

# Delay claims: Is time money?



## Construction Law

By PAMELA J. SCHOLEFIELD

The single most common, and often most expensive, problem encountered on any construction project is delays.

Delays are not really the problem, they are just the measured effect of the problem. And, some delays, in and of themselves, may not seem to be an issue, but individual task delays can impact productivity and create a domino effect on the critical path. When the magnitude of these seemingly insignificant delays compound, so do the related costs. The end result is delays eating up project profits.

### Good contracts don't prevent delays.

Aside from having an accurate set of plans and specs included in your contract documents, don't expect your contract to help you prevent delays.

Contract terms, no matter how favorable to you, cannot immunize your project from delays.

Even though the contract can't prevent delays, once there are delays, the lawyers come out in droves to analyze the contract to determine who will be responsible for the resulting costs.

The reality of construction is that projects require careful monitoring and a hands-on approach throughout the project to keep it running smoothly. Planners, project managers and field superintendents are all instrumental in minimizing delays.

### Proving damages due to delays is often not easy.

Last week we discussed CPM (critical path method), and how it is important in project planning. Once delays are an issue, CPM can assist in convincing the court that there were delays and what tasks caused them, but CPM only provides part of the delay equation.

CPM measures time, not costs. The

real impact of a delay is only known once the additional time is combined with the additional costs, and proving either can be very complicated.

A full analysis is much more complicated than just comparing as-built schedules with the original as-planned schedules.

Knowledge and experience are required in areas such as accounting, project management, scheduling, estimating, methods, and efficiency analysis, and often a hired professional expert is needed to assist with the analysis.

### Look early and often for potential delays.

Sometimes, the delay problem can manifest itself from the beginning. Many potential delays can be anticipated early through the use of well-planned, detailed schedules. Failure to address scheduling issues at the beginning is a major mistake, unreasonable time requirements will not work themselves out during construction.

After a project begins, once a delay is suspected, you should maintain complete documentation of all activities that may be affected and continue to update the schedule.

Also, keep detailed information of the impact of the delays on other tasks and labor costs and efficiencies. As we have noted in past articles, all things equal, the party with the better documentation usually prevails in case of a dispute.

### Typical owner delay damages

Liquidated damages- used when actual damages will be difficult or impossible to ascertain and, thus, a specific sum of money is listed in the contract for each day the project is extended past the promised completion date. Liquidated damages are not considered as a punitive (punishment) tool, but it isn't unusual to hear owners threatening to assess them to extract some additional performance from a contractor. What

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## Building

Work Involving New Construction, Additions, Alterations and Remodeling of Residential, Commercial and Industrial Structures. Please Check Engineering, Specialties or Subcontractors for Additional Bidding Projects

(G) Indicates General Contractor Requesting Sub bids  
(S) Indicates Subcontractor  
(NA) Indicates Not Available

### El Centro

Submit bids to Central Union High School District. Adan Alicea (760) 768-5200 Email: adan.alicea@hmcarchitects.com. Estimate: N/A.

April 3, 2:30 pm

### Transcript Plan No. 17

**Work Involves:** Central Union High School Library & Career Center Remodel: Bid Package No., Title & License Class Required are as follows; No. 1, Demolition - A, B or C21; No. 2, Concrete, Masonry, & Misc. Steel - B or C8, C29, C50, C51; No. 3, Finish Carpentry & Casework - B or C6; No. 3, Finish Carpentry & Casework - B or C6; No. 4, Rough Carpentry, Finishes, Openings, & Insulation - B or C2, C5, C9, C28, C33, C35; No. 5, Aluminum Storefronts & Glazing - B or C17; No. 6, Flooring & Tile - B or C15, C54; No. 7, Miscellaneous Specialties - B or C61 w/D34; No. 8, Plumbing, HVAC, Roofing & Sheet Metal - B or C4, C20, C36, C38, C39, C43; No. 9, Electrical, Communications/Data, & Fire Alarm - B or C7, C10. Prebid Conf. held on Mar. 20, 11 a.m., at the jobsite: Central Union High School Library, 1001 W. Brighton Ave., El Centro, CA 92243. Bid Sets (RF) \$150 (mailing a separate non-refundable charge of \$40) may be obtained from HMC Architects, 619 Paulin Ave. Ste. 106, Calexico, CA 92231, 760-768-5200. Make checks payable to HMC Architects.

