



Expert Witness Report

BETWEEN:

“Minnowa Construction, Inc”

Appellant/Claimant

And

“Iowa Department of Transportation”

1st Respondent/Defendant

SCHEDULING EXPERT REPORT

BY



HSE CPM SCHEDULING CONSULTANTS

Specialist Field : HSE CPM Scheduling Consultants

Subject Property : Construction of Bridge 616, Story County, IA

Instructed By : Iowa Department of Transportation

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1.0 Introduction

The Project of construction of Bridge 616 Contract ID (85-0354-18) located in Story County, IA.

We have been asked to consider the Project events as they relate to Minnowa's Construction, Inc delayed finish date as assessed by IDOT at the conclusion of the Project.

We have reviewed various documents relative to the issues in this matter. To form these opinions, we relied on certain project documents produced by Minnowa, IDOT and HRS including, but not limited to Contract Documents, correspondence, Project schedules, IDOT Daily and Weekly Reports, Minnowa Field Reports.

1.1 Formal Details

Bridge 616-Contract ID 85-0354-183 is a new steel girder bridge at the interchange of Interstate 35 and US Highway 30. This project was awarded to Minnowa Construction, Inc. on or around September 20, 2016.

This structure provides an improved access from northbound I35 to westbound US Highway 30 by means of an aerial traffic lanes "flyover". The reinforced, cast-in-place. concrete bridge substructure consists of a north and south abutment and six pier footings with flared "T-shaped" stem and cap.

The superstructure is composed of five parallel welded steel girders with a reinforced, cast-in-place concrete deck. In order to integrate the structure with the existing roadway configuration the geometry is complex.

In addition to the bridge approaches, substructure, and superstructure; the project included grading, paving and drainage structure improvements.

2.1 The Parties

Claimant/Appellant: Minnowa Constructions, Inc.

1st Respondent/Defendant: Iowa Department of Transportation

2.2 Property Address: Bridge 616 Contract ID (85-0354-18) located in Story County, IA

2.3 Issues

- After Contract award on or around (September 20, 2016). IDOT acknowledged Minnowa that a steel girder is required therefore, Minnowa Construction, Inc. had to develop erection plan prepared by a professional engineer for IDOT's review and approval which was submitted on (Feb. 2018). As the approval process evolved, additional requirements were instructed by IDOT that resulted in a delay in the project finish date as a direct consequence for Minnowa Construction lack of planning and preparation for the project.
- Minnowa Construction, Inc. claims that work days would not be assessed to the Contractor during the winter work period from November 15 to April 1, weekend days, and nine (9) State recognized holidays, even if the Contractor was able to achieve progress toward completion.
- Based on the approved time of 391 working days and the 471.5 working days recorded; there's a delay of 80.5 days after the estimated project completion.
- IDOT asserts that the late completion of the Project is unexcused and has assessed Minnowa 80.5 days liquidated damages at \$5,500 per day for a total of \$442,750.

2.4 Documents Relied Upon

- Certified Claim Combined 11-5-20.
- 5-11-2017_1618- Updated Schedule.
- Schedule (Partial Combined 11-5-20).
- 2021.04.09 Minnowa Disclosure of Expert Witnesses.

- Ex AA - Emails - 3-8-18 for Minnowa PM #1 to IDOT representative

This e-mail summarizes the position of the contractor that for as quoted **"It would save us considerable dollars not having to put towers in"** which indicates its behavior for saving money with no concern about time wasted.

- Ex GG - 4-23-18 email for Minnowa PM #1 to IDOT project engineer and others

This e-mail summarizes the position of the contractor that for as quoted **"looks like our beam seat elevations are out of tolerance"** which refers to their accountability for the delay happened. Another quote is **"The abutments we did not have revised elevations for so they are off a little"** which refers to even more delay happened through their late respond on behalf of deconstructing and remediating processes.

- Ex FF - 4-20-18 letter to IDOT project engineer from Minnowa PM #1

This e-mail summarizes the position of the contractor that for as quoted **"I am writing you today to inform you of a change in the project management"** which refers to the lack of responsibility in the Minnowa Construction, Inc. to let go of the project manager in such a critical situation and phase throughout the project.

