

A construction site at sunset or sunrise, featuring several cranes and workers on a building's steel framework. The sky is a mix of orange, yellow, and blue. Large, semi-transparent letters 'C', 'S', and 'E' are overlaid on the background. The main title 'CONSTRUCTION SUPERCONFERENCE' is centered, with 'SUPER' in orange and 'CONSTRUCTION CONFERENCE' in white. A white curved line underlines the word 'CONSTRUCTION'.

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Caught in the Middle: Mastering Upstream and Downstream Claims

Strategic Legal Approaches to Managing Risk, Preserving Claims,
and Resolving Disputes Across Contract Tiers

- Marty Harris, Executive Lead and Senior Vice President, AECON
- Donald Kaplan, Managing Director, FTI Consulting
- Jeremy Knaebel, Senior Counsel Nuclear, Security & Environmental, Bechtel



Marty Harris
Executive Lead and Senior
Vice President
AECOM



Donald Kaplan
Managing Director
FTI Consulting
CCP, PSP



Jeremy Knaebel
Senior Counsel Nuclear,
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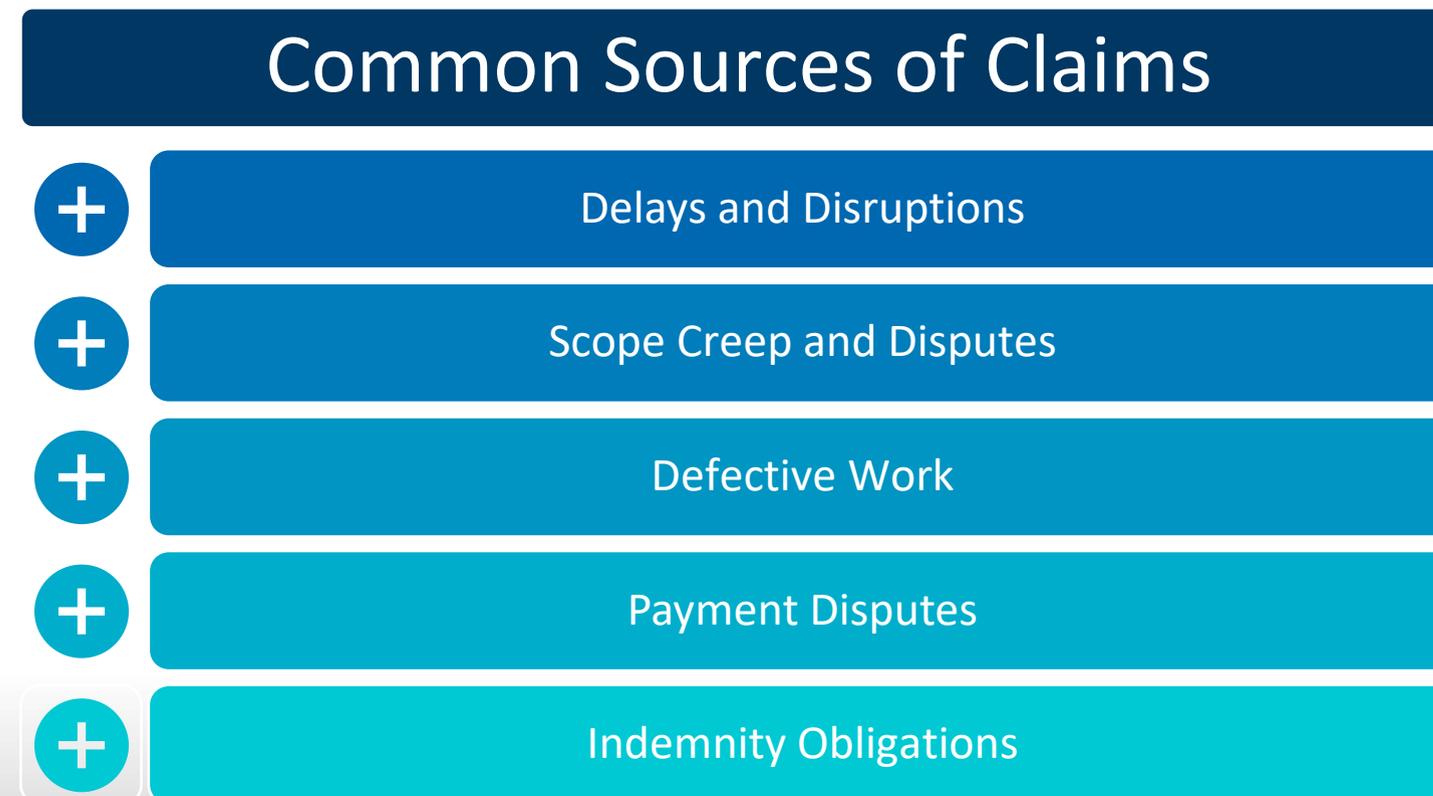
- In today's layered and high-stakes construction environment, legal professionals must skillfully manage risk and resolve disputes within a complex web of contractual relationships. This panel brings together leading construction attorneys and claims experts to explore advanced legal strategies for navigating both upstream and downstream claims.
- Topics will include drafting effective risk-shifting provisions, maintaining leverage through timely notice and documentation, and coordinating dispute resolution across multiple contract tiers. Panelists will share practical insights from real-world projects, highlighting how risks flow through the contract chain and where legal teams can proactively step in to protect their clients' interests.

