

Delay and Disruption Claims: Tips, Traps, and Critical Path Proof

Collaborative. Accountable. Authentic.
Legal Solutions for Business Objectives.



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Presenters



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Partner | Lathrop GPM

Richard McDonald is a Partner in Lathrop GPM's San Jose office. He is a preeminent construction attorney, arbitrator and mediator with more than 40 years of experience advising owners, contractors, design professionals, subcontractors and suppliers on a broad spectrum of commercial, industrial and residential construction law issues.



Robert Adams, FICCP, PMP

Managing Director, Commercial Damages & Investigation | Vertex

Robert Adams is a Managing Director in VERTEX's Commercial Damages and Investigations practice, based in Irvine, California. He has over 33 years of experience in the engineering and construction industry, holds a Project Management Professional (PMP) designation, and is a Fellow of the Institute of Construction Claims Practitioners (FICCP).



Bob Rosin

Partner | Lathrop GPM

Bob Rosin is a Partner in Lathrop GPM's San Jose office. With more than 40 years of experience, in state, federal and administrative proceedings and trials, as well as arbitration and mediation, Bob has successfully prosecuted his client's claims and defended their interest in disputes involving major construction and infrastructure projects, including transportation, energy, utilities, commercial, and residential developments.

Definitions - AACE and ASCE are the most widely used references and standards

- Construction Schedule
- Impact
- Disruption
- Delay
- Excusable/Nonexcusable delay
- Compensable delay
- Concurrent delay
- Float
- Apportionment
- Critical Path

Frequently Used Terms

- **Construction Schedule:** a description of when each activity in a project can be accomplished and must be finished to be completed timely. AACE Int'l, *Cost Engineering Terminology* Recommended Practice No. 10S-90, at 41, 120 (Rev. Feb. 18, 2026). Often developed using the Critical Path Method (CPM), a scheduling technique used to predict the duration of a project by analyzing the sequence of activities with the least amount of scheduling flexibility (i.e., the critical path). *Id.*
- **Impact:** may be a consequence or effect. AACE Int'l, *Cost Engineering Terminology* Recommended Practice No. 10S-90, at 66 (Rev. Feb. 18, 2026).
 - An **impact cost** is an added expense due to the indirect results of a changed condition, delay, or changes that are a consequence of the initial event such as premium time, lost efficiency, etc. *Id.*
- **Disruption:** is an interference with the orderly progress of a project or activity. If a disruption is caused by owner or engineer action, the contractor may be entitled to recover any resulting costs. AACE Int'l, *Cost Engineering Terminology* Recommended Practice No. 10S-90, at 51 (Rev. Feb. 18, 2026).

Frequently Used Terms (I)

- **Delay:** The time period during which some part of the construction project has been extended beyond what was originally planned.
- **Excusable Delay:** Delays that under the applicable contract and/or controlling law are ones for which an extension of time may be obtained.
- **Non-Excusable Delay:** Delays that under the applicable contract and/or controlling law are not ones for which an extension of time may be obtained.
- **Compensable Delay:** An excusable delay that is one for which a party is entitled to recover.
 - (and many would argue, is not concurrent with nonexcusable delays)
- **Concurrent Delay:** Two or more independent delays occurring during the same time period, each of which by itself would affect the critical path.
 - Must be on the same critical path or on parallel paths that are both driving project completion.

Frequently Used Terms (III)

- **Float:** the amount of time that an activity may slip in its start and completion before becoming critical. AACE Int'l, Cost Engineering Terminology Recommended Practice No. 10S-90, at 61 (Rev. Feb. 18, 2026).
- **Apportionment:** A legal concept regarding which delays are attributable to or the responsibility of particular parties.
 - Under California law, cases generally require apportionment if the underlying contract includes a time extension provision.
 - Older view was that any delay by the other party would preclude recovery; newer cases generally allow delays to be apportioned based on application of law to the facts:

At least historically, there has been a split of authority regarding whether a construction contract's liquidated damages provision is enforceable against a contractor when at least part of the delay is caused by the owner.

The rule applied by the Gogo and Aetna courts has been attributed to the fact that, before 1977, courts and the Legislature viewed liquidated damages provisions with general disfavor ... Commentators and courts alike have since said that, when some delay is caused by the owner and some is caused by the contractor, the better-reasoned approach is to apportion delay so that liquidated damages provisions are enforced. These courts have rejected the notion that apportionment is unduly burdensome. (*Jasper*, at p. 15, 153 Cal.Rptr. 767; *Nomellini*, at p. 246, 96 Cal.Rptr. 682 [“[q]uantum of delay in terms of time is all that is being apportioned” and “[t]hat is an uncomplicated fact finding process”].)

Whiting-Turner Contracting Co. v. 250 Fourth Dev. LP, 2025 WL 1156004 (2025), review denied (July 23, 2025) (citations omitted)

Frequently Used Terms (IV)

- **Critical Path:** Longest sequence of dependent activities on a project schedule that determines the shortest possible time to complete the entire project.
 - Any delay to a task on the critical path directly delays the entire project (no “float”).

Typical (AIA and Consensus Docs) language

A-201 – Key Provisions

- I. 3.10 – Contractor’s Construction and Submittal Schedules, specifies components of the schedule, with process for updates.
- II. 7.2.1 – Change orders request by Contractor; directive by Owner, with separate process for how to proceed.
- III. 8.3 – Delays and Extensions of time. Subsections cover specific grounds for extensions including “force majeure.”
- IV. 15.1.6 – Claims for additional time after prompt notice following the event giving rise.

