

Construction Delay Claims

Matthew Nicholas
Revay and Associates Limited

Kitchener, ON
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1

Objectives

- Understanding construction delay claims
- Review of typical contract clauses related to delays
- Use of CPM in delay analysis
- Assigning responsibility for delays
- Resolution of delay claims

2

Construction Delays

- Most common reason for claims in construction
- Difficult to identify impact of delay events
- Difficult to prove responsibility for delays
- Time is money; hence delays are costly
- Parties reluctant to deal with delays during construction

3

What is Delay ?

In construction claims, a delay is the time during which some part of the construction project has been extended or not performed due to an unanticipated event.

4

What is a Claim?

"A claim is a demand or an assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract."

5

Causes of Delay

- Owner caused
- Designer caused
- Contractor/Subcontractor caused
- Third-party caused
- Extreme weather
- Strikes and labour disputes

6

Effects of Delay

- Delayed completion
- Missed intermediate milestones
- Acceleration
- Liquidated damages
- Increased costs
- Delay claims

7

Contract Time

- Most contracts include an obligation to perform the work within a fixed time
- Most contracts contain provisions for adjusting Contract Time
- Contract compliance is required to get relief for delay damages

8

Contract Terms (CCDC 2)

- Contract Time (Article A-1, 1.3)
- Construction Schedule (GC 3.5)
- Changes to Contract Time (GC 6.1.1.2)
- Construction Delays (GC 6.5)
- Notice of Delay/Claim (GC 6.5.4/6.6.1)
- Claims (GC 6.6)
- Dispute Resolution (GC 8.2)
- Liquidated Damages
- No Damages for Delay

9

Construction Schedule

- To ensure that the work of the project is adequately planned
- To list activities required to complete the work, allocate duration and provide preferred sequences to determine the timing of activities
- To provide for effective resource management
- **To assist in recovery of delays and allocation of liability for delays**

10

Scheduling Specification

- To define contractor's obligations
- To prescribe :
 - Form and detail of the schedule & supporting data
 - Methods for adjusting and updating schedule
 - Use of schedule for contract modification, time extensions & analysis of delays
- CPM schedule often required under contract terms

11

Why Update Schedules?

- To determine which activities are behind or ahead of schedule
- To determine if the project is behind or ahead of schedule
- To record progress
- To produce current schedule that shows how the remaining work will be completed within Contract Time
- **To show why project completion is revised**

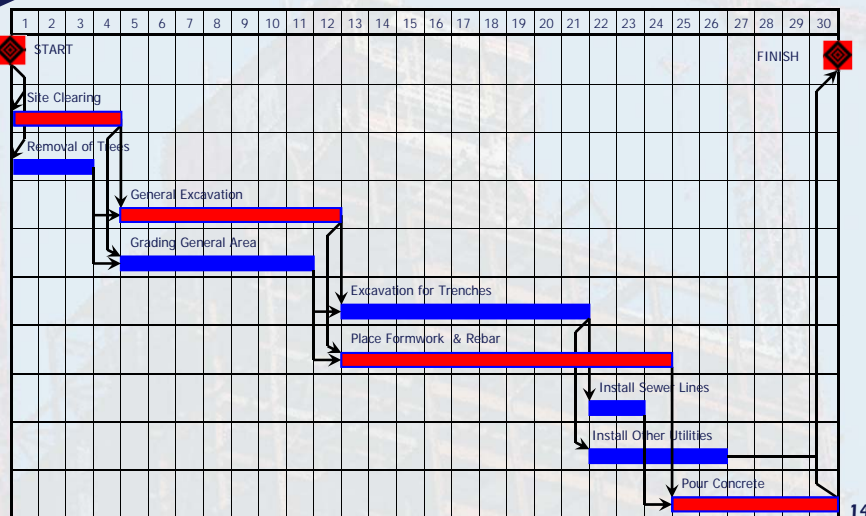
12

CPM Methodology

- Activities are logically linked together based upon:
 - what activity immediately precedes this activity (predecessor activity/logic)
 - What activity immediately follows this activity (successor activity/logic)
 - What activity can be performed concurrently with this activity

