



IRMI[®]

Preconference Workshop 6

***MATERIAL PRICE ESCALATION AND
AVAILABILITY***

Presented by

**David M. O'Haren
Executive Vice President
Holder Construction Group, LLC**

Monday, November 8, 9 a.m.–4:30 p.m.

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David M. O'Haren
Executive Vice President
Holder Construction Group, LLC

Mr. O'Haren is a panelist for Monday's Preconference Workshop 6, "What's Hot in Construction Risk Management?" He is an executive vice president of Holder Construction Company in Atlanta, where he leads the company's Risk Management Department. He has been with Holder Construction Company for 15 years. In his current position, Mr. O'Haren is responsible for a nine-member risk team that handles safety, loss control, property and casualty insurance, contract administration, and other operational risks. In addition to other operational initiatives, Holder's risk team has implemented a rolling CCIP program and a rolling Subguard program in the last several years.

Prior to joining Holder, Mr. O'Haren was an auditor with a national public accounting firm where he earned his CPA certificate. His primary focus included audit clients in the real estate and construction businesses.

Mr. O'Haren is a member of the board of directors of the Georgia Branch—AGC, where he currently serves as treasurer. He is a member of the United States Green Building Council—Atlanta Regional Chapter and the Construction Education Foundation of Georgia (CEFGA), where he currently serves as president. In addition, he is on the national committees of Safety and Health and Risk Management for the Associated General Contractors of America. Mr. O'Haren formerly served as president of Project Safe—Georgia. He is active in civic and local community activities.

Notes

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MATERIAL PRICE ESCALATION AND AVAILABILITY

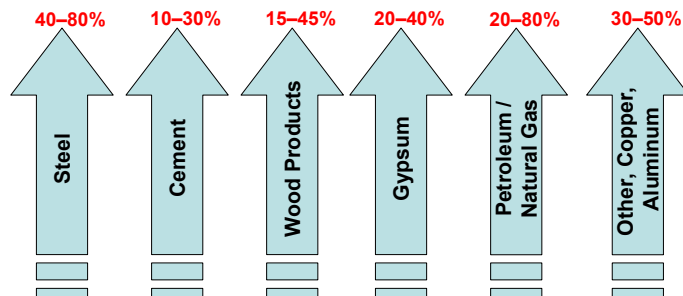
David M. O'Haren
Holder Construction Group, LLC

Material Price Escalation & Availability

- Outline of the Issue
- Most Recent Twelve Months
- Impact on Owners / Contractors / Subcontractors
- Contractual / Legal Issues
- Strategic Options

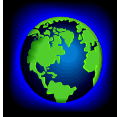
The Issue: Material Cost Increases & Availability Problems

Material Cost Increases



The Issue: Material Cost Increases & Availability Problems

Availability Issues

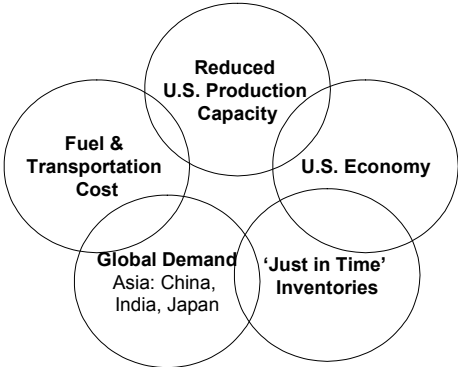


Steel: Worldwide



Cement: US;
Acute in Florida

Why Is There an Issue?



Effects on Owners, Contractors, & Subcontractors

- Fixed Price Contracts
- Project Cost Increases
- Schedule Delays
- Impacts to Fees / Equity
- Insolvencies

Public vs. Private

Federal Work

FAR 16.203 – Limited to Contingencies Beyond Control

State & Local

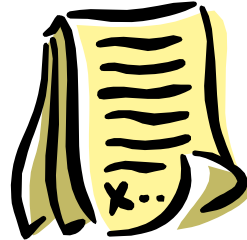
States – Yes Studying No

Private Owners

Negotiating Owner ⇄ Contractor ⇄ Subcontractor

Key Contract Provisions

- Price Escalation
- Changes Clause
- Changed Conditions
- Delay Clause
- Claims / Disputes
- Force Majeure
- Contingency



Contractual Relief



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AIA 201 – 1997 4.3 Claims & Disputes

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to(7) other reasonable grounds, Claims shall be filed in accordance with this Paragraph 4.3. (21 Day Time Frame)

Contractual Relief



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GENERAL CONDITIONS OF THE
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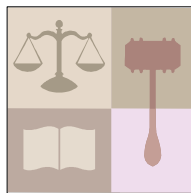
The American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

AIA 201 – 1997 4.3.7.1 Claims for Additional Time

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

Legal Excuses



- Impossibility
- Frustration of Purpose
- Commercial Impracticability

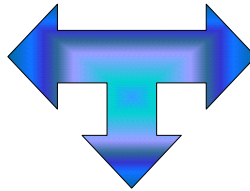
Statutory / UCC

- Generally, Construction Contracts are not subject to UCC
- Impossibility
- Impracticability due to Factors Not Reasonably Foreseeable

Strategic Options

Know / Pre-qualify

- Owners
- Subcontractors



Insurance / Surety

- Captive Risk Coverage
- Subguard

Enterprise Risk Management

- Upstream & Downstream Strategic Contracting
 - ❖ Contract Type
 - ❖ Time Limits
 - ❖ Escalation Clauses

Summary

- **Evolving World Economy**
- **Lack of U.S. Raw Material
Supply Control**
- **Fixed Price Contract Risk**