



CONSTRUCTION **SUPER**CONFERENCE

2025

CONSTRUCTIONSUPERCONFERENCE.COM

Panel S27

Shared Goals, Superior Results

*Using Common Interest Agreements to
Minimize Disputes and Unlock Potential*

Brian Rice – Vice President, Associate General Counsel,
Chief Litigation Counsel | RailWorks Corporation

Mark Masterson – Managing Partner | Moye, O'Brien & Masterson, LLP

Megan Cantlebury – Partner | Moye, O'Brien & Masterson, LLP

Luke Eaton – Shareholder | Cozen O'Connor

Tim Hampson – Managing Director | Ankura Consulting Group



The Traditional *Prime vs Subcontractor* Dispute Approach

Traditional Adversarial Approach

- ***“Fight it out” or “Pass it through”***
- **Limited / No Collaboration**
- **Split / Separate Proceedings**
- **Self-interest Overcomes Patience**

Risks in Pursuing Claims Under Traditional Approach



- Battling theories that pit prime vs. subcontractor
- Inconsistent outcomes risk tension between positions
- Inconsistent pricing, scheduling approaches

The Solution May Be To Collaborate

What is Collaboration?

- Joint Legal Strategies
 - Shared Points of Emphasis
 - Focus on Common Strengths
 - Cost Sharing / Pooled Resources
 - Empowering Most Capable
-

The Solution May Be To Collaborate



What is a Common Interest Agreement?

A legal agreement between parties with a common legal interest allowing them to share information and strategize without waiving their attorney-client and work-product privileges.

The Solution May Be To Collaborate



Why Use a Common Interest Agreement?

- Sharing Information
 - Preserving Privilege
 - Preserving Work Product
 - Confidential Collaboration
 - Counsel
 - Experts
-

