

## Delay

### Book Review –

### Pickavance, Delay And Disruption In Construction Contracts, LLP Limited

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- **Review by Paula Gerber, Partner,  
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This book by English lawyer and architect Keith Pickavance fills a significant gap in construction law literature. It is the only book I have come across to deal comprehensively with the subject of delay and disruption – the single most common cause of disputes in construction contracts.

The book is useful in that it considers all aspects of proving a claim from both the legal and technical perspectives. The author notes that the days of the “global” or “total cost” claim are largely over, and states:

*“whereas, typically, if a contract had overrun by, say, 3 months and the contractor’s costs were £2 million more than his tender, his claim was for 3 months’ extension of time and £2 million in damages. Very little information about the facts of the delays would be produced and little explanation would be offered of how the relationship of the change which was alleged to have occurred was said to have affected the time for performance of the contract. It was not then generally expected that the amount of any award or judgment would flow from any direct mathematical calculation. So much has now changed.”*

The author’s objective with this book is to provide a guide on how to logically and systematically analyse time, and the effect of events on costs. It is intended to assist all those involved in preventing or defending an action. It does this by taking a chronological approach to the construction process beginning with a chapter on “Preparing for the Eventuality of Delay and Disruption”. Here we see an analysis of the different types of risks, e.g.:

- legal;
- disputes;
- design;
- buildability;
- procurement;
- biddability;
- construction;
- financial;
- political; and
- insurable risks.

The introduction to this chapter begins with the useful reminder that:

*“No construction project is free of risk. Risk can be managed, minimised, shared, transferred or accepted, it cannot be ignored.”*

The next chapter looks at the building contract. This chapter like all of the 15 chapters making up the book, begins with a glossary of terms. Phrases defined in this chapter include “compensable delay”, “culpable delay”, “excusable delay”, “float” and “relevant event”. The chapter then looks at the circumstances which can effect the execution of a building project and which, either by the rules of common law or the explicit terms of the contract, excuse the contractor from the consequences of delay and/or provide compensation for costs that may have been incurred as a result of the delay. This involves looking at what happens when work is delayed because of weather, ground conditions, failure to give access to the site, acts of third parties and acts of nominated sub-contractors and suppliers. While the general overview of these topics is good, readers outside the UK may find it less useful because of the time spent focusing on clauses in UK standard form contracts.

The section dealing with extensions of time (“EOTs”) is a thorough analysis of the law relating to EOTs. There is a useful reminder that a delay, or likelihood of delay, to progress is not necessarily the same as a delay or likelihood of delay to completion, although the two are often confused.

Chapters 4 and 5 deal comprehensively with issues relating to the master program. The author notes that the program will be the basis upon which many decisions are made including:

- the reasonableness of the period and the practicability of the contract’s performance;
- the standard by which progress is measured;
- the source of identification of problems relating to integration of successive trades and activities;
- the tool for analysing the impacts of time and costs of change;
- the tool for replanning the project in the event of change; and

- the principle method of demonstrating excusable delay and compensable disruption.

It is noted that a program with nothing by way of explanation to support it is of very little use when it comes to incorporating the results of change. Thus, a method statement demonstrating the assumptions that formed the factual basis for setting key dates and the logic by way of which the program has been developed are just as essential. In *Kitson Sheet Metal Ltd v Matthew Hall Mechanical and Electrical Engineers Ltd* (1989) 47BLR 82, the court held that a program with little or nothing to support the methodology was no more than a mere statement of intention.

There is an analysis of the Critical Path Method of programming which the author notes is more advanced in the United States than in the UK. Other methods of programming such as the Precedents Diagram Method, Arrow Diagram Method and Cascade Diagram Method are also considered.

The importance of updating the program on a regular basis is illustrated with an American case (*Blackhawk Heating and Plumbing Co Inc - GSBCA No. 2432*) where a claim was presented on the basis of a retrospective analysis of a program which had not been updated to demonstrate the way construction logic had changed before the events complained of occurred. The Board of Appeal said:

*“We have consistently tried to evaluate [the contractor’s] delay claims, in terms of the delay actually caused to contract completion. We have found, and still find, that ductwork design delay did not effect such completion. Instead, the critical path, as shown by analysis of [the Contractor’s] “as built” CPMs ran through the electrical fixture submittal activities including the shop drawings for such fixtures. “As built” CPMs were based on [the Contractor’s] own work records, which showed that [the contractor] did not adhere to its original CPM construction plan. Under the circumstances, arguments that certain ductwork delays were critical simply because the original plan indicated that they might be, is not persuasive in the light of the actual construction facts”.*

Later chapters deal with:

1. managing change in delay while work is in progress, including advice on forecasting delay and preparing contemporaneous records;
2. analysing and demonstrating the cause and effect of delay after the event, covering retrospective activity and delay analysis, techniques for proving causation and identifying entitlement including loss and expense;
3. presenting or defending a claim including preparing the pleadings and methods of calculating damages.

At 555 pages, the book is not light reading. It is more likely to be useful as a reference book than something to be read from cover to cover. However, it is easy to follow with case references and technical terms clearly explained. It will undoubtedly become a valuable resource for all those involved with prosecuting or defending construction claims.

The book is available for £95.00 plus £10.00 for overseas shipping from:

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