A201 General Conditions (With Revisions in Red)

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, **pandemic, governmental orders (such as shelter in place orders), conditions that would make work dangerous or unhealthful (such as excessive heat or smoke)**, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

AGC of California Subcontract (With Revisions in Red)

Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required to be furnished by Owner or Contractor, or by damage caused by fire or other casualty or events for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, **pandemic, governmental orders (such as shelter in place orders), conditions that would make work danger or unhealthful (such as excessive heat or smoke), or other causes beyond the Subcontractor's control that could not reasonably have been anticipated at the time that this Agreement was executed, and the risk of which was not expressly allocated to Subcontractor**, then the time herein fixed for the completion of the Work shall be extended the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

Typical (AIA and Consensus Docs) language (cont.)

Other Time/Schedule Related Clauses

- I. 3.2.4 – RFI requests open the door for additional time, if Architect believes it is warranted, depending on response.
- II. 3.7.4 – Concealed conditions opens the door for claims for additional time.
- III. 5.2.3 – If Owner objects to a subcontractor selection, door is open for increase in contract time.
- IV. 6.1 – Owner can hire separate contractors, but Contractor given right to the extension for “delay” or “additional costs.”
- V. 7.3.1 – Owner “Change Directive”
- VI. 8.1 – “Time” defined.
- VII. 9.5.1.6 – Owner can withhold progress payment if “reasonable evidence” work cannot be completed within Contract Time.
- VIII. 9.7 – Contractor can suspend the Work if Owner improperly withholds progress payment; and get an extension upon restarting.
- IX. 10.32 – Hazardous Material encounters allow for extension of Contract Time.
- X. 10.4 – Emergencies allow for extension of time.
- XI. 14.3.2 – Contract Time extended due to Owner suspension for convenience.

Typical (AIA and Consensus Docs) language (cont.)

Consensus Docs 200

- I. 2.4.22 – Definition of Schedule
- II. 3.3.3 – Contractor entitled to time extension for errors/omissions reported in plans.
- III. 3.16.2 – Concealed/unknown conditions.
- IV. 4.1 – Owner has to perform supervise and respond in timely manner.
- V. 6.2 – Schedule of the Work.
- VI. 6.3 – Delays and extensions
- VII. 6.4 – Notice of delay Claim.
- VIII. 6.5 – Liquidated damages.
- IX. 8.1 – Change Orders.
- X. 8.2 – Interim owner directives.
- XI. 8.4 – Changes Notice (except for claims for time).
- XII. 9.5 – Contractor entitled to more time for Owner delay in payment.
- XIII. 11.2 – Contractor's failure to maintain Schedule is an event of default.

Special considerations during drafting/negotiations

- Front end alignment by all stakeholders – review plans, specs, project site, leases, agency with jurisdiction.
- “No damages for delay” – Contractor often surprised, what exactly does that clause mean.
- Waiver of consequential damages – mutual? Limited?
- Schedule update requirements
- Notice of Claims – time limits; content – how much detail?
- Compensable costs
- Liquidated damages
- Mediation

Basic Terms

Key 1st Steps in Construction Dispute Resolution

Minimizing and Managing Dispute

- Understand Forensic Schedule Analysis
 - Approach schedule analysis as both a science (data-driven) and an art (expert interpretation) to gain a comprehensive understanding.
- Engage a Third-Party Expert
 - Leverage external expertise for an impartial and in-depth analysis of the dispute.
- Define the Dispute's Nature
 - Clearly identify the core issues, including delay, disruption, scope changes, payment disputes, or quality concerns.

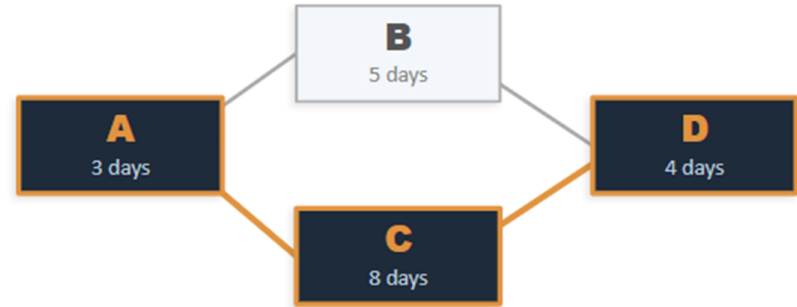


While construction disputes are common, proactive measures to minimize their potential and quantity before a project begins are prudent.

What is CPM? (Critical Path Method)

Minimizing and Managing Dispute

- The critical path is the longest chain of dependent tasks in a project — and it controls the finish date.
- Delay anything on it, the project finishes late.
- Everything else has float — room to slip without causing a problem.



Critical Path = 15 days

*Path A→B→D = 12 days — but B has float;
the longest driving path is A→C→D.*

KEY TERMS

- Critical Path** The sequence with zero float
- Total Float** How long a task can slip before delaying the project
- Free Float** How long a task can slip before delaying the next task

Not everything matters equally. CPM tells you which tasks are truly critical vs. which have room to breathe

Thanksgiving Dinner

Critical Path Analogy

The turkey takes 4 hours. That's your critical path. The rolls take 20 minutes — they have float. You can start them late. But if the turkey isn't in the oven on time, dinner is late. Period.