- Section 1: Understanding the Claims Chain
- Section 2: Legal Challenges
- Section 3: Schedule and Quantum Considerations
- Section 4: Strategic Contract Drafting
- Section 5: Claims Management, Preservation and Defense Tactics
- Section 6: Example Claim Scenarios
- Section 7: Key Takeaways

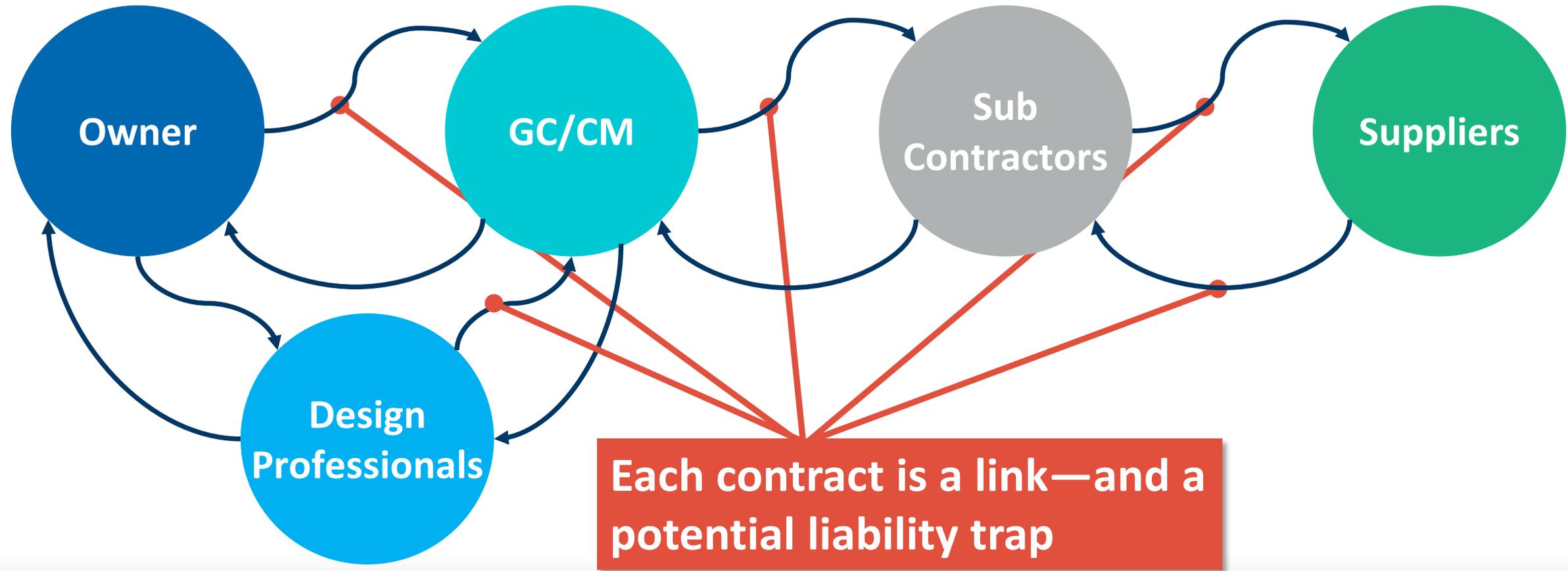
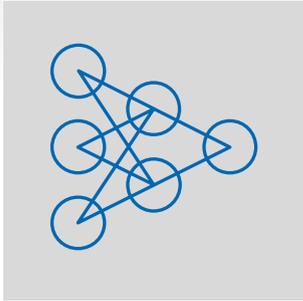


Section 1: Understanding the Claims Chain

- Upstream Claims refer to parties higher up the contracting chain where as a Downstream Claim involves parties further along the contracting chain. Any entity along the chain can be caught in the middle.
- Each Contract is a Link—and a Potential Liability Trap



