



25TH CONFERENCE  
OF THE  
GERMAN INTERNATIONAL  
CONSTRUCTION LAW COMMITTEE

# The Tiny Contract Provison that Shook the Ground

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Contract & Claim Manager  
Andritz Metals Germany GmbH

**ANDRITZ**

ENGINEERED SUCCESS

# WHAT IS GOING ON IN THIS PRESENTATION



- No earthquake(s) really happen(s) in here ...
- No natural caused disaster will be reviewed or discussed ...
- No lives , no damages of man-build-structures due to an earthquake impact will be explored.
- A contractual dispute arising from a change in law during execution of an EPC contract will be briefly introduced ...
- ... where **only** the nerves of the Project Managers and Claim Managers heavily suffered and were significantly wrecked during a long and tiring claim and later mediation process ...
- ... thankfully no other harm did surface !!!

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**Strip processing and rolling**  
Complete processes – all from a single source

ANDRITZ Metals is one of the few single-source suppliers worldwide capable of providing all technologies and processes involved in the manufacturing of steel strip on a comprehensive basis: mechanical, process, electrical equipment and automation, as well as lifecycle services. For our customers this ensures interface minimization as well as consistent optimization of the overall process.

**Since 1689**



**Today**



# CLAIMSMANSHIP

@ ANDRITZ Metals Germany GmbH

>> Ensuring the Predicted Economic Success of Projects<<



# “CLAIMSMANSHIP” - SOME DEFINITION

Zack Jr., James G., Journal of Construction Engineering and Management, Volume/Issue 119/ 3

One result of this trend has been that more projects end up in major disputes now than at any time in history. It has been suggested that the project’s dedication ceremony is no longer at the end of the job, but at the beginning of the final phase of the project—the dispute phase. As a result, a new project-management style or tactic has grown over the past two decades—the management of construction claims, or “claimsmanship.” Claimsmanship does not take the place of strong project management. Rather, claimsmanship frequently is a tactic used in the absence of good project management. It seems to revolve around two basic tenets: “What’s mine is mine, what’s yours is negotiable”; and “if you don’t ask, you won’t get.” Notwithstanding the negative influence of claimsmanship on the construction industry as a whole, it has also recently resulted in some positive project management practices that may benefit the industry as a whole over the long run.

*Claimsmanship*, as used in this paper, is generally defined as the art or practice of making and winning claims by questionable expedients without actually violating the rules. It is the writer’s contention that claimsmanship, which used to be practiced only by a small group of specialists, is now played