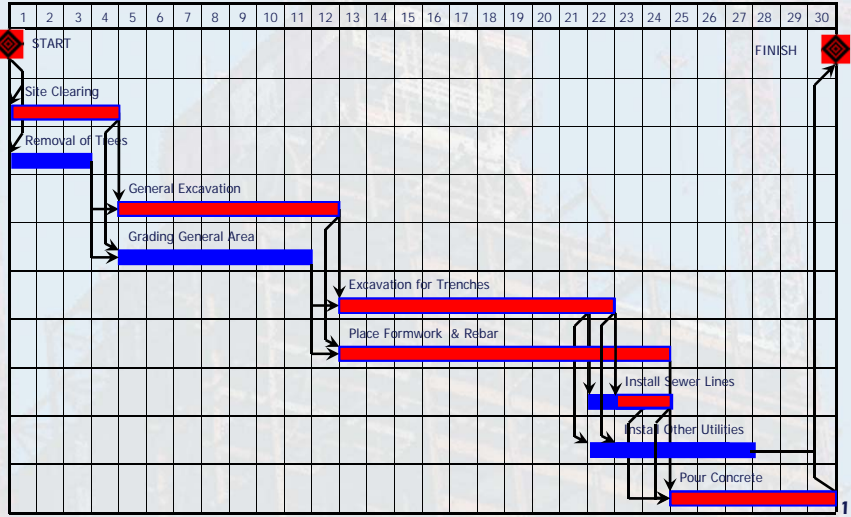
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CPM Schedule



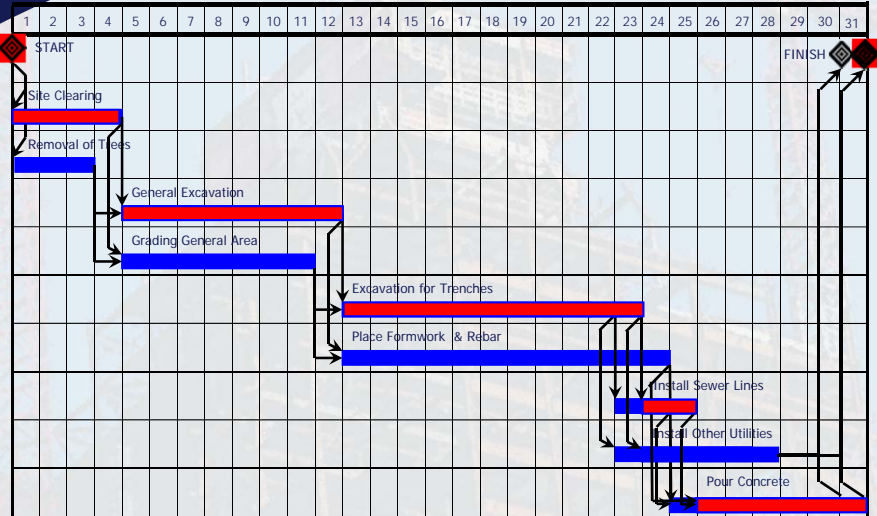
14

Construction Delays



15

Impact of Delays



16

CPM Scheduling and Delay Analysis

- Best way to demonstrate delays and schedule impacts
- Comparison of Baseline vs. Actual can determine whether a delay event occurred and caused the delay
- Establishes whether or not the delay is on the critical path and quantifies the project delay
- Recognizes the responsible party to the delay
- CPM schedules have made delay claims more complex but relief more realistic

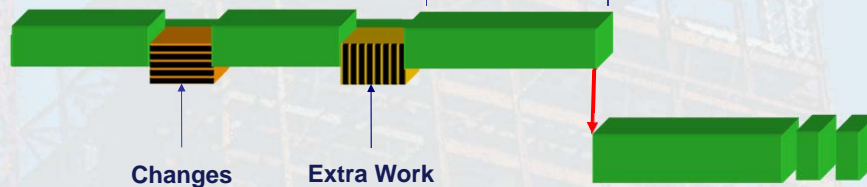
17

Cause and Effect

As-Planned



Actual



18

Responsibility for Delays

Construction delays fall into two major categories

- Excusable delays
 - Compensable
 - Non-Compensable
- Non-Excusable delays
 - Non-Compensable

19

Excusable: Compensable Delays

- Delays for which the Owner must assume responsibility pursuant to the terms of the contract
- These delays entitle the Contractor to both extension of time and compensation

20

Excusable: Non-Compensable Delays

- Delays which result from the so called “neutral events” i.e. causes beyond the control of both parties such as force majeure events, strikes, or unusually severe weather

