

Construction Contractor Claims: Contractor's Periodic Cost Reports and Its Actual Cost

A Practical Guidance® Practice Note by
Michael T. Callahan, CCL Construction Consultants



Michael T. Callahan
CCL Construction Consultants

There are a variety of ways to calculate damages when a construction contractor makes a claim. The best proof of a contractor's claim is to provide actual cost information from the company's accounting books and records with the damage calculation presenting a direct cost for each item of delay. This is known as the detailed damage calculation method. This practice note explains how to properly implement the detailed damage calculation method.

For more on contractor claims, see [Defending Construction Contractor Claims—Has the Contractor Released Its Rights?](#) and [Using Evidence to Demonstrate a Contractor's Bad Performance: What Can We Learn from Southwest Electric Contracting Services v. Industrial Accessories Co.?](#)

Overview

As noted, there are several methods for calculating damages when a construction contractor makes a claim. In addition to a detailed damage calculation based on actual costs, these include the total cost approach and quantum merit, all three of which often use cost estimates. Another approach, the jury verdict method, uses opinion to value the claim calculation. Different types of underlying cost information may be used to support these different calculation methods.

The best proof of a contractor's claim is the detailed damage calculation method, which uses actual cost information from the company's accounting books and records to create a

damage calculation that presents a direct cost for each item of delay. Thus, in *Youngdale & Sons Construction Co. v. United States*, 27 Fed. Cl. 516 (1993), the court required the contractor to calculate its damages by the detailed cost method in preference to alternate cost calculations presented by the contractor by the estimated evaluation approach, the jury verdict method, the cost-plus method, and the productivity comparison method.

In an earlier Virginia Supreme Court decision, *Fairfax County Redevelopment & Housing Authority v. Worcester Bros. Co.*, 257 Va. 382, 514 S.E.2d 147 (1999) "actual costs" were defined as "a term of art." As a term of art, actual cost "includes direct costs (like the price of materials and wages of employees) and indirect costs (like home office overhead)" and excludes things like "profit margin mark-ups." Some contracts require the use of actual cost to value a claim.

The Contractor's Periodic Cost Report

Understanding Cost Reports and Their Uses

The contractor's periodic cost report plays a crucial role in calculating a contractor's claim. In a periodic cost report, the contractor identifies anticipated costs common to its construction specialty and assigns each cost a "cost code." A cost code can then be subdivided into smaller groups, each with a separate cost code to assure related costs are easily identified. Each cost code will be related to a distinguishable performance act, and each will also have a name.

Contractors use cost codes to organize its bid estimates and recorded actual costs are an important source of data used by the contractor when preparing future estimates for new

projects. More importantly, a contractor records actual costs in its periodic cost reports. Not all cost codes will be used on every project; each project uses only the relevant cost codes. A contractor's cost report may be three pages or more than 100 pages, depending upon the sophistication of the contractor and the complexity of the project. The contractor may choose to track its actual costs with off the shelf or proprietary software.

A contractor's cost report almost always includes a budget for each activity included in its contracted performance. The budget for a cost code may differ from its estimate; budgets may be higher or lower than the estimate. This is because the contractor has more information about the project than the contractor had to prepare its bid costs. Budgeted costs for complex activities may be allocated portions of a larger bid items that included multiple tasks.

One of the first steps necessary for an attorney presenting a contractor's cost claim is to review the cost report. Each cost code should be reviewed to identify which costs have overrun its budget and determine whether project owner's action caused the cost overrun or if the overrun remains the contractor's responsibility. Surprisingly, this attorney review often identifies costs that the contractor initially omitted from its claim. The contractor's cost report may also expose cost overruns that may be attributed to mismanagement or mistakes in its estimate if submitted for a design-bid-build project. See Record Keeping in Construction and Design Discovery in Construction Litigation P 4.04 [A][8].

Revising Cost Reports

Cost reports should be revised once a month with actual costs with costs for activities that have not been completed remaining as estimates even if only partially completed. This all means that the amounts the contractor used for negotiation will not match the contractor's eventual actual costs.