Publication year: **1993**

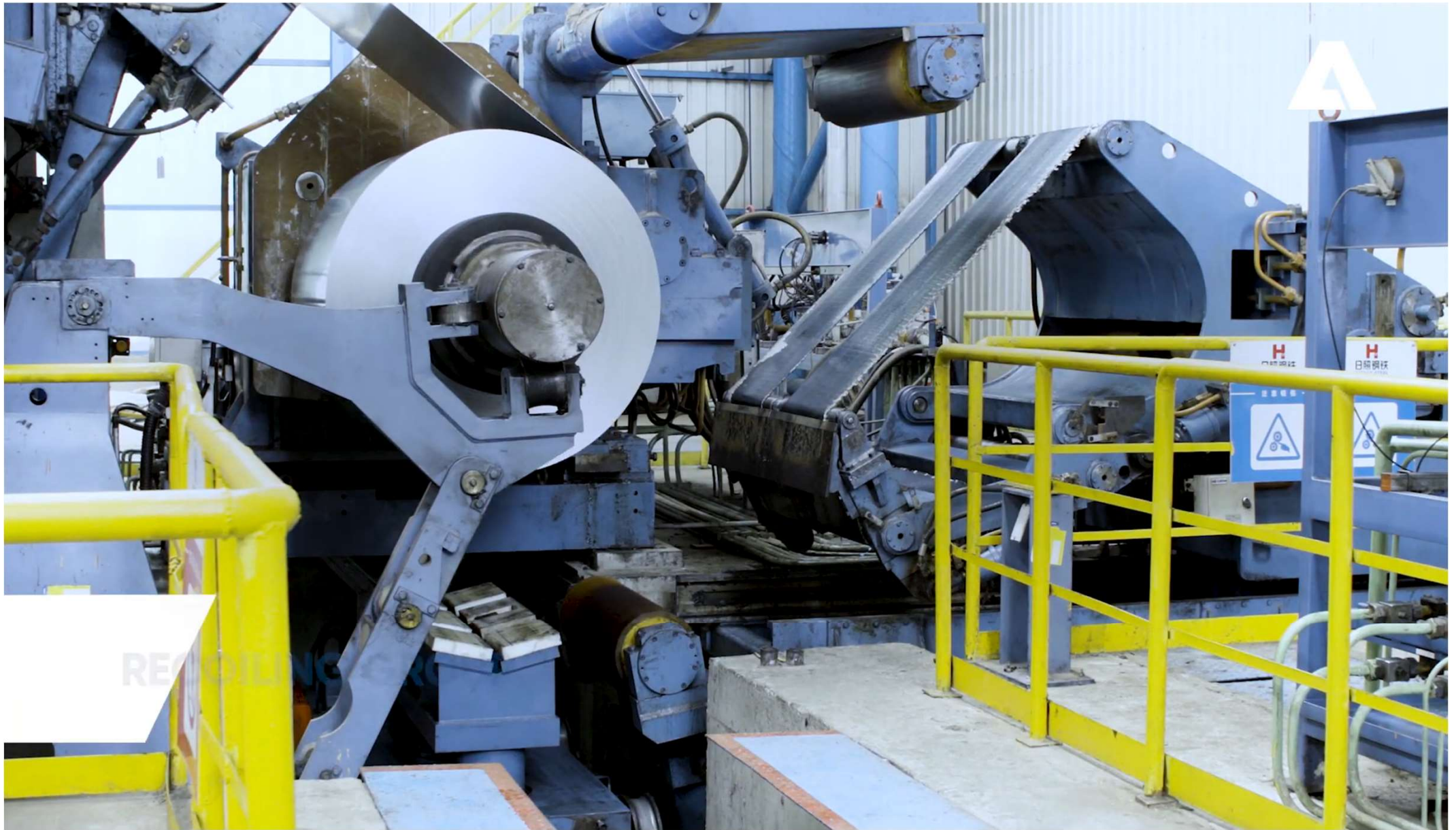