The turkey = critical path

Long, dependent, drives everything downstream.



The rolls = float

Can be delayed without ruining dinner — up to a point.



One delay ruins the whole schedule

Forget to buy the turkey?
Everything else is irrelevant.

Summary of Terms: Delay vs. Disruption

Key Distinctions According to AACE International RP 29R-03



Delay

An extension of the project duration that specifically impacts the critical path.



Disruption

Interference with the orderly progress of work, potentially impacting productivity without necessarily extending the project timeline.

The C.A.S.E. Framework

4 Step Process for Forensic Analysis

C

Collect & Test Records

Gather project records and test their quality, completeness, and reliability before any analysis begins.

A

Ascertain Nature of the Impact

Characterize whether the event constitutes delay, disruption, or both — and determine which party it affects.

S

Substantiate by Analysis & Established Methodologies

Apply recognized methodologies to establish causation and quantum — match method to the available evidentiary record.

E

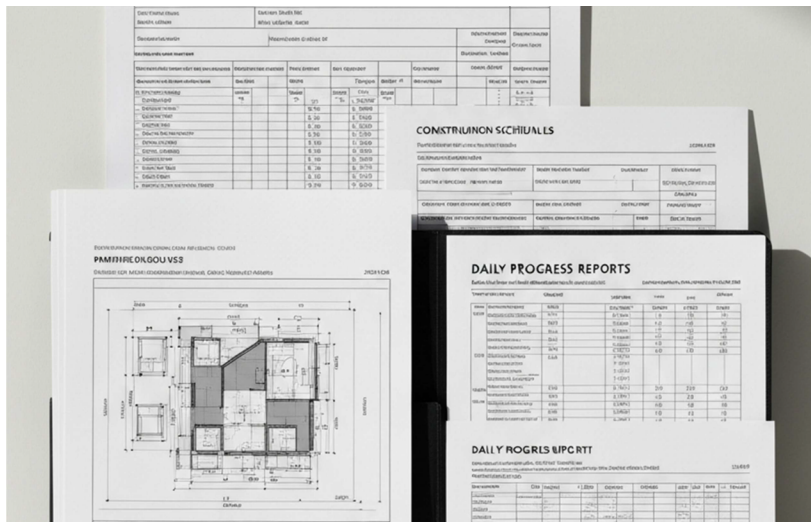
Explain the Findings & Opinions

Translate analysis into a clear, accessible opinion — from raw record to defensible conclusion, in language the audience can follow.

Collect & Test Records

Collecting Essential Project Records

- **Schedules:** Baseline, interim updates, and as-built schedules.
- **Daily Reports:** Daily logs of site activities, resources, and conditions.
- **Meeting Minutes:** Records of decisions, discussions, and actions.
- **Photographs & Videos:** Visual evidence of progress and events (ensure metadata is preserved).
- **Logs:** RFI logs, change order logs, issue logs, delay logs.
- **Job Cost Reports:** Information on resource allocation and progress.
- **Contract Documents:** Including amendments and change orders.



Data Quality Assessment

Garbage In, Garbage Out

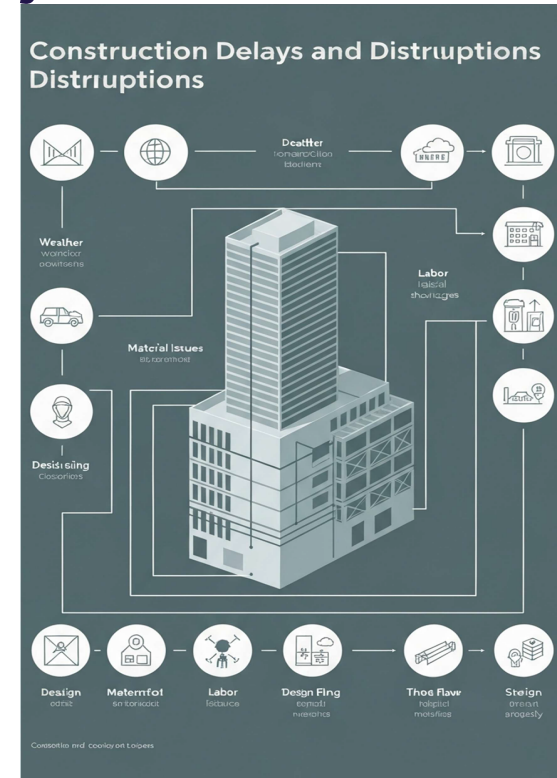
- **Schedule Integrity is Paramount**
 - Flawed input data leads to inaccurate delay analysis. Accurate schedule data is the foundation for reliable delay analysis.
- **Ensuring Schedule Credibility**
 - Utilize third-party software for objective schedule quality assessment. Focus on characteristics of credible baseline and monthly update schedules.
- **Key Considerations for Credible Schedules**
 - Robust logic, realistic durations, accurate progress updates, and adherence to industry best practices are essential for credible schedules.