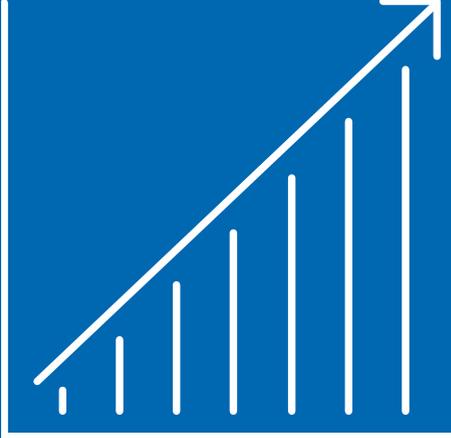
The Contractual Web



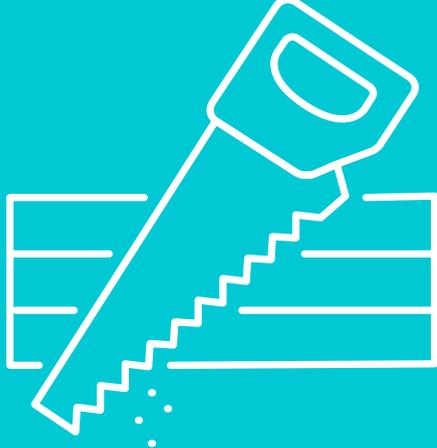
Common Sources of Claims



Delay and Disruptions



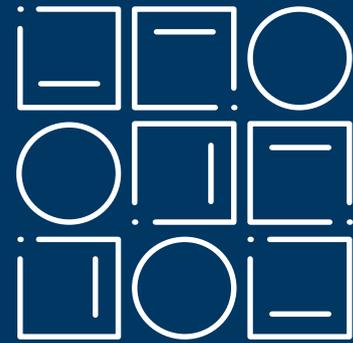
Scope Creep and Disputes



Defective work



Payment disputes



Misaligned Clauses Across Contract Tiers

Conflicting Notice Periods

Indemnity Passed Without Limits

Forum Selection Conflicts

Often Discovered Too Late, Once Claims Arise



Section 2: Legal Challenges

- Impacts of Misaligned Contract Provisions
 - Pass through Claims and Liquidating Agreements
 - Preserving Claims Across Tiers
 - Forum Selection & Jurisdictional Conflicts in Multi-Tiered Disputes

Flow-Down Clause Conflicts

- Inconsistent or missing flow-down language can sever the legal link between upstream and downstream claims.
- Subcontractors may be subject to obligations not present in the prime contract — or vice versa — complicating claim recovery.

Notice and Timing Incompatibilities

- Different deadlines for notice of claims (e.g., 7 days vs. 21 days) can create procedural default traps.
- Missed notice windows in one contract tier can bar claims across the entire chain, despite valid entitlements.

Dispute Resolution Mismatches

- Conflicting arbitration or litigation clauses may lead to bifurcated or duplicative proceedings.
- Venue and governing law clauses can trigger jurisdictional challenges, delays, or unenforceable decisions.

Indemnity and Insurance Inconsistencies

- Misalignment in indemnity scope or insurance coverage can leave prime contractors exposed despite downstream fault.
- Subcontractors may unknowingly assume broader indemnity than intended if upstream terms are not clearly incorporated.

Pay-If-Paid vs. Pay-When-Paid Confusion

- Inconsistent payment triggers create financial uncertainty and potential breaches.
- Courts may interpret ambiguous language differently depending on jurisdiction, increasing legal risk.

Change Order & Claim Handling Procedures

- Differing procedures for submitting and approving changes or claims can cause delays, rejections, or waiver of rights.
- Experts may struggle to track causation and responsibility across parties without unified processes.

Warranty

- If warranties are not passed up or passed down depending on the commercial strategy, there may be inconsistent and uncoordinated warranty coverage at each tier for the same work or equipment

- Delay damages or Liquidated Damages and/or limitations of liability clauses
- Contract Terms and Conditions
 - Payment Provisions
 - Scope of Work
 - Technical Specifications
 - Drawings
 - ES&H Requirements
 - Insurance Requirements
 - Financial Securities
 - Performance and Schedule Guarantees

Impact on Delay and Damages Analysis

- Misaligned terms affect the availability and quality of documentation needed for forensic scheduling or damage quantification.
- Legal and technical experts may be forced to make assumptions due to missing or contradictory contractual guidance.

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What Are Pass-Through Claims?

- A **pass-through claim** allows a lower-tier party (typically a subcontractor) to pursue a claim against an upstream party (e.g., owner) **through** the prime contractor.
- Common when the subcontractor has no direct contractual privity with the owner, but has suffered damages due to the owner's actions.

Role of Liquidating Agreements

- A **liquidating agreement** formalizes the pass-through mechanism between the prime contractor and the subcontractor.
- It typically includes:
 - Acknowledgment of subcontractor's claim validity
 - Agreement to pursue the claim on subcontractor's behalf
 - A waiver of direct claims by the subcontractor (except to the extent of recovery)

Key Legal Elements

- **Flow-Through Liability:** Prime contractor remains liable but only to the extent of what it recovers from the owner.
- **Mutual Cooperation:** Both parties must cooperate in pursuing the claim, including sharing documentation and legal strategy.
- **Privity Workaround:** Liquidating agreements serve as a workaround to the doctrine of privity that normally bars subcontractor claims against owners.