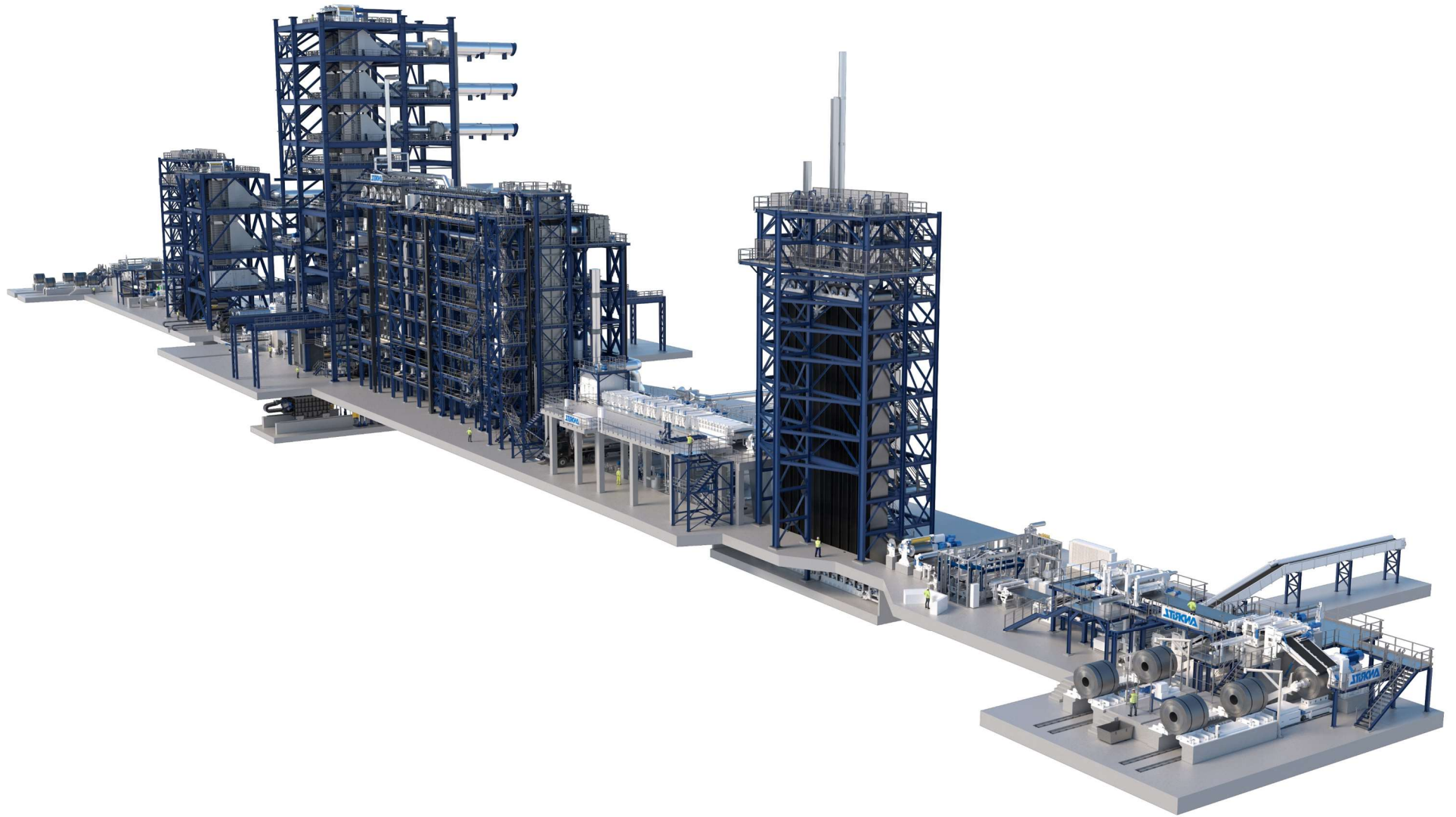
**„A RANDOM CASE“**  
THE LINE:  
CGL - Continuous Galvanizing Line

