

## **Concurrent Delay: An Alternative Proposal For Attributing Responsibility (15 October 2014)**

On 15 October 2014 the SCL hosted the talk “*Concurrent Delay: An alternative Proposal For Attributing Responsibility*” by Dr Franco Mastrandrea and Mr Steve Briggs from Hill International, chaired by Mr Chen Han Toh, from Pinsent Masons MPillay.

The speakers set the scene by summarising some of the key concepts and difficulties which typically arise when assessing concurrent delay, including application of the “*but-for*” test and the prevention principle. The current trends in various jurisdictions were also helpfully summarised. Dr Franco Mastrandrea then expressed his views as to various shortcomings in current English law and practice in this area, including the general rejection of an apportionment approach to assessing concurrent delay.

It was then on to the main event – the presentation of an alternative proposal for attributing responsibility for delay in the form of a retrospective “*but-for apportionment*” analysis which seeks to take account of all delaying events and apportion responsibility between the contracting parties by reference to the significance of each of the relevant causes.

The proposal prompted some interesting questions from the audience. Unsurprisingly, some queried the favouring of a retrospective apportionment analysis over a Time Impact Analysis which can evaluate delays as they occur. However, Dr Franco Mastrandrea made a compelling case as to why the alternative analysis proposed could, in certain circumstances, be a superior means of determining ultimate responsibility for delay. It was certainly a very informative and thought provoking talk.

Contributed by  
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