Common Interest Agreement Drafting Considerations

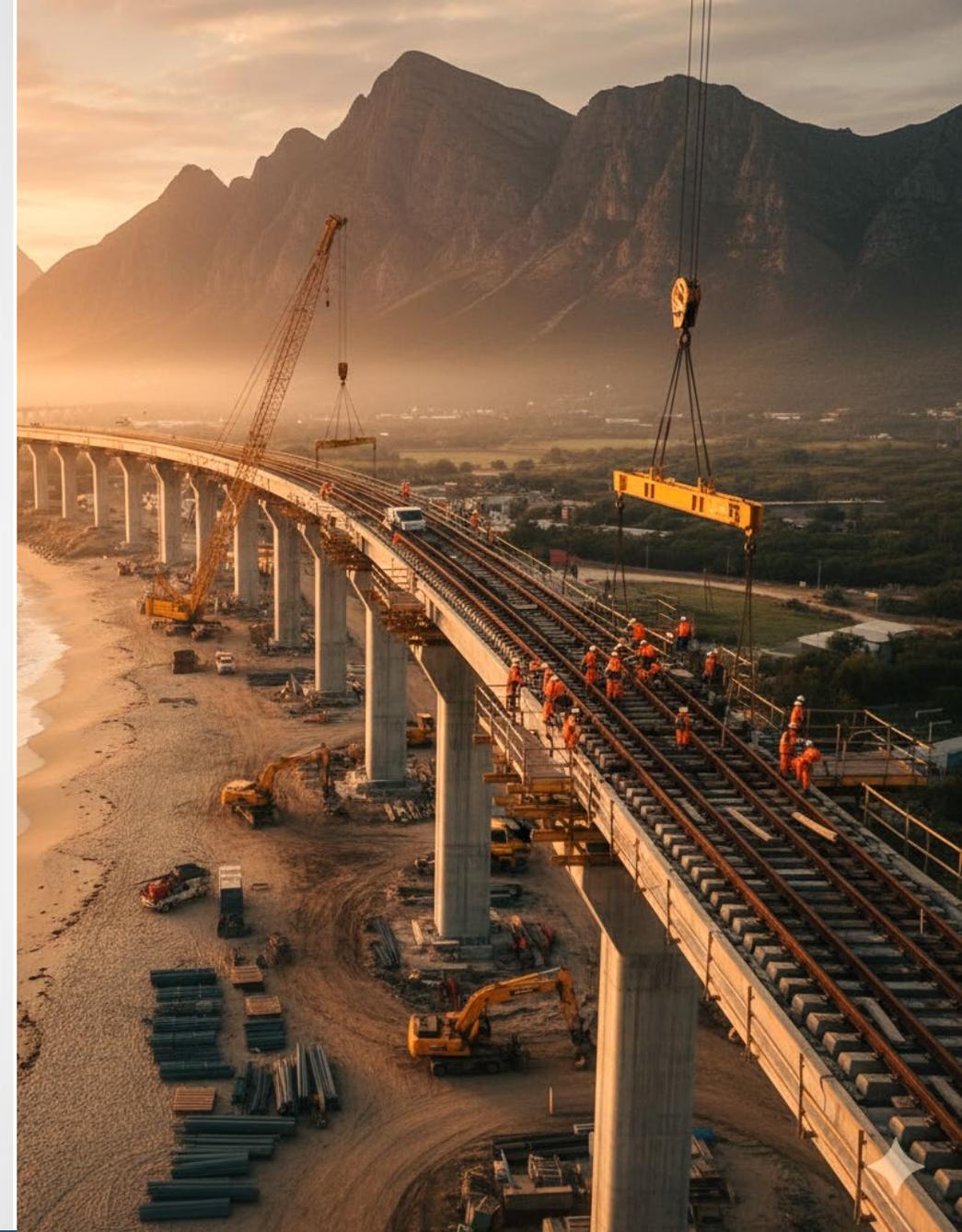