02











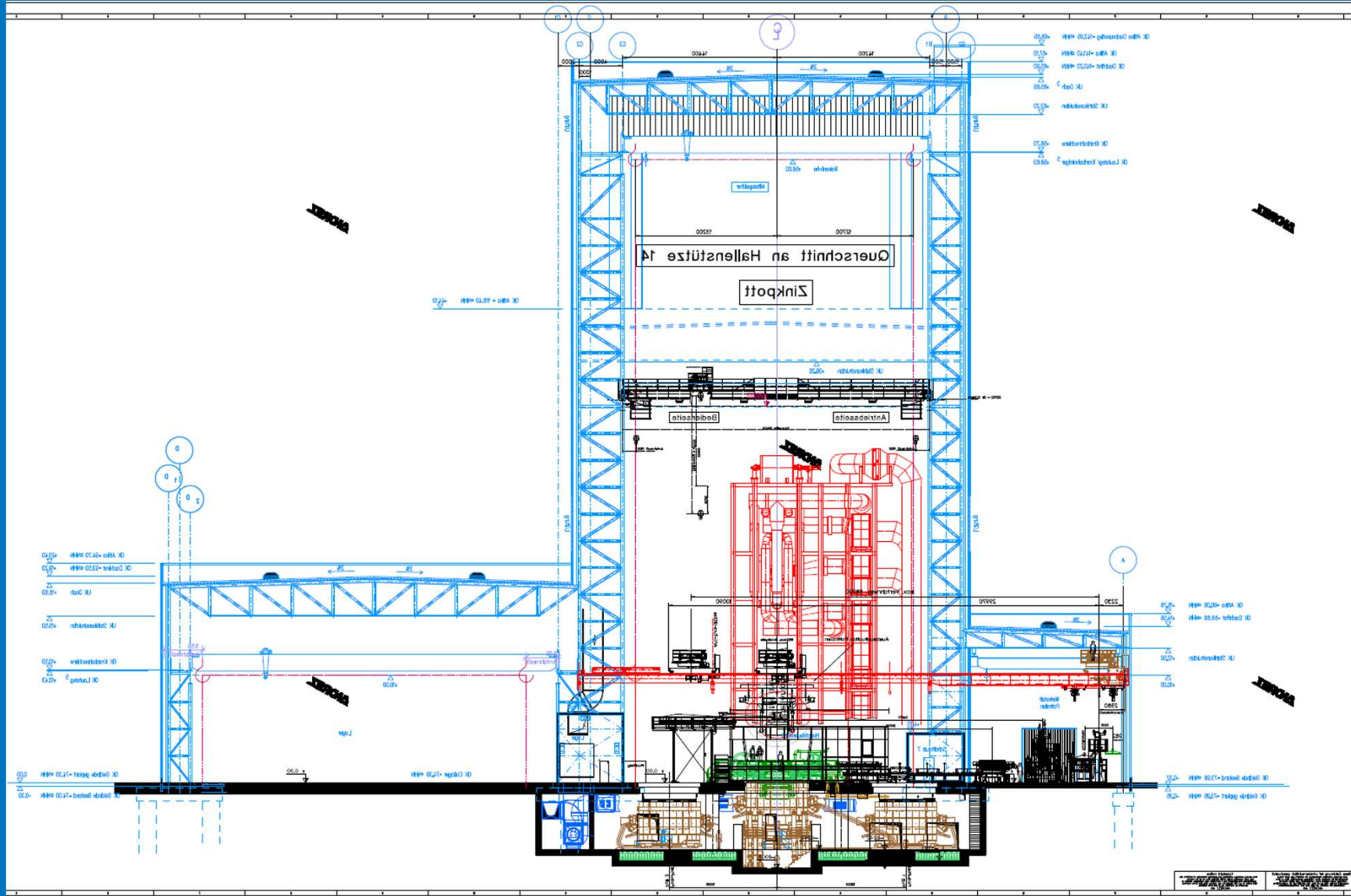


# „A RANDOM CASE“

THE BUILDING:  
BASICALLY AN EMPTY SHELL

01







# „A RANDOM CASE“

THE CONTRATUAL PROBLEM:  
What are the requierements for  
earthquake prevention measures

03



CLASSIFIED

## CGL Request for Quote

### Site Conditions

- Location
  - Blytheville, AR, USA
  - Latitude: 35°55'56.75"N
  - Longitude: 89°44'16.63"W
- Elevation: 252'
- January Temperatures
  - AVG Low = 28F
  - Record Low = -14F
- July Temperatures:
  - AVG High = 92F
  - Record High = 109F
- July Relative Humidity: 93% -98%
- Wind:
  - ASCE Risk Category II (115 mph)
  - ASCE Surface Roughness Class C
- Seismic:
  - PGA =0.4969 g      Ss=0.7943      S1=0.1682
  - 0.2 sec Amplification      Fa=1.182      1.0 sec Amplification
  - Fv=2.127      PGA Amplification Fpga=1.004
  - Surface Values: PGA=0.499   0.2 sec=0.939   1.0 sec=0.358





### Site conditions

Location of end customer: Osceola, Arkansas, USA  
Latitude: 35.616 (N)  
Longitude: -89.9551 (W)  
Temperatures: min. 15°C; max. 45°C (inside building/place of installation)

### Seismic data:

To be investigated in the responsibility of the contractor for the structural engineering. The contractor will summarize the operating figures/factors which will be applied for the calculation of seismic loads at the beginning of the project for information.

