

Legal Scope

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Advertising Material

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You Scream, I Scream, We All Scream for Eichleay

When a project is delayed, contractors and subcontractors often seek recovery of losses caused by the delay. Claims for delay damages are complex, because multiple layers of factual and legal analysis must identify whether the delay was either (a) excusable; (b) compensable; or (c) inexcusable and noncompensable.

There are further complications to these claims: Usually there are conflicting facts, and sometimes concurrent delays caused by several parties. Even if a delay is clearly excusable and the fault of the owner, it can be difficult to prove the losses caused by the delay.

On this last point, contractors and subcontractors will often declare that they have “Eichleay Damages.” But what, exactly, are Eichleay Damages?

Eichleay is a formulaic calculation of indirect overhead (unabsorbed home office overhead costs). The Eichleay formula comes from the 1960 case, Appeal of Eichleay Corp., which was adjudicated in the Armed Services Board of Contract Appeals. The

concept behind Eichleay is that when a delay occurs on a project, it would be impractical for a contractor to lay off its home office for the temporary delay period, especially if the contractor may be instructed to quickly remobilize to the project. Thus, while the project is delayed, the contractor wastes money on the home office costs. Also, the contractor’s costs and bid for the project were structured on the anticipated revenue of the project. But during the delay, there is no revenue from the project, yet the home office costs for that project continue to accrue for no purpose.

Eichleay is therefore intended to calculate and define the wasted costs of home office overhead that were incurred during the delay. Here is the generic formula:

Step No. 1	Contract Billings			
	$\frac{\text{Total Billings for Contract Period}}{\text{Total Home Office Overhead for Full Contract Period}}$	X		Overhead Allocable to the Contract (“OAC”)
Step No. 2	OAC			
	$\frac{\text{Total Days of Performance (including delay)}}{\text{Daily Contract Overhead}}$	=		
Step No. 3	Daily Contract Overhead	X	Number of Days Delay	= Amount Claimed

Litigating delay claims often requires a significant amount of technical and complicated testimony, usually in part from an expert, to explain the project schedule, origin of delays, and the calculation of the losses. When litigating delay claims it is best to consult with counsel early and often. The contractor/subcontractor must take great care to document the on site conditions and reasons for the delay, and legal counsel is often necessary to advise on submitting and preserving the delay claim as it accrues and, ultimately, litigating the delay claim.



313 W Liberty St., Suite 272 | Lancaster, PA 17603 | 717-212-9164

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The Numbers:

2% to 2.25%

- This month the Federal Reserve raised interest rates by a quarter percentage point.
- This is the third interest rate increase this year.
- Generally, increases in the Fed target rate cause other borrowing rates to increase.

Source(s): Colin Dwyer, The Fed Just Raised Its Rate Again, NPR (Sep. 26, 2018).