

Recovery of Extended Home Office Overhead

A brief resource - Construction Claims
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The rationale is that home office overhead costs represent continuing expenses of the contractor's business which cannot ordinarily be charged to a particular contract and must therefore be allocated among the contractor's various projects on some fair basis of proration.

1. Until recently, the generally accepted method for determining home office expense attributable to a delay period was per the formula outlined in the case of *Eichleay Corporation, ASBCA 5183, 60-2 BCA ¶2688.*
 - a. **The basic formula allows for the creation of a unit of monthly overhead to be calculated by the relationship of the total home office overhead, to the pro-rata percent value of the subject contract, to the sum of all contracts.**
 - i. *Keep in mind that the acceptance of the Eichleay formula came at a time when computerization of construction offices and job costing was limited to book keeping machines and manual records*
2. The "mechanical imposition" of the Eichleay formula was rejected in 1978 by the New York Court of Appeals in the case of *Berley Industries, Inc. v. City of New York, 44 N.Y.2d 683.* Per Berley, before using the Eichleay formula, a contractor must first show:
 - a. **That there is an increase in home office activity expenses because of the delay to the particular contract, and;**
 - b. **That the character of the contractor's business does not permit independent proof of the increased overhead attributable to the delay without the aid of the Eichleay formulation.**
 - ii. *Modified applications of the Eichleay can be developed resulting in factored units of monthly applicable overhead where other distinguishable criteria such as labor curves, establish a means to apply factoring. The "mechanical imposition" of any formula must be avoided*

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to whatever extent possible to maintain credibility of the calculated data.

- iii. Current Construction Management Systems provide detailed Job Costing using code structures such as the CSI "Construction Specification Institute" code, or variations. It is a distinct advantage to keep and maintain contemporaneous records of job costs, more so than it is to attempt to segregate such expenses from ordinary contract costs months or years after the fact, when a claim subsequently develops and requires documentation.*
 - iv. While maintenance of such separate systems and accounts may seem slightly burdensome at the time, they will prove to be easier and less expensive to maintain than after-the-fact reconstruction, or more acceptable than the application of the Eichleay formula or derivatives.*
 - v. Contemporaneous records can be, by their nature, more convincing to a judge or arbitrator of the contractor's claims than would be any ex post facto reconstructions.*
 - vi. By establishing at the onset of a project, accounting techniques which offer the opportunity for the segregation and maintenance of "breach-generated" costs, proof of damages at trial or in arbitration can be as simple as evidence of the existence of such separate accounts.*
3. Additional rejection of the Eichleay formula and possibly the final nail in its coffin may have been driven by the General Services Administration Board of Contract Appeals, in the case of **Capital Electric Company, GSBCA 5316, et al, 83-2 BCA 16, 548.**
- vii. In the wake of Berley and Capital Electric, it remains to be seen whether any future remains for the recovery of extended home office overhead expenses, unless extensive computer controlled accounting systems are in place to track and maintain a segregation of delay related costs through "force accounts" or "extra work accounts".*
 - viii. With advances in the application of computer technology to the process of Job Costing, it will be increasingly more difficult to recover, based on past decisions which more readily accepted "reasonable estimates" and formulas such as Eichleay*
 - ix. Judges and arbitrators will continue to demand credibility in the assessment of damages to such a degree as to limit the applicability such famous cases as **Wunderlich Contracting Co. v. United States, 351 F.2d 956, 173 ct. cl. 180 (1965)**, where - A claimant need not prove his damages with absolute certainty or mathematical exactitude. It is sufficient if he furnishes the Court with a reasonable basis for computation, even though the result is only approximate. Yet this leniency as to the actual mechanics of computation does not relieve the*

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contractor of the essential burden of establishing the fundamental facts of liability, causation, and resultant injury.

- x. See also **Dale Construction Co. v. United States, 161 ct. cl. 825 (1963)**. - *Once entitlement is established, damages will not be refused solely because the contractor has not proved their amount to a mathematical certainty. Most courts and boards are willing to accept a reasonable estimate or a logical method of calculation.* **Peter Kiewit Sons Co. v. Summit Construction Co., 422 F.2d 242 (8th Cir. 1969)** and **Lauria Bros. & Co. v. United States, 369 F.2d 701 (1966)**.

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