The contractor's cost reports are usually one of the first documents requested by the owner in the litigation that follows a failed negotiation. Actual costs are important because they are almost always preferred by courts, but actual costs are also almost always different from the estimated costs. This means that contractor's counsel should anticipate the need to conform that the contractor's claim amounts match its cost reports. And, if the project has not been completed, the attorney should anticipate that the damages claim will change prior to trial. Further, the attorney should anticipate that the contractor may not alert the attorney of changes to its actual costs reflected in the cost reports as the project is completed and the cost reports are regularly revised according to its general practice. The

contractor may not recognize the significance of changes to its cost report to its litigated claims. When attending regular meetings with the contractor, counsel should always ask whether the cost report has changed with the substitution of actual to estimated costs.

Common Claimed Costs

Potential contractor cost claims include:

- Labor costs for inefficiency or addition work
- Material costs
- Equipment costs
- Project overhead or "general conditions"
- Home office overhead (HOO)
- Finance costs and interest
- Lost profits
- Bond and insurance costs –and–
- Attorney's fees and costs for assembly of the claimed costs

Many cost reports combine labor, material, and equipment costs for a particular activity in the cost report. General conditions often are presented separately. HOO, insurance, bonding, and finance costs may not be included in a cost report but found in the contractor's company-wide accounting reports. Lost profits are identified and calculated from evidence not included in either the project or company-wide cost reports. Any escalation costs may be identified by comparing estimated and actual equipment costs and explanations for the differences.

Costs That Should Be Tracked in the Cost Report

Additional Labor Costs and Inefficiency for Additional Work

Additional work is often identified and quantified from the contractor's daily work report. These reports, if used both regularly and properly, should identify additional work performed and workers who performed the additional work and record the number of hours each worker has spent on the additional work. The daily reports, when shared with the project owner's representative, are also helpful if the contract contains any notice requirements for making claims.

Labor inefficiency can be caused by both delay and additional work that impose/lead to trade stacking, crew size inefficiency, an increased learning curve, the need for concurrent performance, occupancy issues, site access issues,

or the payment of overtime. It is nearly impossible for a contractor to recognize and record labor inefficiency daily, as it is happening. Most activities require more than one day to complete, and inefficiency is recognized at the conclusion of the activity, when total actual task hours are compared to the estimated task hours. If the overrun is associated with the delayed or additional work, the additional hours may be recovered in a claim with the delayed or additional work. Support for the labor inefficiency may be provided by comparing the actual with the estimated hours. However, comparing estimated and actual labor hours is often disputed by the project owner.

Inefficiency can also be calculated by comparing the actual hours with prior similar projects or from productivity studies sponsored by trade groups such as the Mechanical Contractors Association (MCAA) or a University. Determining the amount of labor inefficiency that exists can be highly contentious. Convincing a judge or arbitrator that hours not identified and recorded as inefficient may later be recoverable is difficult.

One well-accepted method to calculate labor inefficiency is identified as the “measured mile.” A measured mile calculation compares a period of unimpacted work with an impacted period to measure production loss. The contractor’s cost report facilitates a measured mile calculation because labor costs are most always identified in a contractor’s cost reports by date. If the dates of the disruption can be identified, the cost report can in turn identify the increased labor costs.

Labor inefficiency is most often calculated by an expert. For guidance on working with an expert, see [Selecting, Hiring, and Working with Expert Witnesses in Construction Claims](#).

In *Nova Group/Tutor-Saliba v. United States*, 159 Fed. Cl. 1 (2022), the U.S. Department of the Navy (NAVFAC), awarded a contract to Nova Group/Tutor-Saliba, a joint venture (NTS) to design and construct a new ship repair wharf. NTS’ subcontractor experienced pile driving difficulties. NTS claimed that the subcontractor’s inability to drive piles to their designed tip elevations was caused by “unknown subsurface conditions,” and “a Differing Site Condition at the Pier B structure.” NTS claimed \$1,881,900 for a constructive change due to the differing site conditions. NTS sought \$10,498,284.85 for extra work caused by differing site conditions. However, NTS’s claim for extra work caused by differing site conditions was denied because it did not meet its burden of proving cost damages for lost productivity costs.

