



Shootout at the OK Corral

Did You Notice Me?

Mock Trial 2008 - 2017

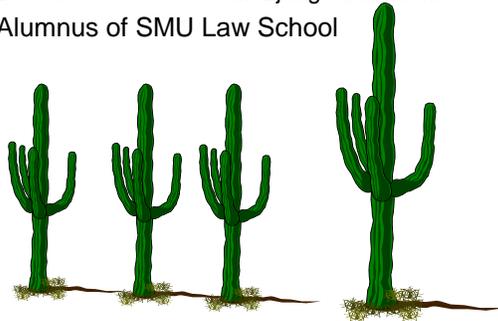
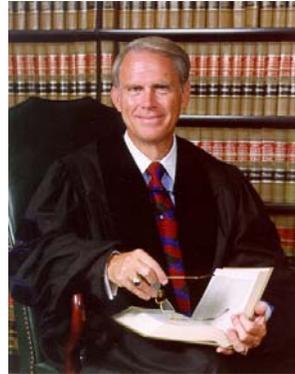


Historical Note – Jim O’Brien and Fred Krietzburg were the founders/owners of legendary O’Brien-Krietzburg CPM consulting firm – known as OK or OKA (associates.) Thus when first creating this mock trial series, with Jim as one of the experts, the “Shootout at the OK Corral” motif was adopted and is still generally understood by Schedulers old and young.

Hon. John M. Marshall

Presiding

- Senior Judge of the 14th Judicial District Court, Dallas County, TX
- **MC² LEGAL, PLLC**
3418 Daniel Avenue, University Park, TX 75205
214-361-1107 Mc2judge@aol.com
- Alumnus of SMU Law School



by Fred

The Hon. John M. Marshall will be presiding today. Our court system has some impressive looking buildings. Our Legislatures pass some fancy looking laws. Our Executives may strut before us to the tune of “Hail to the Chief.” But it is the Judge who **is** the law.

At our first session in 1998, when Jeff’s partner Bob Meyers swore expert Jim O’Brien in at the start of the trial, he jokingly said “this doesn’t really count because were not in a real courthouse.” Judge Marshall interrupted, and reminded Bob and all of us, “**The Court is where I sit.**”

I hope all goes well at today’s mock trial, but I have brought my toothbrush along, just in case!

Jeffrey B. Kirzner, Esq.

Attorney for the owner



- Jones Day
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(949) 553-7533 jkirzner@jonesday.com
- Member of Jones Day's Domestic and International Construction Law Practice
- Has represented Owners in major construction cases including:
 - Orange County Transportation Authority • County of Los Angeles
 - Los Angeles County Metropolitan Transportation Authority
 - County of San Bernardino • San Bernardino County Flood Control District



by Jeff

Jeff will be acting as the attorney for the owner today

<<need additional bio data>>

Daniel D. McMillan, Esq.

Attorney for the owner



- Jones Day
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 243-2582 DDMcMillan@jonesday.com
- Co-chair of Jones Day's Domestic and International Construction Law Practice
- Author
 - "Federal And State False Claims Acts And Public Construction Projects"
 - "An Owner's Guide to Avoiding the Pitfalls of Disputes Review Boards"



by Jeff

Dan will be acting as the attorney for the contractor today

<<need additional bio data>>

Randy R. Dow, Esq.

Attorney for the contractor

- Boyd & Jenerette, P.A.
4443 Lyons Road, Suite 209
Coconut Creek, FL 33073
(954) 670-2198 x516 rrow@boydjen.com



- Construction law, with an emphasis on delay and defect claims
- Defense of product liability and general liability claims relating to construction equipment, power tools and construction vehicles.
- Committee Chair for the CLE Subcommittee of the Florida Bar Construction Litigation Committee



by Randy

Randy will be acting as the attorney for the contractor today

<<need additional bio data>>

Gray Childs

Technical Expert to the Court on Computer Generated Exhibits



- Gray Childs has spent the last 20 years believing and proving that the way to control and predict the future of projects is through scheduling by leveraging technology.
- Starting as a PM/Scheduler, Gray has traveled the globe “Paying Forward” the lessons learned from an exceptional field superintendent.
- Gray’s field construction experience, combined with extensive technology experience working for software companies like ConstructWare/Autodesk and Primavera/Oracle and has developed a broad and deep technical skill set specific to the industry.
- Gray now works for LoadSpring Solutions, the industry leading Project Management/Controls Cloud Services company, evangelizing and implementing the technology, processes and people that began with the lessons learned 20 years ago now delivered in the modern world of projects and technology

By Fred

Gray Childs will be the FACT witness for the contractor today

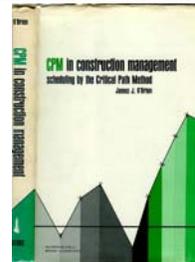
true experience, earlier in career, as a contractor project manager /
superintendent playing today

today a respected consultant working for Loadspring

James J. O'Brien., P.E.

Expert for the Contractor

- founder O'Brien-Kreitzberg Associates
- currently "trying to retire" – private practice
2 Linden Avenue Riverton, NJ 08077
856-829-9480 jimobriend527@aol.com
- Scheduler -- CPM since 1962 -- 55 years
- Construction Engineering since 1955 – 60+ years
- Professional Engineer -- 6 states
- Author: *CPM in Construction Management*
--and 12 other books
- PMI, CMAA, AACEi, SAVE and ASCE



By Fred – Jim O'Brien needs no introduction – by some considered "Father of CPM" – while did not invent CPM, did effectively introduce it to world with industry bible CiCM

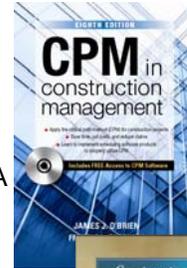
Cannot be here in person today due to a case calling him out to Seattle, WA. But he will be here in video clips, and "who knows?"

Fredric L. Plotnick, Ph.D., Esq., P.E.

Expert for the Owner



- Engineering & Property Management Consultants, Inc.
261 Old York Road #732 Jenkintown PA 19046
www.fplotnick.com 215-885-3733 fplotnick@fplotnick.com
- CPM Scheduling since 1975
- Professional Engineer and Attorney -- PA, NJ, FL
- Professor of Engineering -- Drexel U. – Philadelphia, PA
Temple University – University of Pennsylvania
- Co-Author: *CPM in Construction Management*
- Past President NSPE/PSPE-Philadelphia Chapter
- Member ASCE, AACEi, PMI, ABA Forum on Construction
- Construction CPM Conference



By John

Fred Plotnick is one of our regular speakers at our annual User Conferences on the interface between engineering, construction, software applications and the law. Fred has worked with Primavera almost from our beginnings assisting with technical and practical use issues. Mr. Plotnick is one of the pre-eminent theorists in CPM analysis and is the added author to Jim O'Brien's classic CPM in Construction Management.

Fred is here at our Construction CPM Conference with his wife, Kim, ...

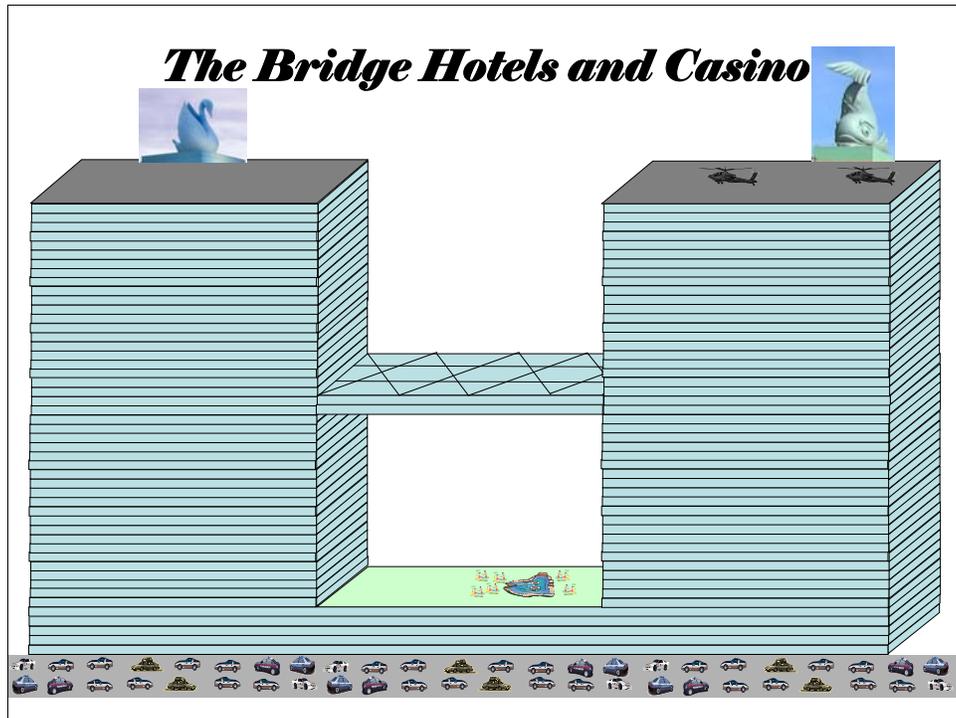
As well as overall coordination and moderator, Fred will be the expert witness for today's presentation and therefore has the honor of deliberately making mistakes for the two attorneys to capitalize upon. He reminds you that next month's courtroom may feature you and hopes that you do not make the same mistakes.

Shootout at the OK Corral

- Courtroom exhibits will be introduced as part of the trial
- Testimony of James J. O'Brien will be by videotaped deposition
- Testimony of Fredric L. Plotnick will be live and unscripted
- Judge Marshall and the attorneys will also instruct the audience on good and bad behavior by an "Expert" and courtroom dynamics
- The facts of this presentation are fictional and any resemblance to actual events is purely coincidental



By Fred - intro to today's show



By Fred

The Bridge Hotels and Casino is a 49 story structure consisting of two floors of casino, restaurants and entertainment, three floors of parking garage, and two 44 floor hotels placed above the parking garage. A feature which highlights this structure and gives it the Bridge name is a skybridge connecting the two towers at the 21st and 22nd floors. The skin of the two towers is floor to ceiling glass panels affixed to a specially fabricated frame system, which in turn is affixed to the structural steel and floor slabs at each level. Another feature is the glass ceiling and glass floor of the skybridge. Patrons may look down through the 21st floor straight into the hotel pool below. This is usually not recommended after losing heavily at the tables.

Both the glass panels and frame are fabricated overseas and must be transported to the U.S. by ship.

Explicit Contract Language

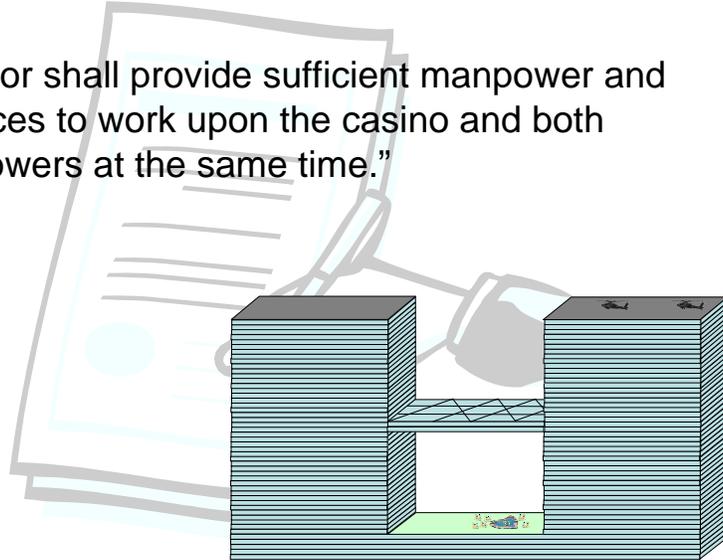
“The Contractor shall complete the project not later than 01NOV07. Time is of the essence.
Liquidated damages for loss of casino income shall be \$1,000,000 per calendar day.
Additional actual damages for costs incurred by the Owner shall be assessed in addition to L/D’s.

Note that the casino may not open for business until the hotel and other elements of the project are finished and functioning

By Fred – some interesting contract language on this project

Explicit Contract Language

“Contractor shall provide sufficient manpower and resources to work upon the casino and both hotel towers at the same time.”



By Fred – some interesting contract language on this project

Explicit Contract Language

“In the event that the contractor believes that actions or inactions of the owner have caused a delay to the project, the contractor shall notify the owner and shall review and modify its plan of execution to mitigate such delay.”

“In such event, the contractor shall immediately provide the owner with:

- 1) an estimate of the length of anticipated delay without effectuating such recovery plan, and
- 2) an estimate of the cost of effectuating such recovery plan.”

By Fred – some interesting contract language on this project

Explicit Contract Language

“The Contractor shall prepare and submit a CPM schedule to the Owner for the purpose to provide further assurance that the Contractor will meet the Contract Deadline of 01NOV07.

The CPM shall be prepared in general conformance with the text CPM in Construction Management, 8th Edition.

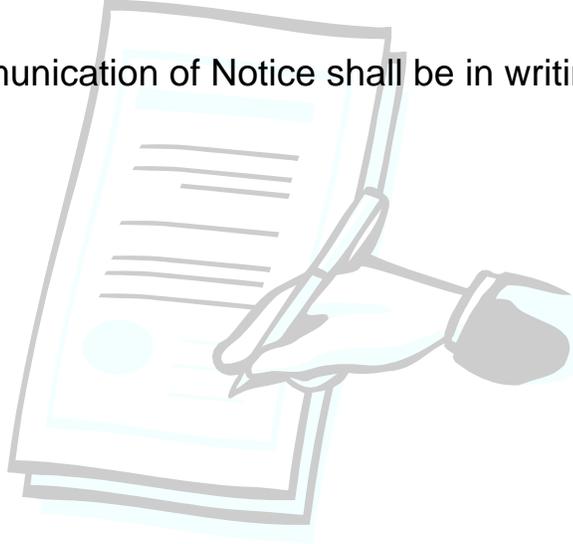
The CPM shall be resource loaded for all major resources.

Non-conformity within the CPM with any other Contract provision, and acceptance thereof by the Owner, shall not constitute waiver of such provision.

By Fred – some interesting contract language on this project

Explicit Contract Language

“All communication of Notice shall be in writing”



By Fred – some interesting contract language on this project

Questions of Law

“All communication of Notice shall be in writing”

- Judicial enforcement of such language
- Actual knowledge – Constructive knowledge
- Digital Communications Act of 2000
- Are progress meeting minutes “Notice in Writing”?
- Is a CPM update submittal “Notice in Writing”?



Randy – Jeff – John – provide insights on NOTICE

New Technologies – New Law?



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The Next Generation

Fredric L. Plotnick, Ph.D., Esq., P.E., is an authority on CPM planning and scheduling and on legal aspects of engineering and construction. He is co-author, along with James J. O'Brien, of [CPM in Construction Management](#), now in its 7th edition. This blog will discuss CPM scheduling, engineering law and other aspects of project management.

Will Google Voice Open the Door Again to Trustworthy Verbal Contracts?

Posted by [fplotnick](#) at 4/23/2010 4:30 PM CDT

How will Google Voice transform the construction industry?

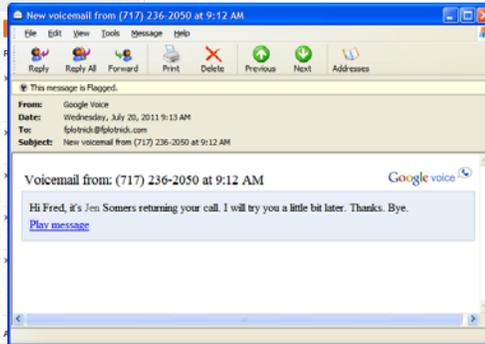
Will it return construction to the days when deals were done with verbal agreements?

