

Workshop T1

Tuesday, November 3, 1:30–3:00 p.m. and 3:30–5:00 p.m.

RISK AND INSURANCE IMPLICATIONS DUE TO PROJECT DELAYS

Presented by

Alejandra Evans
Executive Vice President of Business Development
Allied North America

William Noonan
Vice President–Risk Management
Structure Tone Organization

Tracy Alan Saxe
Attorney
Saxe Doernberger & Vita, P.C.

The planning was impeccable. The insurance was negotiated and accepted. The foundation and surrounding infrastructure were erected ... and then the dreaded project delay occurs. What happens now? This workshop will provide a brief introduction and overview of project delays and their causes/effects and then discuss in detail the financial and legal implications of a project delay for owners as well as contractors, including the impact on the insurance program. Mitigation strategies and methods for preventing or addressing project delays will also be examined.

Better Contracts, Better Project Results...

Construction Contracts by ConsensusDOCS



**Owners, Contractors,
Subcontractors,
Designers and Sureties:
Coming together for best
practice construction
contract documents.**

The Only Construction Contracts Endorsed by 23 Leading Industry Associations



For excerpted sample contracts visit www.ConsensusDOCS.org.

The Only Construction Contracts Endorsed by 22 Leading Industry Associations

- National Association of State Facilities Administrators
- The Construction Users Roundtable
- Construction Owners Association of America
- Associated General Contractors of America
- Associated Specialty Contractors, Inc.
- Construction Industry Round Table
- American Subcontractors Association, Inc.
- Associated Builders and Contractors, Inc.
- Painting and Decorating Contractors of America
- Lean Construction Institute
- Finishing Contractors Association
- Mechanical Contractors Association of America
- National Electrical Contractors Association
- National Insulation Association
- National Roofing Contractors Association
- Plumbing Heating Cooling Contractors Association
- National Subcontractors Alliance
- Sheet Metal and Air Conditioning Contractors' National Association
- Association of the Wall and Ceiling Industry
- National Association of Electrical Distributors
- National Association of Surety Bond Producers
- The Surety & Fidelity Association of America
- Construction Financial Management Association

Alejandra Evans
Executive Vice President of Business Development
Allied North America

Ms. Evans is one of the speakers for Workshop T1, “Risk and Insurance Implications Due to Project Delays,” on Tuesday afternoon. She brings a unique combination of local market development skills –and unparalleled wrap-up insurance expertise—to Allied North America, where she is Executive Vice President of Business Development at this leading independent construction insurance brokerage.

Responsible for managing growing Allied offices in the key Miami and Washington, D.C., markets, as well as national wrap-up subsidiary Project Technologies International (PTI), Ms. Evans leads a team that will bring strategic risk management solutions to the mid-Atlantic construction market, while serving as a valuable resource to clients from coast to coast. Ms. Evans is known for her consultative approach, technical expertise, and superior service commitment. She is also known for her holistic approach to risk management—she takes the time to understand each client’s competitive challenges and business goals to accurately assess their specific risks and create solid strategies to manage them; extensive wrap-up experience—having developed, implemented, and led large wrap-up programs for such major projects as the DC Nationals Stadium, Kansas City Royals Stadium, and the Indiana Convention Center, she knows how to deliver comprehensive, cost-effective programs to her clients; and solid business management skills—she initiated a start-up insurance operation in the D.C. area and, within 5 years, built it into a thriving office with more than \$10 million in revenues.

Prior to joining Allied in 2008, Ms. Evans held positions of increasing responsibility at leading national insurance brokers. She began her career in 1989 and has spent the majority of it focused on construction insurance. A faculty member of the American Management Association, she shares her risk management expertise with senior executives and also “gives back” as a vice president of “Suited for Change,” a nonprofit organization that provides business attire and career counseling to low-income women. Ms. Evans is a graduate of the University of Phoenix.

William Noonan
Vice President—Risk Management
Structure Tone Organization

Mr. Noonan is one of the presenters for Workshop T1, “Risk and Insurance Implications Due to Project Delays,” on Tuesday afternoon. He is the Vice President of Risk Management for the Structure Tone Organization, which includes Structure Tone Inc., Pavarini Construction Company, Pavarini McGovern, and Constructors Construction Company. The Structure Tone Organization performs interior fit out construction, renovation, and new core and shell construction with an annual construction volume over \$2 billion.

In his role as vice president of Risk Management, Mr. Noonan oversees the Corporate Insurance Program and the Rolling Contractor Controlled Insurance Program, and leads risk management initiatives throughout the organization. Mr. Noonan holds the CRIS (Construction Risk and Insurance Specialist) certification from International Risk Management Institute, Inc.

