



PERSPECTIVES

Lessons Learned from the Recent Ruling on Contractor Responsibilities in Delay and Inefficiency Claims

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INTRODUCTION

The recent ruling in *Berkley Insurance Company v. Suffolk Construction Company*¹, issued by the United States District Court for the Southern District of Florida, has highlighted several significant lessons for subcontractors, general contractors (GCs), and construction managers (CMs), navigating construction delays and lost productivity disputes.

This article examines how the Berkley decision, along with the previous precedent set in *Central Ceilings Inc. v. Suffolk Construction Co.*², a 2017 ruling by the Appeals Court of Massachusetts, illustrates the importance of project coordination responsibilities, the consequences of mismanagement, and the reliance on expert testimony in construction litigation.

ACCOUNTABILITY IN PROJECT COORDINATION

One of the most significant lessons from the Berkley case is the legal responsibility of GCs / CMs to manage and coordinate subcontractors' work. The ruling established that Suffolk Construction failed to responsibly manage to the project schedule, which led to inefficiencies and delays. The Court found that Suffolk's lack of proper coordination with predecessor trades, along with its failure to communicate revised sequencing and provide updated schedules to subcontractors, created what the Court described as a "chaotic" environment, resulting in stacked trades, out-of-sequence work, and extensive rework for the drywall subcontractor, Titus Construction Group.

Establishing and maintaining a flow of work in an organized sequence during the project execution is essential to delivering a project efficiently and on time. A responsibly managed construction schedule prevents the stacking of trades and other types of inefficiencies, and ensures subcontractors can complete their work as bid, without delays and disruption. Stacking of the trades occurs when multiple trades are forced to work concurrently in a limited space, creating

inefficiencies to the flow of work, impacting access to work areas, materials, tools and equipment, and changing crew sizing to less than optimal.

The Court reaffirmed that changes to the planned workflow without prior agreement disrupted the overall project timeline and efficiency, leading to inefficiencies that compounded delays and increased project costs.

The Court's ruling recognized that the labor Titus planned for the project was based on the prescribed sequence of work identified in its contract schedule. Also, it was unreasonable for Suffolk to force Titus to bear the additional labor cost beyond its planned labor which would be incurred by Titus while attempting to adhere to a revised and re-sequenced schedule made necessary to mitigate delays created by Suffolk's mismanagement of predecessor trades. The Court found that even increasing labor would not have recovered the schedule.

Similar conclusions were drawn in *Central Ceilings Inc. vs. Suffolk Construction Co.*, where the Massachusetts Appeals Court found that Suffolk's mismanagement directly led to the subcontractor's productivity losses. These cases illustrate that GCs / CMs are obligated to ensure trade coordination, to maintain, adhere to, and communicate the project critical path schedule, and that subcontractors are informed in a timely manner of any changes that may affect its scope. The *Central Ceilings* case was also cited in the Berkley decision.

IMPACT OF MISMANAGEMENT: LEGAL AND FINANCIAL RISKS

The Berkley ruling highlights that GCs / CMs who fail to meet their coordination duties risk breaching their contracts and incurring substantial liabilities for project delays and associated financial damages. In this case, the Court determined that Suffolk's failure to manage the workflow in a systematic sequence caused significant delays and financial hardship for Titus, ultimately

¹ *Berkley Insurance Company v. Suffolk Construction Company*, United States District Court for the Southern District of Florida, July 2024, Case No. 19-23059-CV-WILLIAMS.

² *Central Ceilings Inc. v. Suffolk Construction Co.*, Appeals Court of Massachusetts, March 29, 2017, Case No. 15-P-1117.

resulting in Suffolk being held liable for USD 4.11 million in damages.

A factor in this decision was the Court's rejection of Suffolk's contention that the project delays were due to Titus' workforce shortages. The Court found that any perceived inefficiencies stemmed from Suffolk's failure to enforce the planned and proper sequencing plan, leading to unnecessary labor burdens and project-wide disruptions. The Berkley and Central Ceilings cases make clear that courts are scrutinizing GC's / CM's roles in mitigating or exacerbating delays, holding them accountable when project mismanagement results in financial harm to subcontractors.

IMPORTANCE OF DEFINED PROJECT SCHEDULES AND UNILATERAL CHANGES

The Court strongly emphasized that a project schedule is a contractual obligation for both the GC / CM and subcontractors. The schedule referenced in the subcontract serves as the definitive guide for project execution and represents the conditions under which subcontractors base their bids and expect to perform their work under. Any changes to this schedule must be reasonable, communicated in writing, and mutually agreed to by both parties. Unilateral changes that disrupt subcontractors' as-bid / as-planned workflow are unacceptable and can result in contractual breaches and liability.