### Dike No. 4-Groundwater Recharge Pump Station Coachella

Submit bids to Coachella Valley WD. 2008-2. GEI Consultants, Attn: Marc Rozman, (818) 552-6400 Fax: (818) 552-6401. Estimate: \$5,900,000.

Bid Deadline

April 4, 2 pm

### Transcript Plan No. 8

**Work Involves:** Dike No. 4-Groundwater Recharge Pump Station. Pre-Bid Conf. & Job Site Tour will be held on Mar. 20, 2 p.m., at the offices of the Coachella Valley Water Dist., 85-995 Ave. 52, Coachella, CA 92236. Plans/Specs (NR) \$80, available from owner, (760) 398-2651.

### Roofing at Lindo Park Elementary Lakeside

Submit bids to Lakeside Union School District. 08.01. (619) 390-2680. Estimate: N/A.

Bid Deadline

April 8, 10 am

### Documents Not On File

**Work Involves:** Roofing at Lindo Park Elementary. Mandatory Prebid Job Walk to be held on Mar. 31, 10 a.m., Lindo Park ES, 12824 Lakeshore Dr., Lakeside, CA 92040. Bidding Documents are available from the owner, Lakeside Union School District, 12335 Woodside Ave., Lakeside, CA, 92040 (619) 390-2680.

### Planholders INCLUDE:

G #Gordon Prill, Inc. - GC 8400 North Magnolia Ave. Ste. F, Santee .....619-448-1490/FAX 619-448-1071

### CNSI-BSL3 Laboratory Los Angeles

Bid Deadline

April 8, 11:30 am

Submit bids to UCLA. 942659.01. Project Manager: Ronald Enholm (310)206-3127. Estimate: \$5,500,000.

### Transcript Plan No. 251

**Work Involves:** CNSI-BSL3 Laboratory: The Project consists of renovating existing space for a Biosafety Level 3-Enhanced (BSL3-E) laboratory on Level 6 of the California NanoSystems Institute (CNSI) Building. The CNSI Building, a 7-story 118,000 asf (188,000 gsf) research laboratory in the Court of Sciences, was completed in Spring 2007. The 6,000 asf (6,400 gsf) BSL3 laboratory will be a secure, high-containment facility equipped for the rapid analysis of infectious disease samples. The high-speed, high-volume laboratory will provide analytical testing of samples containing highly pathogenic avian influenza and other select agents, and support bio-emergency first responders during local and global disease threats. The facility will include space for receiving and shipping of infectious disease samples; screening, culturing and typing of samples; automated freezer archiving of samples; and related laboratory support and containment areas. The Project also includes existing mechanical, electrical and plumbing demolition, corridor upgrades, structural reinforcing of roof, new roof penthouses for mechanical equipment, and effluent decontamination. The Project involves coordination with installation of University-furnished automated freezer and analytical equipment. The CNSI Building will be occupied during construction of the BSL3 Laboratory. Certain occupied areas shall require work during non-business hours. There will be shared access to the building's loading dock and service elevator, and restricted space for Contractor's storage and office facilities. The Project includes coordination with University's biocontainment commissioning agent. The Project also includes certification requirements for a University of California equivalent LEED™ Commercial Interiors minimum rating. License Required: B. Bidder Statement of Experience must be submitted no later than Feb. 20, 3:00 p.m. Mandatory Prebid Conf. & Job Walk will be held on Feb. 13, 10 a.m., Capital Programs Bldg., 1060 Veterans Ave., Rm. 128-H, UCLA Campus; Pre-Bid Conf./Job Walk added for Mar. 4, 10 a.m. Plans/Specs (NR) \$200, available from owner, (310) 825-7015.

### McMahan House Construction San Marcos

Submit bids to California State Univ., San Marcos. B-1022. David B. Taylor, (760)750-4554 Fax: (760)750-3286 Email: dtaylor@csusm.edu. Estimate: \$2,500,000.