- Minnowa PM #1_FullSize-w-exhs

In this testimony in page no. (71), Minnowa PM #1 who was the project manager of this project as described by the "Owner of Minnowa Construction, Inc." when he asked if he had any kind of experience with curved steel girder bridges prior this flyover project; admitted that as quoted **"Me personally? No"** which indicates that Minnowa did not assign the adequate personnel to direct its operations throughout this project with such incompetent team.

- Ex ZZ - 5-15-18 email from IDOT project engineer to Minnowa PM #2– 14694

This e-mail from IDOT project engineer questioning about as quoted **"how you are coming on the template check of the anchor bolts. Can you provide an update?"**. This e-mail dated on May 15th, 2018 which is about 25 days of Minnowa PM #2 is assigned as the project manager and the steel anchor bolts template is not ready while the deconstruction of piers and abutments is taking place which leads to a further delay.

- E-mail on Friday May 24, 2019 at 10:05 AM from IDOT project engineer

As quoted **"I just wanted to remind you about the 'substantial completeness'. Any work that is not critical to opening of traffic could wait until after the bridge is open (substantially complete)"**. This e-mail summarizes the position of IDOT which reflects its need to finish the project as fast as they could in comply with the contractor which is advised to how to reschedule the remaining activities to meet the substantial completion date.

- Minnowa PM #1_FullSize-w-exhs

In page no. (73) when he was asked about the chain of command on this project; he answered as quoted **"It would be I guess the owners are pretty much the same, ownership. Minnowa PM #2 was my boss and then I was directly under Minnowa PM #2, and under me was the supervisor, and under the supervisor was the foreman"**. That reflects that there was no specific order to Minnowa management in this project. As listed earlier Minnowa PM #1 when resigned from Minnowa, they brought up Minnowa PM #2 to fill his place. How could that be possible if Minnowa PM #1 as he described himself was an assistant to Minnowa PM #2. That is also a huge spot on the inefficiency of this team to run such a project.

- Minnowa PM #1_FullSize-w-exhs

In page no. (111) when he was asked about the reason then for Minnowa to demolish substantial portions of the pier caps and the abutments to reinstall the anchor rods; he answered as quoted **"I guess, my opinion is that the elevations were wrong "**. His confess make the final decision about who's to blame on a delay of 3 months between May 2018 to August 2018.

- Minnowa PM #1_FullSize-w-exhs

In page no. (113) when he was asked if he recall instructing Minnowa construction's foreman to use a specific type of template to install the anchor rods in the first attempt; he answered as quoted **"The only thing I can recall is what we had come up with when the four of us sat down to develop a plan, and that was plywood."** which did not comply with the drawings which states it should be a steel one to make sure that those rods are being set and plumped correctly.

- E-mail from IDOT to Minnowa PM #1 on Mar 9th, 2018

It refers to Minnowa Construction, Inc. still did not submit the erection plan which made beam setting starting March 19th, 2018 does not seem very realistic, Minnowa PM #1 replied on the same day as quoted **“I would not get too hung up on that start date”**. On April 6th, 2018 another e-mail from IDOT to Minnowa PM #1 stated that Minnowa Construction, Inc. has not submitted the erection plan yet. That says a lot about how Minnowa planned their work during the project.

- Minnowa Foreman deposition With Exhibits

In page no. (38) when he was asked as quoted **“Did the rebuilding of pier one take you off of other tasks that you were trying to perform?”** He answered as quoted **“Yes”**. In the same page when he was asked as quoted “would I be correct in saying that the progress of your crew was delayed, in having to tear down or rebuild pier one?”, he answered as quoted **“I guess so, yes”**. Which refers to the lack of resources assigned by Minnowa Construction, Inc. Did they submit a resource plan or resource loaded time schedule?

