

**SIXTH ANNUAL
SOUTHERN SURETY AND FIDELITY CLAIMS
CONFERENCE**

***THE REST OF THE STORY
THE CLAIM GAME***

PRESENTED BY:

Arnold M. Frost, P.E.
FORCON INTERNATIONAL CORP.
1216 Oakfield Drive
Brandon, Florida 33511

1. INTRODUCTION

Unfortunately we find that THE END GAME is too often not the final stage of a project. A painful and costly period of dispute, which we will call THE CLAIM GAME may follow final acceptance of the project.

The unresolved issues which develop into claims usually involve payments, delays, disruptions, and changes. Because of this similarity in the nature of the claims, Sureties and Principals must often undertake similar activities during THE CLAIM GAME. The details of each project may differ greatly, but the things which must be done to affirm or defend against claims tend to be much the same.

One year ago, I presented a paper to the Fifth Annual Southern Surety Conference titled "WHAT YOU SEE IS NOT WHAT YOU GET". That paper discussed some of the difficulties of estimating and completing the work of a defaulted electrical subcontractor at a State Correctional Facility. This paper discusses the rest of that story, namely "THE CLAIM GAME".

After the **End Game** phase of the "What You See" project, which we shall call "**Project Alpha**" the completing Surety prepared an affirmative Claim against the Obligee. Many of the steps taken to prepare that claim are common to most **Claim Game** activities. The rest of the "**Project Alpha**" story may therefore be of interest to others who must play the Claim Game.

I will introduce the claim preparation activities today, and we will schedule papers for future conferences to provide further details.

The Surety that completed "**Project Alpha**" engaged the Services of a well known Forensic Consulting Company to visit the office of the defaulted electrical contractor to determine the quality and condition of the Files and the documentary support for a Claim against the Obligee for Damages due to Extension, Disruption and Acceleration of the Project by the General Contractor. The forensic consultant's report to the Surety was positive, and the Surety requested that the Claim preparation be started.

2. REVIEWING AND INDEXING CLAIM DOCUMENTS

The Daily Force Reports for all trades, Electrical, Masonry, Concrete, Steel Erection, Sheetrock, etc., and the Minutes of meetings between the Architect, General Contractor, and the Original Electrical Contractor had been thoroughly researched.

A massive data base had been established by the Principal listing all the relevant information from these sources. This data base was set up to be sorted chronologically by craft or building to be used as required in the resolution of the dispute with the Obligee.

3. FOLLOW THE MONEY-ECONOMIC LOSSES

The Electrical Contractors bid take off and direct cost estimate were reviewed to ensure that they were both reasonable and in keeping with industry norms for this type of installation. The actual costs were compared to the estimate to identify the actual damages suffered by the Principal.

4. PAYMENT APPLICATION ANALYSIS

Payment applications and payments to the Principal were tabulated to identify all over or under payments. The monies earned but not paid were reviewed and addressed.

5. CASH FLOW ANALYSIS

The Principal's monthly costs and revenues were reviewed to get a cash flow picture of what actually happened.

6. PREPARING THE "AS PLANNED" AND "AS BUILT" SCHEDULES

The official project schedule had been issued by the Architect, and the electrical portion of the schedule was presented by a single bar stretching over a 24 month period.

The CPM schedule issued by the General Contractor was the first schedule to show the phasing of the electrical work in each building. The major milestones in this schedule were essentially the same in the schedule that was prepared by the Architect. This first CPM schedule was treated as the as planned schedule, the as built schedule was developed from the actual dates taken from the daily field reports.

Since this project was complete and there was adequate as built data available in the massive data base that had been developed, it was decided to use actual data rather than mathematical projections to evaluate the delay and acceleration.

An as built schedule of the electrical and pacing activities was developed by taking the actual starting and completion dates for those activities from the massive data base. Those dates were input into a computerized scheduling program with the as planned dates, the scheduling program was then set up in a "Baseline Compare" mode to evaluate the variance between the as planned and as built schedules.

7. SCHEDULE ANALYSIS

The schedule analysis used for this Claim was a variation of the Pacing Activity Method, as described by Joseph Manzi, P.E., in the September 1994 Issue of FOCUS, rather than the more usual CPM Methods.

A Pacing Activity analysis is centered on those activities which did, in fact, control the project completion. This methodology is particularly useful for delay and acceleration evaluations, when good as built Information is available.

When using a Pacing Activity analysis, the as built schedule data is evaluated to determine which events did, in fact, control the Schedule. The actual and as planned schedules for just those activities are then evaluated to determine:

How did the actual logic and dates vary from the planned schedule?

Why did those variances occur?

What was the impact of those variances on the critical path?

By focusing on what actually occurred, this methodology presents a factual situation which can be readily understood by individuals with little or no advanced scheduling techniques.

8. DEVELOPING "AS PLANNED" AND "AS BUILT" PRODUCTIVITY RATES

The causes of Productivity Loss, namely Extension, Disruption, Resequencing, Acceleration, Morale, etc., were reviewed and the Comparison Method was considered, wherein the actual productivity is compared to the planned productivity that would have resulted "but-for" the actions of the General Contractor.

The planned productivity rates can usually be found in or inferred from the bid estimate. Actual productivity rates require accurate and detailed cost reporting. Actual quantities and actual manhours must be collected, cost coded and compared at frequent intervals to support the calculation of actual productivity rates. Most contractors do not maintain such records, actual quantities are collected for payment applications and actual manhours are collected for payrolls. However, those items are often not cost coded, so actual productivity rates cannot be calculated. We have developed a new methodology to deal with this common problem.

9. PRODUCTIVITY ANALYSIS

The actual labor was taken from the Principal records, along with the actual materials used. Earned value techniques were used to convert the actual material into earned manhours. The difference between the earned and actual manhours represents the productivity lost.

10. QUANTIFYING DAMAGES

The Earned not paid, Extended Site Overheads, Home Office Overheads and Productivity Loss damages were calculated using well established procedures.

Surety Claim Departments may want to establish early in their investigation if their Principals have properly prepared their Files for you, when it is time to get ready for "THE END GAME" and possibly for "THE CLAIM GAME".

AMF5180