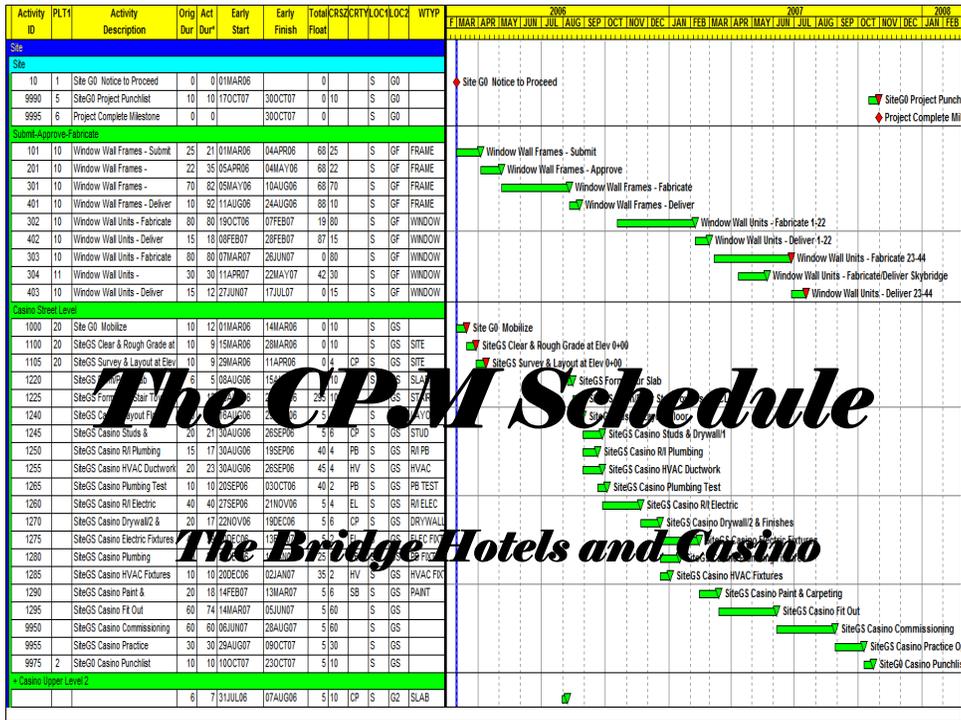
If we remove the threat of "misremembering" conversations, can we return to the civility of accepting verbal agreements knowing that they will now be treated as though they are in writing?

Read on.

One of our recent postings discussed the legal ramifications of new means, methods and technologies that have been introduced over the past three years while many of our industry have been under-utilized. Another new entry that may have enormous impact is the introduction of Google Voice.

Google Voice is a service which provides you with "one incoming phone number" which will then be forwarded to one or many of your various telephone service numbers. For example, should you dial my Google Voice phone number, both my office phone and mobile phone will ring. Whichever is answered first will then be connected. I can program the service to also ring my home phone number for calls from my family, friends and selected clients. But the feature that will





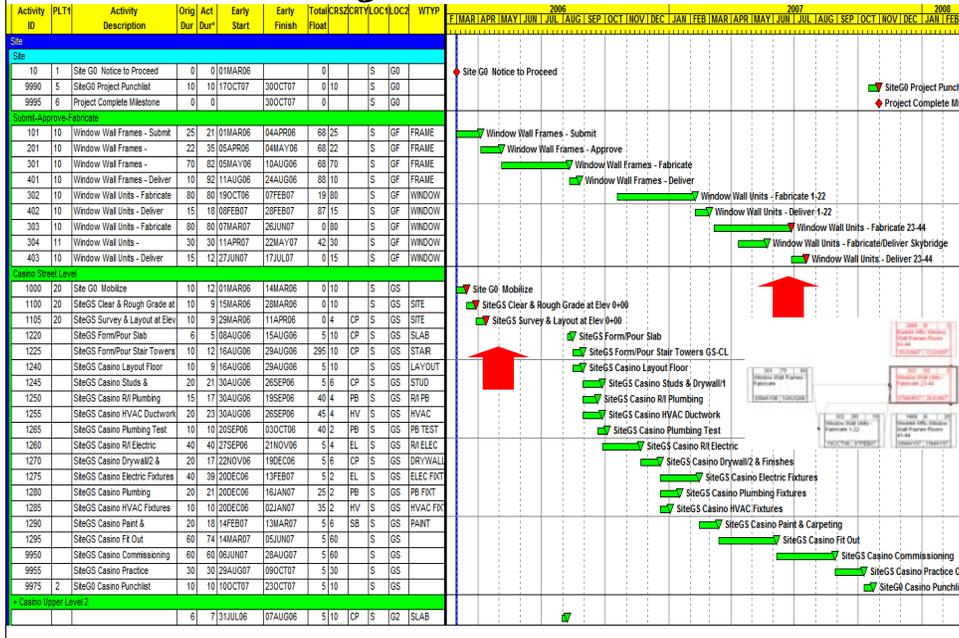
By Fred – some comments on the CPM used on the project and to prepare today’s show

The CPM Schedule

Pertmaster Report Viewer	
File Tools Help	
b1ap-ScheduleCheckReport	
	
Plan Summary	
Title	
File name	C:\ddata\99P386\conf00\b1ap.plan
Plan finish date	10/30/2007 5:00:00 PM
Plan remaining duration	609
Normal tasks	1176
Summary tasks	0
Milestone tasks	2
Hammock tasks	0
Monitor tasks	0
Calendars	4
Links	2323
Resources	12

1176 activities - 2323 restraints between activities

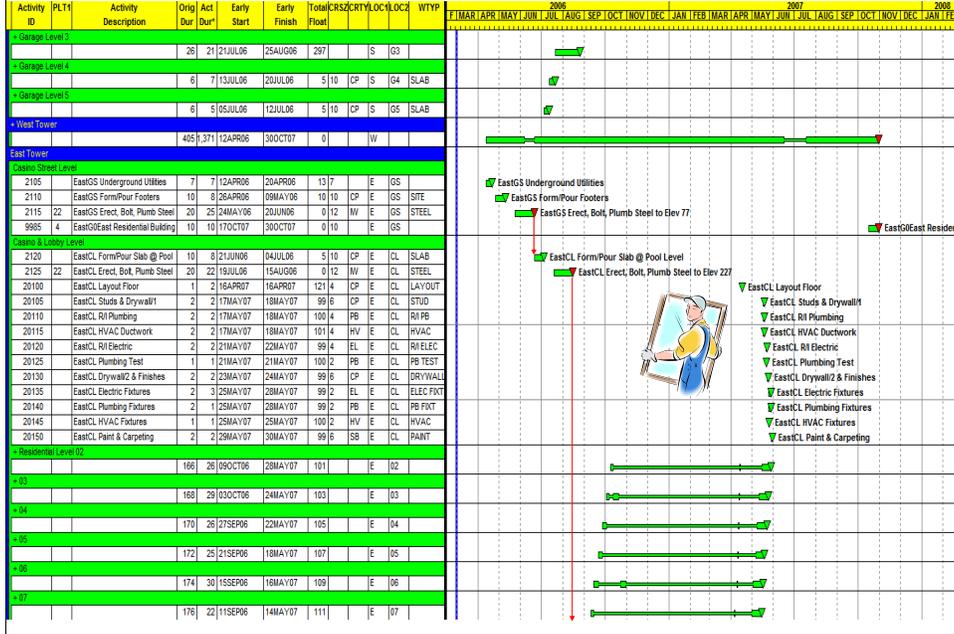
The Bridge Hotels and Casino



In the As-Planned schedule, you will note that the critical path (green bars followed by RED inverted triangles - or with zero total float if looking in the tabular section) starts with mobilization of the site (as is usual) but moves at some point to fabrication of the windows FOR THE UPPER FLOORS only.

We may also note that the amount of float for the casino floor layout through fitout and through commissioning is near critical.

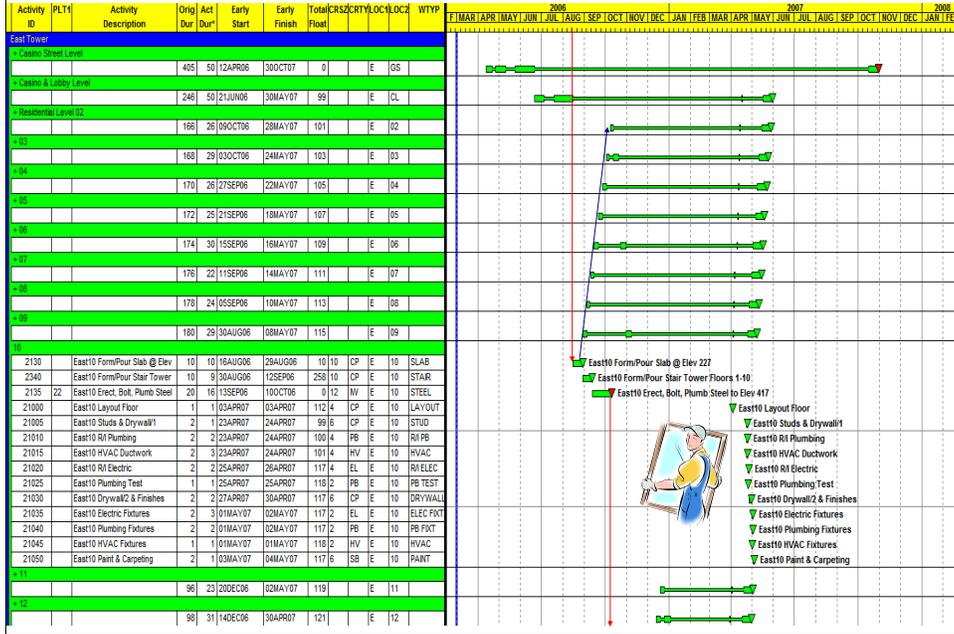
The Bridge Hotels and Casino



the critical path continues from Mobilization through the sequence of rig/set steel to various elevations, and form/pouring a slab at those elevations for purposes of stability before continuing steel to the next level.

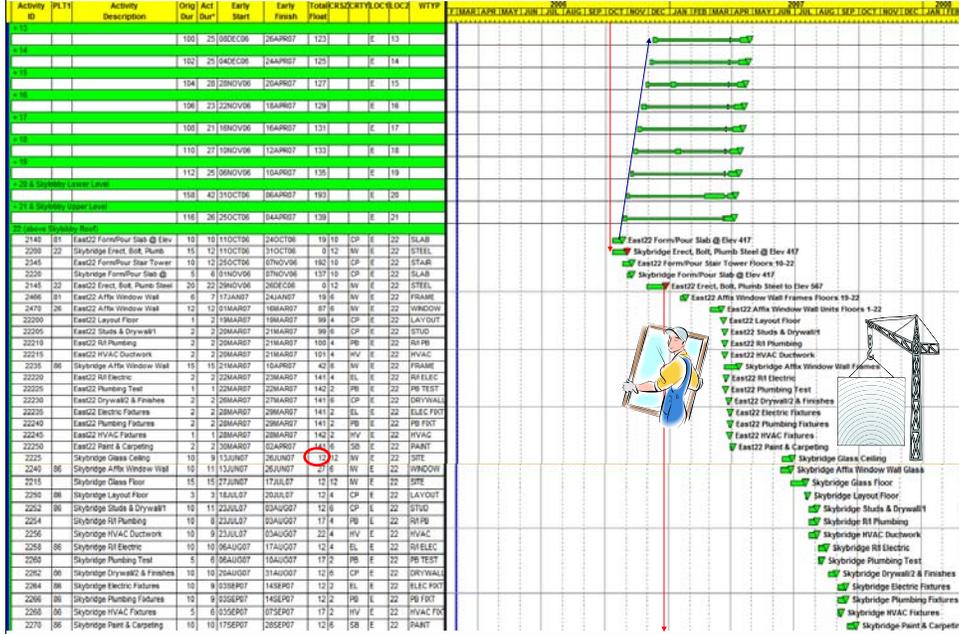
the detail view also shows that once the window skin to the building has been attached, making the interior weathertight, the fitout of hotel rooms on each floor may proceed - note that these typically have a great deal of float.

The Bridge Hotels and Casino



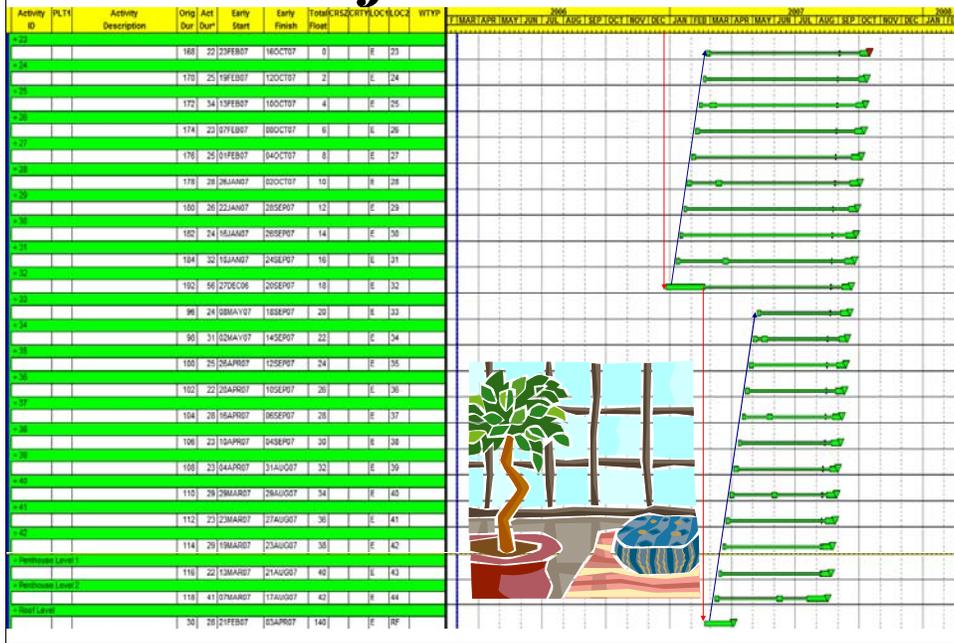
because of the large amount of float relating to interior work, this work has been staggered so as to require only one crew, moving floor to floor, within each section (typically 10 floors) of the building

The Bridge Hotels and Casino



the skytower is a special problem and requires much more detail in planning - note that the work there is near critical - getting as low as 12 days float

The Bridge Hotels and Casino



and so forth to the completion of the project

Delays to the Project Encountered



Activity ID	Title Description	OrigDur	ActDur	Constraint
E001	Event 001 - Delay to Mobilize	1	10	1-Mar-06
E002	Event 002 - Window Frame Approval Takes 35 Days	1	35	30-Mar-06
E003	Event 003 - Ship Hijacked by Pirates	1	92	20-Sep-06
E004	Event 004 - Industry Strike by Dockworkers	1	30	1-Mar-07
E005	Event 005 - Window Connector Design Error - Requires 2X duration to install Floors 1-22	1	24	8-May-07
E006	Event 006 - Skybridge Window Frame Refit / Refab	1	11	23-May-07
E007	Event 007 - Window Connector Design Error - Requires 2X duration to install Floors 23-44	1	24	6-Aug-07



By Fred – describe the causative events encountered

E001 - owner has issue with city permitting, cannot provide site

E002 - owner has 22 days to review submittal per the spec, actually takes 35 days for the window frame submittals