Prior to working at Structure Tone, Mr. Noonan gained 18 years’ experience in the risk management industry, including service as a Regional Director for Turner Construction’s Casualty and Surety Division. Mr. Noonan is a speaker at many national conferences and seminars, including IRMI’s Construction Risk Conference.

Tracy Alan Saxe
Attorney
Saxe Doernberger & Vita, P.C.

Mr. Saxe is one of the presenters for Workshop T1, "Risk and Insurance Implications Due to Project Delays," on Tuesday afternoon. He is a skilled commercial litigator with more than 25 years of experience in insurance coverage issues. Since 1990, he has focused his practice on insurance coverage litigation on behalf of policyholders, handling cases involving coverage for comprehensive general liability, directors and officers, professional liability, builders risk, subguard, first-party property damage, additional insured and business interruption claims. Mr. Saxe has handled cases involving coverage for construction defects, completed operations, product liability, property damage, and bodily injury related to mold and asbestos, bodily injury related to construction, "sick building" syndrome, environmental claims, business interruption, employment disputes, patent infringement, contempt, RICO, unfair practices, breach of fiduciary duty, bad faith, and professional malpractice. Mr. Saxe is well versed in issues relating to late notice, allocation, subrogation, contribution, indemnification, and the duty to defend.

Mr. Saxe was a principal at the law firm of Sachs, Berman, Rashba & Shure, P.C., a well-respected New Haven based firm, from 1989 to 1994. He joined that firm following 4 years with Wofsey, Rosen, Kweskin & Kuriansky in Stamford, Connecticut. He left in 1994 to open the Connecticut office of Anderson, Kill, Olick & Oshinsky, a large New York-based firm. In 1996, Mr. Saxe founded Saxe Doernberger & Vita, P.C.

Mr. Saxe has successfully tried numerous jury and court trials in state and federal courts, has handled cases before the federal, state trial and appellate courts in Connecticut, New York, Pennsylvania, Virginia, Maryland, Massachusetts, California, Washington State, Texas, Florida, Delaware, Indiana, and Michigan and has successfully mediated and arbitrated many disputes. Mr. Saxe has been an Adjunct Professor of Law at Quinnipiac University School of Law, where he has taught courses in Insurance Law. He is also a frequent lecturer nationally on insurance coverage topics.

Mr. Saxe holds a J.D. from Georgetown University Law Center, 1983; a B.A., Policy Studies, *magna cum laude*, Phi Beta Kappa, Syracuse University, 1980.

His admissions include the state courts of Connecticut, New York, District of Columbia, Commonwealth of Pennsylvania, and Washington State. His federal court admissions include U.S. District Court, District of Connecticut; U.S. District Court, District of Columbia; U.S. District Court, Southern District of Indiana; U.S. District Court, Eastern District of Michigan; U.S. District Court, Southern & Eastern Districts of New York; U.S. Court of Appeals, Second Circuit; U.S. Court of Appeals, Sixth Circuit; U.S. Court of Appeals, Seventh Circuit; and U.S. Supreme Court.

His professional activities include membership in the Connecticut Bar Association, the American Bar Association, the D.C. Bar Association, and the Association of General Contractors of America. He is ABA Insurance Coverage Litigation Committee Construction (ICLC) Sub-committee Cochair and ABA ICLC Program Committee Co-Vice-Chair.



Risk & Insurance Implications due to Project Delays

Presented By:

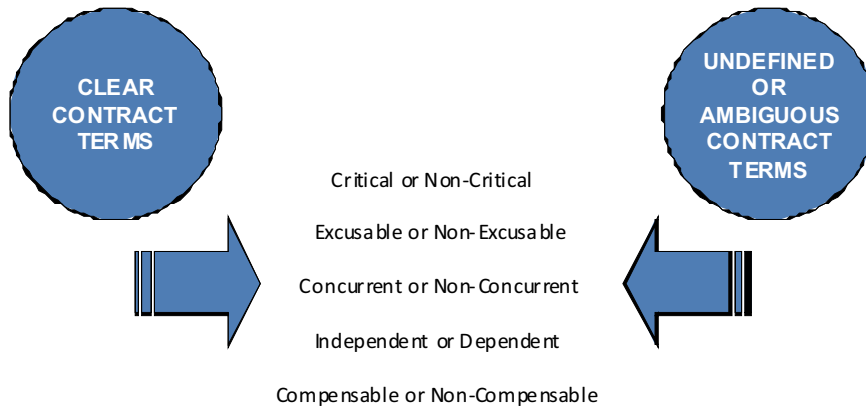
Tracy Alan Saxe, Esq.
Partner
Saxe Doernberger & Vita, P.C.

William Noonan
Vice President – Risk Management
StructureTone, Inc.

