**Delay claim case study exercises**

The case supports many alternative exercises. Here are several that work well, especially when assigned to relatively small groups of students working together.

1. Explore the pros and cons of trying such a case to a jury instead of by a bench trial or arbitration, with some students assigned to defend the plaintiff’s decision to demand a jury trial, and others presenting the opposing analyses.

2. Analyze whether and how an expert might be used on the Section 10.4 contract interpretation issue and whether a court should allow expert testimony on that issue

3. From the distinct perspectives of the plaintiff and the defendants, discuss strategies for dealing with Brannon’s delay analysis in his expert report. What are the pros and cons of the windows analysis and alternatives to that analysis?

4. From the distinct perspectives of the plaintiff and the defendants, discuss strategies for dealing with the problem, highlighted by Brannon’s and Heath’s testimony at trial, that the baseline schedule from which Brannon’s analysis began was flawed by the omission of certain activities on the critical path.

5. Develop strategies for a hypothetical retrial of the case in which the plaintiff contractor will retain a new expert to replace Pat Brannon. Focus especially on these aspects of the hypothetical retrial: (1) the role and effectiveness of the plaintiff’s delay analysis expert; (2) the expert’s handling of a serious flaw in the project’s baseline schedule; and (3) the significance of Section 10.4 of the owner-contractor agreement. Here are specific topics, which may be assigned to distinct groups of students for purposes of a retrial planning exercise:

• Topic 1 As counsel for the general contractor, how will you prepare the new expert for his testimony and how will you qualify him as an expert witness? What specific opinions will you expect to elicit from the new expert, and how will you present that testimony so that it will be convincing to the jury?

• Topic 2 As counsel for the owner, at trial do you plan to challenge the new expert’s qualifications as an expert who should be allowed to give opinions similar to those Brannon gave in the original trial? Why or why not, and what viable bases could you advance for such a challenge? Also (and more importantly for our purposes), how will you prepare to cross examine this new expert? What specific questions do you anticipate asking the expert on cross examination, and why?

• Topic 3 As counsel for the general contractor, and assuming that the plaintiff’s expert offers substantively similar opinions to Brannon’s at the original trial, how will you plan to use that testimony in your closing argument? You should have an outline of the argument you will make, which you should limit to the expert’s anticipated testimony on the plaintiff’s behalf.

• Topic 4 As counsel for the owner, and assuming that the Plaintiff’s expert offers substantively similar opinions to Brannon’s at the original trial, how do you plan to attack and minimize the impact of that testimony in your closing argument? You should have an outline of the argument you will make, which you should limit to the expert’s anticipated testimony on the plaintiff’s behalf.

• Topic 5 As counsel for the general contractor, how will you use Section 10.4, and what testimony (expert or otherwise) will you propose to introduce to establish the meaning and significance of Section 10.4?

• Topic 6 As counsel for the owner, how will you deal with Section 10.4, and what testimony (expert or otherwise) will you propose to introduce to establish the meaning and significance of Section 10.4?