E003 - the ship carrying the window frames is hijacked by pirates and delivery of the frames finally takes 92 days

E004 - delivery of the window is similarly delayed by a longshoreman strike lasting 30 days

E005 - the owner's window frame to window connection design is defective and field installation time is doubled from 12 days to 24 days for each of the four window installation activities (east and west tower, floors 1-22 and 23-44) - this causative event is addressed only to impact on the lower floors

E006 - the interface between frames and windows on the skybridge has issues and 11 days are required to remedy the situation - the contractor blames this on the owner's design, the owner blames this on the contractor's faulty installation

E007 - the owner design error noted in E005 also impacts installation of the windows for floors 23-44

Delays to the Project Encountered



Activity ID	Title Description	OrigDur	ActDur	Constraint
E001	Event 001 - Delay to Mobilize	1	10	1-Mar-06
E002	Event 002 - Window Frame Approval Takes 35 Days	1	35	30-Mar-06
E003	Event 003 - Ship Hijacked by Pirates	1	92	20-Sep-06
E004	Event 004 - Industry Strike by Dockworkers	1	30	1-Mar-07
E005	Event 005 - Window Connector Design Error - Requires 2X duration to install	1	24	8-May-07
E006	Event 006 - Skybridge Window Frame Refit / Refab	1	11	23-May-07
E007	Event 007 - Window Connector Design Error - Requires 2X duration to install	1	24	6-Aug-07

Task Description Predecessor	Constraint	Duration	Task Description Successor	Link	Lag	Link Description
E001 - Event 001 - Delay to Mobilize	1-Mar-06	10	1000 - Site G0 Mobilize	fs	0	Ability to mobilize on site delayed 10 days
E002 - Event 002 - Window Frame Approval Takes 35 Days	30-Mar-06	35	201 - Window Wall Frames - Approve	ff	0	Approval requires 35 days rather than 22 max
E003 - Event 003 - Ship Hijacked by Pirates	20-Sep-06	92	401 - Window Wall Frames - Deliver	ff	0	Window frames delivered late
E004 - Event 004 - Industry Strike by Dockworkers	1-Mar-07	30	402 - Window Wall Units - Deliver 1-22	fs	0	Delivery requires 92 days rather than 10
E005 - Event 005 - Window Connector Design Error - Requires 2X duration to install	8-May-07	24	1470 - West22 Affix Window Wall Units Floors 1-22	ff	24	Finish delayed by 2X duration required
E005 - Event 005 - Window Connector Design Error - Requires 2X duration to install	8-May-07	24	2470 - East22 Affix Window Wall Units Floors 1-22	ff	0	Finish delayed by 2X duration required
E006 - Event 006 - Skybridge Window Frame Refit / Refab	23-May-07	11	2235 - Skybridge Affix Window Wall Frames	ff	0	Replacement frames delivered late
E006 - Event 006 - Skybridge Window Frame Refit / Refab	23-May-07	11	304 - Window Wall Units - Fabricate/Deliver Skybridge	fs	30	Loss of Queue - #304 now after #303
E007 - Event 007 - Window Connector Design Error - Requires 2X duration to install	6-Aug-07	24	2670 - East44 Affix Window Wall Units Floors 23-44	ff	0	Finish delayed by 2X duration required
E007 - Event 007 - Window Connector Design Error - Requires 2X duration to install	6-Aug-07	24	1670 - West44 Affix Window Wall Units Floors 23-44	fs	0	Start delayed to after 2670 as only one crane used
E007 - Event 007 - Window Connector Design Error - Requires 2X duration to install	6-Aug-07	24	1670 - West44 Affix Window Wall Units Floors 23-44	ff	24	Finish delayed by 2X duration required

By Fred – some technical details

how these causative events have been connected to the activities of the logic network are detailed here

in this instance, both contractor and owner agree on these connections

in the real world of claims, this is often the most contentious element of the competing analyses of the experts for the contractor and owner

Battle of the Experts



By John –

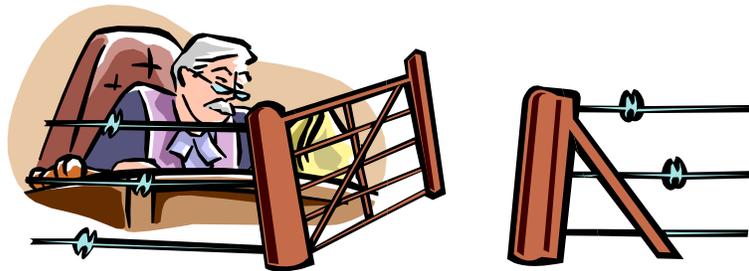
Comments on today's mock trial –

not a full trial – time would not allow full openings, acceptance by court of experts, and opening statements, direct/cross/redirect and closing by each side

several vignettes will be provided – enough to form an opinion and vote for the contractor or owner

Voir Dire

Is the "Expert" competent to testify?



Text by Judge Marshall

Credentials v Teaching the Factfinder



Frye v Daubert
CA TX US and
Battleground Florida



Any additional comments by Jeff, John and Randy

Voir Dire of Dr. Fredric L. Plotnick, Esq., P.E



B.S.C.E.
M.S.C.E.
J.D.
"M.B.A."
Ph.D.
DU UoP TU
ASCE PSPE
AACE PMI



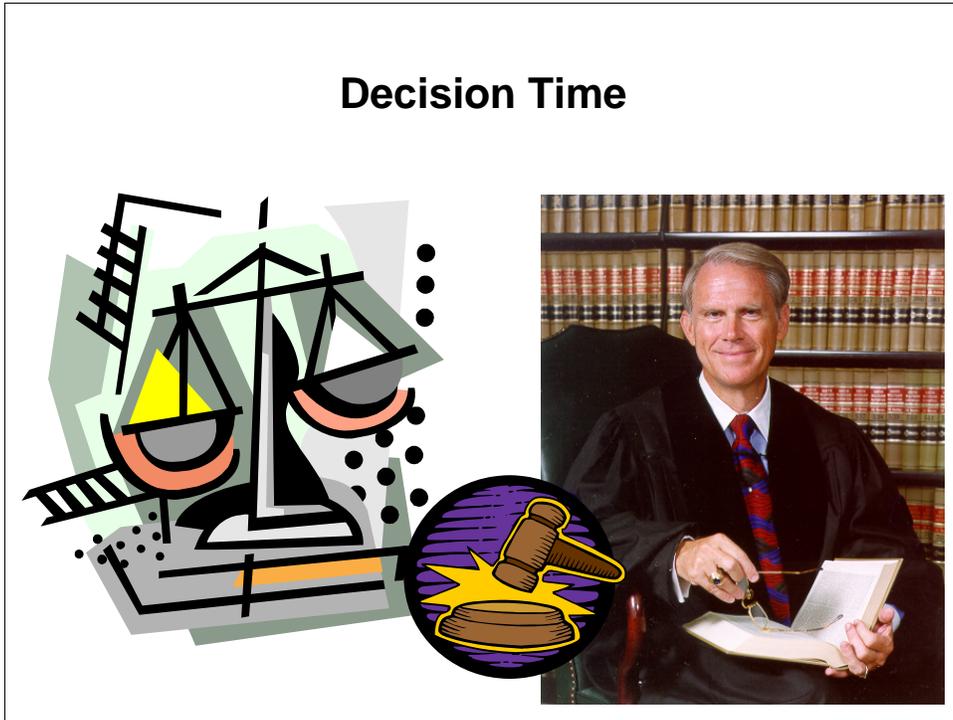
Jeff will swear in Fred – and continue voir dire to a point to include Fred’s credentials and previous court appearances

At the end of the slide Jeff will ask the Court if this is enough –

Randy may object “OK for CA but not for Federal Courts or Florida Courts”

John may note a project in one state with designers and constructors of other states may end in Federal Court

Decision Time

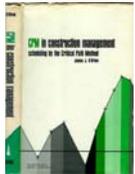


Text by Judge Marshall

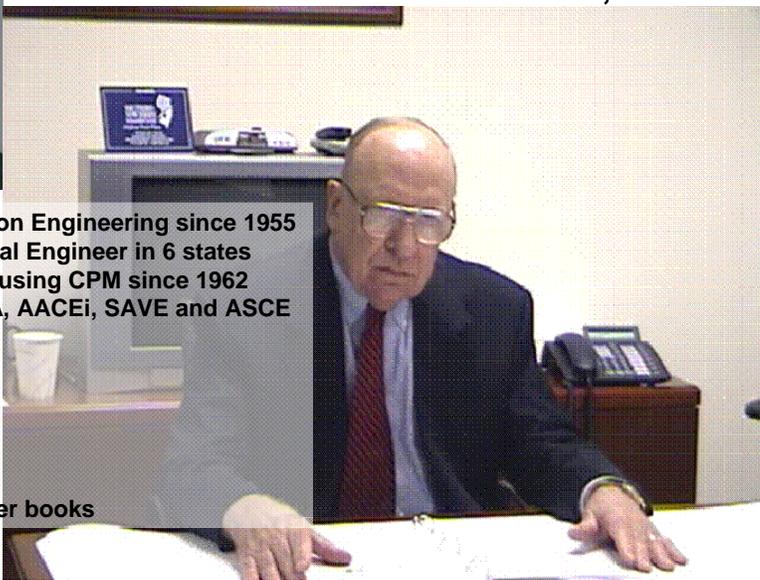
Voir Dire of James J. O'Brien, P.E.



**Construction Engineering since 1955
Professional Engineer in 6 states
Scheduler using CPM since 1962
PMI, CMAA, AACEi, SAVE and ASCE**



and 12 other books



Next slide – Jeff begins by noting Jim’s Frey credentials already in record
And now a proper Daubert voir dire by his associate Dan

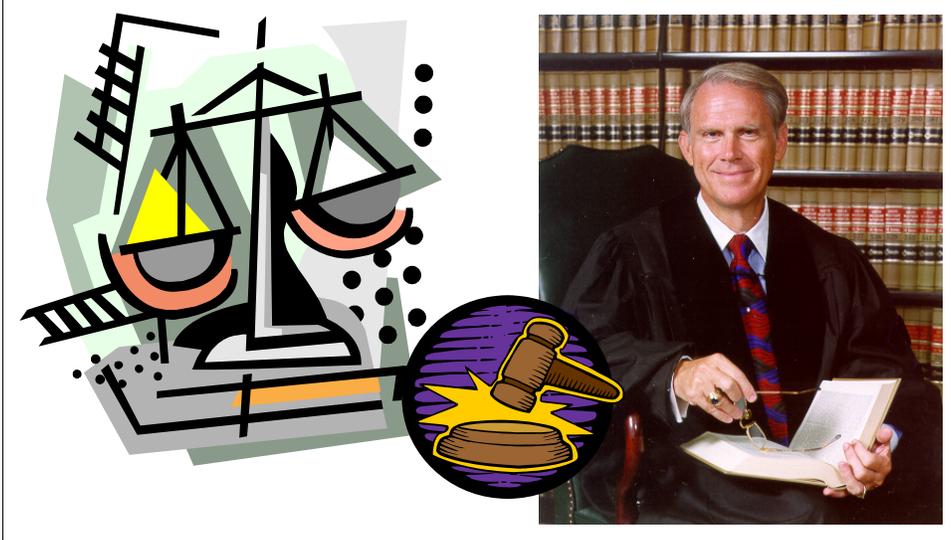
Voir Dire of James J. O'Brien, P.E.



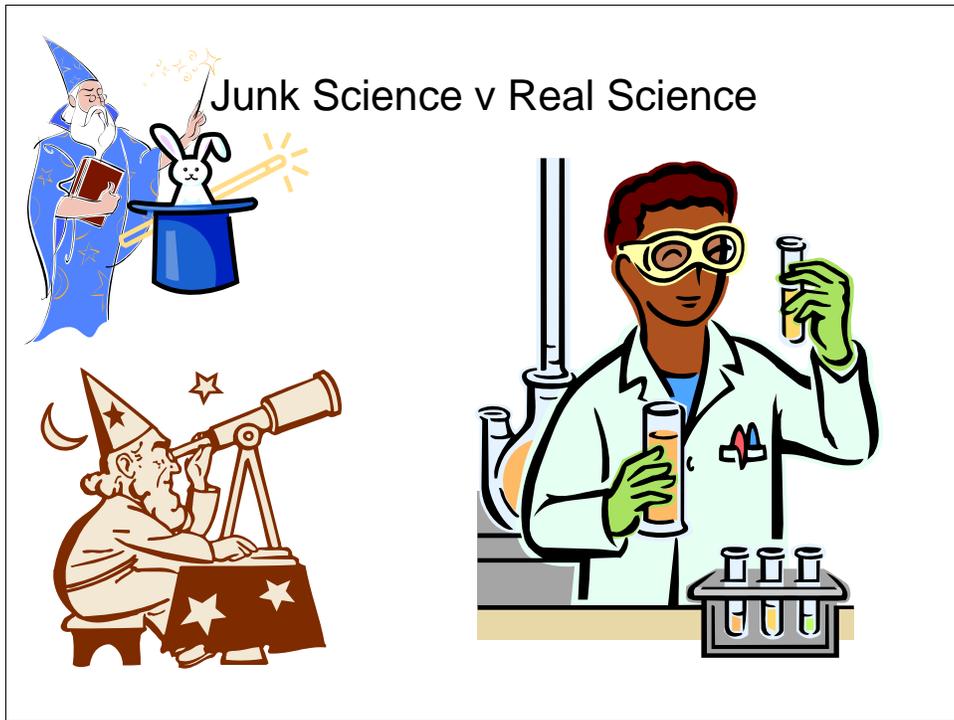
Next slide – Jeff explains a proper Daubert voir dire covers “how to” and we play his voir dire of Jim conducted by Dan

At the end of the slide Jeff will ask the Court again if this is enough

Decision Time



Text by Judge Marshall



John will continue to discuss the problems of Junk Science and judicial remedies therefore

John may ask counsel if CPM, as a field of engineering, should pass a Daubert challenge – asking how accurate is the whole process, and if it has a scientifically established degree of error?

