

Litigation Case

Case Study

Introduction

A fabrication subcontractor was awarded a \$5.6 million contract for the fabrication of five vessels for a large chemical plant expansion project. The fabrication subcontractor then issued a purchase order with another company to perform the post-weld heat treatment of three vessels for approximately \$100,000.

After the post weld heat treatment of one of the vessels (10' dia. x 130'), the vessel was determined to be dimensionally out of compliance. The fabrication subcontractor filed a lawsuit against the post-weld heat treatment subcontractor and claimed over \$5 million in alleged actual, delay, and consequential damages.

Key Issues

The following issues framed the effort and set the priorities for development and implementation.

- At the time of the original post-weld heat treatment, the fabrication subcontractor was already behind schedule.
- After the vessel was determined to be out of compliance, the fabrication subcontractor began constructing a new replacement vessel.
- To ensure that the replacement vessel met the contract requirements, the fabrication subcontractor upgraded the vessel in steel strength and structural support.

Role

Our consultants' role was to independently determine the following:

- Separation of vessel replacement costs and improvement costs.
 - Validation of reasonable vessel replacement costs.
 - Quantification of the delay impact to the project completion date due to the out-of-round vessel incident.
 - Assessment of the validity and quantification of the consequential damages, which were alleged delays to other projects and lost opportunities because of said delays.
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Deliverables

The expert report sequentially addressed each of the fabrication subcontractor's alleged direct damages. After comparing the original specifications and drawings to the replacement specifications and drawings, the improvement costs were deducted from the replacement costs.

The expert report also discussed the fabrication subcontractor's consequential damages due to alleged project delays. The project schedules, progress reports, and other project documentation were analyzed, and the project critical path was not impacted by the re-fabrication of the vessel.

The report linked the project's delayed completion date to the general contractor, fabricator, and other subcontractors' actions. Furthermore, the report graphically demonstrated that the post-weld heat treatment subcontractor did not impact the project's completion date nor cause other project delays.

Results

Of the \$5 million in damages the fabrication subcontractor sought, only approximately \$200,000 was valid. The remaining \$4.8 million was determined to be unsubstantiated, duplicative, or not related to the replacement of the post-weld heat treatment. Our consultant presented a report at mediation and settlement discussions continued after adjournment. The client settled favorably.