“Time is Money”
Who pays the Money for the Time?
Effects of Construction Delays

- Acceleration
- Schedule Change - Inefficiency
- Delayed project completion
- Missed intermediate completion dates
- Liquidated Damages
- Frustration – claims
- Increased Costs
Delay Causes

- Labor Strikes
- Weather
- Third Party
- Plan Errors
- Change Orders
- Contractor Errors
- Suspension of Work
- Utilities
- Differing Site Conditions
- Archaeological Finds
- The list goes on
Costs of Delays

- Delays in most cases always cause additional costs
- Direct Costs
- Indirect Costs
- Impact Costs
When a Delay Occurs

Time for delay needs to be addressed immediately
Problem
Disagreement
Claim
Appeal
Arbitration
CRB
DRB
DRB
Higher Up
Project Level
Contract Clause for Determination and Extension of Contract Time

Most Owner’s contracts have this clause giving guidelines for time requests.
Contractual Requirements for Contractor Scheduling (CPM)

- Without a Schedule, how does Owner/Contractor determine how a delay affects time?
- Initial Schedule
- Schedule Updates
- Contract completion date
- Contractor’s scheduled completion date
- Substantial completion
- Float
Types of Non-Excusable Delay

Non-Excusable (Within control of the Contractor)
- Under estimate of production rates
- Inadequate scheduling or management
- Construction mistakes
- Equipment problems
- Bad Luck
- Liquidated Damages or Termination of Contract

The list goes on

Bottom line - Construction is a risky business
Types of Excusable Delay

- Unusually Severe Weather
- Changes and Extra Work
- Differing Site Conditions
- Delays from unforeseeable causes beyond control of the Contractor
- Labor Disputes
- Utilities
- Etc.
Excusable Delay

• Foreseeability
• Beyond the Control
• Without fault or negligence
Excusable Delay – Time Consideration

- May entitle Contractor to an extension of time (refer to your contract specifications)
- Contractor not charged Liquidated Damages or terminated if the Delay is Excusable – Time should be forthcoming
- If time extension is requested by Contractor and not granted and proven to be excusable – Constructive Acceleration may exist and costs owed by Owner
- Above may be overturned by a “No Damage for Delay” clause in contract
Excusable Delay (Compensable or Non-Compensable)

• Non-Compensable Delay – Unforeseeable and beyond the control and without fault or negligence by the Owner or Contractor (may be entitled to time)

• Compensable Delay – The Contractor is entitled to an adjustment for increases in costs to the performance of the contract
Compensable Time Extensions

The following clauses are placed in the contract to prevent a breach by the Owner

- Changes and Extra Work clause
- Differing Site Condition clause
- Suspension of Work clause
- Utility Work clause
Changes and Extra Work Clause

The Changes and Extra Work may be compensable – time may be given if proven to affect the critical path.
Differing Site Conditions Clause

- Direct Costs
- Indirect Costs (OH & profit)
  
  Amount to be paid can be limited to Contract wording.

- The Changes and Differing Site Conditions clauses are not generally referred to as delay or suspension of work
Suspension of Work Clause

Delays by the Owner for an unreasonable time fall under this clause and are most likely compensable. Very risky for liability on the Owner

- The Suspension of Work clause should provide contractual guidance for an equitable adjustment to the Contractor for time and money excluding profit
- Ground rules for Delay generally come from Contract Law. The Owner is liable for their actions/inactions that result in unreasonably delaying or disrupting the Contractor
- There is an implied obligation on the part of the Owner not to delay, interfere with or hinder the Contractor’s performance of their contract
Utility Facilities clause

Refer to your State contract requirements to determine your rules for compensation and time the Owner is liable to the Contractor for a Utility delay. Should exclude profit.
Burden of Proof for Damage Must be Proven by Contractor (Time and Money)

- The contract performance was delayed
- Delay was excusable
- Delay was for unreasonable period of time
  - Unreasonable means not originally anticipated, customary or inherent in the construction industry
  - Some States define this unreasonable time by days
- Contractor did incur additional expenses
Defective Plans and Specifications

- Contractor does not have to prove unreasonable time delay
- Any Delay due to Defective Plans/Specifications is unreasonable
Third Party Delay

• This is a delay without the fault or negligence of either the Owner or Contractor

• Generally eligible for time but not compensable
Concurrent Delay

- Both Owner and Contractor are contributing to the Delay time
- Neither Party can recover damages (non-compensable)
- Contract time may be extended
Delay Costs

The cost of the delay must be traced directly to the claimed delay in a clear cause and effect relationship.
Acceleration

Acceleration is action taken by the Contractor in order to speed up the progress of the project to accomplish early completion or to make up for lost time

- Voluntary
- Constructive (not ordered by the Owner but attributed to the Owner)
- Direction from the Owner
Constructive Acceleration

• Constructive Acceleration occurs when the Contractor is induced by the actions/inactions of the Owner to complete the work in accordance with schedules not updated to include all time extensions from excusable delays.
Contract Completion

The contract must be specific in terms of the time required to perform the work.
Contractor’s Scheduled Completion

- This is the date the Contractor presents on his schedule as to when the work will be completed.
Substantial Completion

• Most contracts define what constitutes substantial completion
• Substantial completion is primarily used to stop time accounting
No Damage for Delay cause

- An effort to reduce claims for delay
- Exculpatory Language – precludes damages for delay
- Generally, the Contractors sole remedy is only a time extension if so stated in the contract
- Validity of this clause varies from State to State
- Clause must be very clear and unambiguous
- Enforceable – with following exceptions
  - Jurisdiction allows the clause
  - Delay was not contemplated by the parties to the contract
  - Delay caused by fraud, gross negligence, active interference
  - Delay is so unreasonable that it is tantamount to an abandonment of the Contract by the Owner
  - All of the above have been completely reversed by the courts and rulings made in various ways
Owner caused suspension or delay for unreasonable period of time

Excusable – 100%
Compensable – 100%
Unavoidable Utility Delay

Excusable – 95%
Compensable – 56%
Unusual Severe Weather

Excusable – 95%
Compensable – 8%
Unavoidable area-wide material shortage that occurs after bid

- Excusable – 90%
- Compensable – 0%
Labor strikes that occur after bid

Excusable – 81%
Compensable – 9%
Unforeseeable and unavoidable; such as fires, floods, and natural disasters

Excusable – 100%
Compensable – 29%
Third party delay without fault or negligence of either Owner or Contractor

Excusable – 88%
Compensable – 31%
Differing Site Conditions

Excusable – 100%
Compensable – 95%
Damage to permanent work prior to acceptance

Excusable – 64%
Compensable – 47%