Common Pitfalls

- **Lack of Clarity:** Vague or missing language about pass-through rights can invalidate the subcontractor's ability to recover.
- **Late Agreements:** Liquidating agreements created after a claim arises may be viewed as self-serving or unenforceable.
- **Non-Cooperation:** If the prime fails to diligently prosecute the claim, the subcontractor may be left without recourse.
- **Conflict of Interest:** The prime contractor may be reluctant to press a claim that also implicates its own performance or delay.

■ Impact on Experts and Analysis

- Experts must understand whether a claim is direct or pass-through to assess entitlement, causation, and damages properly.
- The structure of the agreement can affect **burden of proof**, access to project records, and scope of recoverable damages.
- In absence of a valid liquidating agreement, damages analysis may be challenged due to lack of standing or contractual basis.

■ Best Practices

- Draft liquidating agreements **in advance**, as part of standard subcontract templates.
- Ensure the language clearly defines:
 - The claim scope
 - Cooperation requirements
 - Recovery obligations
- Coordinate legal and expert input to preserve rights and analytical clarity.

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Timing is Everything

- Strict contractual deadlines for **notice of claim, impact reporting, and claim submission** often vary across tiers.
- Failure to comply with upstream or downstream timelines can result in:
 - **Waiver of claims**
 - **Loss of indemnity rights**
 - **Inability to pass through legitimate costs**
- Delays in notifying upstream parties can break the chain of recovery, even when entitlement exists.

Documentation is Your Defense

- Thorough, contemporaneous project documentation is essential to preserve and support claims across tiers.
 - Daily reports, RFIs, delay logs, meeting minutes, change orders, impact memos, etc.
- Each tier must **maintain its own project record**, but also **coordinate formats and content** to ensure traceability.
- Gaps or inconsistencies in documentation across parties make expert delay and damages analysis vulnerable to challenge.

Communication Pitfalls to Avoid

- **Assumptions that others are “handling it”** often lead to missed notices or incomplete documentation.
- Prime contractors frequently fail to pass subcontractor claims upstream in a timely or complete manner.
- Informal communications (e.g., verbal updates or casual emails) may not satisfy notice requirements under contract.
- Miscommunication around delay responsibility or impact dates can fracture the claim and weaken its credibility.

Best Practices for Preserving Claims

- Establish a **claims preservation protocol** at project startup, including:
 - Templates for notice letters and impact logs
 - Claim tracking spreadsheets shared across legal and project teams
 - Clear internal escalation timelines
- Train all tiers—especially subs—on their notice obligations and how to escalate issues properly.
- Coordinate with legal counsel early when an event occurs to align messaging and preserve rights.

Legal and Expert Implications

- Legal counsel must confirm whether notice and claim procedures are **contractually enforceable** across all tiers.
- Experts rely heavily on preserved documentation to construct credible **delay timelines** and **quantify damages**.
- Without preserved claims and aligned records, the fact finder may discount or reject otherwise valid claims.

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The Basics of Forum Selection

- Forum selection clauses dictate **where** and **how** disputes will be resolved (e.g., arbitration vs. court, jurisdiction, venue).
- These provisions are critical in construction contracts due to the multi-party, multi-tiered structure of typical projects.

Common Conflicts in Multi-Tiered Agreements

- Prime contract may call for **AAA arbitration in New York**, while a subcontract requires **litigation in Texas state court**.
- Parties often sign contracts **without aligning dispute resolution provisions across tiers**, leading to:
 - Duplicative proceedings
 - Conflicting judgments
 - Delays in resolving underlying claims

Joinder and Consolidation Issues

- Subcontractors may be barred from joining upstream proceedings if forum clauses conflict.
- Many arbitration rules allow joinder **only with party consent**—a major problem when upstream and downstream parties are not aligned.
- Courts and arbitrators may **refuse to consolidate** proceedings, forcing separate fact-finding processes.

Legal Risks and Strategic Challenges

- Claims may be **dismissed or stayed** if brought in an incorrect forum.
- Jurisdictional battles can **consume months in pre-hearing litigation**, increasing costs and eroding leverage.
- Parties may try to **forum-shop** or use procedural motions to block pass-through claims or counterclaims.

Contract Drafting & Negotiation Best Practices

- Align dispute resolution terms **vertically across the contract chain**:
 - Use consistent language for arbitration vs. litigation
 - Align governing law and venue
 - Reference upstream clauses where applicable
- Include **joinder or consolidation provisions** to ensure efficiency in disputes involving multiple tiers.

Implications for Legal Counsel and Experts

- Experts may need to **testify in multiple forums** on the same facts if disputes are bifurcated.
- Inconsistent procedural rules (e.g., discovery scope, expert admissibility) can affect how delay and damages evidence is presented.
- Counsel must develop **coordinated litigation/arbitration strategies** across venues to avoid prejudice or evidentiary gaps.