Ascertain the Nature of the Impact

Effect of Delay vs. Disruption on Project

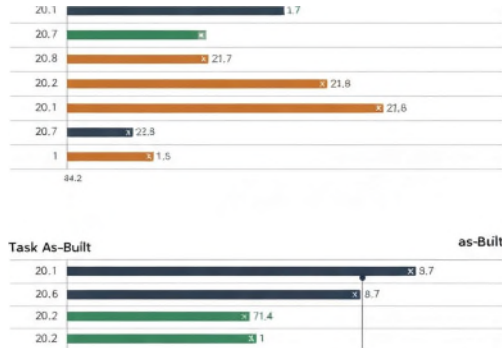
- **Delay:** An event that extends the project completion date.
- **Disruption:** An event that hinders the contractor's ability to perform work efficiently, impacting productivity.
- **Interplay:**
 - Disruption can lead to critical delays.
 - Delays may necessitate acceleration, which can cause further disruption.
- **Lost Productivity Claims:** Contractors may claim for lost productivity (and associated costs) due to disruption, even if no time extension is granted for the project completion date.



Identifying Project Delays

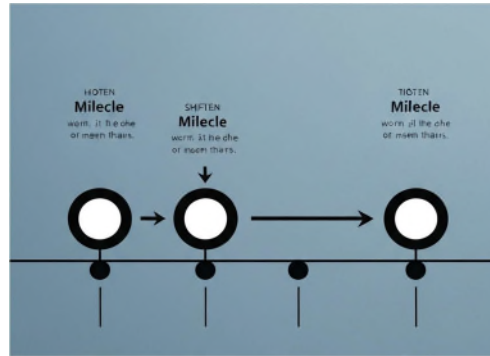
Comparing Planned vs. Actual Progress

Compare Baseline vs. As-Built Schedules



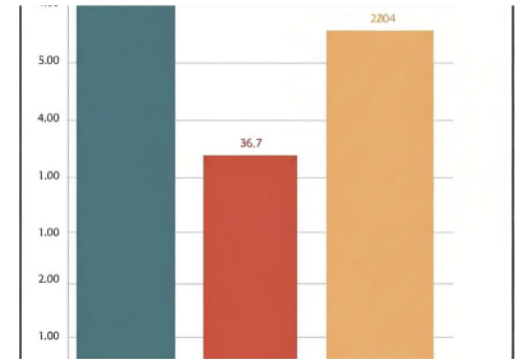
Analyze the critical path against actual progress to identify discrepancies.

Visualize Milestone Shifts



Observe visible displacement of key milestones from the original plan.

Detect Schedule Variance



Identify the difference between planned and actual or forecasted completion dates.

Identifying Project Disruption

How to spot when a project is going off track



Review Workflow

Understand the planned steps and sequences.
Look for deviations or bottlenecks



Assess Productivity Losses

Quantify any decrease in output or efficiency compared to planned benchmarks.



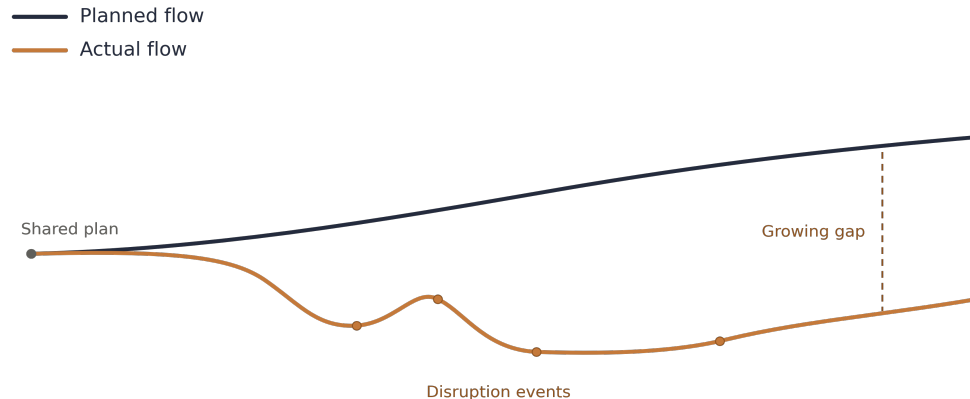
Examine Planned Logic

Assess of the underlying assumptions and reasoning for task order and dependencies still hold true.



Analyze Work Calendar

Check for unexpected changes, resource unavailability, or shifts in scheduled workdays.



Substantiate by Analysis & Established Methodologies

Establishing Causation: Trigger Event

Identifying the root cause or 'trigger event' that led to a specific impact.

- Leverage Project Records
 - Meeting Minutes
 - Requests for Information (RFIs)
 - Site Instructions
 - Other relevant project documentation
- Employ 'Why' Analysis:
 - Systematically ask 'why' to drill down to the fundamental cause.
 - Uncover the root of the problem, not just the symptoms.



Establishing Causation: Issue Database

A structured approach to systematically track and isolate causative events, enabling a clearer understanding of cause and effect.