(or leave this to another presentation)

Direct Examination

Testimony for the Contractor



Probable time for session break – Regrouping for mock trial – re-introduction by John

A 2nd Chance at Direct Examination

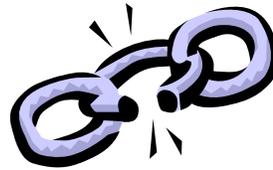
Testimony for the Contractor



Probable time for session break – Regrouping for mock trial – re-introduction by John

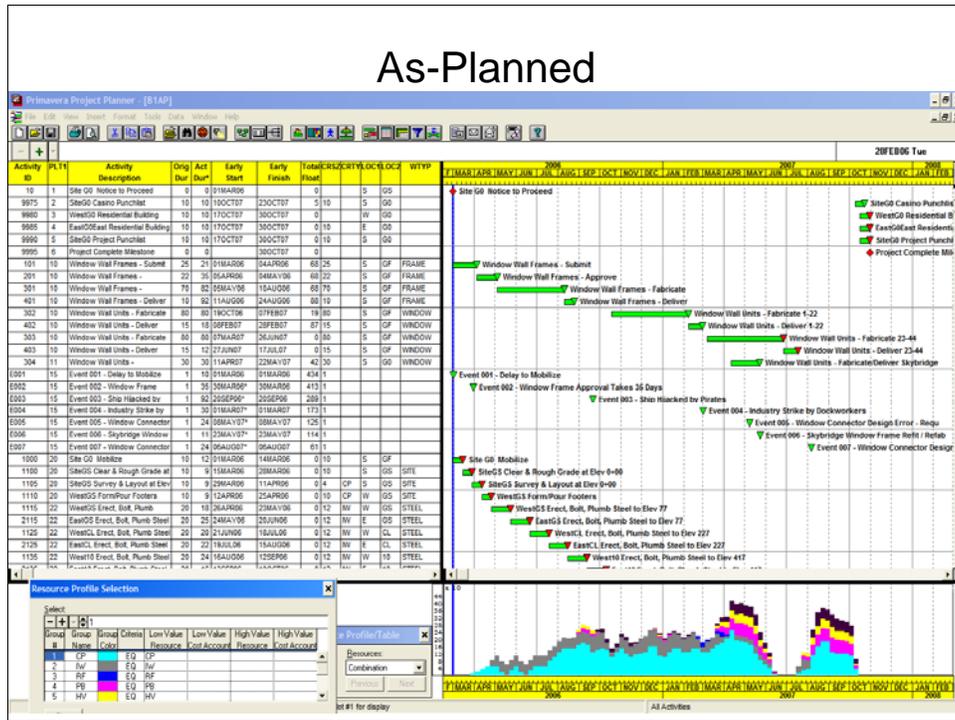
Purpose of Direct Examination

- Humanize witness -- stress credibility
- Weave expert's report into the "storyline"
- Simplify presentation of
 - assumptions
 - findings
 - analysis
 - opinions
- Defuse weak points



Text by Randy on how an attorney should conduct direct examination

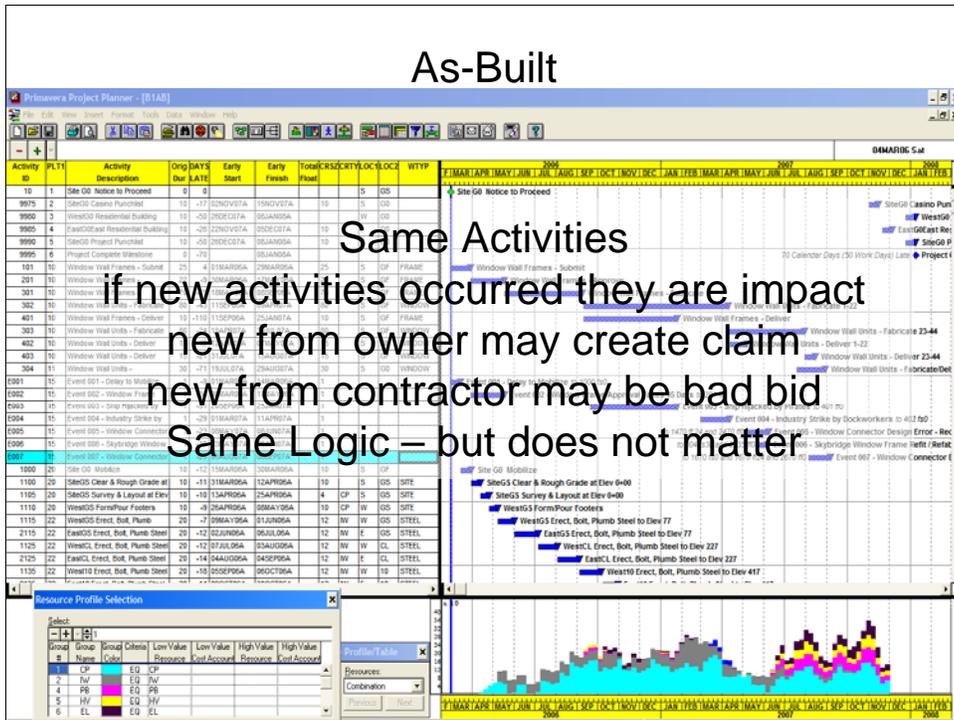
As-Planned



Randy leads Fred (as Contractor' Expert this time) through presentation of claim

Fred - Hailey&Burton Cartwright (the contractor) did one bang-up job of planning this project. The As-Plan schedule clearly shows how the project kicks off right from Day One mobilize and moves through erecting the steel. The level of staffing by Cartwright is significant, but workable.

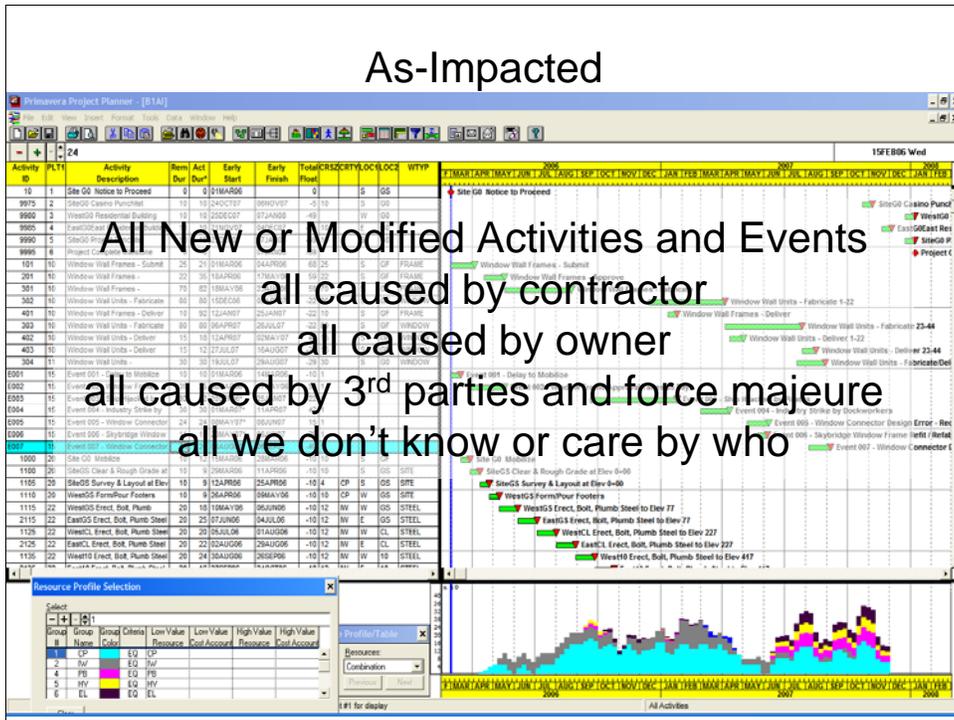
As-Built



Fred - the As-Built schedule shows a project that was seriously delayed by the SEVEN causative events added. These SEVEN causative events clearly caused the delay to the project and should relieve the contractor of L/D's

How do we know it is these causative events that created the delay? As provided in Jim O'Brien's testimony, we will load these to the As-Plan and see the result - leaving it to the Jury to determine if the As-Impacted matches the As-Built

As-Impacted

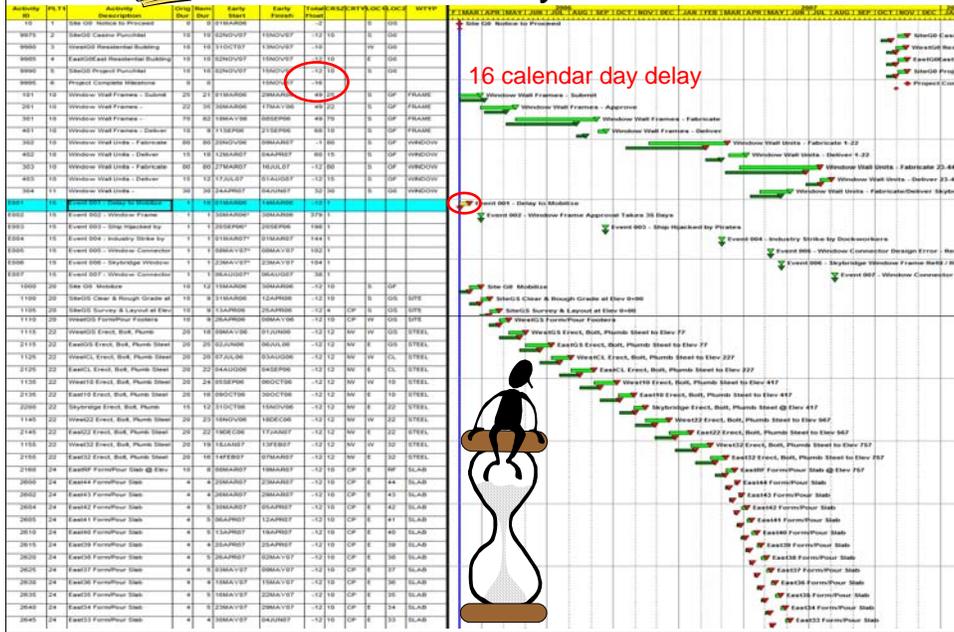


and here is the As-Impacted, showing the theoretical impact of the SEVEN causative events to this project

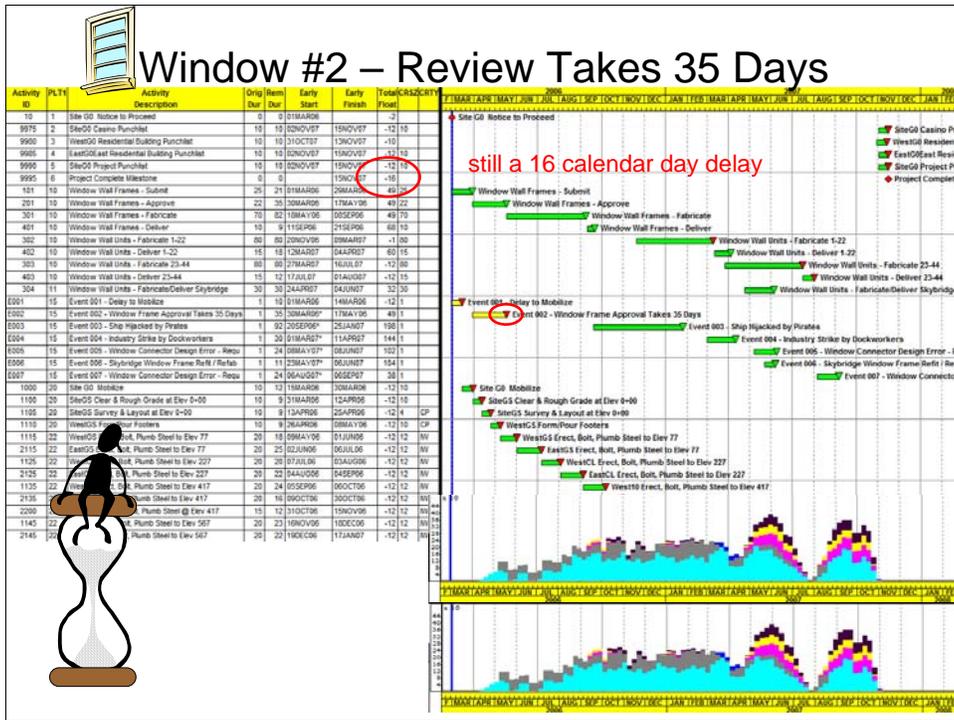
it should be conclusive to the issue of relief from L/D's that this As-Impacted schedule matches the As-Built, but perhaps we should look more closely and compare this result to that which may be shown by adding each of the SEVEN causative events at a time - the Windows approach



Window #1 – Delay to Mobilize



Window #1 shows that the 10 work day delay to provision of the site by the owner to the contractor had a 16 calendar day impact to the project

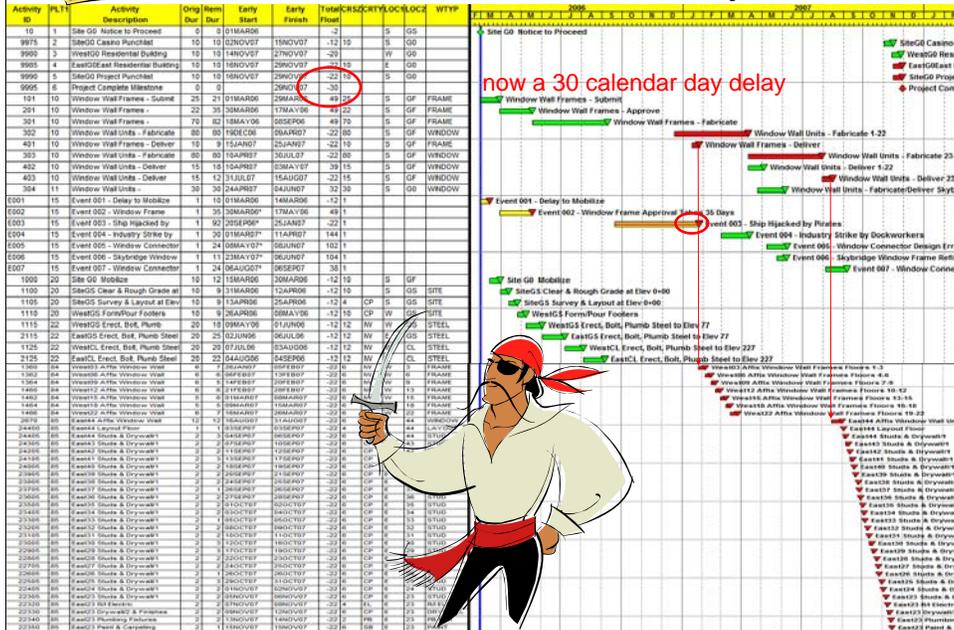


in window #2 we factor in the 35 days it took the owner to review the contractor's window frame shop drawings, but conclude that while these may have caused a disruption and additional cost to the contractor, they did not add any delay to the project

