

THE CLAIM PROCESS

Concurrent Delays

understanding the impact on delay claims

By Aman Kahlon



A delay is “concurrent” is a delay to the critical path of the project caused by multiple events not exclusively controlled by one party. If you are impacted by a delay to the critical path that was not within your control but are responsible for another overlapping delay to the critical path, the delays are concurrent, and you may not be able to recover damages for the former delay. You may, however, still be entitled to an extension of the contract time, which is usually classified as an “excusable delay” (contrast, with “compensable delay” where time and money are recoverable).

THE CRITICAL PATH

Whether a delay is concurrent generally depends on who the responsible party was and whether the delay is on the critical path. A contemporaneous delay that does not affect the critical path may not be “concurrent” for purposes

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of schedule review and analysis. Similarly, if the critical path is delayed simultaneously by two separate events, both outside your control, neither delay will be considered concurrent with respect to your delay claim or defense of the same. However, if the delay

impacts from those two events run simultaneously, you may not be entitled to double or duplicative recovery. You will only be able to recover for the actual delay to the critical path.

SCHEDULE UPDATES

On complex construction projects, with multiple overlapping activities and, sometimes, multiple critical paths, determination of concurrent delays can be difficult. In such circumstances, it may make sense to staff a scheduler to a project full time or even hire an outside scheduling consultant to review and update your schedule regularly as the project progresses and impacts accrue. If you end up in a dispute or claim with a subcontractor, owner, or other party, having consistent and quality schedule updates will help you analyze the different delays to the project and determine responsibility and concurrency.

Sometimes concurrent delays will not show up on schedule updates, but may be revealed when project documentation is reviewed. Certain delays may be reconstructed from project documents like daily reports or material procurement trackers. For example, daily reports may capture impacts from weather or site issues that do not always make it up the food chain to a scheduler or consultant who is updating the schedule. This may be especially true on already heavily impacted projects, where parties are scrambling to keep the project progressing and the schedule is not regularly updated or well-maintained.

CLOSING THOUGHT

Concurrent delays can have a substantial impact on delay disputes on construction projects. If you have, or are facing, a big delay claim, being able to map out possible concurrency will help you value your claim or your exposure better and help you make better commercial and litigation decisions.

If you end up in a dispute or claim with a subcontractor, owner, or other party, having consistent and quality schedule updates will help you analyze the different delays to the project and determine responsibility and concurrency.

Additionally, note that concurrency is a difficult concept for many trained professionals in the construction industry. If you are heading down the path towards

litigation, you might also consider concurrency in the context of how a lay judge or jury may view the concept.

If your claim involves a complex delay analysis with concurrent delays over a portion of the delay period, are you going to be able to convince a fact finder that he or she should award you damages? If not, you might reconsider a more aggressive position on your claim. ■

about the author

Aman Kahlon is a partner in the Construction Practice Group at Bradley Arant Boul Cummings (www.bradley.com) in Birmingham, Alabama. He represents owners, general contractors, and subcontractors in construction and government contracts matters. His litigation experience covers a wide variety of disputes, including substantial experience in power and energy matters. He also advises clients on delay, interference, defective design, and negligence claims. He can be reached at akahlon@bradley.com.

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info@mcrusher.com
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