ICCP

Construction Clinic 23

Concurrent Delay

Presented by

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CONCURRENT DELAY

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

*"A Period of **project overrun** which is caused **by two or more** effective causes of delay which are of approximately **equal causative p**otency"*

Concurrent Delay by John Marrin QC (2002), 18 Const LJ No. 6 436.

- True concurrency rare.
- However opposing expert will nearly always raise alternative causes of delay to negate and cast doubt over the EOT / L&E entitlement.
- Complicated by the SCL Protocol providing two alternative views on concurrency (see para 10.7 to 10.10).

THE ORTHODOX APPROACH TO CONCURRENCY

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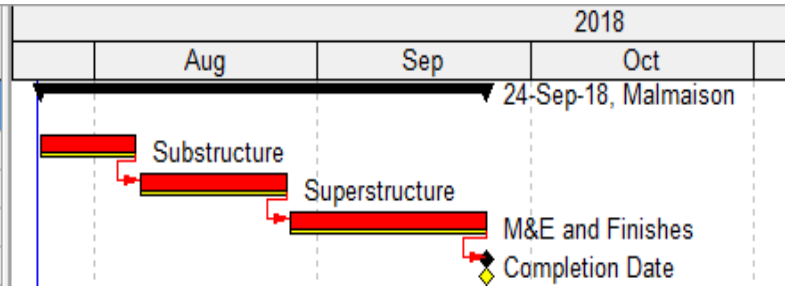
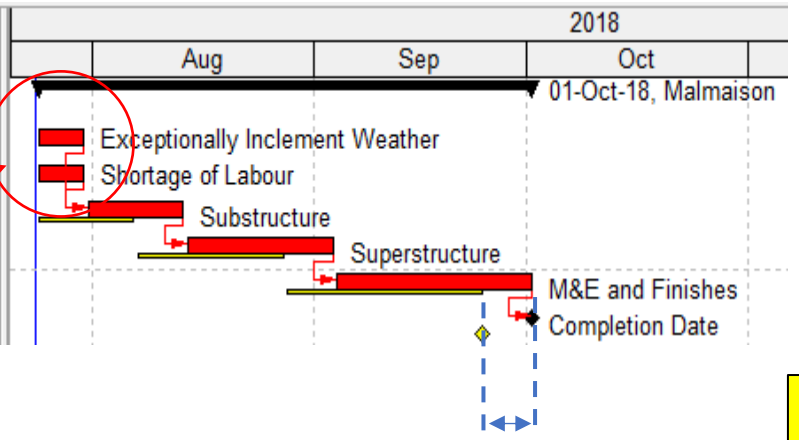
- *Malmaison, etc*:

Activity ID	Activity Name	Start	Finish	Original
Malmaison		24-Jul-18	24-Sep-18	45
A1000	Substructure	24-Jul-18	06-Aug-18	10
A1010	Superstructure	07-Aug-18	27-Aug-18	15
A1020	M&E and Finishes	28-Aug-18	24-Sep-18	20
A1030	Completion Date		24-Sep-18	0



Activity ID	Activity Name	Start	Finish	Original
Malmaison		24-Jul-18	01-Oct-18	50
A1040	Exceptionally Inclement Weather	24-Jul-18	30-Jul-18	5
A1050	Shortage of Labour	24-Jul-18	30-Jul-18	5
A1000	Substructure	31-Jul-18	13-Aug-18	10
A1010	Superstructure	14-Aug-18	03-Sep-18	15
A1020	M&E and Finishes	04-Sep-18	01-Oct-18	20
A1030	Completion Date		01-Oct-18	0



Two concurrent delays
<u>Relevant Event –</u> Exceptionally Inclement Weather
<u>Contractor Delay –</u> Shortage of Labour