Bid Deadline

April 8, 2 pm

### Transcript Plan No. 43

**Work Involves:** McMahan House Construction, License Required: B. Mandatory Prebid Mtg. to be held on Mar. 3, 2:00 p.m., CSU San Marcos, 333 S. Twin Oaks Valley Rd., San Marcos, CA 92096; Additional job walk added for 3/21 (mandatory for GC's who missed walk on 3/3). Plans/Specs available for the non-refundable cost of printing from Mayer Reprographics. Order form may be obtained thru their website: www.mayer.com, 619-295-4112. Available on or after Feb. 20.

### Planholders INCLUDE:

G #Wier Construction - GC 2255 Barham Dr., Escondido .....(760) 743-1477/FAX (760) 746-5224  
G #Marcotte & Hearne Builders (GC) 11696 Sorrento Valley Road, Suite 200, San Diego ..... (858)793-4101/FAX (858)793-4102  
G #PCL Const. Svc., Inc. - GC(SD) 4690 Executive Dr., Suite 100, San Diego ..... 858-657-3400/FAX 858-657-9444  
G #Randall Const. - GC 3656-D Ruffin Road, San Diego .....(858)560-5453/FAX (858)430-5456  
G #Erickson-Hall - GC (Escon) 500 Corporate Dr., Escondido .....(760) 796-7700/FAX (760) 796-7750

## Volunteers

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needed skilled construction workers to finish home repairs.

"We have worked with them before on previous hurricane disasters in Florida, so it was natural to work with them again," Mackevics said.

The United Methodist Committee on Relief is providing case management, prioritizing the work and taking care of delivery arrangements of the construction materials to the various locations where the team will be working.

"Most of the displaced families are living in temporary shelters," said Barry La Forgia, executive director for IRT. "Many are poor and elderly, living on low and fixed incomes. They cannot afford to rebuild their homes without help."

There is no set goal of how many houses need to be finished in the week the volunteers are there because some need more work than others and sometimes there is not enough of a skilled trade, like a stucco specialist.

This leads to one of the main obstacles of this relief program. According to Mackevics, finding enough skilled volunteers has been harder and harder as time goes on.

"You don't hear about places like Mississippi and other parts of the South that were damaged by Hurricane Katrina anymore in the media," she explained. "So people think that help is not needed anymore, but there is a lot that still needs to be done. We need plumbers, roofers, electricians and any skilled workers in the construction industry."

San Diego construction companies have also tapered off from being involved than in the past and Mackevics reiterated that it is due to the perception that the Gulf Coast no longer needs help.

"As of September 2007, approximately 31,000 people are still displaced from their homes and are living in either FEMA trailers or with rela-

tives," Mackevics stated.

In the past two years, 199 IRT volunteers have repaired more than 95 homes in these areas.

The team that recently returned included carpenters, drywall specialists, roofers, plumbers and handymen. The 14 San Diego County volunteers included Don and Pauline Curry, El Cajon; Pete Dudley, Jamul; Jamie Durward, Cardiff-by-the-Sea; Carl Emerich, La Mesa; Carol Fox, San Carlos; Mark Grisez, El Cajon; Ken McIntyre, Kensington; Bob Moran, Lakeside; Jerry Ollinger, Mira Mesa; Janet Richardson, El Cajon; Tom Sprague, Alpine; Geoff Sheldon, Pacific Beach; and Steve Walsh, Vista.

Mackevics said the majority of the San Diego volunteers are amazed at how bad the area really is and how much re-building still needs to be done.

"Some were so moved by the whole experience that they have volunteered to be part of another team that goes

back later this year," Mackevics said. "They were also presently surprised on how many other skills they can learn and how much they can get accomplished in such a short amount of time."

The cost to send a team of 17 volunteers to Mississippi for a week is approximately \$12,000, with the funding coming from donations. The amount covers aerial and terrestrial transportation, and the United Methodist Committee on Relief provides accommodations and food for them with some materials being donated and others being purchased.

The next team is scheduled to go on a weeklong volunteer trip May 11 and volunteer groups will continue to go every other month until the end of the year.

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*Send your thoughts and comments to [carlos.rico@sddt.com](mailto:carlos.rico@sddt.com).*

**Source Code: 20080321cya**

## Construction Law

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the contractor often does not realize is that liquidated damages are often less than the actual damages that an owner could incur for a delay.

