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Understanding Types of Construction Scheduling Claims

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When a project fails to timely meet milestones or completion dates, disputes often arise. Sometimes, the owner threatens to assess liquidated damages. Other times, however, it may be the contractor who has a claim against the owner. Three typical claims that a contractor may have that arise from a delayed project are extension of time claims, disruption claims and claims for acceleration. Each type of claim is slightly different.

Extension of Time Claims

An extension of time claim (delay claim) arises when the duration for the critical path work exceeds the schedule due to no fault of the contractor. Due to the extension to the schedule, it may cost the contractor more money to complete the project. Damages that are generally sought in an extension of time claim include:

- increased labor costs
- increased material costs, idle equipment, and storage costs
- increased direct overhead costs for the extended time
- increased indirect home office costs for the extended time

Disruption Claims

A disruption claim (loss of productivity claim) arises when the owner's interference, or an event for which the owner is responsible, results in a loss of productivity. Essentially, the contractor is performing the work different from, and less efficient than, originally planned and bid. The actual work may not have changed, it simply takes more time, effort, and burden to complete the work, and the additional time and manpower to complete the work is therefore a cost that is sought to be recovered.

Acceleration Claims

An acceleration claim arises when the owner requires the contractor to accelerate the work by finishing earlier than scheduled. The costs to perform the work more quickly are the amounts sought in an acceleration claim. Typical costs include:

- overtime and additional shifts
- additional manpower
- increased costs for expedited procurement of materials

A special type of acceleration claim is a constructive acceleration claim, where an event occurs that justifies an extension to the schedule; however, the owner refuses to grant the extension and instructs the contractor to complete the work as originally scheduled. In effect, the contractor must complete the work at a faster pace than originally scheduled, because it has not been afforded the justifiable extension. In this situation, the owner did not specifically request an acceleration, but the outcome effect is an acceleration because the contractor has performed the work on a shorter duration. Once again, the additional costs of performing the work on a shorter duration entitle the contractor to additional payment.

Considerations for Contractors

Disruption claims, acceleration claims, and delay claims may be intertwined, depending on the circumstances. For example, in an attempt to accelerate the work, the contractor may also experience a loss of productivity due to trade stacking or improper sequencing. Likewise, a disruption of the work that also extends the schedule could create intertwining damages for delay and disruption.

Schedule disputes are a complicated and frequent issue that arises on construction projects. It can be difficult to gather evidence of the issues, analyze legal rights, and calculate the claim for damages. Best practice is to engage early consultation with experts in critical path analysis and your attorney to prepare the assertion or defense of the claim. Saxton & Stump attorney [Ron Pollock](#) is available to discuss how our [Construction Law Group](#) can advise on claims preparation and claims defense.

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