

ENERGY EXPERT: ISSUES IN FOCUS

A quarterly review of disputes and complex issues in the hydrocarbon production and processing industries.

Baker & O'Brien, Inc.

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Determining the Root Cause of Project Delay – Not as Easy as It May Appear

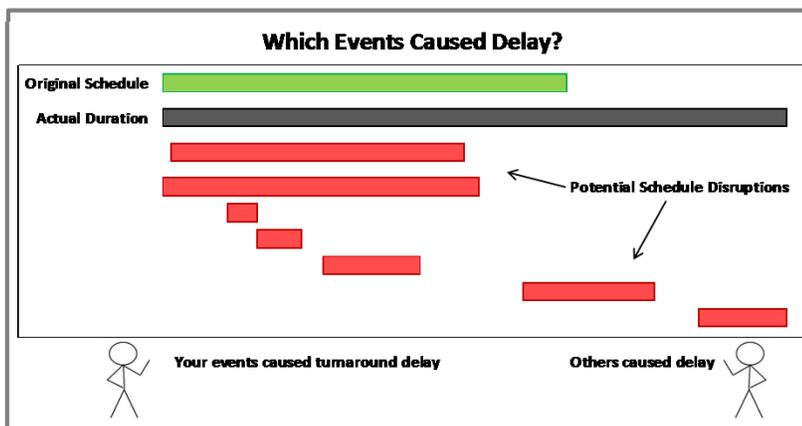
Jury Trial, United States

By J. David Morgan

Not unlike an automobile, a refinery incorporates complex pieces of machinery that must periodically be inspected, maintained, cleaned, and “tuned up.” However, refinery tune-ups—referred to as “turnarounds” in industry parlance—are significantly more complicated than those on a car. Refinery turnarounds are planned months in advance, and the schedule typically involves hundreds, or even thousands of individual tasks, many of which are interrelated and must be performed in a certain sequence. Because of the complexity of turnarounds, refinery owners usually engage outside specialty contractors to execute such work. Any interruption or delay in one turnaround task can negatively affect subsequent tasks, extending the turnaround schedule and often costing millions of dollars in lost production while the refinery is shut down. Establishing who or what may have been responsible for turnaround delays can lead to disputes between the owner and its turnaround contractors.

A refinery owner engaged several contractors to provide the manpower, equipment, materials, and tools to perform a turnaround. Originally scheduled to last two months, the turnaround took over four months. A few days into the work, a major accident involving an equipment subcontractor disrupted a critical work task, extending the entire schedule. The owner filed a major claim against the subcontractor. Had this been the only delay event experienced, the equipment contractor would have had sole responsibility. As the work proceeded, however, a number of other events occurred that extended the schedule.

Baker & O'Brien was engaged to conduct a detailed review of how the turnaround actually proceeded in comparison to the original schedule, with a focus on the actual identifiable impact of various delay events, including: (1) the early accident involving the equipment subcontractor; (2) the late completion of repairs to a key piece of equipment necessary for re-start of the facility; and (3) weather-related incidents, including two hurricanes.



Our report, which was submitted into evidence, examined the initial accident involving the equipment subcontractor to determine if it had an effect on the eventual duration of the turnaround. Similarly, the other delay events were analyzed to determine the impact to the downtime of the refinery. Following the deposition of our experts, the case settled prior to going to trial.

Equipment Failure or Operational Error? – The Answer is in the Details

Bench Trial, Europe

By Peter W. Halliday



The owners of a fuel products storage terminal formed a special purpose company to operate and maintain the facilities on their behalf. Products were stored and distributed by pipeline and road transport under contracts between the owners and various product suppliers.

During a storage tank filling operation, a tank overfill incident occurred which resulted in an explosion. There was substantial property damage as well as major fuel supply disruptions. The product suppliers, as well as other affected parties, many of which had incurred large business interruption losses, initiated legal action against the operator and one of the owners, alleging full responsibility and liability for the incident. In its defense, the operator contended that the root cause of the overfill incident was a failure of equipment, which could not have been foreseen.

Baker & O'Brien was engaged to provide an expert opinion on the root cause—equipment failure, operational error, poor procedures, inadequate maintenance, improper construction, or some combination of these. Our consultants analyzed all available maintenance and operating records; visited the manufacturer of the tank monitoring system; visited other facilities employing similar systems; examined technical aspects of the tank instrumentation and related equipment; studied a complete reconstruction of operator displays and events leading up to the incident; and reviewed standard industry procedures and practices for filling of petroleum storage tanks. Following a detailed assessment of all these factors, an expert report was prepared and submitted to the client. Our opinions were used in the client's discussions with the other parties regarding what led to the disaster and how to prevent similar occurrences in the future.

Force Majeure: Were Supplier Actions “Foreseeable” and “Controllable”?

Arbitration, North America

By Alan Reynolds

A petrochemical plant entered into an agreement to supply a chemical intermediate as feedstock for a customer's downstream production facility. The petrochemical plant announced—and commenced—a planned shutdown and turnaround that was scheduled to last for 60 days, but took 150 days. The downstream customer filed for arbitration seeking damages for the incremental 90 days during which it had to find alternative sources of feedstock. In its defense, the petrochemical supplier sought protection under the force majeure clause of the supply agreement, alleging that the extended delay in the turnaround was unforeseeable and outside of its control.

An alleged key factor delaying the turnaround was the late delivery of a new compressor from the petrochemical plant's equipment vendor. At the date scheduled to begin the turnaround, the compressor completion was behind schedule. Nonetheless, the plant shutdown proceeded according to the original schedule. Upon start-up, various compressor defects were discovered, the correction of which resulted in additional delay in the plant re-start.

Baker & O'Brien was asked to review contemporaneous documentation to assess the extent to which the potential delivery and start-up delays were foreseeable and whether the actions were prudent – considering all of the other factors at play. Based on the supplier's internal turnaround documentation, as well as correspondence between the supplier and the compressor vendor, Baker & O'Brien examined the causes for the delay in the turnaround completion, whether the compressor delay had a material effect on this delay, and whether the delays were foreseeable. Our opinions were presented in an expert report and the matter settled prior to commencement of arbitration.



Consulting Support for Complex Commercial Disputes

When faced with complex commercial disputes in the energy-related industries, clients often turn to Baker & O'Brien for its independent and objective support. For over 20 years, the firm's consultants have employed their engineering knowledge, industry experiences, and commercial acumen to provide assistance on a wide range of matters. Our project experience includes disputes involving operational incidents, standards of care, asset valuation, commercial supply terms, product quality, large engineering and construction projects, and intellectual property.

Our clients include many of the world's largest law firms, insurance providers, and operating companies. Law firms rely upon Baker & O'Brien to evaluate

technical and commercial aspects of a case and provide expert testimony. Our analyses, conclusions, and expert testimony have been heard by judges, juries, and arbitration panels around the world. On insurance matters, clients rely upon Baker & O'Brien's assistance for investigation of industrial accidents, and quantification of resultant property damage and business interruption losses. We are also called upon to assist insurers in subrogation actions by evaluating causation theories and claims for damages.

We would welcome the opportunity to discuss our qualifications in more detail as they relate to your specific area of interest.

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