

# Concurrent Delays: An Owner's Sword, Shield...or Land Mine?

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*Presented by:*

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# Objectives

- Panel Introductions
- What's the “Big Deal?”
- Definition of Concurrency
- Case Studies: Apportionment
- Key Requirements
- Case Studies: Burden of Proof
- Literal vs. Functional
- Case Studies: Damages
- Difficulties in “Proving”
- Suggestions

# Panel Introductions

- **Dr. Anamaria Popescu**, PE, PMP-BRG, CO
- **Antoine Bigenwald-Langlois** Lawyers, Quebec
- **Thomas Buckley-Hendrick Gardner Kincheloe & Garofalo**, NC

# What's the “Big Deal?”

- “Misery Loves Company” Concept
- Most Contentious Concept in Delay Analysis
- Differing Views on Approach
- Differing Views on Meaning
- Boils down to \$\$\$\$

# Definition

- Two or More Delay Events at the **Same Time\***
- **“Same Time”** Not a Precise Measure\*\*
- 1 Owner Risk Event & 1 Contractor Risk Event
- “Effects Felt at the Same Time”
- Must Both Effect “a” Critical Path
- If Occurred Alone Still Affects the Completion

*\*SCL Delay and Disruption Protocol 2<sup>nd</sup> Edition*

*\*\* AACEI 29R-03 Recommended Practice*

# Case Studies: Apportionment

- *Sunrise Co. vs. Lake Winnipeg*
  - No Causal Link
  - Damage “Coincidental”
- *L. A. Reynolds Company v. State Highway Commission*
  - Contract Provision on LD’s Trumps Court Decision
- *United States v. United Engineering Co*
  - Contract Mute on Apportionment
  - Burden of Proof Falls on Claimant
- *Brashear v. Richardson Construction, Inc.*
  - “Formula” Inappropriate

# Key Requirements of Concurrency

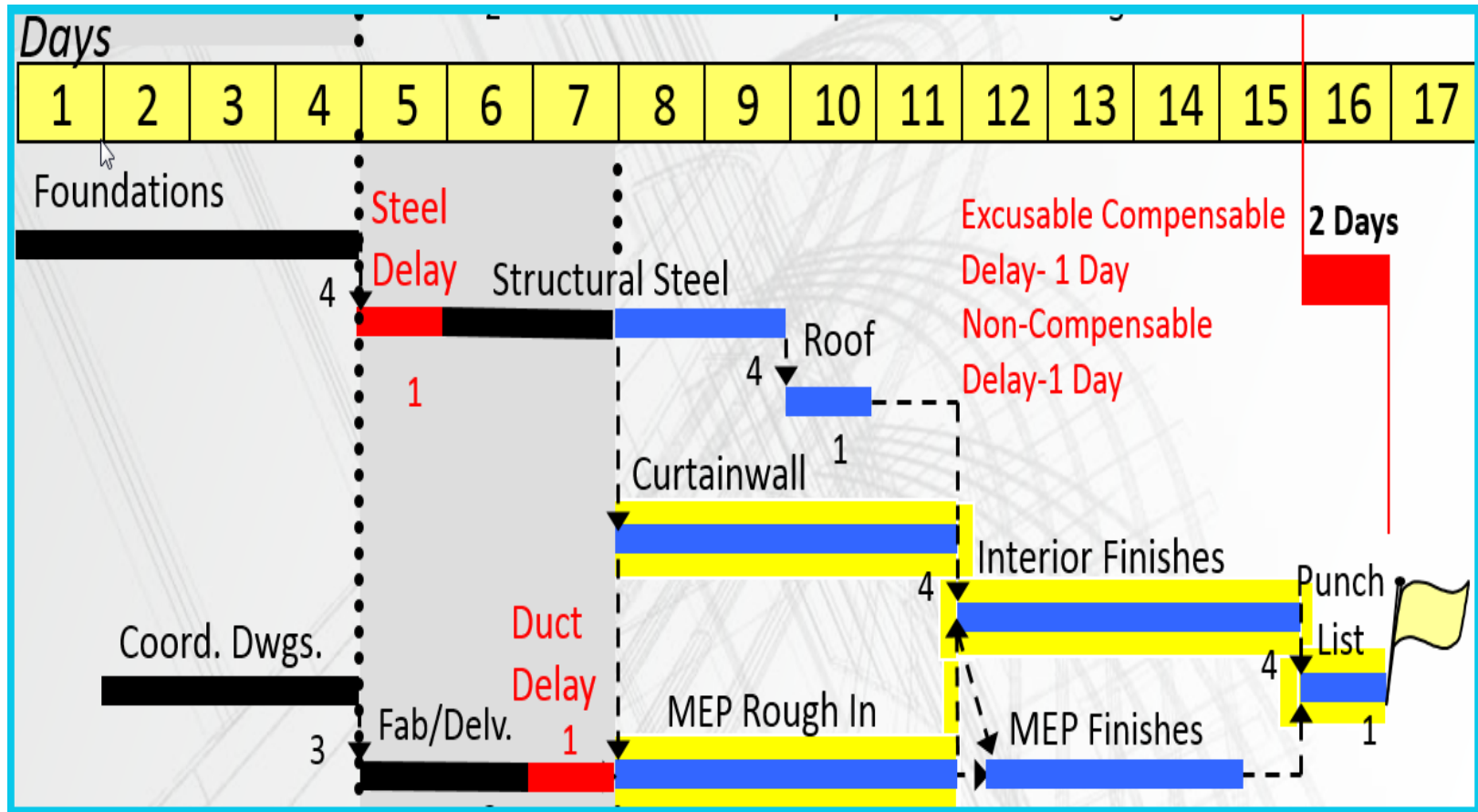
- Delay Events Unrelated and Independent
- Contractual Responsibility of Different Parties
- Delay Events Must be Involuntary
- In the Same Schedule Analysis Time Period
- Independently Delays the Critical Path(s)

# Case Studies: Burden of Proof

- *Blinderman Construction Co. v. United States*
  - No Cost Recovery if Concurrent and Can Not Untwine
- *Calumet Const. Corp. v. Metro. Sanitary District*
  - Apportionment Favored
- *Bolton Corp. v. T.A. Loving Co.*
  - Architect Authority to Determine Delay Responsibility
- *Essex Electro Engineers, Inc. v. Richard J. Danzig, Secretary of the Navy*
  - Delays Can Be Apportioned and Thereby Should Be
  - Sequential Delay Events



# Functional vs. Literal Concurrency



LITERAL THEORY

# Case Studies: Damages & Clauses

- *Perini Pacific Ltd vs. Greater Vancouver Sewerage and Drainage District*
  - Damages Denied
- *Ansa construction Inc. c. Québec*
  - Apportion Damages
- *North Midland Building Limited vs. Cyden Homes Limited (UK Case-Oct 2017)*
  - Clause Upheld by Court

# Difficulties in “Proving”

- Lack of Consistent Schedule Updates
- Lack of Schedule Integrity
- Lack of Adequate Documentation for Causation
- Inexperienced Project Team
- Inadequate Schedule Analysis Methodology

# Closing Thoughts

- Contract Clause on Concurrent Delay
  - Concurrency Matrix
- Quality Daily Contemporaneous Records
- Rigor in Schedule Integrity and Acceptance
- Legal Issues

# Open the Floor

- Questions?
- Thoughts?
- Experiences?