this is because delivery of the window frames had float



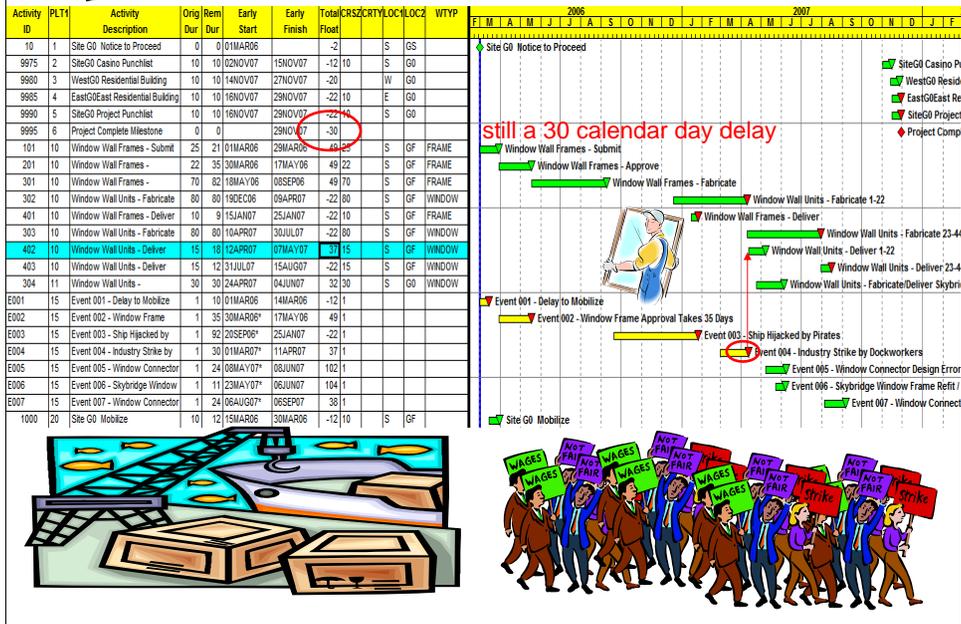
Window #3 – Window Frames Hijacked



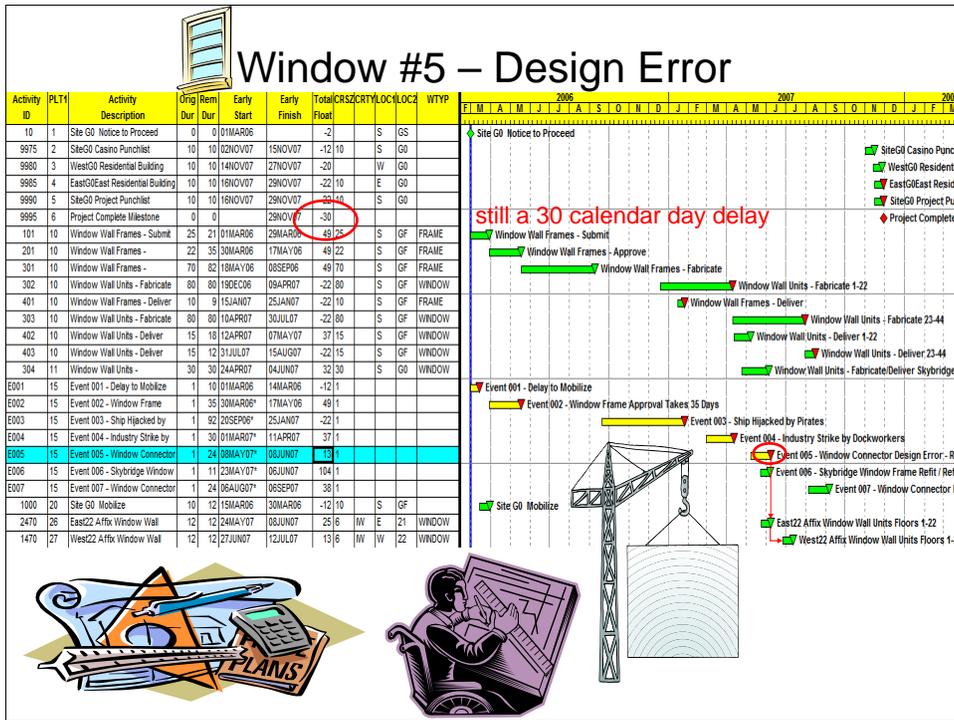
in Window #3 we see the unfortunate event where the window frames, even though fabricated early (and despite the delays caused by the owner's dalliance with shop drawing review,) were hijacked by pirates while enroute this instance of Force Majeure caused an additional delay to the project of 30 days. The contractor does not ask for compensation for this delay - since it is Force Majeure - but does ask for the time lost.



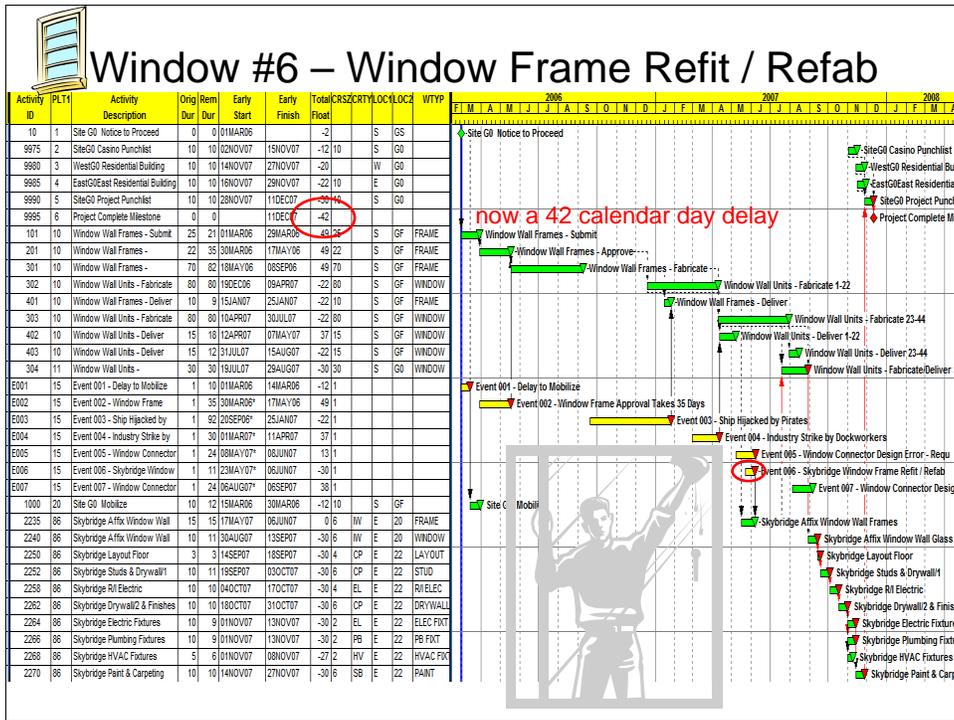
Window #4 – Window Delivery Delay



in Window #4 we see that the impact of the longshoreman strike - also an instance of Force Majeure - had no additional impact on the project

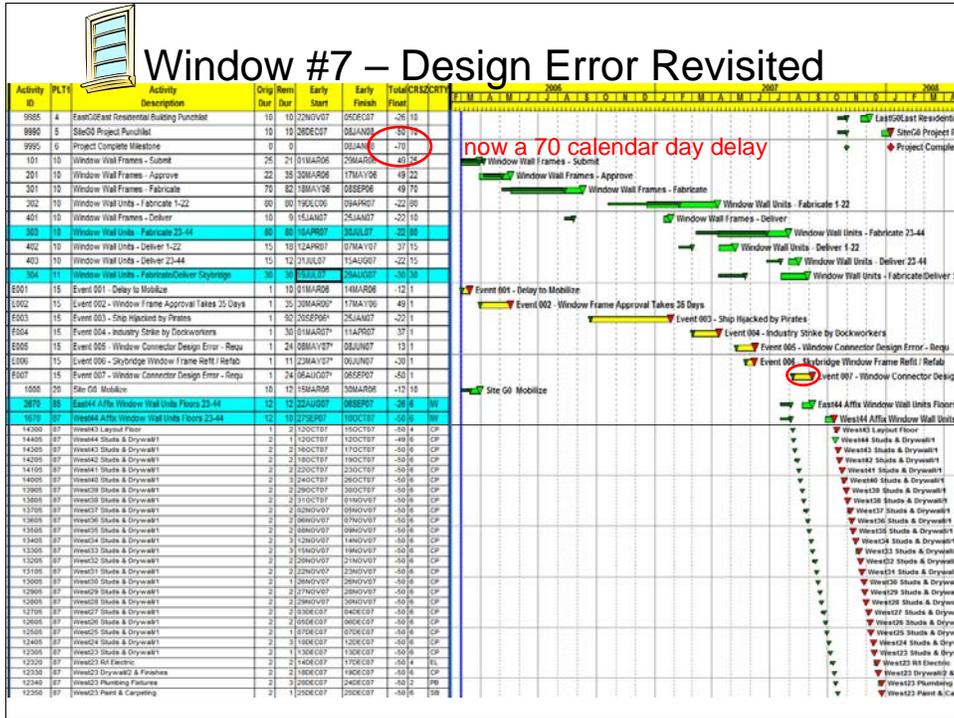


in Window #5 we note the discovery of a serious design error by the owner - but note that at this point in time that it had no immediate impact to the project. And therefore, although Cartwright requested additional funds to accelerate, as may be found in the weekly project meeting minutes, the owner refused.



in Window #6 we see the impact of yet another design error involving how the window frames on the skybridge are not proper - and which added 11 calendar days to the project

while the owner's expert (yesterday) tried to claim this was an installation error and not a design error - and that their inspectors told our craftsmen they were improperly installing the frames - they have not one piece of paper to support this canard. they claim the inspectors have moved away and have pestered our union hall to locate the craftsmen who they claim were notified - which is irrelevant since if they truly had nay concern, such notice should have been in writing



in Window #7 we see the impact of the design error noted in Window #5 and the ill advised refusal of the owner to pay the Cartwrights to accelerate this causative event thus adds an additional 30 calendar days of delay to the project, now totalling 70 calendar days

the project was 70 days late, the owner demands 70 days of L/D's, and yet this analysis has shown that the contractor is entitled to an extension of time for the entire 70 days.

Cross-Examination



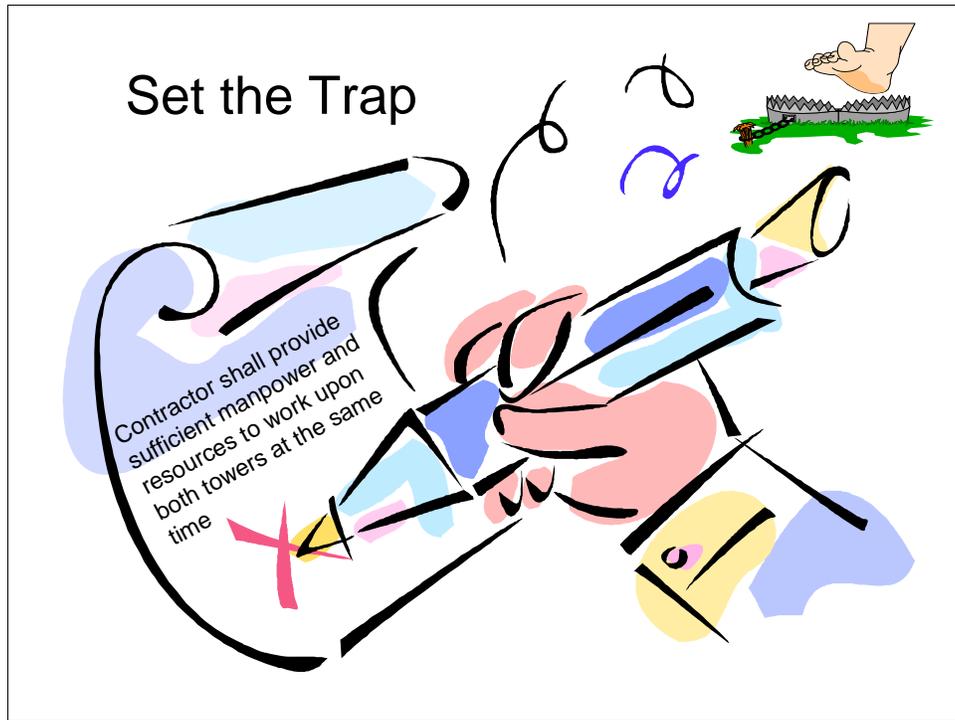
Jeff will cross examine Fred ----

Purpose of Cross-Examination



- Raise “doubts” as to Expert’s Opinion
 - Qualifications of the Expert
 - For the opinion to be rendered
 - Any particular “bias”
 - Knowledge (lack thereof) of “true” underlying facts
 - Methodology and assumptions employed to reach conclusions and opinions
- Advance your theory of the case
 - “If the jury determines ..., you would agree that ...”

Text by Jeff on how an attorney should conduct cross examination



Jeff will ask if contract requires ...

Fred balks at answering Jeff's question. Jeff demands Fred answer.

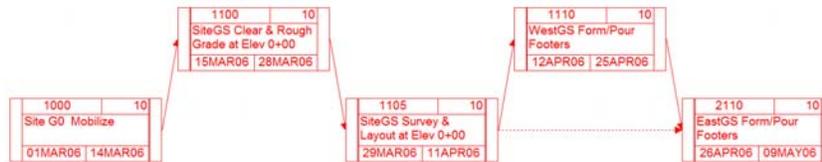
Fred asks Jeff "What would you like to discuss now! My favorite color?"

"Son, we live in a world that needs walls that must be constructed. Who's gonna do it? You? I have more responsibility than you can fathom. You weep for the owners and curse the contractors. But deep down, in places you don't talk about at parties, you need contractors to build those walls. I haven't the time or inclination to explain myself to a man who needs my skills but questions the way I do it. Better just to thank me. Or pick up a hammer and stand a post. But either way I don't give a damn what you think you are entitled to!"

Spring the Trap



Activity ID	Activity Description	Orig Dur	Act Dur*	Early Start	Early Finish	FEB	MAR	APR	MAY	JUN	
1000	Site G0 Mobilize	10	12	01MAR06	14MAR06	03,20,27,6	13,20,27,3	10,17,24,1	8	15,22,29,5	12,19,26,3
1100	SiteGS Clear & Rough Grade at	10	9	15MAR06	28MAR06						
1105	SiteGS Survey & Layout at Elev	10	9	29MAR06	11APR06						
1110	WestGS Form/Pour Footers	10	9	12APR06	25APR06						
2110	EastGS Form/Pour Footers	10	8	26APR06	09MAY06						



Jeff will ask how this excerpt from the project may be defended in light of the quoted contract language.

Fred will refuse to accept the excerpt, note lack of knowledge of every one of 1176 activities and 2263 restraints ... and lack of access to project files in the courtroom.

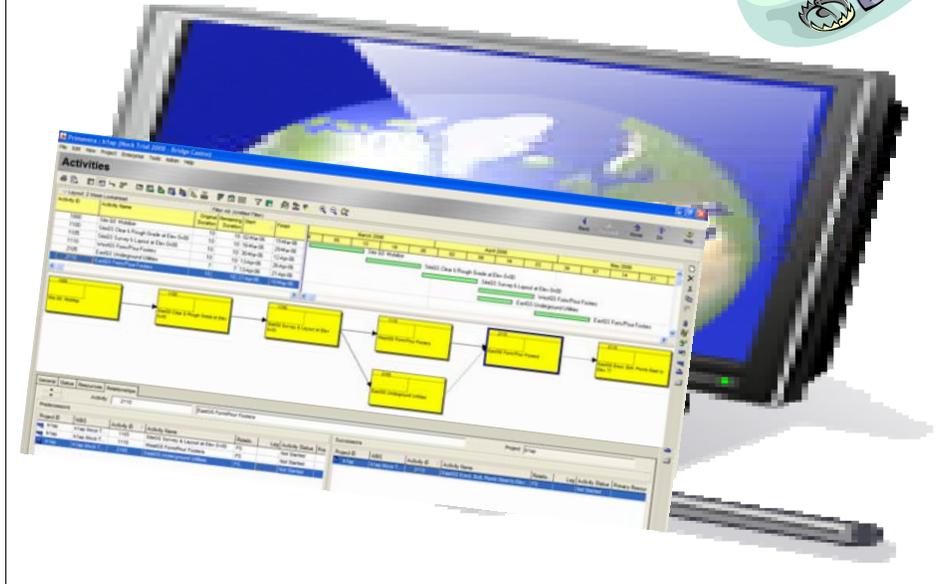
Q&A will elicit the project files are stored remotely with Loadspring

P6 Over the Web



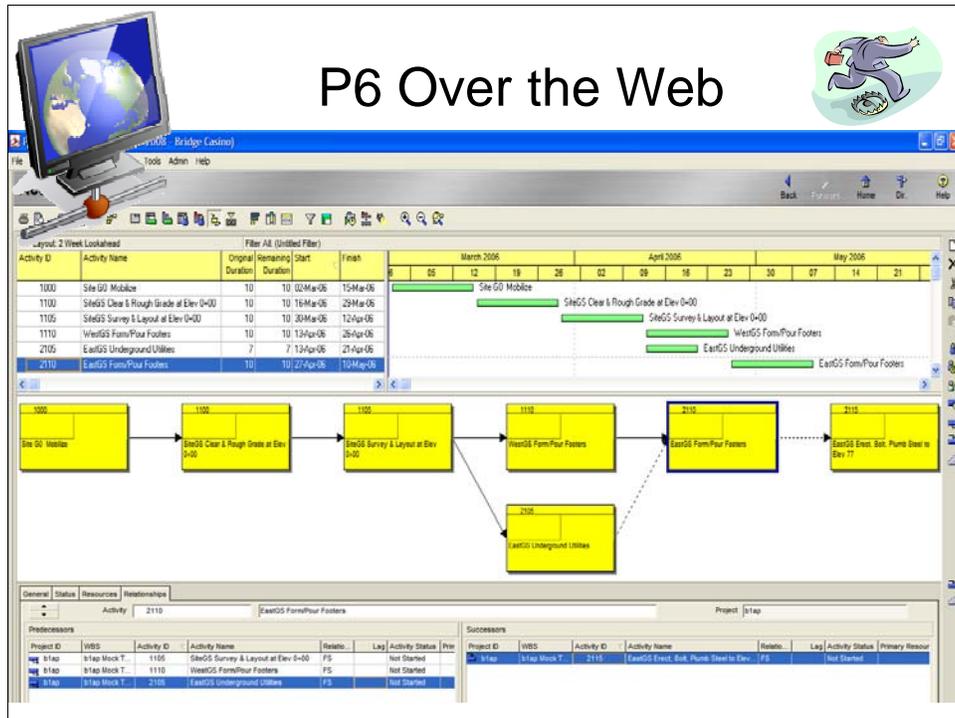
John will call Gray to remotely access the project files to determine the truth.