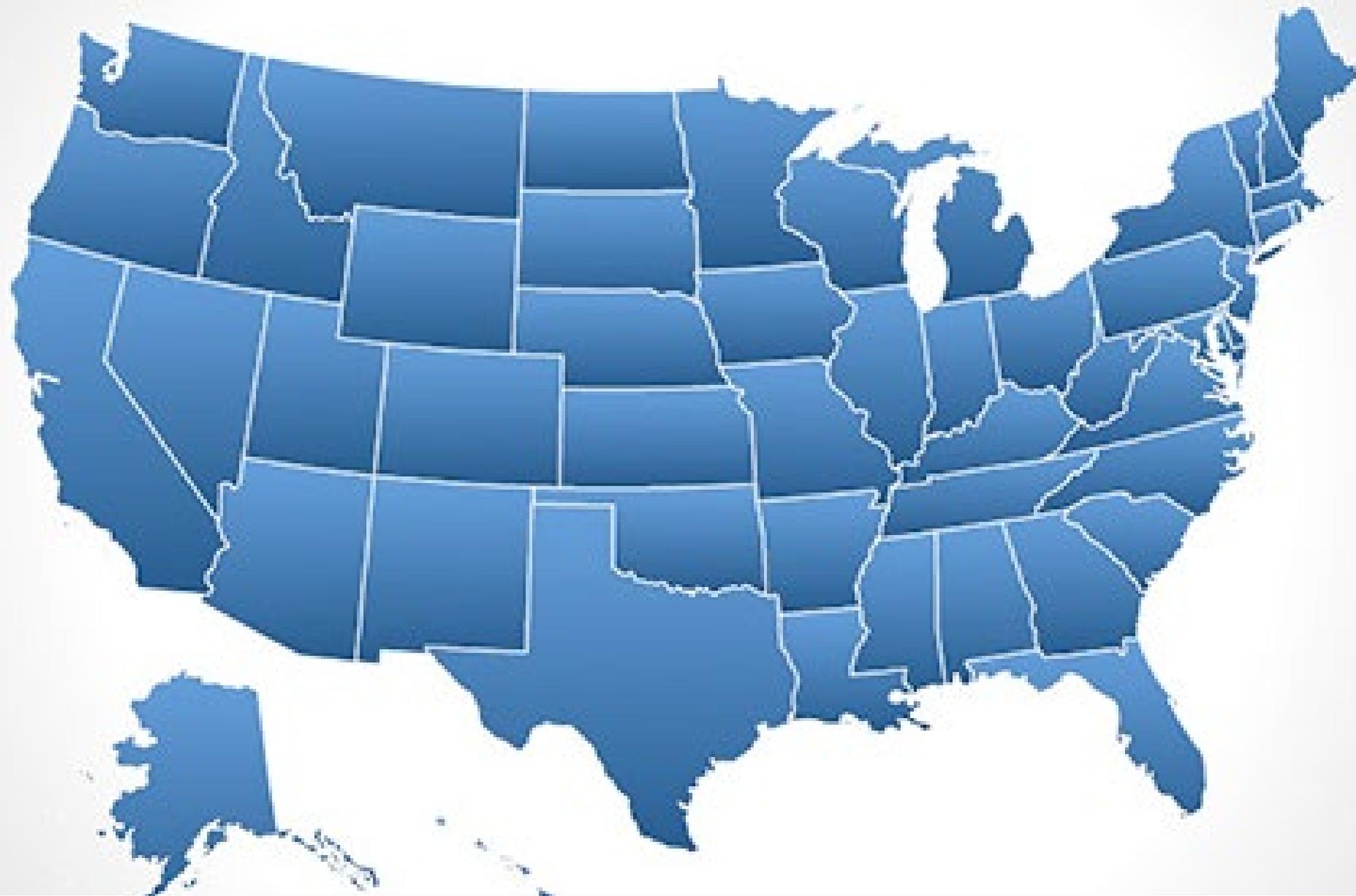
Best Practices