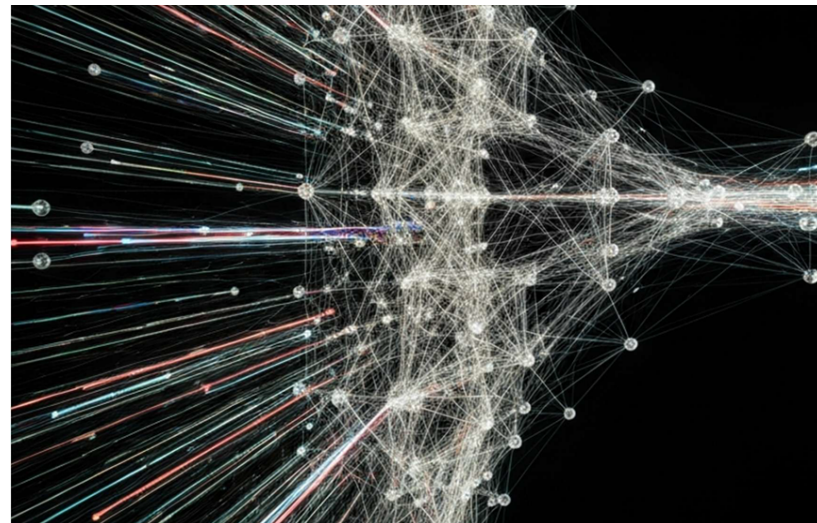
Potential Database Contents:

- **Conflicts:** Documenting disputes, disagreements, or challenges.
- **Weather:** Recording significant weather events and their potential impact.
- **Work Stoppages:** Logging instances of labor disputes or operational halts.
- **Crew/Equipment Logs:** Maintaining detailed records of personnel and machinery availability and performance.
- **Correlated Delay Information:** Linking specific issues to the delays they caused.



Leveraging AI for Data Analysis

- **Enhancing Causation Identification:** Utilize Artificial Intelligence (AI) to process and analyze vast amounts of project data.
- **Data Sources:** Apply AI to large datasets such as deposition transcripts, daily logs, and timesheets.
- **Pattern Recognition:** AI algorithms can identify subtle patterns, correlations, and anomalies that might be missed through manual review.
- **Efficiency and Accuracy:** Streamline the process of establishing causation by automating the analysis of complex and voluminous documentation.



Proving Delay: Analysis Methodologies

AACE Recommended Practice RP-29R-03

To ensure robust and defensible delay and disruption claims, it is crucial to base analyses on recognized industry standards



As-Planned vs. As-Built

Compares the original project plan against the actual progress achieved.



Window Analysis

Isolates and examines delays within defined periods of the project timeline.



Time Impact Analysis (TIA)

Quantifies the effect of specific delay events on the project's critical path.



Mitigation Schedule Analysis

Assesses the effectiveness of efforts to recover lost time.



Collapsing As-Built

Adjusts the as-built schedule backward to pinpoint when delays occurred.



Total Delay Analysis

Calculates and allocates the total project delays experienced.

Quantification of Delay Damages

- **Define the compensable delay:** Establish entitlement and causation, and fix the period of delay.
- **Identify time-related costs:** The general conditions that accrue with duration — site supervision, temporary facilities, utilities, equipment standby. Exclude fixed and one-time costs such as mobilization.
- **Measure cost in the delay period:** Sum the time-related costs actually incurred during the delay window, time-phased to that period rather than averaged across the project. Where records are limited or the contract sets a rate, a daily rate (time-related costs ÷ duration × compensable delay days) can be used, recognizing it averages out cost peaks and tails.
- **Net out duplicate recovery:** Remove any time-related costs already paid through change order markups.
- **Substantiate:** Tie the claim to invoices, payroll, equipment logs, and financial statements covering the delay period.



Proving Disruption: Measured Mile Methodology

The Method

- **What it is:** Compares labor productivity during a disrupted period against productivity during an unimpacted period of the same work on the same project. The unimpacted period — the "measured mile" — sets the benchmark; the shortfall against it measures the disruption.
- **When to use it:** Disruption claims where work continued but at reduced efficiency — particularly where critical path delay is minimal but work pace was impaired.
- **Why it holds up:** Built entirely on actual project performance. It avoids theoretical productivity factors and disputed bid estimates, which is why it is recognized under AACE RP 25R-03 and accepted in arbitration and litigation.

Requirements to Implement

- **A representative baseline:** An unimpacted or minimally impacted period, long enough to reflect normal performance.
- **Comparable work:** Similar scope, location, and conditions across both periods — ideally the same crews.
- **Granular records:** Labor hours tied to quantities installed for both the impacted and unimpacted periods.
- **Causal link:** Documentation connecting the disruption events to the measured productivity loss.

Quantification of Disruption \$ Damages

- **Measure the lost hours:** Take the actual hours expended on the impacted work and subtract the hours the same scope would have required at the unimpacted baseline rate established by the measured mile. The difference is the lost productivity, expressed in hours or as a percentage of impacted labor.
- **Convert to cost:** Multiply the lost hours by the loaded labor rate — base wage plus fringe benefits and payroll burden. Add related costs that scale with the added labor (supervision, small tools, consumables, equipment).

Key Data for Substantiation:

- **Labor and quantity records:** Hours and installed quantities tied to cost codes for both the baseline and impacted periods.
- **Baseline basis:** Documentation of the measured-mile period or comparable work used as the benchmark.
- **Causal link:** Evidence connecting the disruption events to the measured inefficiency.



Explain the Findings & Opinions

Explaining the Findings: Presentation Strategies

- **Audience-Centric Approach:** Tailor your presentation to the specific audience (e.g., executives, attorneys, project managers).
- **Clear Narrative Structure:** Build a story from high-level overview to granular details. (space shuttle view)
- **Simplicity is Key:** Keep explanations straightforward and easy to understand.
- **Appendices for Depth:** Utilize appendices for detailed data, methodologies, or supporting evidence.