P6 Over the Web

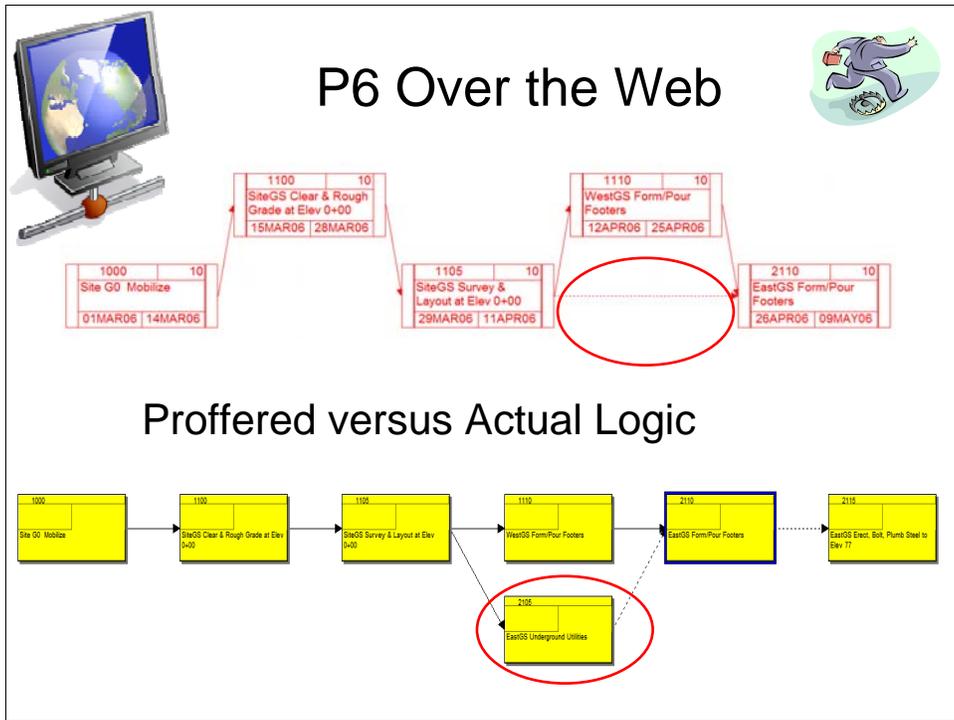


We fake the use of the internet

P6 Over the Web



We fake the use of the internet



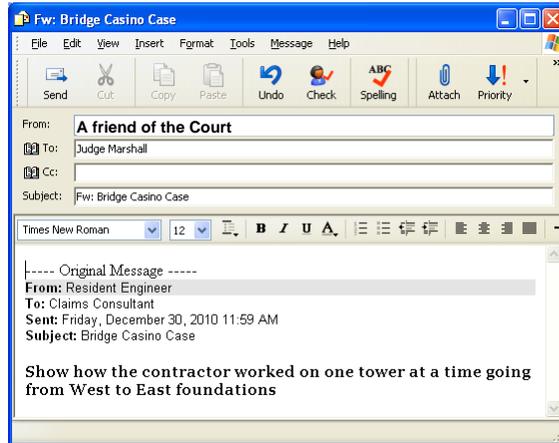
Gray will note that review of file indicates another activity, not in Jeff excerpt, for U/G utilities on East side of building site, which justifies use of the CPM for this analysis

Randy may have some comments about Jeff's antic

So may John – along with advise to audience if called as an expert

Fred will thank the judge and ask how he knew to subpoena Gray

How did the Judge know?



John will feign innocence

Re-Direct Examination



Text by Randy .. Next slide

Re-Direct Examination

- Re-Direct is to let the attorney be the advocate
 - And to let you be the EXPERT
- *If* your client's attorney needs to "save your reputation"
 - solely to assist your joint client
- A good attorney will know how you could respond
- A good attorney will know when the factfinder also knows
 - and that's a very good time to stop

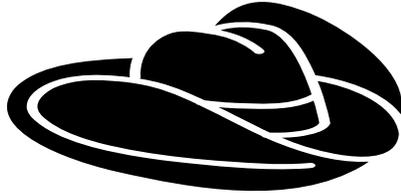
Text by Randy on how/why/when an attorney should conduct re-direct examination

Changing Hats



Fredric L Plotnick

Expert for the Contractor



Expert for the Owner



F Leigh Plotnick

John will explain that Jim could not make it to Las Vegas, and that Fred is switching hats and will now be the expert for the owner

Direct Examination

Testimony for the Owner



Jeff will make a brief opening statement, then
Jeff will lead Fred through direct – this time as expert for the
owner

**Always Review the Files and Not Just the Reports
Run a Variety of Analyses and Metrics**

Comparison reporting overview
The **Claim Digger** tool enables you to generate a report that compares selected data fields in a P6V.

Perform project data integrity checks
1. Choose Tools, Check Project Integrity.
To fix errors or inconsistent data, mark the Automatically Fix Correctable Errors checkbox.
To save the results of the data integrity check in a log file (.txt), mark the Log to File checkbox, then click **Log** to specify a filename and location.

Clear	Light	Critical	Soft	Hard	High Float	Negative Float	High Duration	Number of Lags	Max Lag
(10%)	(5-10%)	(0%)	(0%)	(0%)	(0%)	(0%)	(0%)	(0%)	(0%)
Open Ends	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Laggs Density	7 (33)	0 (0)	7 (33)	11 (53)	0 (0)	0 (0)	0 (0)	0 (0)	4 (20)
Critical	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Soft Constraints	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Hard Constraints	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
High Float	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Negative Float	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
High Duration	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Number of Lags	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Jeff will prompt

Fred will note diagnostics to allow “the other side” or third parties to validate his work

Fred will note claims digger used to be assured Jim did only what he said he did in his analysis

and must assume that Jim is checking his work too

Explicit Contract Language

“Contractor shall provide sufficient manpower and resources to work upon the casino and both hotel towers at the same time.”

“In the event that **the contractor believes** that actions or inactions of the owner have caused a delay to the project, **the contractor shall notify** the owner and **shall review and modify its plan of execution** to mitigate such delay.”

“In such event, the contractor **shall immediately provide** the owner with:
1) an **estimate** of the length of **anticipated delay** without effectuating such recovery plan, and
2) an **estimate of the cost of** effectuating such **recovery plan.**”

Fred – even if we assume the contractor had the right to work one tower at a time, once the owner was late with access, the contractor had a duty to work both towers and charge the owner for mitigating the problem

Jeff - ask if the notice provisions are so owner has opportunity to decide to pay for mitigation – so no financial reason for contractor to not mitigate

Pertmaster

RDCPM™ Ability to Categorize and Selectively Ignore Links

Contractor shall provide sufficient manpower and resources to work upon the casino and both hotel towers at the same time.

ID - Description	Type	Lag	Relative Float	Driving	Total...	Link Category	Ignore Link
1115 - WestCL Erect, Bolt, Plumb Steel to Elev 77	6	0	0	Yes	-10	7	No
2110 - EastCL Form/Pour Slab @ Pool Level	6	0	0	Yes	-10	1	No
1200 - WestCL Form/Pour Slab	6	0	0	No	-10	1	No

Jeff leads Fred

“Did you review the CPM schedules used by the contractor’s expert?”

“Any opinion?”

“Upon what analysis did you base your opinion? Please explain

Fred will explain he used Primavera’s Pertmaster Risk Analysis software to analyze the contractor’s schedule and Window’s analysis.

By comparison of the user defined activity code for location and resource code, Fred has coded all restraint links between activities which have the same IW craft but are performed in different towers. The link color for these restraints has been set to brown as shown in the screen shot.

Pertmaster with RDCPM has the ability to temporarily ignore all these links to see what change this may have to the schedule.

Pertmaster

RDCPM™ Ability to Categorize and Selectively Ignore Links

The screenshot displays the Pertmaster interface. At the top, two dialog boxes are open: 'Link Categories' and 'Link Categories and User Fields'. The 'Link Categories' dialog shows a list of categories with corresponding colors: Physical (blue), Just In Time (green), Resource (red), ChangeFloor SameCraft (dark green), ChangeSection SameCraft (grey), Continuous IW Crew (brown), ChangeTower SameCraft (purple), From Delay Events (pink), and Owner's Option Not Chosen (pink). The 'Link Categories and User Fields' dialog shows a table of 'Selected Task Links' with columns for Preceding, Succeeding, Type, Ignore..., Link..., Link Description, and CRAFT. Below this, there are fields for 'Link Category' (set to '1 - Physical') and 'Link User Fields' (Physical, CRAFT, TOWER, WorkType, Text 4). At the bottom, the 'Task Details' window is visible, showing a table of 'Predecessors' and 'Successors' for task ID 2115.

Predecessors	Type	Lag	Relative Float	Driving	Total...	Link Category	Ignore Link
1115 - WestGS Erect, Bolt, Plumb Steel to Elev 77	fs	0	0	Yes	-10	7	No
2110 - EastGS Form/Pour Footers	fs	0	10	No	0	1	No

Successors	Type	Lag	Relative Float	Driving	Total Finish...	Link Category	Ignore Link
1125 - WestCL Erect, Bolt, Plumb Steel to Be...	fs	0	0	Yes	-10	7	No
2120 - EastCL Form/Pour Slab @ Pool Level	fs	0	0	Yes	-10	1	No
1200 - SheGS Form/Pour Slab	fs	0	8	No	-10	1	No

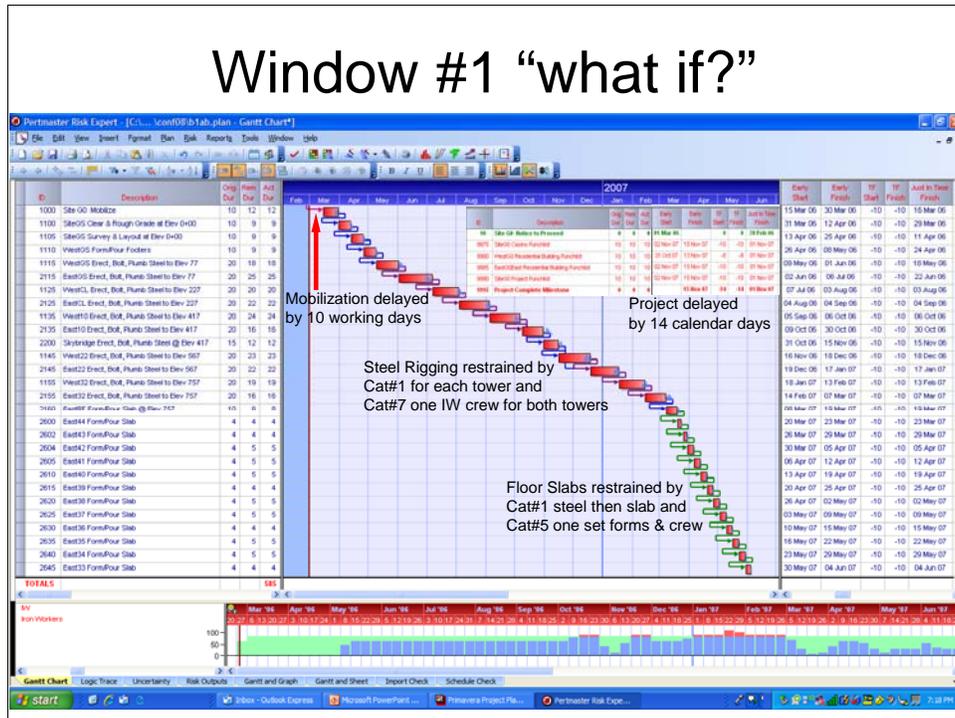
Similarly, this feature of Pertmaster with RDCPM has been used to code links as Physical, Just-in-Time support, or various categories of resource restraints.

Where the same craft or resource moves from floor to floor in a tower, these are coded as #4 and the link color is dark green. Where movement is from one section of the tower to another (below the skybridge to above the skybridge) these are coded grey. Where the IW crew moves between towers, the color is brown; other crafts moving between towers are coded purple.

Restraint links from the Delay Events provided in the Contractor's analysis are coded pink. Code Pink is also reserved for several other options not used in this project.

The jury may also note that each restraint link between activities has been coded as to why it is there, noting a Link Description, Same or Change of Craft, Tower and Worktype. This information may be exported to an Excel spreadsheet for review, and changes may be imported back to Pertmaster.

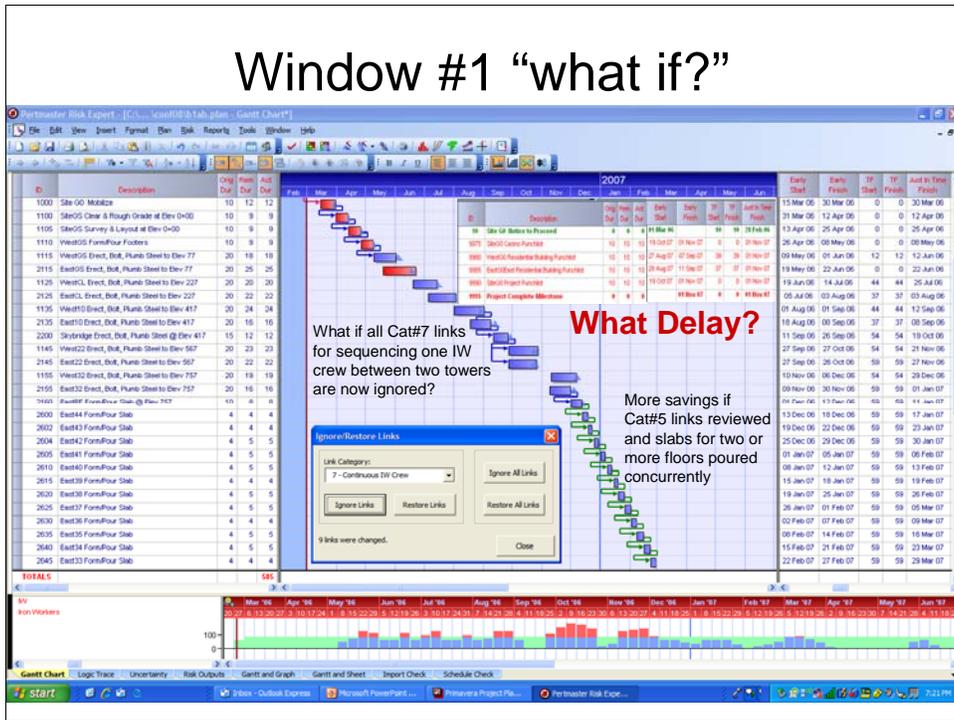
Window #1 "what if?"



