

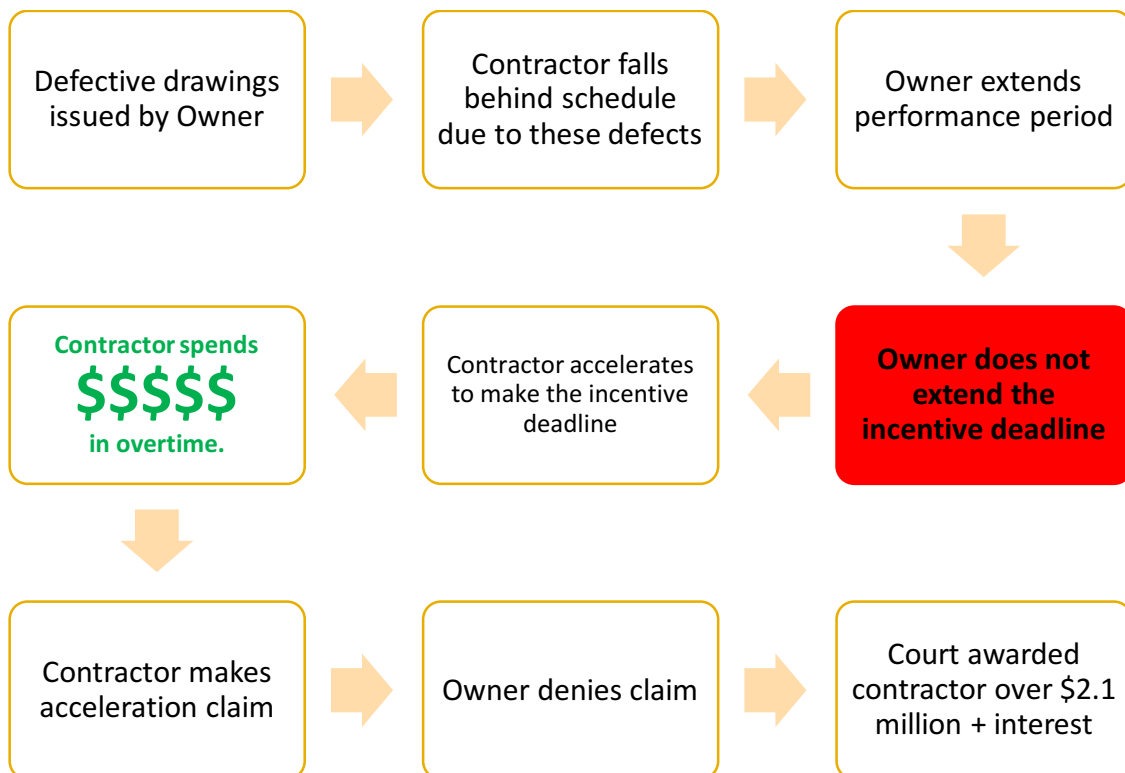
Contractor Wins Acceleration Impact Cost AND the Incentive Payment (1995)¹

Executive Summary: The Pennsylvania Department of Transportation (PennDOT) awarded a time sensitive bridge rehabilitation project to a contractor and, within the contract, provided a large daily incentive payment for early completion. PennDOT delayed the project and refused to pay the acceleration claim. PennDOT lost in Pennsylvania court.

Hey Mr. Owner, you can't have your cake and eat it too! But, in this case, that is exactly what the owner was attempting. Thankfully, their own state court put an end to this bad faith act and equitably awarded the contractor.

Background: Here's the rundown on what happened on this bridge rehabilitation project near Pittsburgh, Pennsylvania:

Sequence of Events ***Department of Transportation v. Anjo Construction Co., 666 A.2d 753 (Pa.Cmwlth. 1995)***



1. Bruce Jervis, Esq., Editor, "Contractor reconstructs bid to prove acceleration costs," *CONSTRUCTION CLAIMS MONTHLY*, volume 18, no. 2 (February 1996): 3.

About the author: Scott Jennings, P.E., is the President of SJ Construction Consulting, LLC. He recently owned and operated a heavy/civil construction company and now provides cost estimating, litigation support, and efficiency advice to contractors. He is the founder of Runjob Software, Inc.

The owner's defective drawings appeared to be the sole cause of the project delay. And despite this fact, the owner felt it was fair to only push back the project completion date – not the incentive deadline.

So, as you can imagine, with the following carrot still out there:

\$14,350 * 100 days = \$1,435,000 of potential early completion bonus!!

the contractor did everything possible to achieve an early completion at or before the incentive payment deadline.

I can see how this went down in every weekly progress meeting. The contractor said over and over that the owner delayed the job and that the incentive payment deadline should be moved along with the project completion date. And week after week the owner stated that they weren't able to move the incentive deadline, but that they could move the completion date so that a financial penalty would not be incurred by the contractor.

Kudos to the contractor (and their attorney) who felt confident enough to move forward full bore (working excessive amounts of overtime) to complete the job in time (per the original incentive milestone date) to win an incentive payment.

Herein lies the despicable act – watching the contractor work all of this overtime to meet an incentive date that should have been moved along with the completion date. This regular observation of the excessive overtime being expended by the contractor to meet the date, with the owner knowing full well the reason for this effort, is termed *constructive acceleration*.

Conclusion: PennDOT made the wrong choice during the project. If they had done the right thing and extended the incentive deadline along with the completion deadline, they could have saved the taxpayers from paying for the contractor's acceleration (in addition to the incentive payment which was earned).