For information only, seismic conditions (per Geo-Technical Report & Site Specific Study):  
(10% probability in 50 years per Arkansas House Bill dated 5/17/2016)

- Site Class: D
- $S_s = 0.597$        $S_1 = 0.152$  (Per Geo-Tech Report)
- $S_{DS} = 0.789$        $S_{D1} = 0.333$  (Based on above  $S_{MS}$  and  $S_{M1}$  with NO 2/3 reductions per Arkansas Bill)
- $S_{MS} = 0.675$        $S_{M1} = 0.304$  ( $S_{MS}$  and  $S_{M1}$  per Geo-Tech's Site Specific Study Report)
- $S_{DS} = 0.675$        $S_{D1} = 0.304$  (Based on above  $S_{MS}$  and  $S_{M1}$  with NO 2/3 reductions per Arkansas Bill)
- Seismic Design Category: D

Source of data: *General design basis for buildings and foundations, issued by CV Engineering, in reference to* [REDACTED]

- CHAPTER 16 - STRUCTURAL DESIGN
- CHAPTER 17 - SPECIAL INSPECTIONS AND TESTS
- CHAPTER 18 - SOILS AND FOUNDATIONS
- CHAPTER 19 - CONCRETE
- CHAPTER 20 - ALUMINUM
- CHAPTER 21 - MASONRY
- CHAPTER 22 - STEEL
- CHAPTER 23 - WOOD
- CHAPTER 24 - GLASS AND GLAZING
- CHAPTER 25 - GYPSUM BOARD AND PLASTER
- CHAPTER 26 - PLASTIC
- CHAPTER 27 - ELECTRICAL
- CHAPTER 28 - MECHANICAL SYSTEMS
- CHAPTER 29 - PLUMBING SYSTEMS
- CHAPTER 30 - ELEVATORS AND CONVEYING SYSTEMS
- CHAPTER 31 - SPECIAL CONSTRUCTION
- CHAPTER 32 - ENCROACHMENTS INTO THE PUBLIC RIGHT-OF-WAY
- CHAPTER 33 - SAFEGUARDS DURING