Jeff - Reviewing Contractor's Window #1 claiming 10 day delay to project caused by owner .. Any rebuttal?

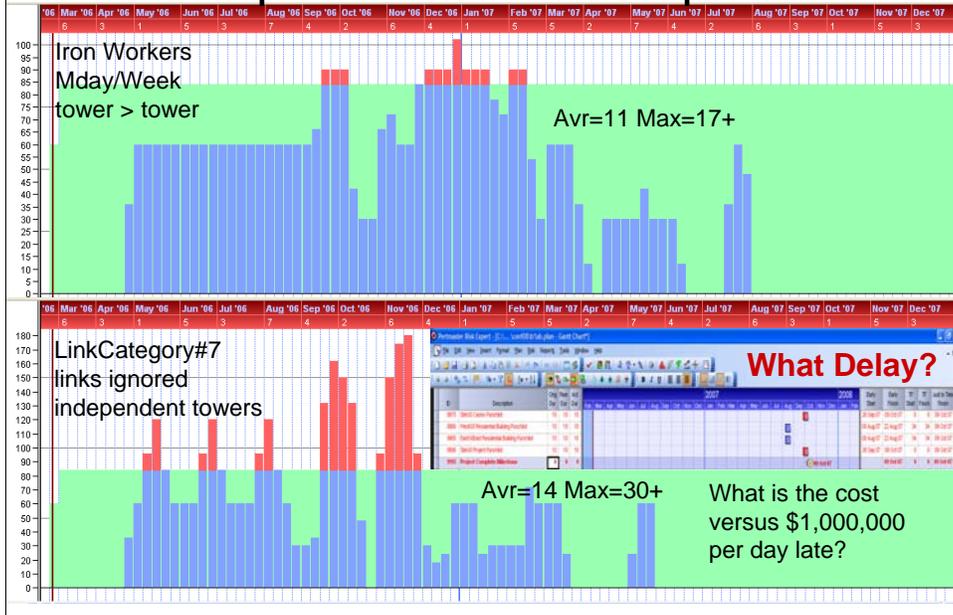
Fred - Owner was responsible for lack of access to project for 10 work days .. However, contractor could have mitigated by honoring contract obligation to work both towers at same time.

Window #1 "what if?"



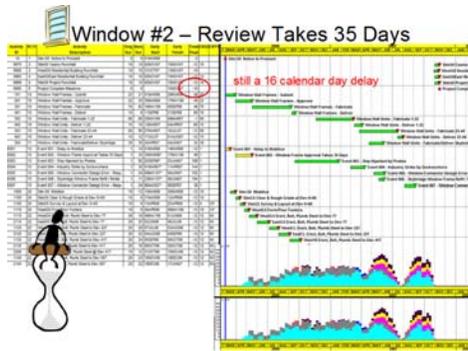
Fred – if contractor had worked both towers at same time for just the initial steel rigging, there would be no delay .. and in fact hotel towers would be complete SEVEN WEEKS EARLY .. even with the owner’s late provision of access to the site – pure and simple, the real critical path – recognized by both parties, was design and fabrication of the window skin system

Compare Contractor Options



Fred – assuming the contractor need to accelerate the full 47 days, rather than only 10 days, and so had bring in additional crews, what is the cost? .. a lot less than the \$1mm per day the contractor knew late completion would cost the owner

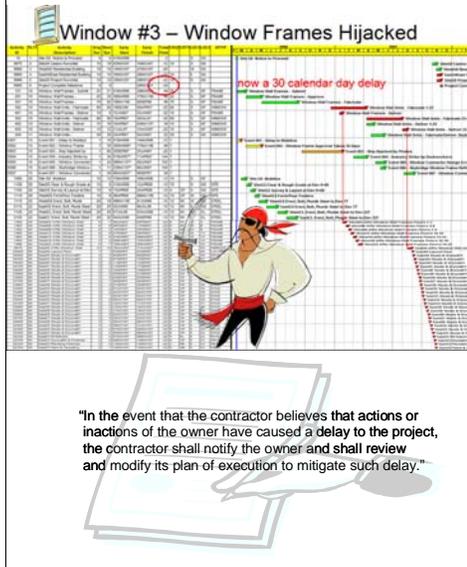
Window #2 - no harm



specification provides Owner
22 days for review –
so complaint is for
only 13 and not full 35 days
but float > 13 ... so no harm

Jeff .. then Fred .. note initial review period was 22 days .. thus claim cannot be for full 35 days used but only for 13 days .. on an activity that had much float

Window #3 – Who is responsible?



Window #3 – Window Frames Hijacked

now a 30 calendar day delay

"In the event that the contractor believes that actions or inactions of the owner have caused a delay to the project, the contractor shall notify the owner and shall review and modify its plan of execution to mitigate such delay."

- 80 days float when hijacked
- factory needs 50 to re-fab
- contractor has \$1m deductible
- contractor chooses to negotiate past 30 days,
- then past 80 days,
- finally getting release & delivery at day 92
- causing a 12 day additional delay from -10 to -22 work days late or from -16 to -30 calendar days late
- cost to Casino is addl \$14,000,000
- **this is NOT force majeure**

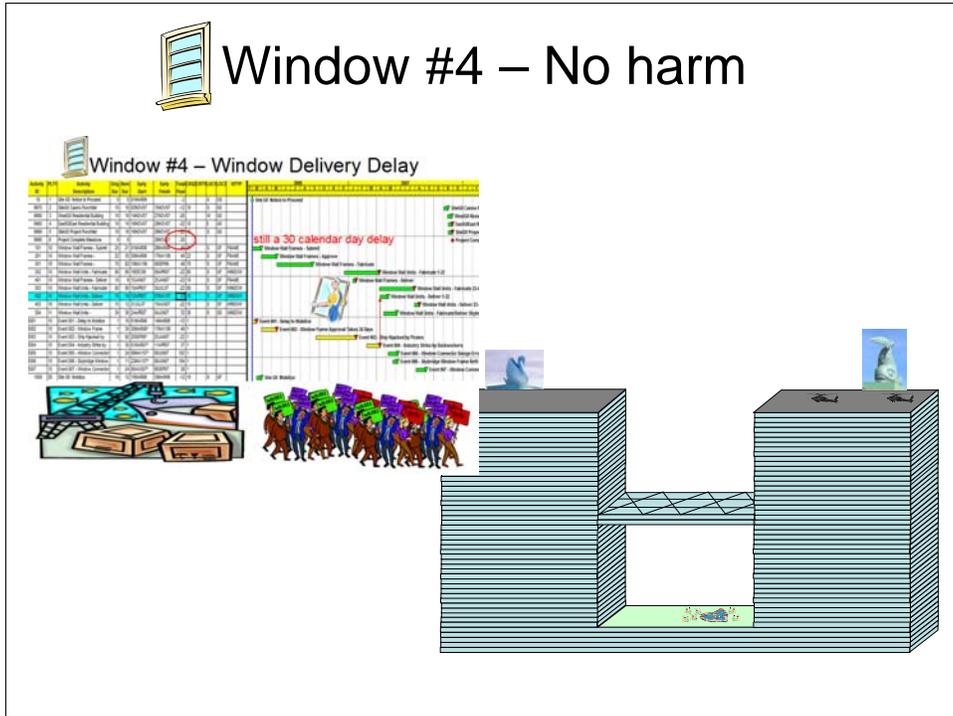
Jeff .. then Fred .. NOT force majeure ..

68 days float in Window #2, plus 12 days for then existing delay = 80 days effective float

COMMENT – even if an activity has a lot of float – time passes by very quickly – need to watch as activity becomes critical

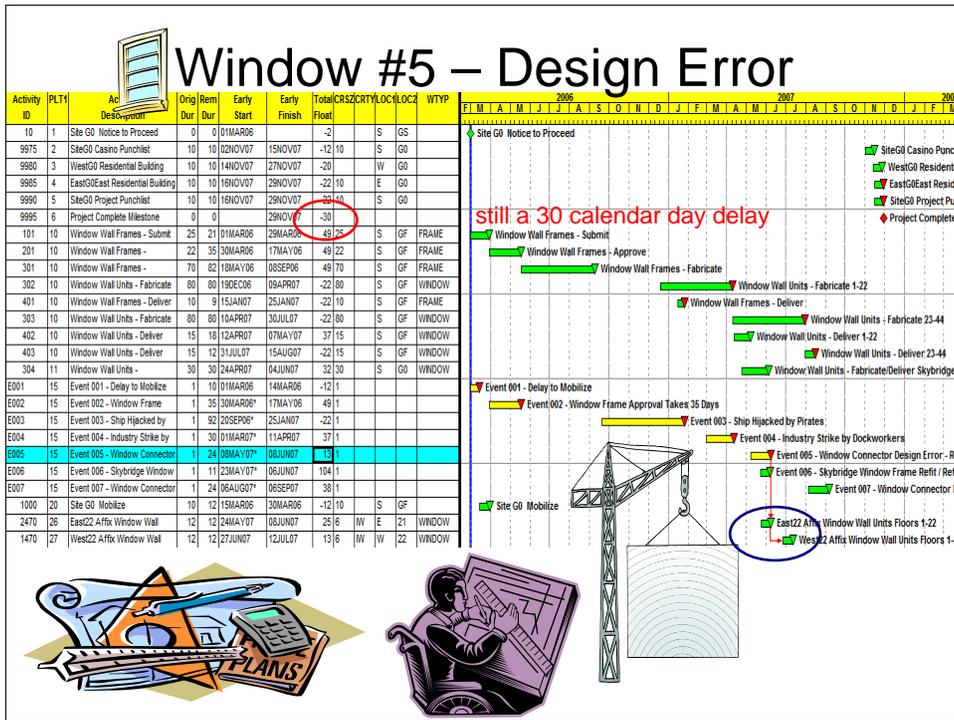


Window #4 – No harm



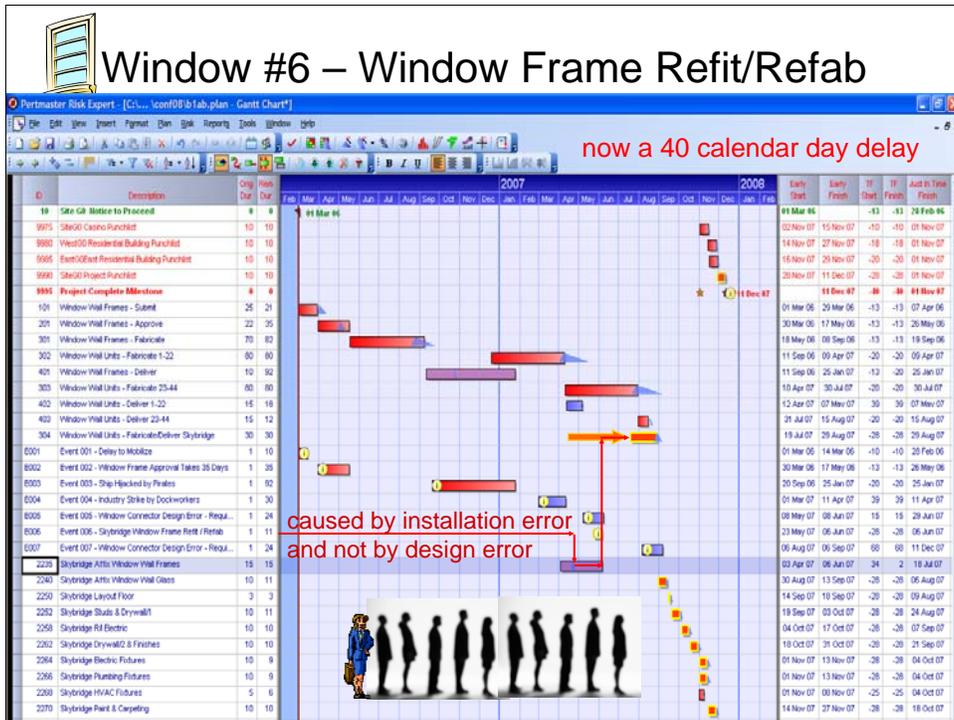
Jeff .. then Fred

The contractor's expert's testimony provides that this event never rose to the level of a delay, as the delivery of the windows had 41 days float prior to the event, this being merely reduced to 39 days since the strike ended shortly after it threatened any impact to this project.

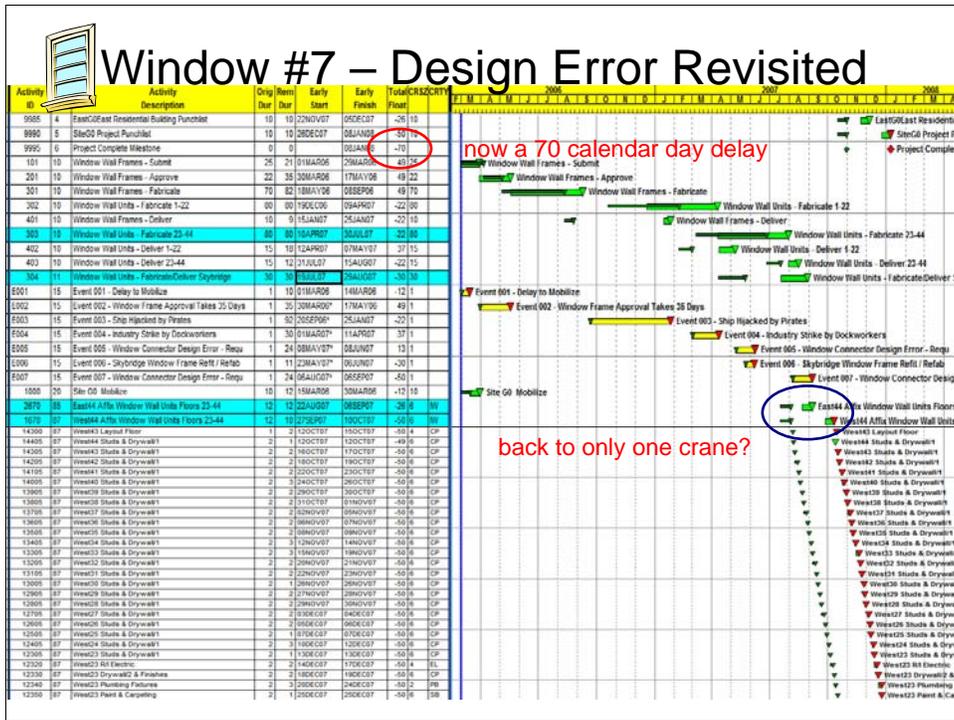


Jeff .. then Fred

The owner acknowledges the design error which is the topic of the Contractor's Window #5. However, this delay, where the contractor must spend 24 days rather than 12 for installation of the windows in each tower, eats away float, but does not cause further delay to the project. Note that there is so much float that the contractor apparently has chosen to dismantle one crane and reduce manpower to one IW crew, despite the owner's incessant demands that it work both towers concurrently.