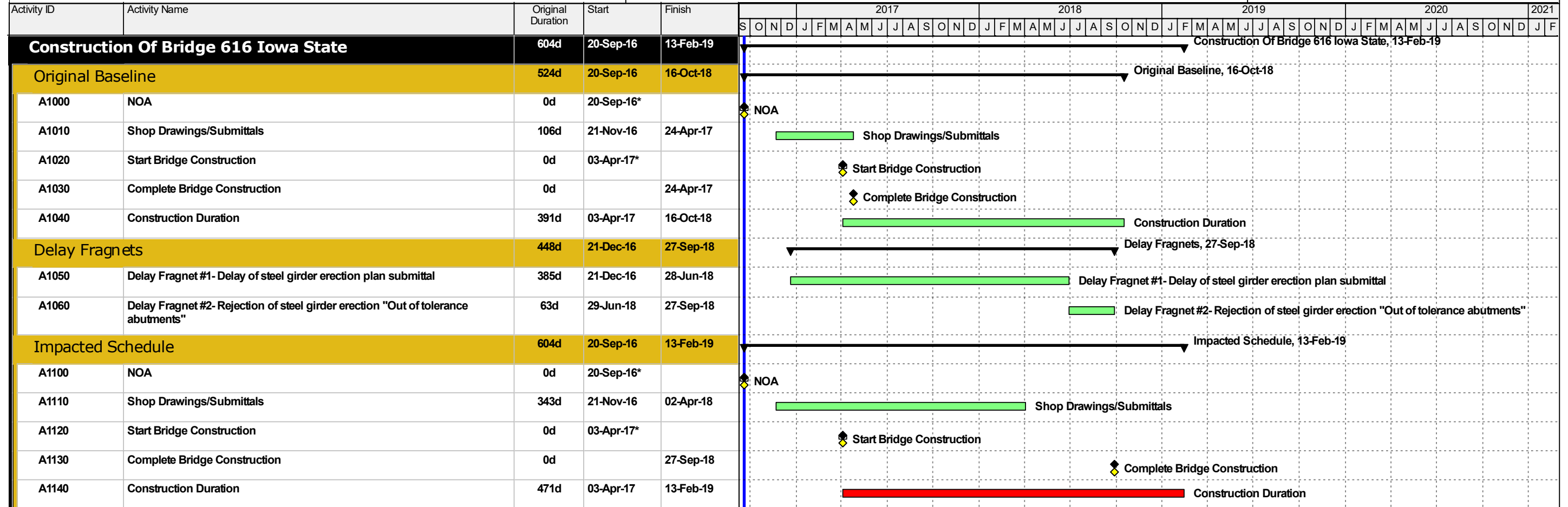
- E-mail on March 27, 2017 from IDOT project engineer to Minnowa PM #1

IDOT project engineer asked Minnowa PM #1 to provide her with an update schedule and erection plan and he replied after few minutes later that he will get that staff ASAP; On May 11th, 2017 “one and half month later” he submitted the update schedule and then submit the erection plan between Feb to May 2018 (12-14 months after that date).

- Minnowa Foreman deposition With Exhibits

In page no. (17) when he was asked about his responsibilities while working for Minnowa Construction, Inc., he answered as quoted **“To supervise a crew, erecting forms, shooting elevations”**. In page no. (11) when he was asked as quoted **“Did you do any surveying as part of that course?”**, he answered as quoted **“No”**. Which indicates the roots of the problem of mistaken elevations regarding the abutments & piers causing a rework “delay” between May 2018 to August 2018.

