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Floating On Assumption: Navigating Questions of Project Float Ownership

Kilpatrick Townsend's Construction Law Blog

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Construction project schedules are oftentimes the source of many disputes between project owners and contractors. These disputes notoriously evolve into the subject of litigation and arbitration claims that assign fault for delayed project completion to one party or another. A party finding itself in such a scheduling dispute involving concurrent delays will need to demonstrate that the delays it caused did not affect the project completion date, while delays caused by the other party did impact the schedule. One way to prove this is to effectively evaluate the float on the project schedule and to make a careful evaluation of the circumstances surrounding each delay, including which party had the right to absorb any available project float. Oftentimes when delays occur and float is available, each party assumes it has a right to absorb the float. There are sensible reasons why one party may assume entitlement to float and subsequent exemption from liability for damages related to its delay. However, mere assumptions about float ownership—as reasonable as they may seem—could lead to unfavorable outcomes.