21

Non-excusable: Non-Compensable Delays

- Delays resulting from the shortcomings of the Contractor or Subcontractors
- The Contractor is not entitled to time extension and may have to accelerate at its own cost

22

Concurrent Delays

- Concurrency is probably the most conceptually challenging aspect of delay analysis
- Concurrency will exist when both parties cause delays during the same period



Contractor inefficiencies



Delivery delay in owner supplied equipment

23

Concurrent Delays

- The Contractor is entitled to an Extension of Time for the effects of the excusable event on the critical path irrespective of whether it is the result of a change imposed by the Owner or a neutral event
- The Contractor is entitled to that Extension of Time irrespective of the fact that the Contractor was in delay at the time of the excusable event

24

What to do when a delay is anticipated ...

Provide **Timely** Notice

25

and then ...

- Gather facts and analyze the reasons
- Perform schedule analysis
- Prepare a logical written summary of the delay/loss incurred
- Present the claim to the other party to the contract
- Follow contract provisions and arrive at equitable compensation

26

Resolution of Delay Claims

- How was the project planned?
- How did construction actually occur on the project?
- What are the variances, or differences between planned performance and actual performance (activities, sequences, duration, manpower, etc.)
- What are the effects of the variance on time/costs?

27

Use of Delay Analysis

- To establish lines of investigation
 - Where delays occurred in the project
 - When & why delays or disruptions arose
 - How extensive they were
 - What activities were affected
- To demonstrate 'entitlement'
- To present the case

28

Choosing an Analysis Method

- Contractual requirements
- Nature of claim/Purpose of analysis
- Available information & reliability
- Size of the dispute
- Complexity of the dispute
- Accuracy required
- Time & budget constraints
- Available software

29

Common Methods of Delay Analysis

- Impacted as-planned method
- As-built 'but for' method or Collapsed as-built method
- As-planned vs. As-built
- Snapshot/Window method

30

Common Heads of Claims - Contractor

- Direct costs
- Indirect costs (GC costs)
- Impact costs
- Head office costs
- Labour/Material escalation
- Bonding & insurance costs
- Financing cost
- Loss of profit

31

Common Heads of Claims - Owner

- Project management/supervisory Costs
- Project overhead costs
- Project insurance costs
- Loss of use
- Lost rents/profits
- Construction loan financing costs

32

Defence to Delay Claims

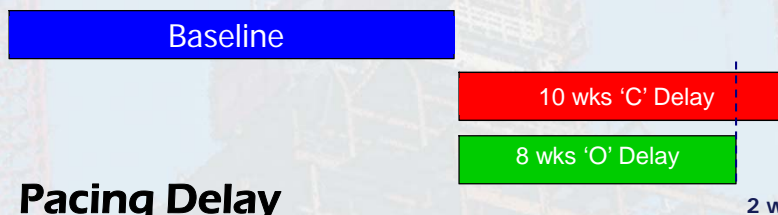
Concurrent Delay occurs when another activity independent of the subject delay is also delaying the ultimate completion of the chain of activities.

Pacing Delay occurs when the delay in the independent activity is the result of a conscious and contemporaneous decision to pace progress against the subject delay.

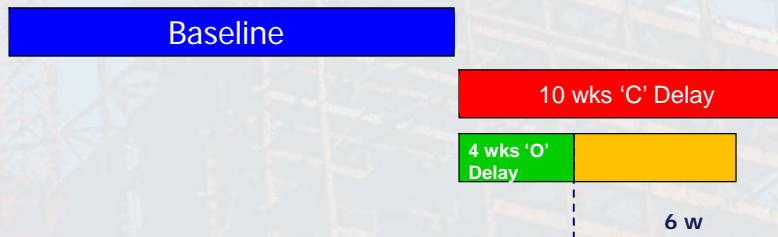
Provide Notice of Intent to Pace

Concurrent vs. Pacing Delay

Concurrent Delay



Pacing Delay



Successful Delay Claim

- Implement effective scheduling and monitoring using CPM
- Delay must extend overall project completion date
- Alleged problems or events are the ones that actually caused the delay
- Comply with contractual requirements, incl. notice provisions
- Employ appropriate delay analysis method
- Provide evidence in the form of accounting records to prove damages

35



36