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## **Concurrent Delays - A Lawyer's Look Back in Time**

*by Peter M. Kutil, Esq. and Karl Silverberg, P.E., Esq.*

Analyzing delays on a construction project is not an easy undertaking. Assigning responsibility for such delays involves extensive analysis. An aspect of this analysis may involve the presence and consideration of so-called concurrent delays.

A contractor is generally entitled to an extension of time to complete the contract when the contractor is delayed due to the owner's fault. If it so happens that at the same time that the owner is delaying the project, the contractor is also experiencing a delay due to the contractor's own fault (for example, a broken crane), then the two delays are said to be concurrent delays. It is the general rule that a contractor is not entitled to an extension of time or extra compensation due to a delay resulting from the owner caused delay if there is an offsetting concurrent delay that was caused by the contractor.

Cases date back many years regarding apportioning delay on construction projects. The CPM (Critical Path Method) dates back to the 1950s and 1960s and is, one could submit, a recent development in light of cases such as *Weeks v. Little*, 89 N.Y. 566 (1882). *Weeks*, a decision by the New York Court of Appeals (the state's highest court), looked at contractor- and owner-caused delays and affirmed the trial court's finding that the contractor caused delays did not delay the overall completion.

The Court noted that "[t]he contractor could gain nothing by haste and pressure in one direction so long as entire completion was delayed by his employers." The decision in *Weeks* illustrates that the contractor's delay was not a concurrent source of delay because the contractor delays were not "critical," to use current schedule lexicon. The issue of whether there is a concurrent delay involves a detailed study of the cause of the delay, the contractor's resources, and his or her ability to get the work done in the original time specified. It is an issue that is often difficult to resolve, as it involves a series of hypothetical "what if" questions. If the owner alleges that there was a concurrent contractor-caused delay, the owner needs to show that the contractor would not have been able to meet the original schedule if there was no owner-caused delay. If the owner has established a concurrent delay, the question then turns to how much of the overall delay is the contractor's responsibility.

It is important to note that every contract and factual situation is different, so each party's obligations are determined on a contract-by-contract basis. While this article is a general overview of the concept of concurrent delays, any concerns on a particular matter should be addressed with an attorney.

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