Jeff .. then Fred .. responsibility for this causative event is disputed ..
 contractor claims bad design, owner claim bad installation .. SCHEDULING
 expert merely indicates impact of 10 calendar days



Jeff .. then Fred

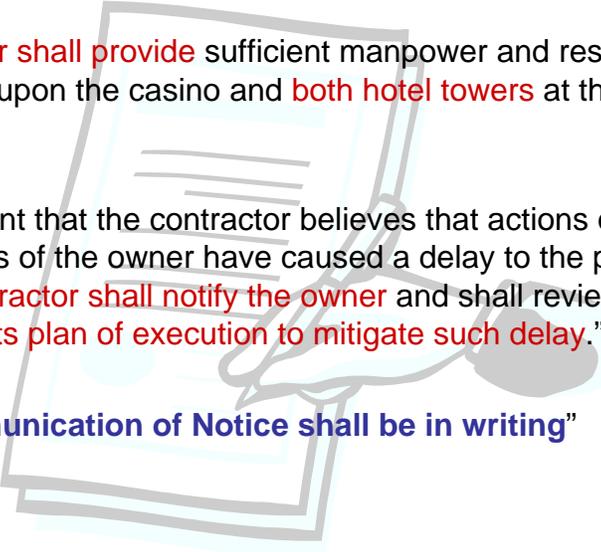
Fred – design error acknowledged to be responsibility of owner

Note error discovered in May – required 2X effort – thus duration – to install windows floors 1-22 – no time to mitigate by hiring more crafts - extra work effort paid by change order – but did not cause delay because had float

Now project is in August – no effort by contractor to hire more crafts – CHANGE of initial plan showing both towers being worked at same time to one then other (including delay for crane moval)

this failure to mitigate – and to exacerbate by reduction to one tower at a time – is cause for further delay of 30 days to a total of 70 calendar days late

This, this error initiated by the owner's design error, but exacerbated by the contractor's failure to mitigate and wilful decision to remove one crane and reduce IW crafts.



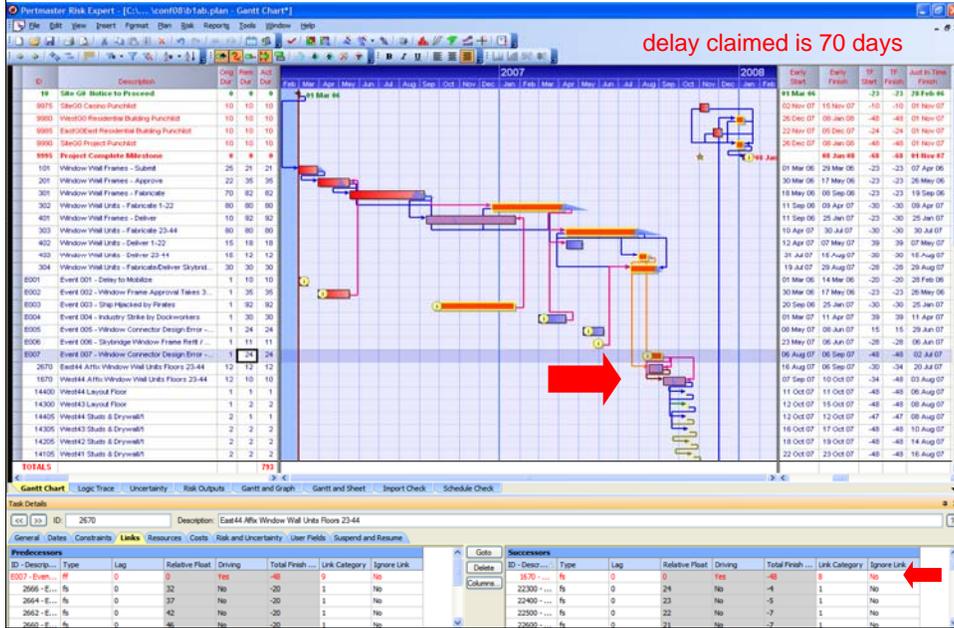
“Contractor shall provide sufficient manpower and resources to work upon the casino and both hotel towers at the same time.”

“In the event that the contractor believes that actions or inactions of the owner have caused a delay to the project, the contractor shall notify the owner and shall review and modify its plan of execution to mitigate such delay.”

“All communication of Notice shall be in writing”

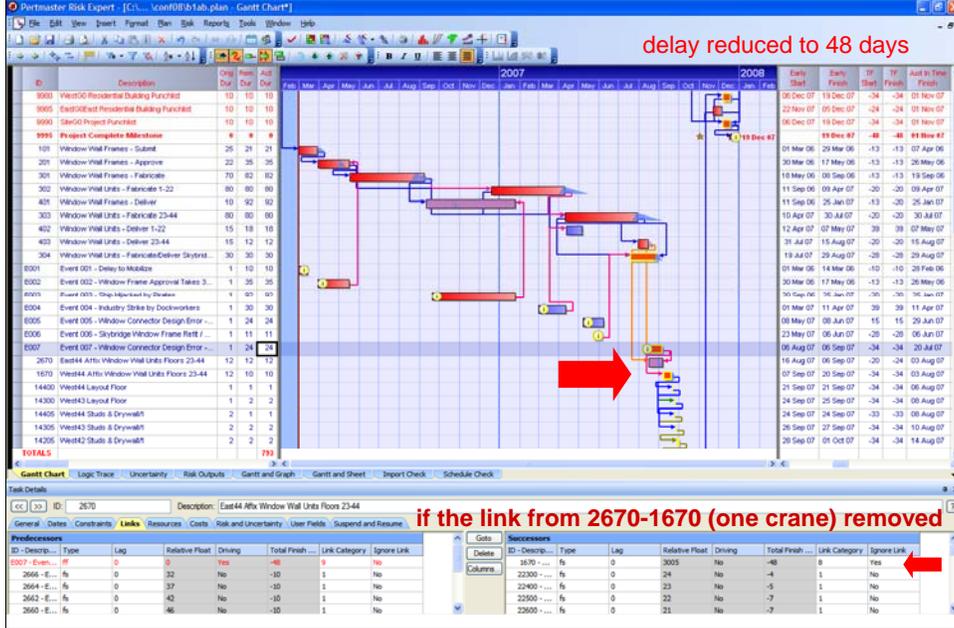
if the contractor felt it would be delayed by the design error, it had a duty to notify the owner - in writing - and to propose a mitigation plan. even if the contractor believed it had the right to use only one crane and crew, it had a duty to quote a price to perform according to the specification (according to the owner) or accelerate (according to the contractor)

Window #7 – Design Error Revisited



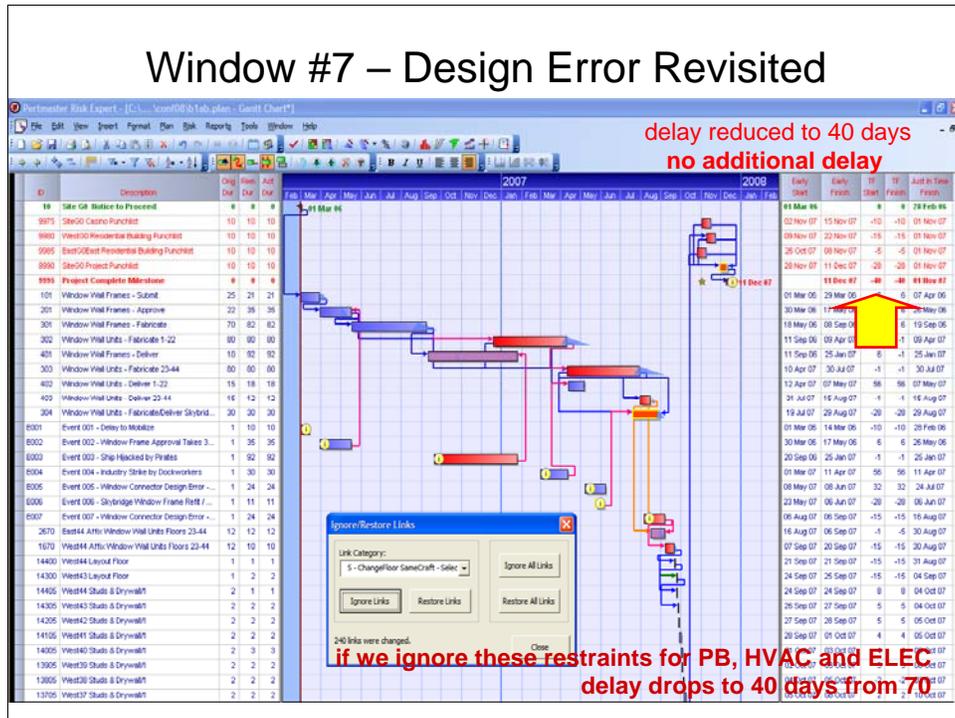
Fred – if we ignore the logic link showing one tower at a time ... [next slide]

Window #7 – Design Error Revisited



project delay drops back to the previous 40 days – thus the entire delay attributed to window #7 is because of this one restraint between #2670 and #1670

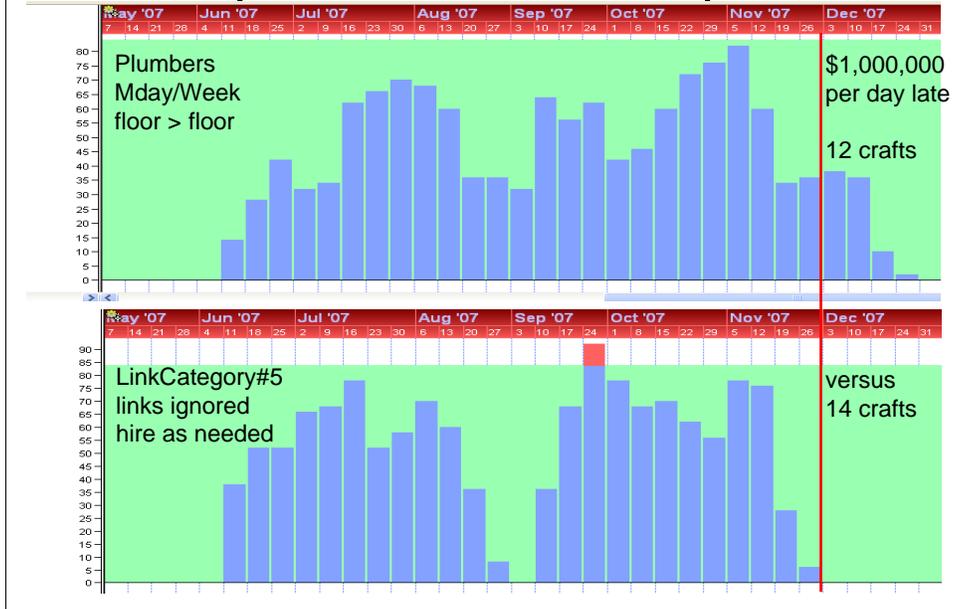
Window #7 – Design Error Revisited



Fred – if instead of going to two IW crews (thus continuing using only one crane) contractor had increase PB, HVAC and ELEC crews (or subs) .. same drop back to 40 days – no further delay

Whatever contractor wanted to charge for either of these efforts is far less than \$30,000,000 casino lost by opening even 2½ months later than caused by previous delays.

Compare Contractor Options



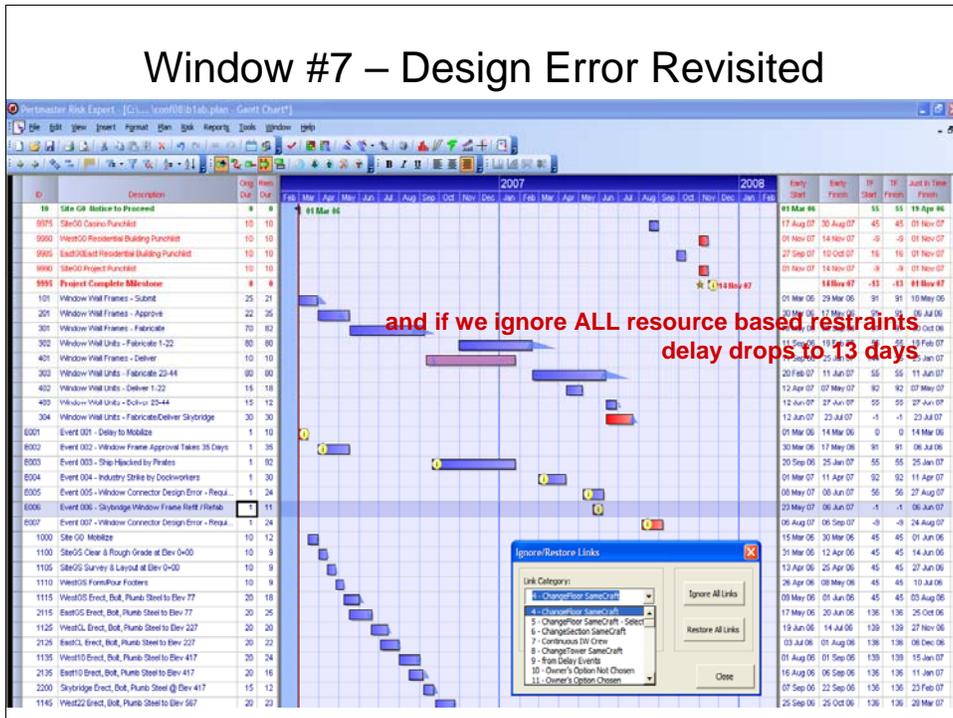
Jeff .. then Fred

Fred – other savings if resource links ignored and contractor brings in multiple crews for fit-out of hotel rooms

for example – for hotel room utility work – Plumbers – HVAC – Electricians – a savings of over one month (~30 calendar days)

and without raising hiring levels to unsustainable levels –(but may increase hiring/layoff cycle)

Window #7 – Design Error Revisited



Fred – had contractor used all these opportunities to mitigate, total delay caused by its dalliance with the pirates would be reduced to 13 days.

Conclusions

Activity ID	Title Description	OrigDur	ActDur	Constraint
E001	Event 001 - Delay to Mobilize	1	10	1-Mar-06
E002	Event 002 - Window Frame Approval Takes 35 Days	1	35	30-Mar-06
E003	Event 003 - Ship Hijacked by Weather	1	62	20-Sep-06
E004	Event 004 - Indenture Delay by P&G Insurance	1	30	1-May-07
E005	Event 005 - Window Connector Design Error - Requires 2X duration to Install Floors 1-22	1	24	0-May-07
E006	Event 006 - Skybridge Window Frame Rafter / Refab	1	11	23-May-07
E007	Event 007 - Window Connector Design Error - Requires 2X duration to Install Floors 23-44	1	24	6-Aug-07

CLAIMED DELAYS

- E001 – Owner Responsible – No impact if Contractor used two cranes
- E002 – Owner Responsible (for over 22 days only) – No impact – Used float
- E003 – Contractor Responsible – by failure to mitigate – to 30 days late
- E004 – Force Majeure – No impact – Used float
- E005 – Owner Responsible – No impact – Used float
- E006 – Contractor Responsible – installation error – to 40 days late
- E007 – Owner Responsible – no impact if Contractor used added crews

Contractor had duty to work both towers at same time

Contractor had duty to mitigate with added crews (small cost)

Owner entitled to full 70 days = \$70,000,000 L/D's

PLUS construction loan interest, fees for engineers and inspectors and other actual costs

Jeff .. then Fred .. conclusions

Cross-Examination



Randy shows off cross examination technique

Closing Arguments



Three minutes each please



John will have lots of fun

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 - 954-670-2198 x516
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Questions?



Fred as Moderator