5 working day concurrent delay

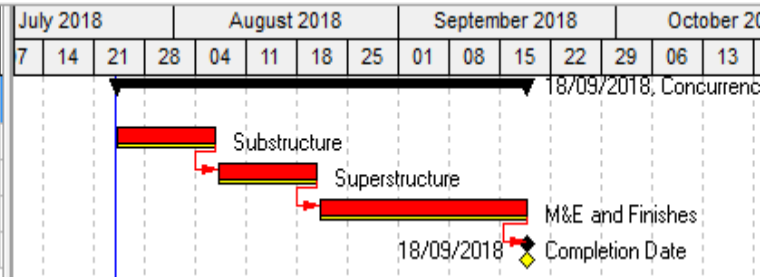
1 week EOT due to the Contractor (5 working days)

THE ALTERNATIVE (NEW) APPROACH

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

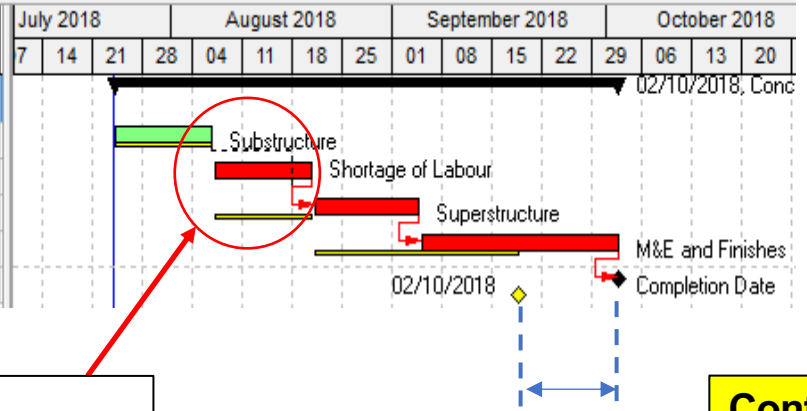
- *Royal Brompton, Adyard, Jerram Falkus, Saga Cruises*:

Activity ID	Activity Name	Start	Finish	Original Duration
Concurrency - Planned Intent		24/07/2018	18/09/2018	40
A1000	Substructure	24/07/2018	06/08/2018	10
A1010	Superstructure	07/08/2018	20/08/2018	10
A1020	M&E and Finishes	21/08/2018	18/09/2018	20
A1030	Completion Date		18/09/2018	0



Layout: Murphys - PP | Filter Any: In Progress, Not Started

Activity ID	Activity Name	Start	Finish	Original Duration
Concurrency - New Approach - Shortage of Labour		24/07/2018	02/10/2018	50
A1000	Substructure	24/07/2018	06/08/2018	10
A1040	Shortage of Labour	07/08/2018*	20/08/2018	10
A1010	Superstructure	21/08/2018	04/09/2018	10
A1020	M&E and Finishes	05/09/2018	02/10/2018	20
A1030	Completion Date		02/10/2018	0



<u>Contractor Delay –</u>
Shortage of Labour causing 10 days delay

Contractor Culpable delay

THE ALTERNATIVE (NEW) APPROACH

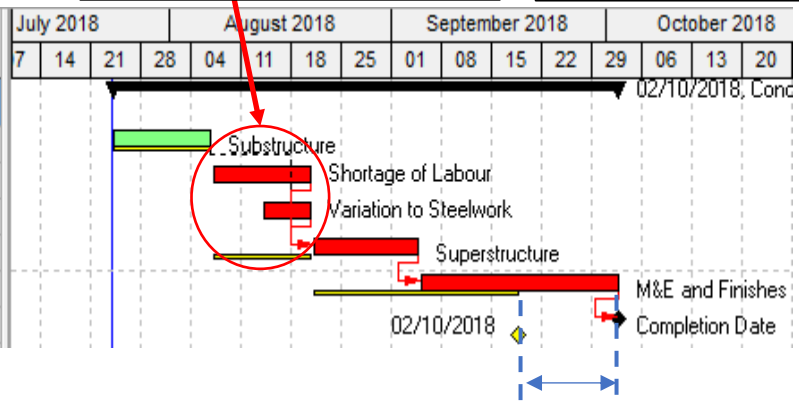
INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- *Royal Brompton, Adyard, Jerram Falkus, Saga Cruises*:

Relevant Event– Variation to Steelwork occurs slightly later but equally delaying

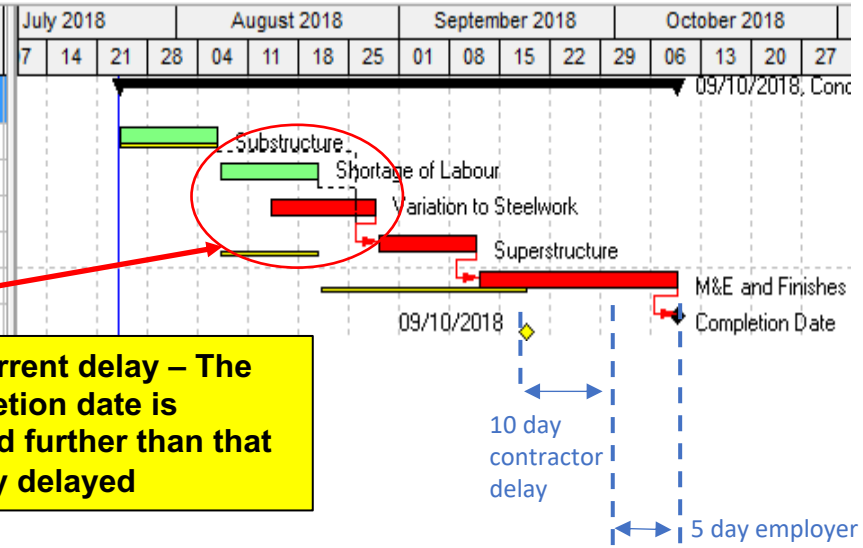
No Concurrent delay – The completion date is not delayed any further than already delayed

Activity ID	Activity Name	Start	Finish	Original Duration
	Concurrency - New Approach - Variation to Steelwork	24/07/2018	02/10/2018	50
A1000	Substructure	24/07/2018	06/08/2018	10
A1040	Shortage of Labour	07/08/2018*	20/08/2018	10
A1050	Variation to Steelwork	14/08/2018*	20/08/2018	5
A1010	Superstructure	21/08/2018	04/09/2018	10
A1020	M&E and Finishes	05/09/2018	02/10/2018	20
A1030	Completion Date		02/10/2018	0



10 day delay remains

Activity ID	Activity Name	Start	Finish	Original Duration
	Concurrency - New Approach - Variation to Steelwork Extended	24/07/2018	09/10/2018	55
A1000	Substructure	24/07/2018	06/08/2018	10
A1040	Shortage of Labour	07/08/2018*	20/08/2018	10
A1050	Variation to Steelwork	14/08/2018*	28/08/2018	10
A1010	Superstructure	29/08/2018	11/09/2018	10
A1020	M&E and Finishes	12/09/2018	09/10/2018	20
A1030	Completion Date		09/10/2018	0



Relevant Event– Variation to Steelwork extends beyond the Contractor Delay

Concurrent delay – The completion date is delayed further than that already delayed

10 day contractor delay

5 day employer delay

CONCURRENT DELAY - SUMMARY

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- Delaying act must affect the **critical path**.
- Delaying act must cause **actual delay** to the progress of the works.
- Delaying act must prevent contractor from achieving an earlier completion date. **If earlier completion date would not have been met** (due to contractor delay), **then no concurrency exists**.
- First event problem – Will new approach prevent parties from raising issues, whilst awaiting the other side's delay to materialise?
- Concurrency argument often won on the factual evidence rather than from the delay analysis itself.
- Pragmatic Approach is required

QUESTIONS

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CONTACT DETAILS

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