MINNOWA'S CLAIM

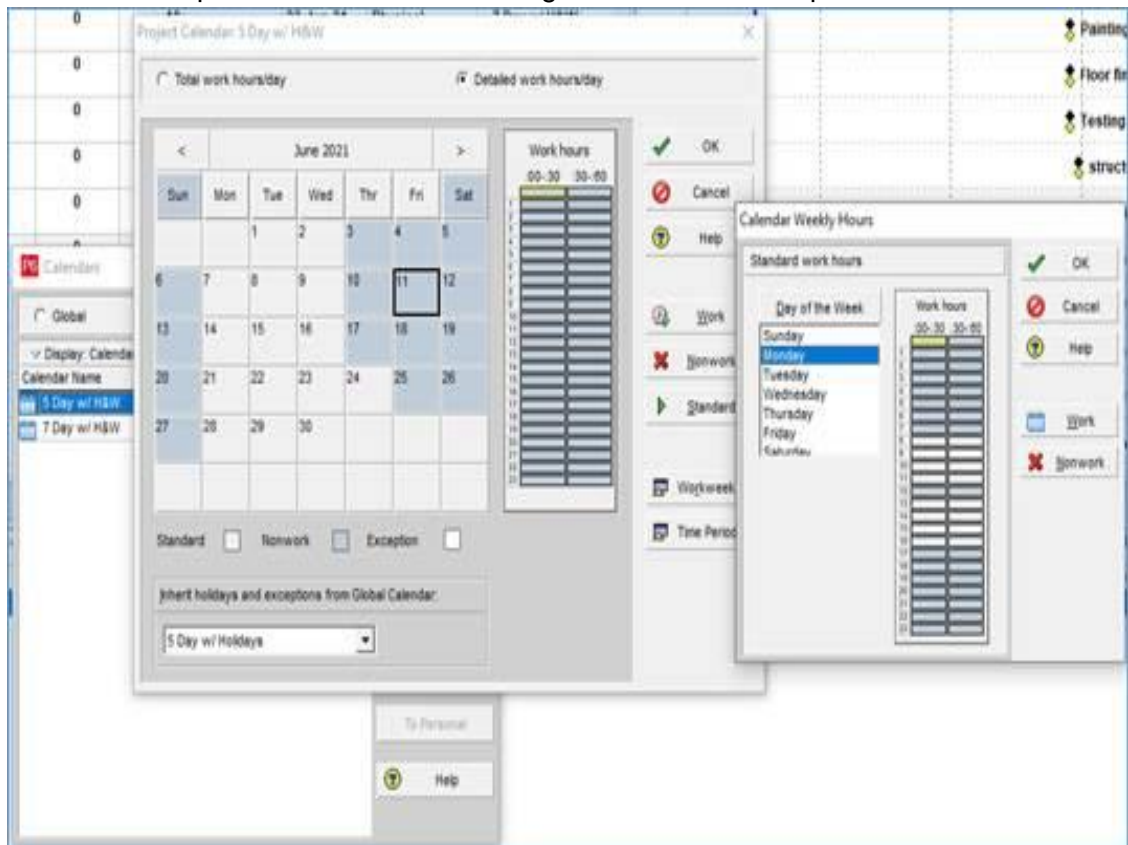


■ Remaining Level of Effort
 ■ Remaining Work
 ■ Actual Level of Effort
 ■ Critical Remaining Work
 ■ Actual Work
 △ Finish Constraint
 ◆ Baseline Milestone
 ◆ Milestone
 △ Start Constraint

Date	Revision	Checked	Approved

3.0 GENERAL FACTS ARISING FROM INSPECTION

- Regarding Mr. William Ashton's notes:
 1. The statement "Mr. Ashton will testify that the contract was awarded based on Minnow's means and methods and that no steel girder erection plan was required to be submitted". Can this statement be verified? Construction schedules should include a Procurement section grouped into "Prepare and Submit", "Review and Approve" and "Fabricate and Deliver". The schedule does not include this section in their schedule and accordingly this can neither be verified nor confirmed based on the CPM.
 2. IDOT notified Minnowa in Oct 2016 that a steel girder erection plan was required but Minnowa submitted the plan in Feb 2018 (16 months after initial request). This delay in submission needs to be explained by Minnowa as it is taking up the float time.
 3. Contractors are generally required to coordinate and observe road closure timings with local authorities prior to bidding. The construction calendar should reflect available working hours in order ensure the project can be completed as proposed.
- Below is a snapshot of the calendar timings from P6 as a sample:



Minnowa did not use an adequate scheduling software that can predict and plan timings as shown in the snip above.

4. Minnowa did not submit an equipment list with their bid Cranes and their tonnages
5. Regarding the alleged verbal instruction to tie the two beams; we need to discuss and agree whether or not this was really the only option. Could the contractor have scheduled one beam at a time if they had used CPM in the baseline.

- Regarding Mr. Galranyk's notes:

1. The statement "It seems that the steel erection plans were approved on June 27th, 2018 and Minnowa could not have started prior to that date". It needs to be clear that they were only submitted in Feb 2018 when they should have been submitted in Oct 2016.