Actual damages-used when no liquidated damages clause exists, such as:

- (1) Owner's project management and supervisory expenses
- (2) Project specific overhead expenses
- (3) Loss of use
- (4) Lost rents (if building is intended to be released)
- (5) Lost profits from a business not opening
- (6) Project-specific insurance costs
- (7) Construction loan interest expenses.

Typical contractor delay damages:

- (1) Project supervision costs
- (2) Extended general conditions
- (3) Jobsite trailer rental
- (4) Temporary facilities such as toilets, fencing telephone, site power and water
- (5) Liability insurance
- (6) Equipment rental costs
- (7) Equipment maintenance
- (8) Field labor if the scope of work is increased as a direct result of the delay
- (9) Increased material costs
- (10) Lost productivity caused by the delay due to disruption and inefficient task sequencing
- (11) Hourly labor rate increases due to longer duration of project
- (12) Demobilization and re-mobilization expenses for extended delays.

Sometimes, it may seem like short

delays here and there do not impact the project cost, so you may not want to take the effort to keep track and provide notice of the delay.

But, the reality is that minutes turn into hours, and for a crew of four workers, one 15-minute delay equates to one labor-hour of lost productivity.

Thus, that 15-minute delay probably just cost you \$75 in lost labor.

To get compensated for delays, we are assuming an inexcusable delay by the other party. But, sometimes events happen that cannot be anticipated by either party and these should be addressed in a contract, for example acts of god, riots, strikes, and force majeure. When this happens, each party usually must bear its own cost of the delay.

Often delays are unavoidable, but the best defense is to anticipate problems, document the impact and look for ways to adjust the schedule to possibly make up the time if the delay is on the critical path.

If you have a construction question, submit it to: [info@construction-laws.com](mailto:info@construction-laws.com)

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**Disclaimer**

*The information in this article is based upon California law and is for general information only. Any information or analysis presented here is intended solely to inform and educate the reader on general issues. Nothing presented or referenced to, regarding facts, documents or applicable laws,*

*constitutes legal advice. Before acting or relying on any information, including any information presented here, consult with a qualified attorney for your specific situation.*

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*Scholefield holds an active PE license in Colorado, an undergraduate engineering degree from the University of Florida, and received her JD from the University of San Diego.*

**Source Code: 20080321tea**

## CONSTRUCTION CALENDAR

### OTHER EVENTS

#### WEDNESDAY, MAR 26 - MEETING

##### DELEGATES MEETING

The San Diego-Imperial Counties Labor Council will meet tonight. **Organization:** Imperial Counties Labor Council **Information:** [www.unionyes.org](http://www.unionyes.org) **Cost:** No Details Available **When:** Starts: 5:30 PM **Where:** Machinists Hall, 5150 Kearny Mesa Road, San Diego

#### WEDNESDAY, MAR 26 - CLASSES

##### CONSTRUCTION FALL AND RESCUE

This top-level training opportunity meets new state standards and certifies a competent person in a comprehensive two-day course. **Organization:** Associated Builders and Contractors, Inc. (ABC) **Information:** Gary Wood (858) 513-4700 [gary@abcsd.org](mailto:gary@abcsd.org) **Cost:** \$355.00- \$425.00 **When:** Hours: 7:00 AM - 3:00 PM **Where:** ABC Training Academy, 13825 Kirkman Way, Poway, 92064

#### WEDNESDAY, MAR 26 - TRAINING

##### CONSTRUCTION FALL AND RESCUE

This top-level course certifies a competent person in construction-related fall protection and rescue. **Organization:** Associated Builders and Contractors, Inc. (ABC) **Information:** Gary Wood (858) 513-4700 [gary@abcsd.org](mailto:gary@abcsd.org) **Cost:** \$355.00- \$425.00 **When:** Hours: 7:00 AM - 3:00 PM **Where:** ABC Training Academy, 13825 Kirkman Way, Poway, 92064



A complete listing of the Construction Calendar is available at San Diego Source — [www.sddt.com/realestate](http://www.sddt.com/realestate). Send notices about upcoming events to [robin.scott@sddt.com](mailto:robin.scott@sddt.com) for a free listing.  
—Compiled by Robin Scott