Section 3: Schedule and Quantum Considerations

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- Schedule Analysis: Upstream & Downstream Complexities
- Quantum Analysis: Recoverability and Damage Tracing

1. Misaligned Contracts Complicate Delay Attribution

- Varying contract language across tiers (e.g., differing definitions of “delay” or “excusable event”) creates confusion about which party caused delay.
- Experts must untangle responsibility across multiple schedules and parties — often with contradictory contract terms.

2. Gaps in Project Records & Conflicting Narratives

- Inconsistent notice requirements lead to missing or delayed documentation.
- Parties may provide conflicting explanations for the same event (e.g., weather vs. coordination failure), weakening schedule credibility.

3. Critical Path vs. Subcontractor Milestones

- Owners and GCs typically track **project-level critical path**, while subcontractors operate on **scope-specific milestones**.
- Delay to a subcontractor’s critical path may not immediately affect the overall project but may still lead to downstream impacts or claims.

4. Effect on Delay Analysis Methodology

- Misaligned records force experts to make assumptions or use different delay analysis techniques at each tier (e.g., TIA upstream, as-built vs. planned downstream).
- Lack of consistency undermines defensibility, especially in arbitration or litigation.

5. Preserving Upstream Claims with Schedule Integrity

- Without coordinated baseline schedules and timely updates, claim preservation and forensic scheduling become speculative.
- Schedule updates and impact narratives must be coordinated between tiers to enable a credible and traceable delay story.

Section 3: Schedule and Quantum Considerations

- Schedule Analysis: Upstream & Downstream Complexities
- Quantum Analysis: Recoverability and Damage Tracing



1. Flow-Down Clauses Can Limit Recovery

- Contractual language may limit or condition a subcontractor's entitlement to damages (e.g., "only to the extent GC recovers from owner").
- These clauses can result in valid damages being **legally unrecoverable**, despite technical merit.

2. Pass-Through Rights Must Be Preserved

- If no liquidating agreement exists, subcontractor claims may fail for lack of privity — leaving damages unsupported upstream.
- Experts may be unable to include subcontractor costs in owner-facing damages without legal standing.

3. Contemporaneous Documentation is Critical

- Labor hours, equipment usage, productivity losses, and cost overruns must be tracked in real time.
- Without documentation, damages analyses become speculative or subject to heavy discount by fact finders.



4. Contract Clarity Improves Quantum Analysis

- Aligned contracts improve expert efficiency by enabling consistent treatment of markups, escalation, and excluded costs.
- Legal clarity ensures damages are not overstated due to duplicative or unauthorized recovery at multiple tiers.

5. Expert Credibility Depends on Clarity

- Confusion in contractual structure or lack of clear documentation undermines expert testimony.
- Well-aligned contracts and organized backup support a compelling, defensible quantum position.



Section 4: Strategic Contract Drafting

- **Clauses to Align and Scrutinize:**
 - Notice and Timing
 - Indemnification and Limitation of Liability, Liquidated Damages
 - Warranty, Title, and Security Interest for Suppliers
 - Dispute Resolution and Joinder
 - Pay-if-Paid vs. Pay-when-Paid
- **Coordinating Language Across Contracts to Protect Clients from Mismatches**
- **Sample Clause Comparisons (Good vs. Problematic)**
 - These should be specific and not general to avoid courts striking them down

Sample Clause Comparisons

No.	Topic / Clause Title	Sample Flow-Down Clause Language
1	Dispute Resolution (Arbitration)	To the extent the Prime Contract requires disputes to be resolved by arbitration, and in every other case, Subcontractor agrees that any dispute, claim, or controversy arising out of, or in connection, related or to this Subcontract shall be resolved in the same manner and forum as required by the Prime Contract. Contractor may, at its discretion and sole option, consolidate or join Subcontractor, or Subcontractor's related action, in any arbitration between Contractor and Owner involving related issues, and Subcontractor shall be bound by the result of such proceeding.
2	Payment Terms	Payment to Subcontractor is expressly conditioned upon Contractor's receipt of payment from Owner for Subcontractor's Work. Subcontractor shall be paid only to the extent Contractor receives payment from Owner for Subcontractor's Work. Payment timing , retainage, and invoice requirements shall mirror those in the Prime Contract.
3	Warranty and Security Interest	Subcontractor warrants that all Work, materials, and equipment furnished under this Subcontract shall comply with the Prime Contract and be free from defects for the same period and under the same terms as Contractor's warranty to Owner. Subcontractor grants Contractor a security interest in materials, equipment, and Work in progress to secure performance and payment obligations, assignable to Owner if required.
4	Delay or Impact Claims	Subcontractor shall not be entitled to additional compensation or time for delay, disruption, or impact unless and to the extent Contractor recovers such relief from Owner. Subcontractor must submit written notice and supporting data within the time required under the Prime Contract to allow Contractor to comply with its notice obligations to Owner.