NTS claimed \$607,280 for costs incurred due to “direct labor costs (excluding overtime premium)” resulting from loss of productivity caused by acceleration. NTS’s expert opined that the productivity loss occurred due to overtime,

increased work force needs, and increased scope needed to construct portions of the work. NTS’s expert considered three approaches to determining labor productivity loss: (1) industry factors, (2) measured mile, and (3) modified total cost.

The proposed construction industry lost productivity factors were based on MCAA-published loss percentages that should be expected due to a discrete type of impact that could occur on a project. NTS’s expert rejected the use of the industry factors stating that actual cost data was available and would be a more accurate method to calculate lost productivity.

NTS’s expert determined that the measured mile approach was the most accurate and preferred approach. However, the court rejected the expert’s calculations because the expert did not adjust their cost calculation for any contractor-caused inefficiencies. The government contended that NTS failed to properly account for work NTS undertook to correct its subcontractor’s defective work. NTS had back charged its subcontractor for the costs to correct the defective work and that back-charged work had contributed to the labor overruns. NTS failed to apportion the subcontractor-caused re-work in its loss of productivity claim. This performance inefficiency had inflated NTS’ expenditures and should have been adjusted in its cost methodology. The court awarded NTS \$528,802.82 on its constructive change claim, together with interest calculated according to the Contract Disputes Act. 41 U.S.C. § 7101 et seq.

Material Costs

To the extent that a supplier’s delivery is delayed beyond the performance period defined in the purchase order and the supplier requires additional fees for its delayed performance, material escalation has occurred. A purchase order may define different material costs for different performance periods. As the performance is extended into a higher cost period because of compensable delay, the additional cost of materials may be included in the escalation claim. If the contractor does not have purchase orders to define increased material prices but can prove material escalation has occurred, indices measuring changes in material costs may be used. Some, but not many, construction contracts include a material escalation provision.

Equipment Costs

There are two types of equipment costs that may be included in a contractor’s cost claim: owned equipment and rented equipment. Either or both types may be utilized at the project site and included in a claim. Some equipment may be used by contractor’s project management and considered overhead. Equipment used to perform work related to the project may be charged to a cost code in the contractor’s cost report.

Actual equipment costs are not reported in cost reports as frequently as labor costs. This means that estimated costs included in the cost report's budget for equipment may not be revised to reflect actual equipment costs as often as labor costs. Costs for rental equipment may lag by several months while actual costs for owned equipment may not be recorded until the project is complete. The equipment costs included in the cost claim should, as much as possible, include actual costs. This means that the contractor may be required to revise its estimated costs in the budget before inclusion of equipment costs in the claim.

Owned equipment costs may also be pooled in the contractor's company-wide accounting system and assigned to a particular project proportionately, based on project size. Owned equipment costs may include depreciation as costs for maintenance, repair, and fuel. For federal construction projects, Part 31 of the FAR determines whether contractors are permitted to take depreciation on owned equipment. FAR § 31.105 states that:

Actual costs data shall be used when such data can be determined for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment.

Some contracts may require equipment costs from a particular publication's stated equipment costs to be used in the claim. For example, the Defense Acquisition Regulations and its predecessor, the Armed Services Procurement Regulations identify the amounts permitted for specific equipment as does the Associated General Contractors of America's composite rate equipment publication. Equipment rate manuals include:

- The Associated General Contractors of America Contractors' Equipment Cost Guide
- U.S. Army Corps of Engineers' (USACE) Construction Equipment Ownership and Operating Expense Schedules
- Associated Equipment Distributors (AED) Green Book
- Rental Rate Blue Book for Construction Equipment
- Cost Reference Guide for Construction Equipment –and–
- State Industry Guides, such as The California Department of Transportation Labor Surcharge & Equipment Rental Rates

How the equipment rates in these manuals are applied can also be contentious. The contractor in *Lodge Construction, Inc. v. United States*, 158 Fed. Cl. 23 (2022) used operating and standby rates under the USACE Manual for a 2006 773D Caterpillar truck as equivalent to the size, capacity, horsepower, and value of the equipment it actually used, which was not listed in the Corps' manual. The contractor claimed that the four Caterpillar trucks were worth \$3.5 million (\$888,686 each). The court found that the actual trucks used, which were much older, were worth closer to \$40,000 each. The contractor had been warned by one its consultants that its rates charged for the dump trucks were inflated. Nevertheless, the contractor did not revise the rates or properly follow the USACE Manual's procedures.