Alejandra (Alex) Evans
President
Allied North America Brokerage of Florida, LLC

Workshop T1

WHAT CONSTITUTES A PROJECT DELAY?



PROJECT DELAYS
Page 1

MAJOR CAUSES OF PROJECT DELAYS

- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____



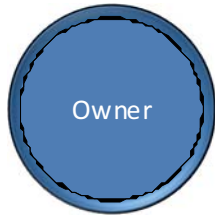
PROJECT DELAYS
Page 2

MAJOR CAUSES OF PROJECT DELAYS

- Improper planning
- Poor management
- Differing site conditions
- Permits and approvals
- Lack of project funding
- Regulatory changes
- Failure to provide site access
- Defective drawings
- Environmental issues
- Major subcontractor default
- Change in scope of work
- Labor shortages
- Productivity issues
- Document review/approval
- Testing and inspections
- Inclement weather
- Force majeure events
- Materials shortages/delays
- Failure to accept completed work
- Major site accidents

PROJECT DELAYS
Page 3

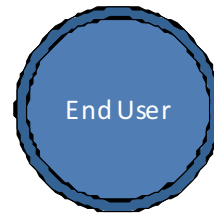
MAJOR EFFECTS OF PROJECT DELAYS



- Loss of Use
- Loss of Revenue
- Higher Project Costs
- Higher Financing Costs



- Acceleration Costs
- Material Escalation
- Increased G&A
- Lost Interest
- Preservation of Property
- Demolition Costs
- Contractual Penalties
- Missed Opportunities
- Strain on Cash Flow
- Reputational Issues



- Loss of Use
- Temporary Costs
- Aggravation
- Noise Issues
- Dust Issues
- Safety Issues
- Traffic Concerns

PROJECT DELAYS

Page 4

IMPACT OF PROJECT DELAYS ON INSURANCE PROGRAMS AFFECTED PROGRAMS



- Workers' Compensation
- General Liability
- Umbrella Liability
- Builder's Risk
- Contractor's Pollution
- Professional Liability
- Surety Bonding
- Subguard

PROJECT DELAYS

Page 5

IMPACT OF PROJECT DELAYS ON INSURANCE PROGRAMS AFFECTED TERMS & CONDITIONS

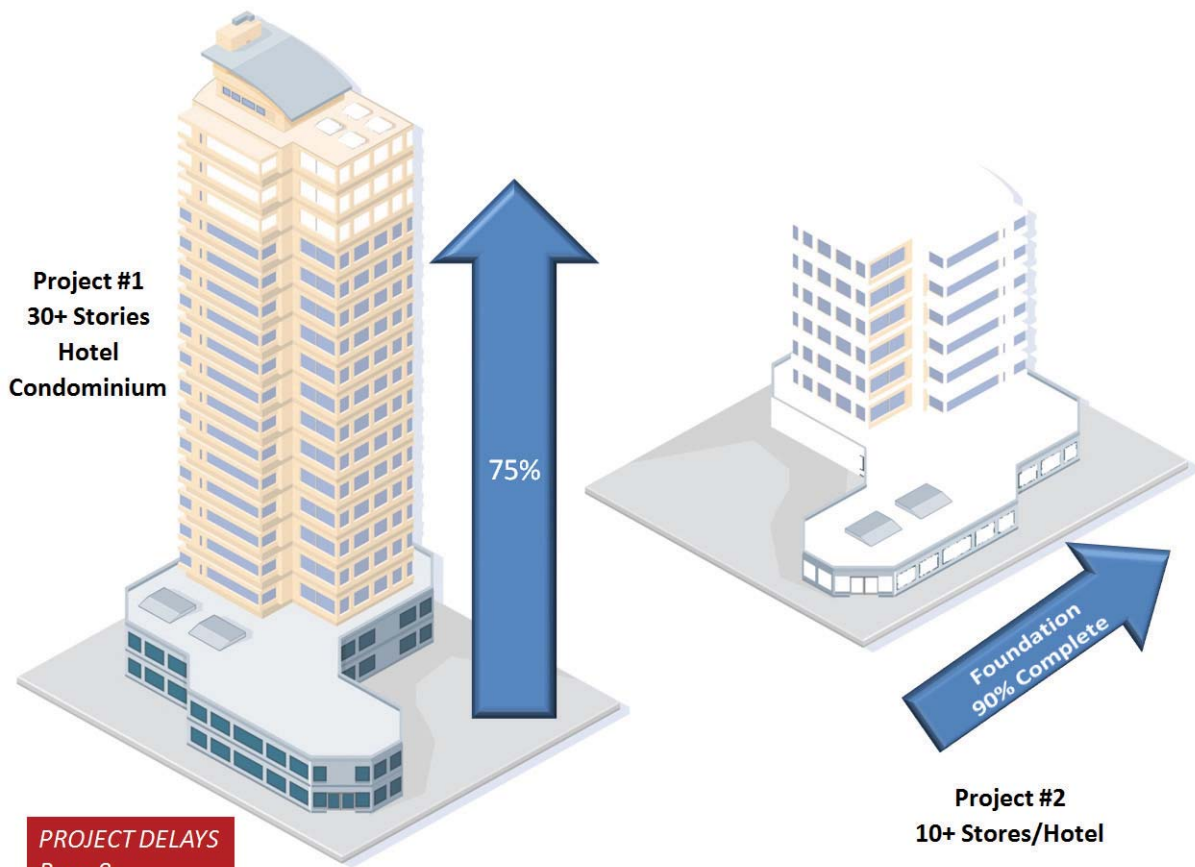
- Policy Term
- Minimum Premium
- Maximum Rate
- Collateral Obligation
- Payment Plan
- Completed Operations
- Cancellation Clause
- Minimum Volume
- Preservation of Property
- Delay in Start Up
- Notice of Claim

