



Construction Law | Dispute Resolution | Procurement | Training

PW-CF1 and Disruption

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Quigg Golden *What we do*

- **Construction Law**
 - PWC, NEC, FIDIC contract advice/drafting
- **Procurement Law**
 - Strategy, bid support, training, challenges
- **Dispute Avoidance/Resolution**
 - Conciliation/Mediation
 - Adjudication
 - Arbitration
- **Project Management**



About Me



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Disruption

- What is it?
- PW-CF1 concept
- Clause 10.7.4
- Records
- Evaluation



What is Disruption?



In construction contracts, the term 'disruption' refers to a loss of productivity due to a hindrance or interruption of the progress of the construction works which reduces the rate of efficiency.

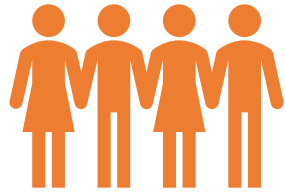
It takes 10 manhours to achieve an amount of work which should have been done with 6 manhours

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CWMF & PWC



CWMMF and PWC Philosophy



Public Perception



Cost Control (aims to provide):

- Certainty
- Value for Money

The Government's Objectives

- ✓ Greater cost certainty at contract award stage (protecting spend/budgets);
- ✓ Award contracts on the basis of a lump-sum fixed-price to the greatest extent possible;
- ✓ Rebalance risk so that there is optimal allocation of risk;
- ✓ Achieve value for money; and
- ✓ Achieve more efficient delivery of the projects
- ✓ = an end result quite favourable to Employers



Clause 10.7.4

Adjustments to the Contract Sum for a Compensation Event shall only be...



CI 10.6

- The value of any additional, substituted, and omitted work required as a result of the Compensation Event

CI 10.7

- Any delay cost

Cl 10.7 Delay Costs

- Depending on Schedule Part 1K
 - The expenses [excluding profit and loss of profit] unavoidably incurred by the Contractor as a result of the delay to the Date for Substantial Completion
 - or
 - The daily rate of delay cost tendered by the Contractor in the Schedule
- There shall be no increase to the Contract Sum for delay cost for the period of concurrent delay [cl 10.7.2]

CI 10.7.4 (10.7.3 in CF5)

“Except as provided in this sub-clause 10.7 [notwithstanding anything else in the Contract] losses or expenses arising from or in connection with delay, disruption, acceleration, loss of productivity or knock-on effect shall not be taken into account or included in any increase to the Contract Sum, and the Employer shall have no liability for such losses or expense”

Can we stop now?



10.6.1-10.6.3

- Additional, substituted, and omitted work shall be valued as follows:
 - Similar to work, executed under similar conditions, use rates in Pricing Document
 - Not similar to or not executed under similar conditions, use rates in Pricing Document as basis where reasonable
 - Other ER makes a fair determination



10.6.4 Cost Basis

Employer's Representative may conclusively direct CE to be valued

On a costs basis, compared with the Contractor's cost without the Compensation Event, determined for:

- Persons involved – 10.6.4(1)
- Material costs - 10.6.4(2)
- Plant costs – 10.6.4(3)

So contractor might not benefit from good rates, but will be stuck with bad ones!

Formulating a Claim

Who must prove?

Who has the burden of proof?

To what standard must they prove?



Balance of Probabilities



*"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of **the event was more likely than not**"*



Records, Records, Records ...

*“A party to a dispute... will learn three lessons (often too late): the importance of **records**, the importance of **records** and the importance of **records**. It is impossible to exaggerate the extent to which lawyers can find unexpected grounds, often quite real, on which to cast doubt on evidence if it is not backed up by meticulously established records”*