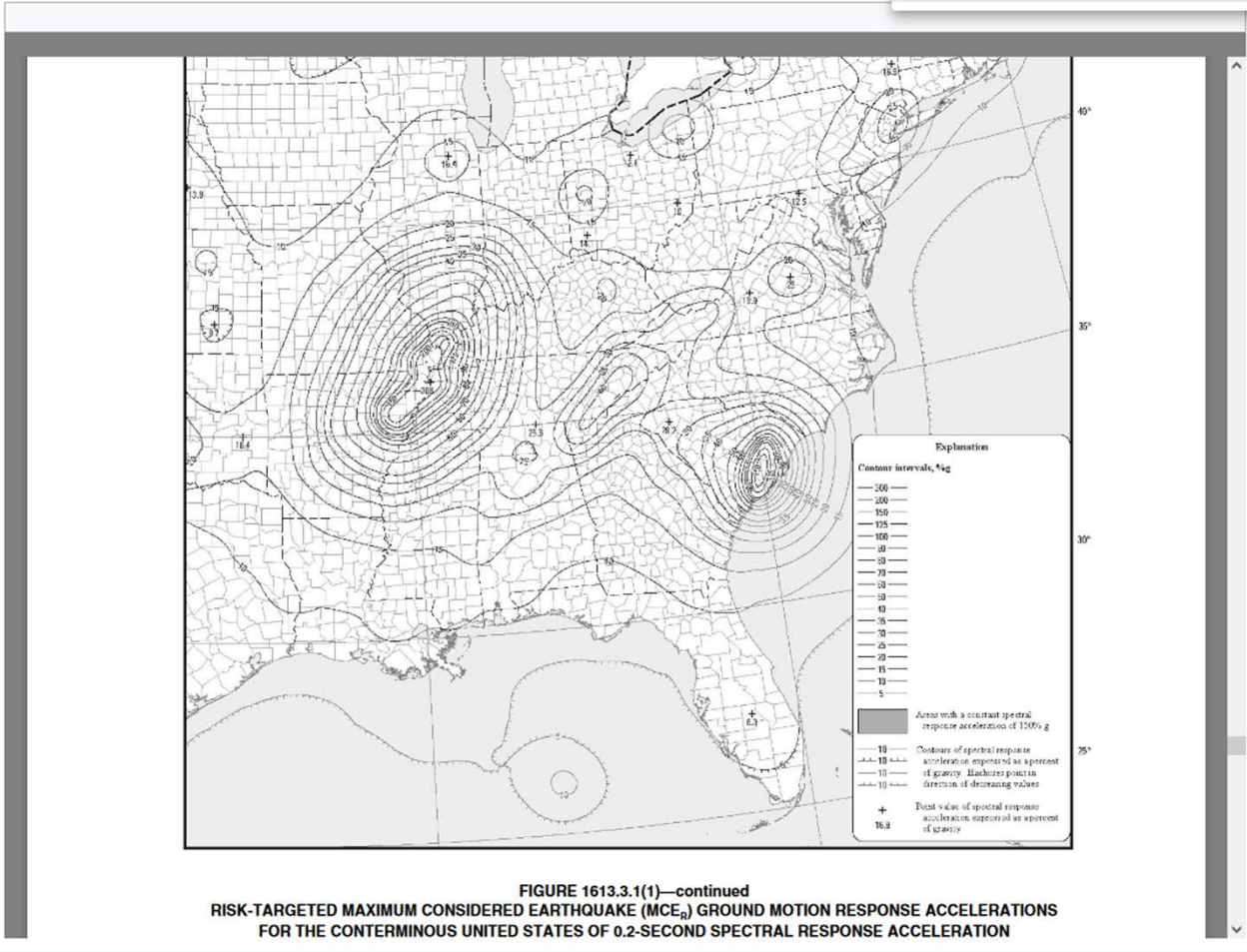


FIGURE 1613.3.1(1)—continued RISK-TARGETED MAXIMUM CONSIDERED EARTHQUAKE (MCE<sub>E</sub>) GROUND MOTION RESPONSE ACCELERATIONS FOR THE CONTERMINOUS UNITED STATES OF 0.2-SECOND SPECTRAL RESPONSE ACCELERATION





12. Governing Law and Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State in which the Facility is located without giving effect to such State's choice-of-law rules that may require the application of the laws of another jurisdiction. Each party, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the jurisdiction of the courts of the State where the Facility is located as well as the United States District Court for the district in which the Facility is located. Both Seller and [REDACTED] waive personal service of any and all process, and each consents that all service of process may be made by Registered Mail, Return Receipt Requested, directly to it at its proper address. Both [REDACTED] and Seller waive any objection based on *forum non conveniens* or any objection to venue of any such action.



Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: S5/20/16* Call Item 14  
2 90th General Assembly **A Bill**  
3 Third Extraordinary Session, 2016 SENATE BILL 5  
4  
5 By: Senator Burnett  
6 By: Representative M. Hodges

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**For An Act To Be Entitled**

AN ACT TO AMEND THE LAW CONCERNING EARTHQUAKE  
RESISTANT DESIGN REQUIREMENTS FOR BUILDINGS AND OTHER  
~~STRUCTURES; TO DECLARE AN EMERGENCY; AND FOR OTHER~~  
PURPOSES.