PROJECT DELAYS
Page 6

Case Study

Owner	Developer
Type of Project	Two Mixed Use Construction Towers
Cause for Delay	Lack of Funding for Second Phase of Project
Type of Wrap-Up	Owner Controlled Insurance Program (OCIP)
Construction Value	\$125,000,000+

PROJECT DELAYS
Page 7



PROJECT DELAYS
Page 8

Workshop T.1

Case Study

Key Program Issues	<ul style="list-style-type: none"> Limited time constraint, 30 months to complete the two projects. Construction on the second project was delayed by a year. Premium payments contemplated construction of both projects. Collateral requirement was based on projected losses for both projects. There was no further funding for the insurance costs related to completing the foundation on the second project. Once the foundation was completed there was a need to insure the dormant site. Once the financing was obtained (for second project), coverage would need to resume. A new completion date would need to be established for the second project.
Negotiation Strategy	<ul style="list-style-type: none"> Negotiate a reduction in premium to reflect a single site but maintain coverage for the second site's foundation. Get carrier to reduce the collateral requirement to reflect only one project. Procure a site-specific dormant policy. Once new funding is obtained, extend policy period to cover both projects through completion.
Results Obtained	<ul style="list-style-type: none"> Continuation of OCIP at reduced construction values with minor rate increase was secured. Carrier agreed to include coverage for the completion of the foundation for no additional premium. Carrier agreed to waive any future collateral steps until project resumed. A vacant site GL policy was obtained to protect the second project's foundation for a nominal cost. A coverage extension of 6 months was secured once financing was obtained for no additional premium. The maximum rate on the program was reduced significantly. The collateral obligation was reduced significantly with no step up required until project resumption.

PROJECT DELAYS

Page 9

PROJECT LOCATION WHY IT MATTERS

- All states and towns/cities have varying laws and local codes
- Discuss with local counsel your responsibilities and liabilities regarding the project site
- Work with local counsel to produce a list of mandatory tasks to eliminate/reduce exposure for the construction site

PROJECT DELAYS

Page 10

RISK & INSURANCE MITIGATION STRATEGIES

KEY TAKE AWAYS

- ☑ Policy Term grace period
- ☑ Eliminate minimum premium requirement
- ☑ Negotiate collateral step ups
- ☑ Payment Terms
- ☑ Acceleration costs wording
- ☑ Wrap-Ups: parties should have copies of policies
- ☑ Negotiate pro-rata cancellation provisions
- ☑ Have a back-up insurer strategy
- ☑ Determine the need for a site-specific policy
- ☑ Ensure preservation of property
- ☑ Site security
- ☑ Understand notice of daim to preserve policy rights

PROJECT DELAYS

Page 11

RISK MITIGATION STRATEGIES – BEYOND INSURANCE

PREPARING FOR THE DELAY IN ADVANCE

- Take advantage of the “present” and document today
- Construction schedules and daily construction reports are key
- Make sure all human resource files are up to date
- Convert files to digital ones

PROJECT DELAYS

Page 12

RISK MITIGATION STRATEGIES – BEYOND INSURANCE
KEY DELAY DOCUMENTATION

- ☑ Construction schedules
- ☑ Meeting minutes
- ☑ Daily logs and diaries
- ☑ Change order logs
- ☑ Inspection & progress reports
- ☑ Cost accounting records
- ☑ Construction contracts
- ☑ Invoices
- ☑ Purchase orders
- ☑ Estimates and bids
- ☑ Equipment use logs
- ☑ Financial statements
- ☑ Reports to sureties
- ☑ Claim notice

PROJECT DELAYS
Page 13



PROJECT DELAYS
Page 14