Illustration of Delay

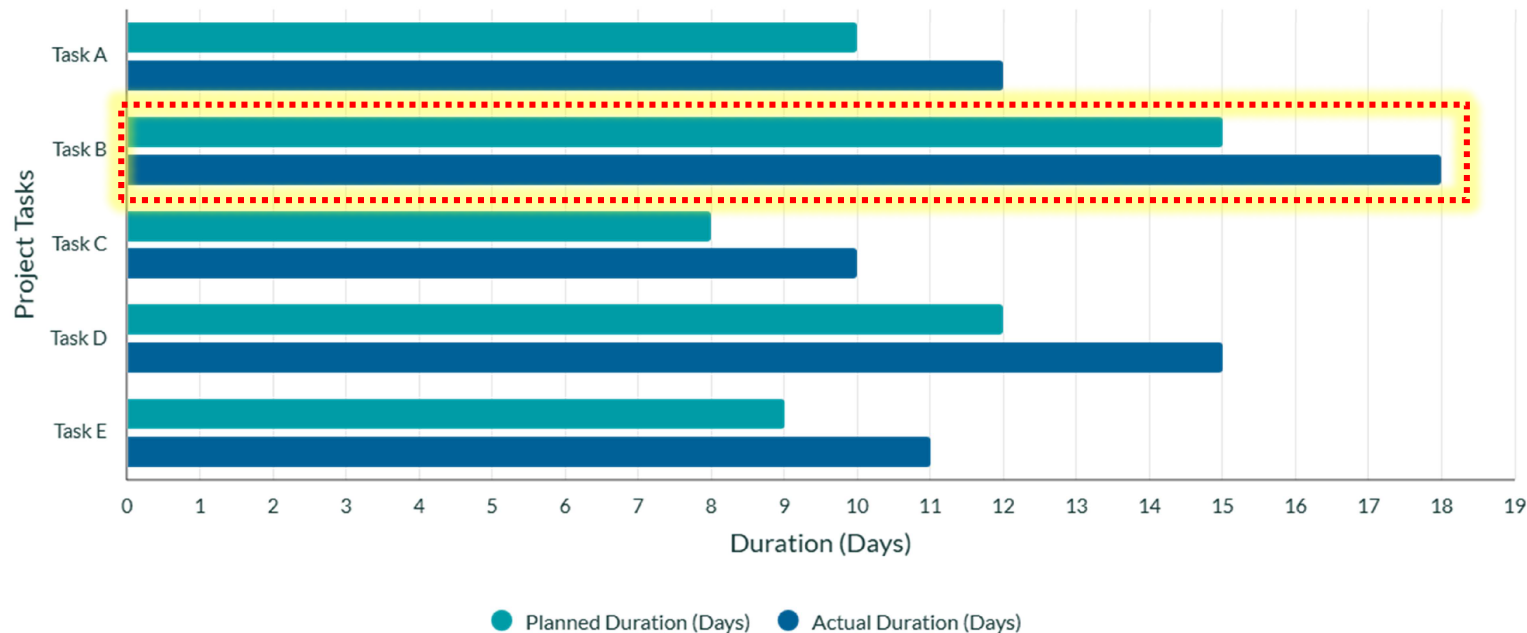
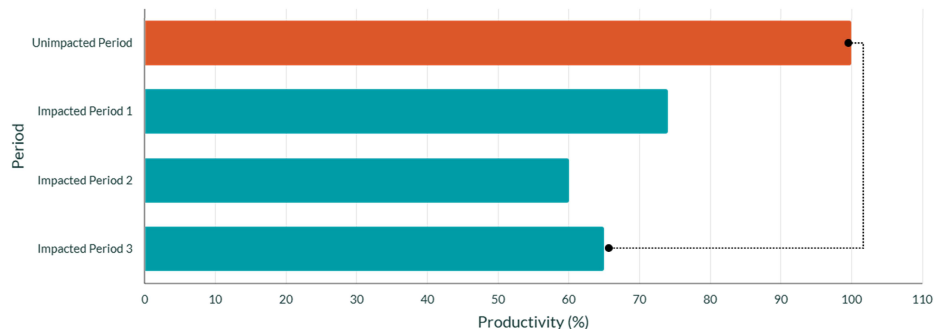


Illustration of Disruption (Productivity Loss)

Comparing Output During Impacted vs. Unimpacted Periods

Example 01



Example 02

Period	Activity	Hours Worked	Quantity Completed	Productivity (Units/Hour)
Normal Operations (Mile 1)	Installation of HVAC Ducts	800	100 Units	0.125
Disrupted Period (Mile 2)	Installation of HVAC Ducts	1200	110 Units	0.092
Difference	Installation of HVAC Ducts	+400 Hours	+10 Units	-0.033 Units/Hour

Productivity significantly declined during impacted periods, with the most substantial loss observed in Impacted Period 2.