Another part of the contractor's claimed costs were costs associated with the ownership and operation of a different piece of equipment, a batch plant. The batch plant equipment mixed water, excavated soil from the site, and used Portland cement to produce a soil cement. The Army Corps had paid the contractor for the cost to purchase, deliver, and install the batch plant. The contractor then financed roughly 75% of the purchase costs through SunTrust Bank. Despite receiving credits from the batch plant vendor and failing to pay the principal of the loan from SunTrust, the contractor claimed ownership costs. The United States asserted that the contractor was not entitled to claim ownership costs related to the batch plant. However, FAR § 31.205-11 provides that depreciation, rental, and use charges "are unallowable on property acquired from the Government at no cost by the contractor . . ." Because the contractor financed the purchase of the batch plant through SunTrust Bank, incurring interest as a cost of capital, the contractor could claim its costs of capital under FAR § 31.205-10.

Project Overhead (a/k/a General Conditions)

The required personnel, equipment, and services at the project site are often referred to as "project overhead" or general conditions. Common extended general conditions include personnel costs for project managers and other similar project administrative personnel; costs of additional utility charges for heat, light, sewer, and water; additional costs for maintenance and cleanup; additional costs for facilities such as temporary storage facilities, dumpsters, or office trailers; communications charges; and additional security charges.

To recover its general conditions costs on change orders, contractors often use the contract's defined percentage markup on the change order cost. If the change order involves a time extension, a contractor may also seek to recover a per diem for the extended general conditions.

Bond and Insurance Costs

Because a bond premium is calculated on the final contract amount and the final amount may include recovered claims, inclusion of the additional bond premium in the delay claim has in the past been permitted. Courts have accepted as proof of additional bonding costs the amounts included in previously executed change orders. Extended insurance for additional periods of coverage for equipment, personnel, or material storage may also be included. These costs may be provided for in the contractor's general conditions and found on the contractor's cost report.

Attorney's Fees

A cost report may include attorney's fees in its general conditions. Attorneys' fees incurred as a business cost, rather than a cost of litigation, may be recoverable despite the absence of contractual or statutory authority. Fees may be recoverable when the attorneys are involved in contract administration activities or when they participate in a request for equitable adjustment (REA), negotiations for an increase in progress payments, or other similar activities during performance of the contract. Including attorney's fees in the cost report supports the claim that the fees were not costs related to litigation.

Costs for Assembly of the Claimed Costs

The general conditions costs included in the cost report may also include consultant fees. Costs incurred for claims consulting, accounting, and auditing in preparing for a claim are not recoverable unless specifically provided by contract, statute, court rules, or special circumstances. Consulting services for prosecuting claims against the federal government are unallowable under FAR §31.205-33, but costs for preparation may be recovered. If the consulting or accounting services relate to work performed with a connection to contract administration or negotiation of the change order amount, they may be recovered on U.S. government contracts.

LCC-MZT Team IV v. United States 155 Fed. Cl. 387 (2021) concerned disputes arising out of a construction contract between LCC-MZT Team IV and the U.S. Naval Facilities Engineering Command Northwest (NAVFAC) for a construction project at a naval base in Washington. The government had required the contractor to accelerate, stack trades (rendering work areas overcrowded), and re-sequence the work to mitigate the government's disruptions, impacts, and delays to meet the substantial completion date and the contract completion date. The NAVFAC's delays, impacts, and disruptions delayed the completion of the project and required the contractor to hire a schedule and claims consultant to prepare the time

impact analysis and requests for equitable adjustments. Per FAR clauses 52.243-04-Contract Changes, 52.236-02 Differing Site Conditions, 52.246-12-Inspection, 52.236-11-Use & Possession, 52.242-14-Suspension of Work, 52.245-1-Government Property and 52.211-13-Time Extensions, the contractor requested payment of these additional costs.

