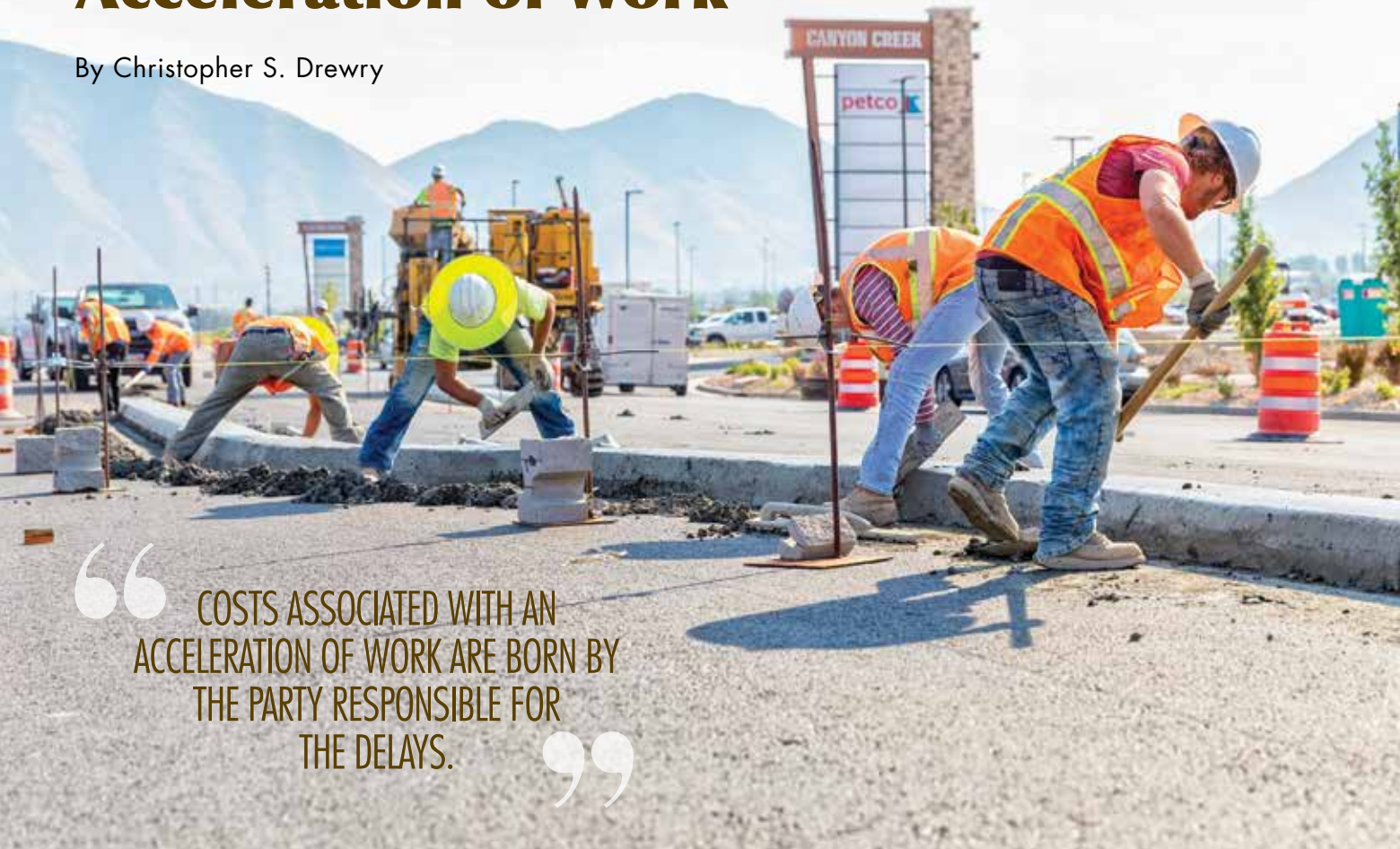


Costs for the Contractor's Acceleration of Work

By Christopher S. Drewry



“ COSTS ASSOCIATED WITH AN ACCELERATION OF WORK ARE BORN BY THE PARTY RESPONSIBLE FOR THE DELAYS. ”

Contractor delays may occur in maintaining the construction schedule milestones or in achieving the overall completion date, or more accurately, the date of substantial completion. If the delay is caused by the contractor's own fault, or one for whom the contractor is responsible, then the delay is neither excusable nor compensable.