Red Flags for Claims and Delays

- Aggressive Schedule.
- Liquidated Damages.
- Schedule slippage caused by Owner – or General Contractor – caused problems.
- Excessive changes.
- Major changes.
- Excessive inquiries on contract documents (RFI's).
- Excessive bulletins.
- Slow or non-response to contractor's inquiries.
- Contracts with much exculpatory language.
- Specifications and drawings prepared by multiple parties.
- Non-performance of subcontractors and suppliers.
- Delayed payments.
- Owner on tight budget.
- Inexperienced Owner or A/E representatives.
- Extreme personality clashes.
- Refusal to approve baseline or updated schedules.
- New technology.
- Delayed or lack of need of facility by Owner.
- Non-negotiable occupancy date by Owner.
- Owner's corporate policies.
- Difficult or unusual working conditions.
- Poor definitions of scope of work.
- Late Owner-furnished equipment.
- Subcontractor defaults and terminations.
- Increased or unreasonable inspection requirements, tests or quality control program.
- Unwarranted work rejection.
- Refusal of Owner to grant time extensions.
- Out-of-sequence work.
- Owner directing means and methods.
- Multi-prime projects.

Disputes Regarding Delay Usually Arise From a Misaligned Constellation of Events and Causes



Typical Compensable Delays

- Changes – both actual constructive
- Differing conditions
- Defective plans, specifications, or information (or failure to provide)
- Active interference
- Failure to take actions required for progress

Active Interference

- Excessive Change Orders
- Inadequate Responses to RFIs
- Occupation of Work Space
- Suspension of Work
- Acceleration of Work – directed or constructive

Failure to Take Action - Examples

- Permits, utilities (e.g., PG&E), coordination with other work or projects
- Review of submittals, furnishing of information
- Response to RFIs
- Not obtaining Regulatory Approvals, such as OSHPD, Dept. of Health

Problems Outside of Parties' Control

- Weather
- Other non-human interference: fire, natural disasters
- Unknown or concealed conditions
- Nonperformance by third parties: PG&E, utility companies, governmental agencies
- Unavailability of materials, equipment or labor
- Interference from events such as war, terrorism, strikes, new laws, pandemic (COVID 19)

Contracts may allocate or shift risk and responsibility for such matters, subject to limitations imposed by statutes and applicable law.

Problems Outside of Parties' Control



Dewatering and access issues ...

Covid/Force Majeure

- Most contracts have a clause providing an extension of time for delays outside of the contractor's control, such as fires, earthquakes, acts of God.
- These time extensions are usually noncompensable.
- To receive the time extension, you will almost always need to follow the steps required in the contract.

Notice – When Required

- Earliest opportunity
- Read and understand contract
- Prior to disturbing conditions (see differing site conditions notice requirements)
- Notice of Potential Claim
- After RFI response or when change order request is rejected

Notice – General Guidance

- Follow your contract (read and understand in advance → flow chart)
- Notify of claim or potential claim or delay
- Describe generally and specifically
- Explain what you plan to do
- Estimate costs (depends on circumstances)
- Estimate time (depends on circumstances)
- Advise how you will track your costs and time
- Ask owner/other party for any objection or input

Notice – Tips on Giving Effective Notice

- Be professional, clear, concise
- Sound cooperative
- Do not attack
- One subject matter per letter
- Do not air dirty laundry
- Carefully consider pointing finger
- Do not claim impact costs unless justified
- Do not waive rights
- Stick to the facts

Notice – Additional Considerations

- Know what your contract requires!
- Give the best notice you can even if you can't give perfect notice. The substantial compliance doctrine can help you, as can the doctrine of relief from forfeiture.
- If your contract is with a public agency make sure to comply with claims presentation requirements; e.g., in California, requirements under Government Code Section 900 et seq. (“Tort Claims Act”) – 1 year deadline for damages not involving injury to property.
- Don't give up if your notice is late – relief from forfeiture may be available if there has been no prejudice (except as to Gov. Code).

State of California Notice Procedures (Caltrans)

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION			
SUPPLEMENTAL POTENTIAL CLAIM RECORD			
CEM-6201E (REV 9/2014)			
FOR STATE USE ONLY			
Received By _____		Date _____	
(For resident engineer)			
TO _____	(RESIDENT ENGINEER)	CONTRACT NUMBER _____	DATE _____
		IDENTIFICATION NUMBER _____	
<p>This is a Supplemental Potential Claim Record for additional compensation and/or days submitted as required under the provisions of Section 5-1.43, "Potential Claims and Dispute Resolution," of the Standard Specifications. The initial potential claim record was submitted on:</p> <p>DATE _____</p> <p>The particular nature and circumstances of this potential claim are described in detail as follows: (attach additional sheets as needed)</p> <p>_____</p> <p>The basis of this potential claim including all relevant contract provisions and a statement of the reasons these provisions support and provide basis for entitlement of the potential claim is as follows: (attach additional sheets as needed)</p> <p>_____</p> <p>The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached. (attach additional sheets as needed)</p> <p>_____</p> <p>A time impact analysis of the disputed disruption has been performed and is attached. The affect on the scheduled project completion date is as follows:</p> <p>_____</p> <p>The undersigned originator (contractor or subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code Sections 12500-12655. The undersigned also understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 5-1.43, "Potential Claims and Dispute Resolution," of the Standard Specifications and must be restated as a claim in the contractor's written claim statement in conformance with Section 9-1.17D, "Final Payment and Claims" of the Standard Specifications.</p> <p><input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> CONTRACTOR</p> <p>_____</p> <p>(Authorized Representative)</p> <p>For a subcontractor potential claim</p> <p>This potential claim record is acknowledged, certified, and forwarded by:</p> <p>_____</p> <p>PRIME CONTRACTOR</p> <p>_____</p> <p>(Authorized Representative)</p> <hr/> <p>ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1203, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.</p>			