In its REA, the contractor sought \$196,134 for additional costs incurred by its subcontractor-consultant Mirack, stating that the consultant had provided the contractor consulting services for a Time Impact Analysis and REA. These services included review of all correspondence to and from the owner, weekly and monthly schedule review, and review of daily logs in addition to preparation of the Time Impact Analysis and preparation of the additional cost calculations. The description provided in each invoice was "Consulting for P-913 EHW Security Force Facility Claim and Schedule." The monthly invoices were broken down by week, indicating how many hours are being charged by Mirack for that week, with hours charged at the rate of \$155 per hour.

The contractor argued that it was forced to obtain assistance from a consultant because of the difficulties caused by the delays to the project. NAVFAC argued that the services provided by the consultant were unclear and that it was not possible to discern whether the contractor sought costs relating to prosecution of claims. The contractor contended that it only sought costs for invoices issued by the consultant during the extended duration. The contractor contended that the consultant had served as the project scheduler, claims consultant, and interim project manager. NAVFAC's expert had concurred that the contractor was entitled to these costs if they were incurred in preparing REAs and associated time impact analyses, but the expert also believed the invoices did not clearly indicate what the consultant was doing during the claimed time period.

The contractor was solely responsible for scheduling and, to perform under the contract, it needed an approved scheduler. NAVFAC argued that costs expended for prosecution of claims against the government were not recoverable unless part of contract administration and that the contractor could not recover for costs associated with REAs, because costs incurred for preparing the REAs were part of the contractor's costs for its prosecution of claims. NAVFAC further contended that the scheduler was properly part of the contractor's overhead costs and already recovered under the contract's terms, not a separate cost for which it was entitled to compensation and that whether the scheduler was an employee of the scheduler or a subcontractor, it was part of the means and methods that was determined by the contractor. In addition, NAVFAC contended that the invoices

did not point to what portions of each invoice related to which and that the contractor did not present evidence that the consultant was actually even approved as the project's scheduler. Finally, NAVFAC argued that the contractor failed to demonstrate with necessary particularity that the invoices attached to its REA relate to anything other than items contractually required, or to the prosecution of its claims against NAVFAC, but that if the court determined that the contractor was entitled to recover any portion of its scheduling and claim consulting costs, the contractor's claims should be limited to only those amounts proven to be related to its computation of the time impact analysis. The court found the contractor was entitled to recover \$759,260.61 representing compensation due to the concrete testing required by the stop work order, additional field office overhead incurred from the 76 days of excusable, and other entitlements.

Costs Not Tracked in the Cost Report

Home Office Overhead (HOO)

HOO is all overhead expenses that cannot be directly related to a particular project. For example, the salary of the contractor's president. A contractor's insurance policies may be included as HOO, as can the contractor's accounting fees, donations, and interest payments on a line of credit. HOO overhead is a necessary part of a project's performance costs, but allocating HOO among several projects under construction at the same time and deciding whether all HOO costs should be included can be challenging.

The Eichleay formula is a popular and often-used method for calculating HOO and is required for federal construction claims. However, use of the Eichleay formula is not limited to federal construction projects. Many state courts have accepted the Eichleay formula to allocate HOO to a project.

Appellate courts in California, Florida, Louisiana, Maryland, Massachusetts, Ohio, Texas, and Virginia, have relied upon case law to determine whether the Eichleay should be used. In the Federal Circuit adopted pricing unabsorbed overhead claims using the Eichleay formula, so long as the contractor also established a delay or suspension resulted in indefinite standby similar to the elements set forth in *P.J. Dick Inc. v. Principi*. Other courts, such as in Connecticut, Michigan, Oregon, Tennessee, and Washington have referenced, or applied, the Eichleay formula and prerequisites, but have not formally adopted or rejected its use.

Finance Costs and Interest

Finance costs are costs the contractor encounters as a result of not receiving its money from the owner in a timely manner. If the contractor is forced to borrow money to finance construction, the interest costs of borrowing represent a finance cost. If the contractor is substantial and can prove it would have invested the money withheld, the lost investment revenues or lost opportunity costs constitute another financing cost.

To recover such interest, the contractor must prove that (1) it paid the interest and (2) the borrowing was necessitated by the delay caused by the owner. Recovery under this theory of damages is not limited to the cost of borrowing money but recovery also may be obtained on the interest that would have been earned on the contractor's own funds used to finance the work during the delay.

Lost Profits

Lost profits are awarded when anticipated profits can be proven to a reasonable, although not necessarily absolute, certainty. Lost profits are direct damages not consequential damages.