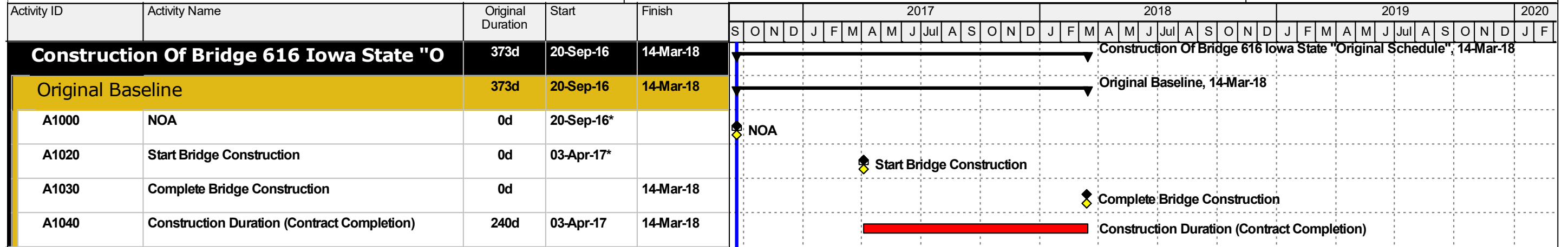
- Regarding Mr. Sniegowski's notes

1. There is no fragmentary delay analysis to demonstrate the impact on the critical path.
2. The simulation is a visual layout that was not prepared using a scheduling software. Information is missing such as critical path, data date, remaining work, completed work. Activity durations are excessive and need to be broken down.
3. The contractor did not use a contemporaneous method to analyze delays. Schedule updates and reported delays are not shown.

Furthermore; we would like to state that after reviewing all documents related to this project especially "The Developmental Specification" which prevail over those published in the standard specifications which states the following statement "Base the progress schedule on an adequate daily working hour schedule, with sufficient materials, equipment, and labor being furnished to ensure completion of the contract within the contract period. Commence and prosecute the work according to the accepted progress schedule, with forces and equipment adequate to complete the controlling operations on schedule." Which we believe it was not submitted to IDOT as we reply on Mr. William Ashton notes.

From all of these Points; we HSE Contractors believed that IDOT instructed Minnowa Constructions, Inc. throughout the project to reach the contract completion dates with no delays.

HSE DETERMINTAION



 Remaining Level of Effort	 Remaining Work	 Finish Constraint
 Actual Level of Effort	 Critical Remaining Work	 Baseline Milestone
 Actual Work	 Start Constraint	 Milestone

Date	Revision	Checked	Approved

4.0 OPINION

We at HSE Contractors, after reviewing all the documents believe that “Minnowa Constructions, Inc.” with its performance throughout the whole project could not commit to the final completion date with “IDOT” and as shown in Sec. No. (3) (General Facts Arising from Inspection) there are many reasons of delay occurred by Minnowa Constructions, Inc. even if IDOT extends the contract project duration from 240 days after the late start on April 3, 2017 by 128 days (Winter season gab) to be 368 days by the end of the project.

5.0 SUMMARY

We at HSE find the claims raised by the claimant “Minnowa Construction, Inc.” are inexcusable therefore, non-compensable.

6.0 Expert's Declaration

- 6.1 We confirm that insofar as the facts stated in this report are within my knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.
- 6.2 We understand that my duty included in my providing written reports and giving evidence is to help the court, and that this duty overrides any obligation to the party who has engaged me. I confirm that I have complied with my duty.
- 6.3 We have endeavored to include in my report those matters, which I have knowledge of or of which I have been made aware, that might adversely affect the validity of my opinion.
- 6.4 We have indicated the sources of all information I have used.
- 6.5 We have not, without forming an independent view, included or excluded anything which has been suggested to me by others.
- 6.6 We will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.
- 6.7 We understand that:
- a) My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath or affirmation
 - b) We may be cross-examined on my report by a cross-examiner assisted by an expert;
 - c) We are likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
- 6.8 We confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- 6.9 The above declaration is in accordance with the requirements of the Civil Procedure Rules, and in particular Rule 35 "Experts and Assessors".

.....
Date

7.0 List Of Appendices

- Certified Claim Combined 11-5-20.
- 5-11-2017_1618- Updated Schedule
- Schedule (Partial Combined 11-5-20).
- 2021.04.09 Minnowa Disclosure of Expert Witnesses
- Ashton 2021.05.25 Expert Report
- Galarnyk 2019.12.31_09.26 Expert Reports
- Sniegowski 2021.06.07 Expert Report
- Emails - 3-8-18 for Brian Connell to Ron Benson
- 4-23-18 email for Brian Connell to Jenny Hoskins and others
- 4-20-18 letter to Jenny Hoskins from Brian Connell
- Connell-Brian Testimony 7-9-2021
- 5-15-18 email from Jenny Hoskins to Quentin Thorson
- E-mail on Friday May 24, 2019 at 10:05 AM from Jenny Hoskins