In Berkley, Suffolk failed to provide written notice of schedule modifications and did not obtain Titus' agreement to alter timelines. Furthermore, the Court rejected Suffolk's defense under its "no damages for delay" clause, having found that Suffolk breached the Contract by unilaterally making unreasonable changes to the contract schedule without Titus' consent, negating any such contractual defense. The ruling reinforces that GCs and CMs must abide by the formal process of amending the schedule to ensure proper coordination, parity, and prevent disputes.

IMPORTANCE OF EVIDENCE PRESERVATION IN DELAY DISPUTES

The Berkley ruling highlights the importance of subcontractors documenting delays, trade stacking, and mismanagement issues in order to protect their legal and commercial interests. In this case, Titus and Berkley provided detailed records of correspondences and field reports that demonstrated Suffolk's failure to coordinate the predecessor trades and provide clear and unencumbered access to Titus' areas of work as planned and represented in Titus' Contract schedule.

Key evidence included:

- Emails showing that Suffolk did not provide updated schedules despite repeated requests.
- Testimony confirming that Titus was forced to spread its workforce out over significantly more floors than planned due to mismanagement of predecessor trades and the resultant poor sequencing.
- Documentation of extensive rework required due to damage caused by other trades.
- Daily reports, site photographs, and progress logs showing repeated disruptions to the planned workflow.
- Meeting minutes and subcontractor notices documenting raised concerns over inadequate coordination and scheduling issues.

This case illustrates that subcontractors must proactively maintain contemporaneous project records of disruptions, noncompliance with scheduling requirements, and any directives received that are contrary to the contract schedule and requirements, as well as notifications to the GC / CM of all such events as they occur. Such documentation is pivotal in proving entitlement to claims for additional compensation and protecting against unjust blame for project delays. By consistently keeping detailed records, subcontractors strengthen their ability to assert claims for lost productivity and delay damages, helping to establish accountability and ensuring financial recovery when disputes arise.

EXPERTS' ROLE IN DAMAGE CALCULATIONS

Another notable aspect of the Berkley and Central Ceilings rulings is the Court's reliance on expert analysis to calculate damages related to lost productivity. Suffolk attempted to offset its damages by attributing delays to subcontractor alleged labor shortages and self-inflicted inefficiencies. However, expert testimony demonstrated that the primary cause of project disruptions was Suffolk's failure to coordinate the work of the subcontractors in order to maintain the as-planned properly structured and sequenced workflow to ensure Titus' work would be available to Titus as depicted in the contract schedule.

Berkley's expert Michael Bennink, PE, CCP, PSP, PMP from J.S. Held, utilized a measured mile analysis, a widely accepted methodology to quantify lost labor productivity. This approach compared the actual work completed under disrupted conditions with an equivalent scope performed under the as-planned contracted planned conditions, effectively illustrating the financial impact of Suffolk's mismanagement.

Berkley's expert William Perry, PE from J.S. Held, provided schedule delay analysis rebutting Suffolk's allegations that Titus delayed the project, and further substantiating the disruption to Titus' planned work sequence in support of its lost labor productivity claim.

This case shows the judicial reliance on expert witnesses in construction litigation. GCs, CMs and subcontractors must ensure they retain qualified schedule delay and labor inefficiency experts who can present independent, clear, and data-backed analyses, to substantiate their claims.

CONCLUSION: KEY TAKEAWAYS FOR CONSTRUCTION PROFESSIONALS

Subcontractors, general contractors, construction managers, and legal counsel navigating construction disputes should take note of the following best practices gleaned from the Berkley ruling:

- **Project Coordination Accountability:** GCs and CMs are contractually obligated to ensure timely planning and scheduling and coordinate all trade work
- **Project Communication:** GCs and CMs should proactively communicate with all trades to facilitate planning and scheduling and prevent the occurrence of and subsequent liability for project disruption and delays.
- **Defined Project Schedules:** The contract project schedule is binding, and any changes must be communicated in writing and agreed upon by all parties.
- **Diligent Record-Keeping:** Subcontractors must proactively document all delays, trade stacking issues, rework, and scheduling conflicts, to support potential claims.
- **Expert-Driven Claims:** Courts are placing increasing weight on expert testimony utilizing forensic schedule and lost productivity analyses in determining entitlement and damages.

By understanding these legal precedents and implementing these proactive best practice strategies, construction professionals can better navigate their roles, protect their commercial interests, minimize exposure to costly disputes in future projects and avoid litigation.

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