Construction Law in Louisiana: 

*Construction Claims*

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Delays

- Excusable or Inexcusable
- Compensable or Non-compensable
Inexcusable Delays

- Caused by or otherwise attributable to the contractor
- Risk of “Cause” assumed by the contractor
Excusable - Noncompensable Delays

• Contractually stipulated
  - Force Majeure
• Concurrent delays
Compensable Delays

• Caused by or otherwise attributed to the owner
Disruptions

- Interference causing loss of efficiency
Disruption v. Delay

- **Delay** – More time taken to perform work
- **Disruption** – Work is made more difficult and expensive than it should have been
Interference With Contractor’s Performance

• Contractor must prove interference causing the disruption was:
  – Breach of express or implied contract condition
Breach Of Contract Condition

- Express
- Implied
Possible Causes of Disruption

• Delay
• Failure to provide a suitable work site
• Failure to coordinate and supervise properly other contractors’ activities
• Failure to meet express contractual obligations
Acceleration

- **Actual** – contractor is forced by the owner to complete its work before the actual completion date
- **Constructive** – contractor overcomes an excusable delay to the work and meets the contract completion date
Defective Work

• Civil code article 2769
Defenses

- Contractual
- Non-contractual
Some Defenses

- Notice requirements
- “No Damages for Delay” clauses
- Waiver of contractual provisions
- Failure to mitigate damages
- “Factual” or “Merit”
Quantification Of Contractor’s Damages

- Loss sustained
- Profit deprived
Contractor’s Damages for Delay

- Direct costs
  - Labor and labor inefficiencies
  - Material
  - Equipment
- Indirect and associated costs
  - Overhead
    - “Field” or “Job” overhead costs
    - “Home Office” or “G&A”
Owner’s Damages

• Stipulated or Liquidated Damages
• Actual damages
• Damages for defective work
Design Professional Liability: Claims By Contractor

- Architects, Engineers, Surveyors, Draftsmen and others
Privity of Contract Not Necessary

- Negligence Based for Commercial Damages: “Altogether too much control over the contractor necessarily rests in the hands of the supervising architect for him not to be placed under a duty imposed by law to perform without negligence his functions as they affect the contractor.” *Colbert v. B.F. Carvin Constr. Co.*, 600 So. 2d 719, 724 (La. App. 5th Cir. 1992).

- General Standard: a designer must adhere to the standard of care and skill practiced by other professionals in the same community.
Duty Often Influenced by Contractual Duties to Owner

• “[I]n the absence of an express contractual provision to the contrary, the architect does not guarantee the owner a perfect plan or a satisfactory result. He is not liable for mere errors of judgment. His liability attaches only when his conduct falls below the standard of skill and care exercised by others engaged in the same profession in the same locality.” *Seiler v. Ostarly*, 525 So. 2d 1207, 1209 (La. App. 5th Cir. 1988).
Courts Have Fashioned Modified Rules or Tests for Liability

1. Minimum Requirements of Sound Principles
2. Clearly Improper and Manifestly Below Reasonable Standards in the Profession
3. Common Sense

Example Cases
- Wastewater Treatment Plant
- Womack Case
Burden of Proof

• General Rule is Expert Testimony
• Exceptions:
  – Ordinary intelligence when conduct clearly improper or manifestly below reasonable standards
  – When lay persons can infer negligence by applying a common sense standard
• Prescriptive Period/Statute of Limitations: one year period, commencing on the day the injury is sustained, *i.e.*, the time of the incident that causes the loss.
QUESTIONS?