



DEMAND
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Contents

- **Contract Analysis by Non-Attorneys - 1**
- **Demand Staff - 2**
 - Al Jongeneel - 2
 - Jeff Jackmond - 2
 - Bob Pratt - 3
 - Andrew Lonergan - 3

Offices In

Centennial, CO
Kansas City, MO

DEMAND QUARTERLY UPDATE

FALL 2010

30 Years • Projects in 35 States, 5 Countries • Experts Average 25 Years of Experience • Unprecedented Customer Value

ISSUE 2

CONTRACT ANALYSIS BY NON-ATTORNEYS

“Contract Analysis” is an integral part of any *forensic delay and damages* expert’s consulting work. In performing such an analysis, and the various related evaluations and calculations, it is necessary for the *Construction Professionals* at Demand to apply our education, experience, knowledge, training and skill in reviewing and interpreting the meaning and significance of various expressed and implied contract provisions. This interpretation of contract language is made within the context of the normal usage of various contract provisions, and in accordance with relevant customary practices in the construction industry, with which we are familiar as *Construction Professionals* and not as attorneys, which we are not. Where such opinions are expressed, they are intended to aid the Court, Jury or Arbitrator(s) in applying the law as they see fit, and we expect that such triers-of-fact will give our opinions only that weight they deem appropriate based on the credibility of our analysis and our assimilation of the various relevant facts which our testimony may bring to their attention for consideration.

Our opinions regarding contract documents and provisions are based on years of experience working with standard form documents from the perspective of 1) *cost estimators*, evaluating the scope of the work required by the contract provisions, 2) *project managers for prime or general contractors*, responsible for authoring subcontracts that contain important risk allocation clauses and which may refer to and incorporate flow-down

provisions from the prime contract to the subcontractors and suppliers, and 3) *project managers*, determining the extent of the various parties’ compliance or non-compliance with various contract provisions.

Just as a police officer (who is not an attorney) is called upon to render an opinion to a traffic court regarding their observations of the violations of one or more laws or ordinances so that the traffic court can reach its own conclusions regarding fault or liability, so are our opinions regarding the contractual responsibilities and obligations or risks of the parties not legal opinions, but rather opinions based upon customary usage and industry practices, which the triers-of-fact are free to find, or not to find, applicable.

As active *Construction Professionals* and representatives of Demand, we have taught courses on various types of Construction Contracts, including the *American Institute of Architects* (AIA) Contracts. These courses have been presented to attorneys, and have been accredited for the purpose of granting attorneys CLE credit. One of our *Construction Professionals* is also currently serving on the *Contract Documents Committee* of the *Associated General Contractors of America*, and serving on a task force that is drafting additional standard form contract language to address the issue of requests for Extensions of Time, and to enhance the series of contracts now known as *ConsensusDOCS™*.

AL JONGENEEL, CHAIRMAN



Education

B.S. – Civil Engineering
University of Colorado, Boulder, CO

Professional Highlights

Al has worked in construction management, project engineering, and contract dispute resolution since 1968. He joined Demand in 1984 and currently is the Chairman of the Board

- Served as Demand's President for 17 years, during which time he was responsible for contract disputes work and company management.
- Seven years combined field experience on heavy construction projects with Al Johnson Construction Company and Dravo Corporation. He also served as Assistant Project Manager on a \$60-million twin-tower, high-rise building in downtown Denver.
- Eight years consulting experience with Kellogg Corporation of Littleton, CO.
- Has handled analysis and preparation/defense of complex construction claims totaling more than \$250 million.
- Other areas of expertise include government contracting, contract terminations and federal cost principles and guidelines.
- Testified as an expert witness in courts, arbitrations, and administrative hearings.
- Member AAA Panel of Construction Arbitrators and Mediators.

JEFF JACKMOND, PRESIDENT



Education

B.S. – Construction Engineering
California Polytechnic State University, San Luis Obispo, CA

Professional Highlights

Jeff began his career in construction management in 1974 working as an estimator and project manager for international and regional general contractors. He joined Demand in 1982 and was named President of the company in 2005.

- Prepared and negotiated numerous large construction claims and disputes involving heavy/highway, commercial/industrial, resort hotel complexes, office buildings, and mechanical contracts.
- Testified as an expert witness in courts, arbitrations, mediations, and administrative hearings.
- Expertise includes delay/disruption/impact analysis and pricing using CPM scheduling techniques.
- Provided CPM schedules on active projects totaling more than \$1 billion for contractors, designers and owners including Colorado Department of Transportation, Corps of Engineers, Bureau of Reclamation, Veterans Administration, and other private companies, the largest valued at \$280 million.
- Five years field experience as a cost engineer, estimator, project scheduler, and project manager on chemical, mechanical and commercial/industrial projects.
- Member AAA Panel of Construction Arbitrators and Mediators.

ROBERT H. PRATT, FCPE, VICE PRESIDENT



Education

B.S. – Architectural Engineering
University of Colorado, Boulder, CO

Professional Highlights

- Bob's service in the construction industry began in 1970 and encompasses cost estimating, scheduling, and project management. He joined Demand in 1987.
- Nine years on-site field experience with a Denver-based general contractor on projects including shopping malls, schools, transportation facilities, raw and waste water treatment plants, housing projects, and heavy structures.
- National President of the American Society of Professional Estimators, 1982-84.
- Became Fellow Certified Professional Estimator (FCPE) in 1991.
- Seven years consulting experience with Kellogg Corporation and Pricin Corporation. The latter is a company he founded to specialize in cost estimating software development as well as consulting and expert testimony services in estimating, claims, and scheduling.
- Has prepared construction cost estimates for conceptual designs, bid phase designs, and forensic estimates on change orders and claims.
- Experienced in preparation and defense of claims for contractors, owners, lenders, architects, sureties, and attorneys with special emphasis on damage calculations and delay impact analysis.
- Member AAA Panel of Construction Arbitrators and Mediators.
- Expert witness since 1982, helping resolve several hundred cases totaling over \$500 million in dispute.

ANDREW LONERGAN, PSP, SENIOR CONSULTANT



Education

B.S. – Construction Management
University of Florida, Gainesville, FL

Professional Highlights

- Andrew has worked in construction management, estimating, and project management since 1991, gaining valuable field experience over that time. He joined Demand in 1999.
- Expertise in estimating, scheduling, job cost control, claim preparation, and contract administration.
- Gained extensive knowledge and experience working for private sector companies on hard bid and negotiated contracts.
- Completed projects for owners utilizing expedited schedules for accelerated completion contracts.
- Worked with commercial firms in Florida and Louisiana on public sector projects for Sarasota County School Board and the State of Louisiana.
- Experience includes cast-in-place concrete structures for the University of Louisiana Tiger Stadium, tilt-wall concrete, and architectural concrete structures.
- Estimating services for remediation of construction defects and new construction.
- Certified as a Planning & Scheduling Professional (PSP) through The Association for the Advancement of Cost Engineering.