



# Insight from Hindsight; Issue 15

## Contractor's Right to Early Completion

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## Welcome to Insight from Hindsight

Welcome to the Fall 2015 issue of Insight from Hindsight, the quarterly e-journal of the Navigant Construction Forum™ focusing on construction and dispute related issues in the global construction

community. This issue features five articles offering a global perspective on the issue of the Contractor's right to early completion and the delay claims that arise.

We trust there is something of interest for all our readers.

### **Navigant Construction Forum™**

Established in September 2010, the mission of the Navigant Construction Forum™ is to be the industry's resource for thought leadership and best practices on avoidance and resolution of construction project disputes globally. Building on lessons learned in global construction dispute avoidance and resolution, the Navigant Construction Forum™ issues papers and reports, makes presentations and offers seminars on the most critical issues related to the avoidance or mitigation of construction disputes and the resolution of such disputes.

### **Note from the Editor**

The Navigant Construction Forum™ welcomes submission of articles and papers to be considered for publication in future issues. Please send your articles and papers to Jim Zack.



James G. Zack  
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## **Early Completion Schedules & Early Completion Delay Claims - "The Contractor's Right to Finish Early"**

By Scott A. Beisler, Navigant  
Steven Collins, Navigant

### **Summary:**

With any construction project, no matter the size, the contractor is responsible for preparing the project schedule, which includes the means and methods, sequencing and preferred logic, and the planned manpower and equipment to support the plan. Developing the project schedule, contractor may assess the work and submit an Early Completion Schedule if there is a reason to believe it can complete the work earlier than required by the contract. However, by its very nature, the construction industry environment contains several unknowns that may alter or delay the project.

Given that contractors already know how difficult it can be to complete a project on time, why would contractors want to add yet another risk to their responsibilities by submitting an Early Completion Schedule? Despite the risk involved, some contractors do submit them, some contractors achieve them, and some are actually awarded delay damages against their early completion date. This article discusses the various aspects and consequences of the use of an early completion schedule against the actual outcome of the project.

### Article Sections Include:

- History of Early Completion & Early Completion Delay Damages
- Contract Clauses
  - Contracts Excluding Early Completion Schedules
  - Notice of Early Completion Schedule
- Preparation of an Early Completion Schedule
- Implementation of an Early Completion Schedule
- Early Completion Schedule v. Ghost Schedule
- Legal Issues / Key Cases
  - Three Element Test – Interstate General
  - Reconciliation with Schedule Incentive Clause
- Who Owns the “Float”?
- Pros/Cons of Early Completion Schedules
- Recent Cases
  - Strand Hunt Construction
  - Gilchrist Construction Company

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## Early Completion and its Effect on the Contractor's Right to an Extension of Time

By Andrew Stephenson, Partner, Corrs Chambers Westgarth

### Summary:

This article addresses two questions related to early completion. The first is whether the Contractor is entitled to complete early and the second is whether a Contractor is entitled to an extension of time when it plans to complete early and can still do so but has been delayed in achieving completion. The answers to both questions will vary depending on the standard form contracts.

Since standard form contracts deal with these issues in different ways, it is appropriate to consider a number of example contracts used in different jurisdictions. This article considers the following contracts:

- PC-1 (Australia)
- MDB (based on the FIDIC 'Red Book')
- JCT/SBC (UK)
- The Public Sector Standard Conditions of Contract for Design and Build, 5th Edition (2008) ('PSSCOC'0 (Singapore))

Before analyzing the differences in the contracts, it is important to emphasize two preliminary concepts: The obligation to complete early by a particular date; and that properly drawn construction contracts must give the Contractor a right to an extension of time.

#### Article Sections Include:

- General Law Rights of the Contractor to Complete Early
- Contractual Rights of the Contractor to Complete Early
- If the Contractor has planned to complete early and can still do so, if it is delayed by an excusable delay, is it entitled to an extension of time?

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## Resolving Problems and Disputes on Construction Projects: Tackling Contract Performance Delays

By Nathan Chapman\*, Attorney, Sutherland Asbill & Brennan LLP  
Lee C. Davis, Partner, Sutherland Asbill & Brennan LLP  
W. Henry Parkman, Partner, Sutherland Asbill & Brennan LLP

#### Summary:

All parties involved in the construction process (i.e., owners, contractors, subcontractors and suppliers) have a vested interest in on-time performance and on-time payment. Delays in performance are among the most commonly litigated issues arising from construction projects. Construction projects involve expensive equipment, tremendous overhead, significant manpower and large payrolls for owners and contractors alike. The longer a job takes, the higher the costs and greater the potential for litigation.

This article discusses the different types of delays often encountered on construction projects, liquidated damage provisions in construction contracts, defenses to delay claims and acceleration, and issues related to delays.

Sections Include:

- The Two Major Delay Categories: Inexcusable and Excusable
- Compensable Delay
- Concurrent Delays
- Liquidated Damages
- Contractor's Damages for Delay Despite Early or On-Time Completion
- Defenses to Delay Damages
  - No Damages for Delay or Exculpatory Clauses
  - Notice Requirements
  - Waiver
- Acceleration

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\*At the time this article was published, Nathan Chapman was an attorney with Sutherland Ashbill & Brennan LLP.

This article originally appeared in Lorman Education Series Newsletters.

## **Early Completion Schedules: A Form of Contingency Bidding (Revisited)**

By James G. Zack, Jr., Executive Director, Navigant Construction Forum™

**Summary:**

Everyone in the construction industry understands that on a construction site “time is money”. However, all too few project owners, design professionals and construction managers seem to understand that a contractor is able to save time – and in turn, money – through the use of an early completion schedule. At the same time, a truly claims conscious contractor is able to create a form of liability for the owner.

In the past, contractors would bid on all public contracts with a contingency included in the bid price. However, there is now an increased risk with risk sharing contracts on public works projects mainly due to the standard contract documents issued by various industry associations and committees. These contract forms combined with increasing competition and decreased profitability reduces the contractor’s ability to include a large contingency in their bid. So, contractors have developed new and more sophisticated mechanisms of creating contingencies for themselves without risking their ability to be the low, responsive and responsible bidder. One of these methods is the preparation and submittal of an early completion schedule to the owner for approval.

The purpose of this article is to set forth the background concerning the issue of a contractor’s right to complete work early as well as addresses “early completion delays”. This article also provides a brief overview of ways owners can defend against claims oriented early completion schedules.

### **Article Sections Include:**

- Contractor’s Right to Complete Work Early
- Delayed Early Completion Claims
- What is an Early Completion Schedule?
- The Advantages of a Claims Oriented Early Completion Schedule
- How Can an Owner Avoid Claims Oriented Early Completion Schedules

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## **Early Completion - Some English and Australian Authorities**

By Robert Fenwick Elliott, Barrister, Keating Chambers

### **Summary:**

It is not uncommon for construction contracts to contain, not only dates for commencement and completion, but also a provision for submittal of contract programmes. Sometimes, the contractor will put forward a programme which shows a completion date earlier than the date for completion. The purpose of this article is to consider some English authorities on the rights and obligations in cases where the contractor is prevented or impeded by the employer from achieving such an early completion date.

**Case Examples Reviewed in this Article Include:**

- *Glenlion Construction Limited v Guinness Trust* (1987) 39 BLR 89
- *Finnegan v Sheffield* (1988) 39 BLR 94
- *Alucraft Pty Ltd v Grocon Ltd (Number 6 – the Exhibition Hall Contract)* (1994)
- *John Barker Construction v London Portman Hotel* [1997] 83 BLR 31
- *Alstom Ltd v Yokogawa (No 7)* [2012] SASC 49

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