CONTRACTOR UNEXCUSED DELAY

As a general rule, a contractor may be liable for all costs incurred by an owner as a result of the contractor's *unexcused* delay in completing a project. However, completing on time may be more important to an owner, who has the contractual right to order the contractor to recover its schedule to make up for the unexcused delays. The owner does this through a directive to the contractor to accelerate the work. This acceleration directive can take several forms. The contractor can be required to (i) add more manpower to improve productivity; (ii) work overtime

to recover the schedule; (iii) work an extended schedule; and/or (iv) add a second shift crew. If the contractor refuses to accelerate, then the owner, after proper notice, may hire others to supplement the contractor's work until the schedule is recovered and can later back charge all costs incurred against the contractor. The owner also may consider declaring the contractor in default and if the default continues uncured, proceed with termination of the contract. Costs associated with an acceleration of work are born by the party responsible for the delays, in this case, the contractor. These costs include direct labor and project management cost increases as well as any delay costs or damages incurred by the owner.

DELAYED BY THE OWNER

Conversely, if it is the contractor that has been delayed by the owner, the contractor may be entitled to an extension of time in which to perform. However, the owner often refuses to

ABOUT THE AUTHOR

Christopher S. Drewry is a partner with the law firm of Drewry Simmons Vornehm, LLP, in Indiana (www.dsvlaw.com). He focuses his practice on construction law and litigation, as well as labor and employment law and litigation. He is also a member of the Construction Law and Litigation Committee of the International Association of Defense Counsel. He can be reached at cdrewry@dsvlaw.com.

recognize such delays or else disputes whether they were excusable, and therefore denies a time extension. This, in effect, forces the contractor to accelerate its contract performance in order to meet the original contractual completion dates in order to avoid being late and considered in default. When the contractor is entitled to an extension of time, yet the owner insists on completion by the original contract completion date, the contractor may be entitled to recover its costs associated with the acceleration of its work to perform within the compressed time. This is also considered a "constructive change."

ACCELERATION COSTS

In this context, the contractor's recoverable acceleration costs include both direct costs as well as inefficiency costs. Direct costs will typically include: (i) increased direct labor costs, including additional wages and premiums for overtime (since labor manpower frequently works extra shifts or on an overtime basis, resulting in increased base wages, fringe benefits, and premiums beyond the standard labor rate); (ii) increased project supervision costs for the increased manpower; (iii) corresponding equipment costs for additional small tools or rented equipment required by the increased crew size or more crews; and (iv) material cost increases due to purchasing on a "rush" basis.

Acceleration costs also are likely to include labor inefficiency. These inefficiencies can arise from the stacking of trades, site congestion, fatigue resulting from overtime work and interference due to overcrowding of the worksite. While labor inefficiency is difficult to quantify, it is still possible to do so. One approach is to use an unimpacted base line period of performance on the project and compare it to the accelerated period. This establishes what could have been achieved based upon actual results on the same job. Industry studies also are available which show standard production rates for certain trade activities to compare to the actual experience encountered on the particular job.

Recovery of acceleration costs by contractors has been recognized in a variety of jurisdictions. However, an acceleration claim may also be limited (or altogether denied) if, for instance, there is a failure to provide timely notice

of the claim in accordance with the terms of the contract.

CONCLUSION


From the contractor's perspective, it is imperative to keep in mind these key elements to recover on an acceleration claim: (i) establish the excusable delay; (ii) request a time extension for

it; (iii) when the owner denies one and requires that the schedule be recovered, respond with written notice that this amounts to a constructive change; and (iv) track the costs incurred. Should the contractor do so, it may very well have a substantive acceleration claim for which it can recover additional costs. ■

DDIN[®]

TRANSFORMER SLINGS

- Several Single and Three Phase styles to choose from
- All slings made with strong, durable Samson Rope
- All slings certified, tested & tagged by certified rope specialist




**TALLMAN
TESTED &
CERTIFIED**

samson

**Part Shown: DNTS12PM-2-ADJ-LL
1/2" ADJUSTABLE SINGLE PHASE
PADMOUNT TRANSFORMER
SLING**

**Part Shown:
DNTS12PM-2-LL
1/2" FIXED SINGLE
PHASE PADMOUNT
TRANSFORMER
SLING**



**TALLMAN
EQUIPMENT CO., INC.**

FOR MORE INFORMATION CALL TOLL FREE:
877-860-5666
INTERNATIONAL: 630-860-5666
www.tallmanequipment.com

Tallman Equipment is an employee owned company