In *United States ex rel. Source Helicopters v. Sayers Construction, LLC*, No. 2:19-CV-1602 JCM (EJY), 2022 U.S. Dist. LEXIS 44361 (D. Nev. Mar. 14, 2022), the defendant, Sayers Construction, had subcontracted with the plaintiff, Source Helicopters, on a government electrical construction project. The subcontract contained a "time is of the essence" clause and a progress schedule that required the subcontractor to mobilize on the project no later than December 4, 2017, and complete its work no later than July 20, 2018. The subcontractor failed to meet both deadlines—it did not mobilize until January 9, 2018, and did not finish until November 20, 2018. After completing its work, the subcontractor submitted five invoices to the contractor. The contractor refused to remit payment because the subcontractor had completed its work after the agreed-upon dates. The contractor cited specific provisions of the subcontract showing that the subcontractor understood and agreed that time was of the essence and that it would be liable for any lost profits stemming from its breaches of the subcontract. The court agreed that the contractor's lost profits and overhead were direct damages—not consequential.

When work has not been completed, lost profits are calculated as the contract price less any payments made on the contract and what it would have cost the contractor if it had completed the project in accordance with the contract. The burden of proof to demonstrate cost of completion should include

detailed figures as to the cost of the different materials and operations. In a claim for wrongful termination, the lost profits should be calculated after subtracting all costs and expenses of the remaining performance, not just job-site overhead and direct labor. The remaining costs may include costs for equipment, material, deliveries, permits, supervision, and a host of other items relating to performance of the work.

Not only are lost profits properly considered as an item of delay damage, but also lost profits on other jobs on which the opportunity to work has been denied due to the delay. Small- to mid-sized contractors with limited workforce, resources, and bonding capacity may have consumed their resources and precluded them from securing or performing contracts on other projects thereby losing the profits. To recover lost profits on other projects, a party must prove the damages were within the parties' contemplation at the time they signed the contract and prove the additional net profits it would have earned but for the contract breach. A simple showing that net profit was reduced in the year in which

delayed completion was finally achieved compared to prior years will generally not be accepted. The contractor must demonstrate, through expert testimony, that the reduced profit level for a given period was more likely than not caused by the contract breaches. A contractor without a profitable track record has an even greater challenge.

Concluding Thoughts

The contractor's cost report is often a significant source to both identify and support contractor claims. A 100-page cost report may be intimidating, but understanding the budget and the circumstances leading to any overrun provides a foundation for not only proof of damage but also the basis for pleading and presentation to the dispute resolver. An independent review of the cost report can both explain the claim and distinguish cost overruns that are the owner's responsibility from those that remain the responsibility of the contractor.

Michael T. Callahan, President, CCL Construction Consultants

Michael T. Callahan is president of CCL Construction Consultants, Inc., an international construction consulting firm that specializes in project scheduling and resolution of construction claims since 1986.

Mr. Callahan maintains an active international consulting practice in the measurement and responsibility of construction delays, along with the quantification of additional performance costs and other construction and design-related matters. Mr. Callahan consults on discovery, liability, and damages for construction and design disputes world-wide. He has testified before courts and dispute resolution panels on delay and disruption claims.

Mr. Callahan earned a B.A. from the University of Kansas, and both a J.D. and L.L.M. from the University of Missouri-Kansas City. He has written ten books on a variety of construction and design topics, including Construction Delay Claims with Barry Bramble, Construction Change Order Claims, and Termination Of Construction And Design Contracts. Mr. Callahan prepares the monthly Construction Law Digest for Lexis-Nexis. He was an adjunct professor at the University of Kansas and has lectured throughout the United States, Europe, the Middle East, and Far East on design and construction related topics. He is a member of the Kansas, New Jersey, and Missouri bars by examination. Mr. Callahan is a frequent arbitrator, negotiator, mediator, and a regional advisor to the American Arbitration Association. Author queries are invited at CCL's web site, cclcc.com. Mr. Callahan divides his time between CCL's offices in Eagle-Vail, Colorado and Overland Park, Kansas, and can be contacted at callahanmt@cclcc.com.

This document from Practical Guidance®, a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis®. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.