Form CEM 6201E

Submit Supplemental Potential Claim Record within **15 days** after submission of the Initial NOPC

State of California Notice Procedures (Caltrans)

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION SUPPLEMENTAL POTENTIAL CLAIM RECORD CDS-6010E (REV 9/2014)		FOR STATE USE ONLY	
TO: (RESIDENT ENGINEER) CONTRACT NUMBER		Received By: _____ (For resident engineer)	Date: _____
DATE		IDENTIFICATION NUMBER	
<p>This is a Supplemental Potential Claim Record for additional compensation and/or days submitted as required under the provisions of Section 9-1.43, "Potential Claims and Dispute Resolution," of the Standard Specifications. The initial potential claim record was submitted on:</p> <p>DATE: _____</p> <p>The particular nature and circumstances of this potential claim are described in detail as follows: (attach additional sheets as needed)</p> <p>The basis of this potential claim including all relevant contract provisions and a statement of the reasons these provisions support and provide basis for entitlement of the potential claim is as follows: (attach additional sheets as needed)</p> <p>The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached. (attach additional sheets as needed)</p> <p>A time impact analysis of the disputed disruption has been performed and is attached. The effect on the scheduled project completion date is as follows:</p> <p>The undersigned originator (contractor or subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code Sections 12500-12555. The undersigned also understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.43, "Potential Claims and Dispute Resolution," of the Standard Specifications and must be restated as a claim in the contractor's written claim statement in conformance with Section 9-1.17D, "Final Payment and Claims" of the Standard Specifications.</p>			
<input type="checkbox"/> SUBCONTRACTOR		<input type="checkbox"/> CONTRACTOR	
_____ (Authorized Representative)			
For a subcontractor potential claim			
This potential claim record is acknowledged, certified, and forwarded by:			
_____ PRIME CONTRACTOR		_____ (Authorized Representative)	
_____ (Authorized Representative)			
ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1100 N Street, MS-68, Sacramento, CA 95814.			

“The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown.

Certification in “full cognizance of the California False Claims Act

State of California Notice Procedures (Caltrans)

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION FULL AND FINAL POTENTIAL CLAIM RECORD CEM-6201F (REV. 1/2014)				FOR STATE USE ONLY	
Received By: _____		Date: _____		① (or resident engineer)	
TO: _____	(RESIDENT ENGINEER)	CONTRACT NUMBER _____	DATE _____	IDENTIFICATION NUMBER _____	
<p>This is the Full and Final Potential Claim Record for additional compensation and/or days submitted as required under the provisions of Section 5-1.43, "Potential Claims and Dispute Resolution," of the Standard Specifications. The completion date of the potentially claimed work was:</p> <p>DATE _____</p> <p>The complete and factual narration of events which fully describe the nature and circumstances that caused the dispute or disagreement and potential claim are attached. (attach sheets as required for full and final documentation)</p> <p>The basis of this claim including all relevant contract provisions and a statement of the reasons these provisions support and provide basis for entitlement of the potential claim are attached. (attach sheets as required for full and final documentation)</p> <p>The exact dollar amount requested and an itemized breakdown of individual costs segregated by labor, materials, equipment and other are attached. (attach sheets as required for full and final documentation)</p> <p>The exact amount of any time adjustment requested including time impact analysis is attached. (attach sheets as required for full and final documentation)</p> <p>The identification and copies of any documents and substance of any oral communication that support the potential claim are attached. (attach sheets as required for full and final documentation)</p> <p>Relevant information, references, and arguments that support the potential claim. (attach sheets as required for full and final documentation)</p> <p>The undersigned originator (contractor or subcontractor as appropriate) certifies that the above statements and attached documentation are made in full cognizance of the California False Claims Act, Government Code Sections 12650-12655. The undersigned also understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 5-1.43, "Potential Claims and Dispute Resolution," of the Standard Specifications and must be restated as a claim in the contractor's written claim statement in conformance with Section 9-1.17D(2), "Claim Statement," of the Standard Specifications.</p> <p><input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> CONTRACTOR</p> <p>For a subcontractor potential claim This potential claim record is acknowledged, certified, and forwarded by:</p> <p>_____ PRIME CONTRACTOR</p> <p>_____ (Authorized Representative)</p>					
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Form CEM 6201E

Submit Full and Final Potential Claim Record within 30 days of the completion of the potentially claimed work,

No Damage for Delay Provisions

- Purport to limit contractor's or subcontractor's damages to a time extension without additional compensation.
- Enforceability depends on applicable law and specific wording.
- In California, not enforceable on public works projects where there are unreasonable delays caused by owner (or general contractor in case of a subcontractor) not within contemplation of parties. (See Pub. Contract Code Section 7102). Additionally, under Cal. Civil Code Section 1511, notice requirements for delays must be "reasonable and just."
- Some cases hold that not enforceable on federal projects subject to the Miller Act.
- Can be enforceable on private works projects, depending on the circumstances and language of clause.

Obligatory Godfather Reference

This is the business we've chosen . . .



https://youtu.be/Sa2idZTTWZY?si=R6TB_bqOJcwZf3hz

Q&A

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For more information about our Construction Litigation group, visit: <https://www.lathrogpm.com>