Sample Clause Comparisons

No.	Topic / Clause Title	Sample Flow-Down Clause Language
5	Liquidation Agreement (Pass-Through Claims)	<p>a) Recognition of Claim. Contractor acknowledges that Subcontractor may assert claims, demands, or requests for adjustment arising out of acts or omissions of Owner or others for whom Contractor is not responsible (“Pass-Through Claims”).</p> <p>b) Agreement to Present Claim. Upon written request from Subcontractor, Contractor shall, to the extent it deems proper and consistent with its own rights under the Prime Contract, present Subcontractor’s Pass-Through Claim to Owner as part of Contractor’s claim, change request, or dispute submission under the Prime Contract. Contractor shall have full discretion regarding the form, timing, and substance of such presentation.</p> <p>c) Conditional Liability. Contractor shall be liable to Subcontractor for any such Pass-Through Claim only to the extent that Contractor actually recovers corresponding amounts from Owner, and receipt of such payment by Contractor shall be an express condition precedent to any liability of Contractor to Subcontractor. Subcontractor’s recovery shall be limited exclusively to its allocable share of such amounts actually recovered.</p> <p>d) Cooperation. Subcontractor shall, at its sole cost, furnish all documentation, data, analyses, and testimony reasonably required by Contractor to support the claim, and shall cooperate fully in its prosecution, including attendance at hearings or proceedings if requested.</p> <p>e) Costs and Expenses. Unless otherwise agreed in writing, each party shall bear its own costs and expenses associated with preparing and supporting any Pass-Through Claim. Contractor may deduct from Subcontractor’s recovery a reasonable share of attorneys’ fees, consultants’ fees, or other costs incurred in prosecuting the claim.</p> <p>f) Settlement Authority and Finality. Contractor shall have the sole discretion to settle, compromise, withdraw, or otherwise resolve any Pass-Through Claim with Owner. Any such resolution shall be binding upon Subcontractor, and Subcontractor shall accept the amount, if any, recovered by Contractor from Owner as full and final satisfaction of its claim.</p> <p>g) No Independent Action. Subcontractor shall not pursue any claim or cause of action directly against Owner arising from the subject matter of the Pass-Through Claim except as expressly permitted by the Prime Contract or with Contractor’s prior written consent.</p> <p>h) No Admission or Waiver. The inclusion of a Subcontractor claim in Contractor’s submission to Owner shall not constitute an admission of liability by Contractor nor a waiver of any rights or defenses available under this Subcontract or at law.</p> <p>i) Survival. This clause shall survive termination or completion of the Subcontract to the extent necessary to prosecute or resolve any Pass-Through Claim.</p>

Sample Clause Comparisons

No.	Topic / Clause Title	Sample Flow-Down Clause Language
6	Damages	Subcontractor shall be liable for all losses, costs, and damages incurred by Contractor due to Subcontractor's failure to perform. Subcontractor shall not be entitled to consequential, special, or indirect damages except to the extent Contractor is so entitled under the Prime Contract.
7	Indemnity	Subcontractor shall indemnify, defend, and hold harmless Contractor, Owner, and their respective officers, employees, and agents from and against all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from Subcontractor's performance of the Work, to the same extent Contractor is required to indemnify Owner under the Prime Contract.
8	Limitation of Liability	To the extent the Prime Contract limits Owner's recovery against Contractor, the same limitation shall apply to limit Subcontractor's recovery against Contractor. Subcontractor's total liability shall not exceed the Subcontract price, except for obligations arising from gross negligence, willful misconduct, or third-party indemnity.
9	Notice and Cure Periods	All notices and claim submissions required of Contractor under the Prime Contract apply equally to Subcontractor. Subcontractor must provide notice to Contractor sufficiently in advance to allow Contractor to comply with its obligations to Owner, and no later than [X] days after the event giving rise to the notice.
10	General Flow-Down Provision	Subcontractor acknowledges that Contractor is bound by the terms of the Prime Contract with Owner and shall assume toward Contractor all obligations and responsibilities that Contractor assumes toward Owner for Subcontractor's portion of the Work. In the event of conflict, the more stringent obligation shall apply unless otherwise directed by Contractor.

■ Case Study 1: L3 Harris Maritime Services, Inc. v. BAE Systems Norfolk Ship Repair Inc. (E.D. Va., Oct. 2023)

- Issue: Subcontractor claimed constructive acceleration and delay costs due to COVID-19 measures.
- Holding: The court allowed the constructive acceleration claim because the subcontract incorporated FAR clauses (Excusable Delays and Changes) via a flow-down provision. The court emphasized that refusal to grant time extensions can constitute an implicit acceleration order.
- Significance: Flow-down clauses incorporating FAR terms can expose primes to liability under federal common law standards. [pilieromazza.com], [venable.com]

■ Case Study 2: PowerCom, Inc. v. Valley Electric Co. of Mt. Vernon, Inc. (Wash. Ct. App., 2024)

- Issue: Subcontractor's ability to bypass dispute resolution and sue directly was barred by a flow-down clause requiring multi-step resolution tied to the prime contract.
- Holding: Flow-down clauses can act as contractual waivers, limiting subcontractor rights to independent litigation.
- Significance: Courts enforce dispute resolution flow-downs strictly, even when they restrict subcontractor remedies. [suretybond...rterly.org]

