

**Title:** Eichleay Damages and Delay Claims

**Date:** March 26, 2010

**Time Frame:** 1:00 pm - 2:30 pm EST

**Audience:** Project managers, construction managers, contractors, subcontractors, construction professionals, engineers, architects and attorneys

**Agenda:**

The Eichleay Formula and Necessary Elements to Entitlement for Eichleay Damages

- The Mathematical Ingredients to Calculating the Eichleay Formula
- Proof of Three Elements to Recover Eichleay Damages
  - An Owner Imposed Delay
  - Standby From the Contractor
  - During Standby, the Contractor Was Unable to Take on Other Substitute Work

Should You Focus on Eichleay Damages in All Delay Claims?

- Pros and Cons to Eichleay Formula and Eichleay Damages
- Whether You Can Lien for Eichleay Damages
- Does a Surety Have Liability for Eichleay Damages?
- Waiver of Eichleay Damages
- What Are Non-Eichleay Damages in Delay Claims?
- Subsequent Acceleration Claims

Contract Provisions That Affect Delay Claims

- Flow Down Contract Clauses
- Time of Performance/Scheduling
- Liquidated Damages and No Damages for Delay Clauses
- Limitation of Liability/Exculpatory Clauses
- Notice Requirements in Your Contract

**Speaker:**

Michael E. Milne, Holland & Knight LLP

Christopher J. Weiss, Holland & Knight LLP

**Speaker Biography:**

Michael E. Milne

- Associate with Holland & Knight LLP
- Practices in the firm's Construction and Design Practice Group
- Experienced in handling complex multiparty litigation, including claims for water intrusion, defects, delays, errors and omissions, and contract disputes
- Significant experience with issues involving building envelope, lien law, architectural design and engineering
- Co-lectured seminars on lien law and performance and payment bonds
- Extensive experience in contract review and drafting for general contractors and subcontractors
- J.D. degree, cum laude, University of Florida College of Law
- B.A. degree in history, University of Florida

Christopher J. Weiss

- Partner with Holland & Knight LLP
- Co-practice group leader of the Florida Construction Industry Practice Group and serves as the partner in charge of pro bono work undertaken by Holland & Knight's Orlando office
- Represented clients in construction insurance and surety matters
- Conducted major litigation in many state and federal courts, and has also participated in a variety of arbitrations
- Frequently lectures at the invitation of various professional groups
- Authored many articles related to the construction industry
- J.D. degree, cum laude, Florida State University College of Law
- B.S. degree, with honors, Florida State University

**Benefits:**

The latest issue in Eichleay debates is whether Eichleay damages are dead or just dying. Eichleay damages are only recoverable upon certain elements being met, but the elements continue to get stricter interpretation. Entitlement to Eichleay damages requires proof of three elements: 1) an owner imposed delay; 2) there is standby; and 3) while on standby the contractor cannot

take on substitute work. Under this stricter federal standard, a contractor must demonstrate effective suspension of much or all of its work to satisfy the standby requirement for entitlement to Eichleay damages. Should you even focus on Eichleay damages in your delay claim? What are keys to a successful delay claim? What contract provisions will bolster a delay claim? This teleconference will discuss these issues and more on delay claims.

Learning Objectives:

- You will be able to identify the mathematical ingredients to calculating the Eichleay formula.
- You will be able to review the pros and cons to Eichleay formula and Eichleay damages.
- You will be able to explain what are non-Eichleay damages in delay claims.
- You will be able to describe flow down contract clauses.