Cause and Effect

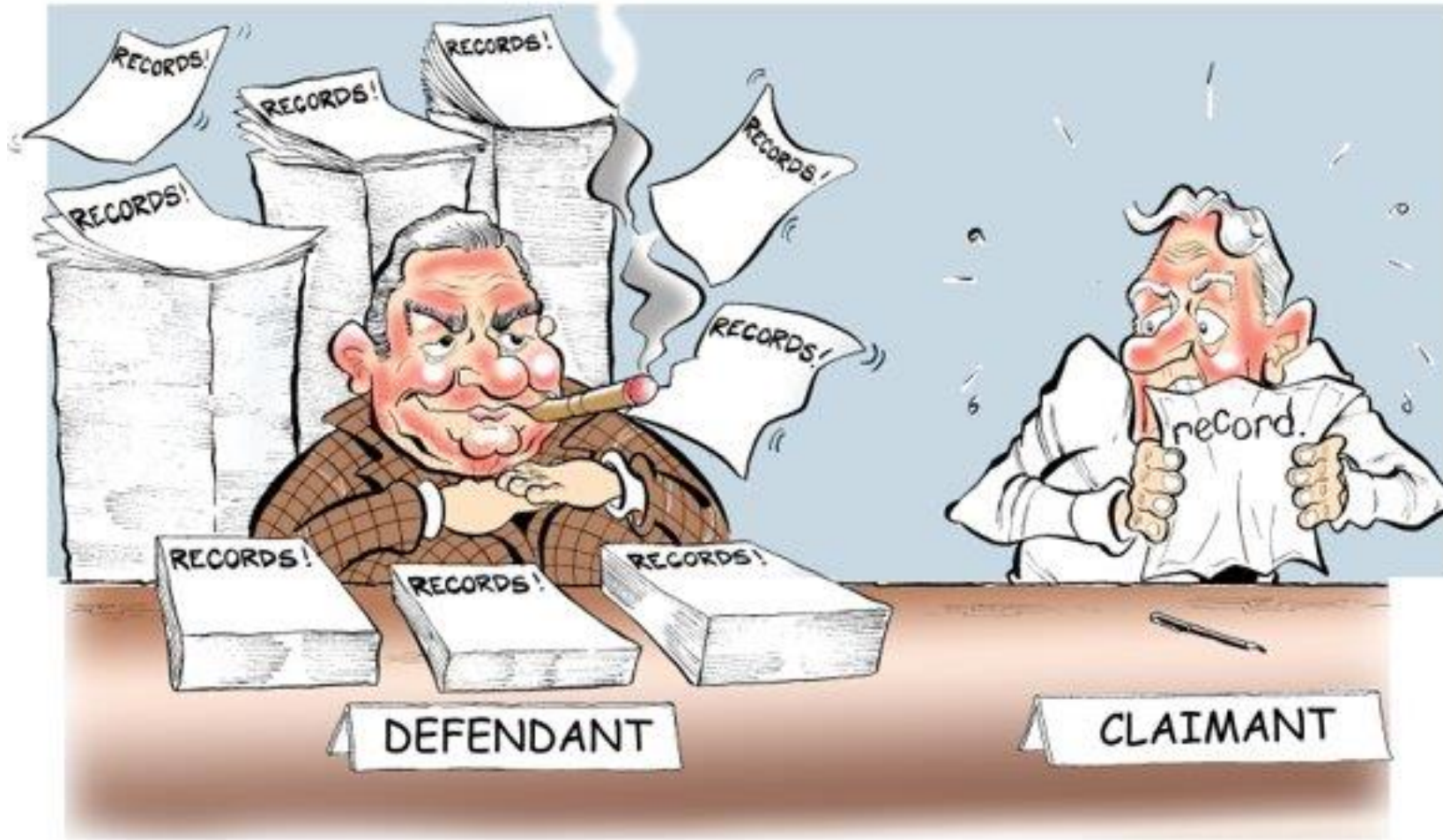
To present a successful claim a contractor must:

- Prove an event happened for which the other party is contractually liable
- Show the effects of said event on the Contractor's works
- Show how the event had a financial impact on the Contractor
- Prove the quantum of said financial impact

How is this achieved? – Clear and substantiated records!

A picture speaks a thousand words....

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Evaluating Disruption

- What was going to happen, e.g. install pipe at a rate of 10m per hour
- What changed that, e.g. in ability to install continually
- What did happen, e.g. install rate reduced to 5m per hour
- Claim =

Actual manhours	10,000
Less Anticipated manhours	<u>5,000</u>
	5,000

X €40 per hour

Claim	€200,000
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What was going to happen



- Best if you are able to show a measured mile
 - A section of work that was not effected
 - Perfect example would be if there were 10 identical floors, 5 were effected and 5 were not
- May need to show on different jobs
- Use pricing books or norms

What impacted productivity? & What happened



- Just how good are your records?
- Can you identify where people were working, on what activity and what they achieved?
- The better the records you have the stronger the claim will be
- The worse they are the more you will approach a global claim and the weaker the claim will be
- No records means no chance of recovery

Use technology

- Each item on a programme has a code
- Allocate people hours to that code accurately
- Measure progress accurately
- Monitor your Spent to Earned (S:E) ratio
- Record the impacts
 - “Why has your team not achieved the output of 10m per hour?”*
- If you can show strong correlation between varying SE ratios and number and magnitude of impacts you have a strong claim

Questions?



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Thank you

Please keep in touch

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