■ Case Study 3: Umoja Erectors LLC v. D.A. Nolt Inc. (3d Cir., Oct. 2025) Issue:

- Issue: Supplier sought payment for corrective work under a time-and-materials subcontract.
- Holding: A defective-work flow-down clause barred payment for corrective work despite T&M terms. Recoupment for backcharges was allowed under the same contract.
- Significance: Flow-down clauses can override pricing structures and allow offsets for defects. [casemine.com]

■ Case Study 4: KeyBank Nat'l Assn. v. Southwest Greens of Ohio, LLC (Ohio App., 2013)

- Issue: Priority of liens and enforceability of flow-down obligations.
- Holding: Broad interpretation of flow-down provisions; subcontractors had limited ability to avoid obligations incorporated by reference.
- Significance: Courts often construe flow-down clauses broadly, increasing subcontractor risk.

- DoD DFARS Final Rule (Effective Nov. 2023): Prohibits flowing down non-mandatory FAR/DFARS clauses to commercial subcontracts. This limits the “kitchen sink” approach and requires primes to carefully select mandatory clauses only. [rjo.com]
- Davis-Bacon Act Updates (Aug. 2023): Reinforces mandatory flow-down of wage determination clauses and liability for non-compliance by lower-tier subcontractors



Section 5: Claims Management, Preservation and Defense Tactics

Claim Mitigation Tactics

- Consideration of the contractual model
 - If the number of interfaces are large and/or complicated
 - Multiple 3rd parties
 - Owner-supplied materials
 - Consider more collaborative models i.e. ECI/PDB/CMGC
 - Can effectively eliminate cross purposes between parties early



Claim Mitigation Tactics

- Communication strategies: upstream & downstream
 - Transparency of commercial requirements
 - Establish clear requirements for notice in both directions
 - Early establishment of escalation protocols
 - Contractual and Informal means of communication
 - Limit messaging internally
 - Establish “project email accounts”
 - Coordinating with clients on documentation and legal positioning



Claim Mitigation Tactics

- Establish Early warning systems: monitoring for upstream/downstream exposure
 - Consideration of 3rd party dispute panels
 - Use of Escrow Documents
 - Regular check-ins where issues can be triaged

- Comprehensive Insurance policy review
 - Who has what obligations – creation of RACI matrices
 - Are all relevant parties' names insured
 - Are notifications understood



Dispute Considerations

■ Process vs Informal Negotiations

- Must preserve the contractual process
- Be open to alternate means to discuss resolution
- Without Prejudice considerations

■ Sufficiently staff / assign duties from all parties to manage the dispute

- Creates
- Preserves documentation

■ Aligned progression of Claims

- Cooperation agreements
- Understanding each party's needs – financial and otherwise prior to settlement