- Identify the Parties
- Define Shared Common Legal Interest
- Identify the Scope of the Agreement
- Define Cooperation
- Define Confidentiality
 - Non-Disclosure
 - Third Party Requests
 - Injunctive Relief

Common Interest Agreement Drafting Considerations

Best Practices

- Define the Pass-Through Process
- Not retrospectively inoperative if dispute / adversity
- No Basis for Disqualification
- Withdrawal



**Is the Common Interest Doctrine
Recognized Nationwide?**

Collaboration Under a Common Interest Agreement



**AVOID
FIGHTING TWO
SIMULTANEOUS
BATTLES**



PROCESS



**SAFEGUARDING
CONFIDENTIALITY
AND PRIVILEGE**



**PROTECTED
VERSUS
NOT PROTECTED
COMMUNICATIONS**

Crenshaw/LAX Light Rail Transit Project

- **How did the Common Interest Agreement develop?**
- **Tolling Agreement**
- **Driving Force for Claim Resolution**
- **Key Highlights**



Orange County Streetcar Project



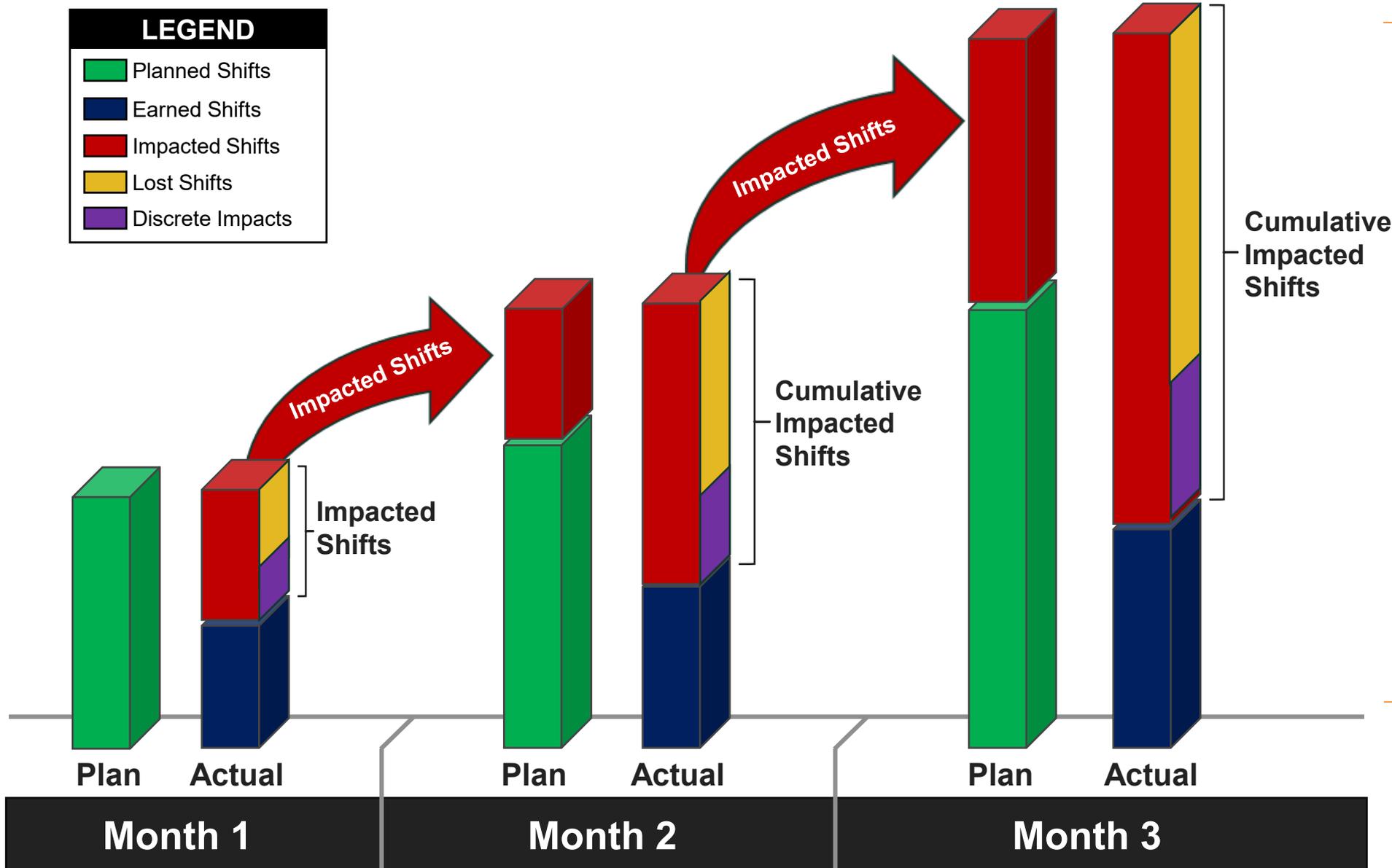
- How did the Common Interest Agreement develop?
- Tolling Agreement
- Driving Force for Claim Resolution
- Key Highlights

Miami Metromover Project



- **How did the Common Interest Agreement develop?**
- **Tolling Agreement**
- **Driving Force for Claim Resolution**
- **Key Highlights**

Delay Technique Mastered through a Collaborative Common Interest Agreement



- **Owner restrictions impacting progress?**
- **How were these impacts converted into measurable schedule delay?**



**Brian
Rice**

516.743.1984

BRice@railworks.com

Vice President, Associate General Counsel,
Chief Litigation Counsel
RailWorks Corporation



**Mark
Masterson**

407.622.5250

mmasterson@moyeobrien.com

Managing Partner
Moye, O'Brien & Masterson, LLP



**Megan
Cantlebury**

407.622.5250

mcantlebury@moyeobrien.com

Partner
Moye, O'Brien & Masterson, LLP



**Luke
Eaton**

213.892.7974

lukeeaton@cozen.com

Member
Cozen O'Connor



**Tim
Hampson**

267.242.8809

tim.hampson@ankura.com

Managing Director
Ankura Consulting Group