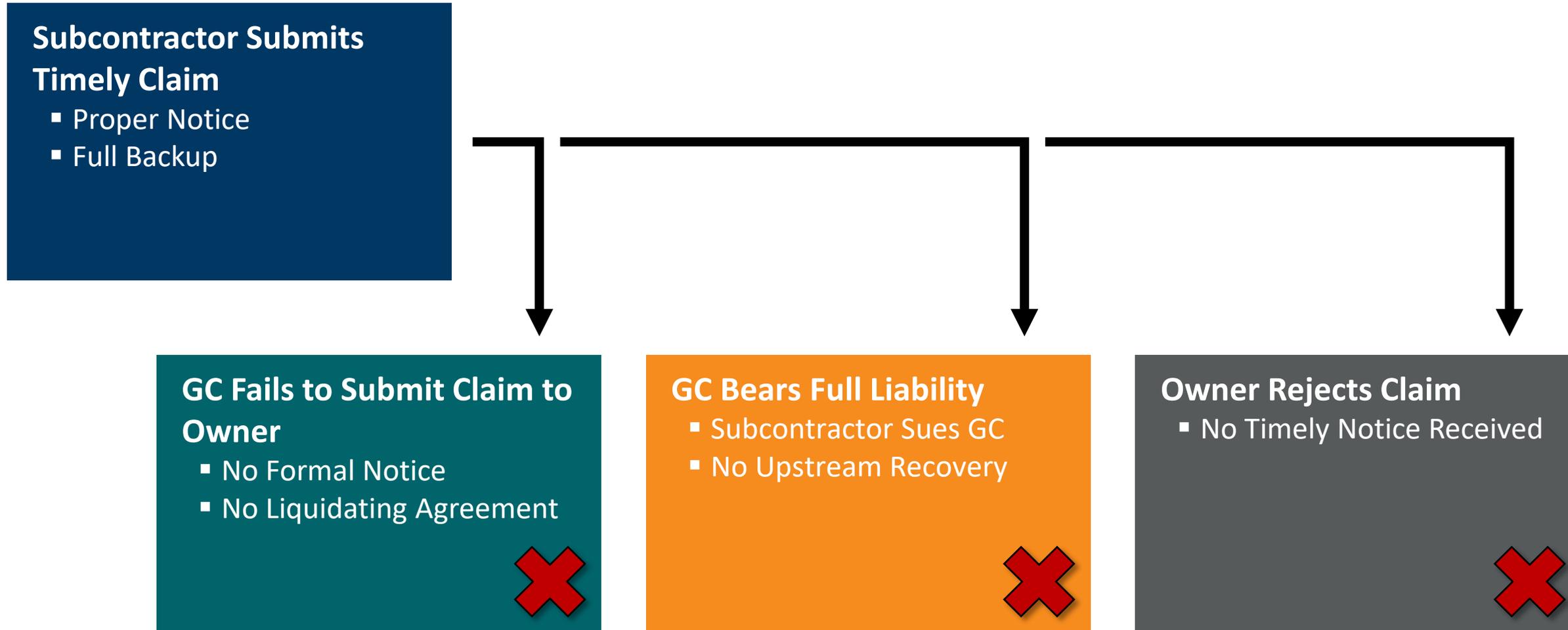




Section 6: Example Claim Scenarios

- Real-world examples of claims that succeeded—or failed—due to poor contract alignment
 - Case Study #1: Failure to Pass through Claim Properly
 - Case Study #2: Misaligned Indemnity Clause
- Lessons learned: What could have been done differently?

Claim Scenario #1: Failure to Pass through Claim Properly (i.e. The Claim that Never Made It)



Claim Scenario #2: Misaligned Indemnity Clause (i.e. Delay without Defense – The Indemnity Clause Gap)



GC–Owner Indemnity Clause:

- GC must indemnify Owner for all delays caused by GC or its subcontractors.



GC–Subcontractor Indemnity Clause:

- Subcontractor only indemnifies GC for 3rd-party claims due to its negligence.
- (No delay coverage.)

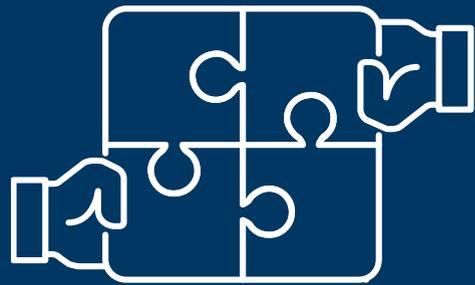


Consequences:

- Owner enforces LD clause (\$700k);
- GC attempts to pass claim to sub—but clause doesn't support it.
- GC absorbs full exposure.



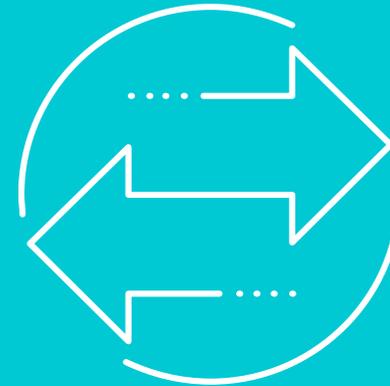
Section 7: Key Takeaways



Align contract language early and consistently



Preserve claims with rigorous documentation



Understand how risk flows—legally and practically



Legal counsel must act as both shield and strategist

- **Drafting:** Ensure clarity and mutual assent; vague or overly broad flow-downs risk unenforceability.
- **Risk Management:** Review upstream contract terms before agreeing to flow-down obligations; failure to do so can waive key rights.
- **Compliance:** Monitor new DFARS restrictions—over-flowing clauses can now trigger non-compliance.
- **Litigation Exposure:** Courts increasingly enforce flow-downs for dispute resolution, pricing, and performance standards.

Responsibility Matrix

Claim Element	Owner/Developer	Prime Contractor	Subcontractor	Expert Considerations
Contractual Notice Obligations	Issue RFPs; enforce prime notice	Must notify owner; enforce sub notices	Must notify prime promptly	Delays in notice can compromise expert's ability to allocate causation and assess timeline
Delay Event Documentation	Document project funding or approvals	Maintain master schedule & updates	Track field-level disruptions	Misalignment leads to gaps in contemporaneous records
Change Management	Approve or reject COs	Submit consolidated COs	Submit CO requests w/ backup	Experts rely on audit trails to quantify compensable delay or disruption
Flow-Down Clauses	Include in prime contract	Draft enforceable clauses to subs	Accept terms with/without negotiation	Inconsistency can block pass-through claims or indemnity defenses
Risk Allocation	Limit liability contractually	Transfer risk downstream	Accept or reject risk via pricing	Experts must understand the contract structure to assess exposure
Dispute Resolution Mechanism	Specify forum or ADR process	Align with upstream terms	Subject to flow-down or separate venue	Misalignment creates procedural complexity in expert testimony and analysis



**What's your
biggest
challenge
managing
tiered claims?**