**Subtitle**

TO AMEND THE LAW CONCERNING EARTHQUAKE  
RESISTANT DESIGN REQUIREMENTS FOR  
BUILDINGS AND OTHER STRUCTURES AND TO  
DECLARE AN EMERGENCY.



20

21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 SECTION 1. Arkansas Code § 12-80-104(a)(2), concerning design

25 requirements, is amended to read as follows:

26 (2)(A) Design loads and seismic design requirements shall be, as  
27 a minimum, those listed in the Chapter of Structure Loads and referenced  
28 chapters from the Arkansas Fire Prevention Code.

29 (B)(i) Buildings or other structures classified as  
30 Category I or Category II occupancies as described in Table 1604.5, Arkansas  
31 Fire Prevention Code, Volume II, 2012 Edition, or in American Society of  
32 Civil Engineers (ASCE) Standard 7-10, Table 1.5-1, that are constructed for  
33 manufacturing or industrial occupancy or for public works may be designed  
34 using the mapped ground motion response accelerations for a ten percent  
35 probability of exceeding the design seismic event in a fifty-year period  
36 based on United States Geological Survey data, instead of the mapped ground



05-17-2016 09:23:59 KLC240



As Engrossed: S5/20/16

SB5

1 motion response accelerations for a two percent or other probability of  
2 exceeding the design seismic event in a fifty-year period as set out in the  
3 Arkansas Fire Prevention Code, 2012 Edition, or subsequent editions of the  
4 Arkansas Fire Prevention Code if the alternate design standard has been  
5 properly adopted by ordinance in the locality in which the building or other  
6 structure is to be constructed.

7 (ii) Under subdivision (a)(2)(B)(i) of this section,  
8 SDS shall equal SMS and SD1 shall equal SM1 in lieu of the two-thirds  
9 adjustment indicated in Equations 16.39 and 16.40 of the Arkansas Fire  
10 Prevention Code, Volume II, 2012 Edition, and the design seismic base shear  $V$   
11 in any given direction shall be not less than that determined in accordance  
12 with Section 1607, Standard Building Code, 1997 Edition.

13 (iii) As used in subdivision (a)(2)(B)(ii), “SDS”,  
14 “SMS”, “SD1”, and “SM1” mean the same as defined in the Arkansas Fire  
15 Prevention Code, Volume II, 2012 Edition.

16



17           SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
18 General Assembly of the State of Arkansas that seismic design requirements  
19 found in the Arkansas Fire Prevention Code are overly restrictive; that the  
20 nature of these restrictions require businesses to expend significant  
21 resources; and that this act is immediately necessary to correct this  
22 restriction, to ease the burden on businesses considering construction in  
23 Arkansas, and to promote local economic development efforts. Therefore, an  
24 emergency is declared to exist, and this act being immediately necessary for  
25 the preservation of the public peace, health, and safety shall become  
26 effective on:

- 27           (1) The date of its approval by the Governor;  
28           (2) If the bill is neither approved nor vetoed by the Governor,  
29 the expiration of the period of time during which the Governor may veto the  
30 bill; or  
31           (3) If the bill is vetoed by the Governor and the veto is  
32 overridden, the date the last house overrides the veto.

33  
34  
35  
36

*/s/Burnett*

# ENGINEERING TIME LINE STEEL STRUCTURE



The Customer requests changes to reduce material costs by weight-saving

- - Allow higher deflection  $L/800$
- - Beams to be changed - NO A-36
- - Plates and tubes A-36 to be used
- - W40x503 to be replaced by smaller beams with X-bracing
- - replace several beams with other module to save weight
- - remove walking platforms beside loopers
- - remove Steel structure furnace extension above tension leveller





## 11. Forces at the column base

The existing forces at the base column, which are needed for the grounding design could be taken from the printout of the static program.

In this printout there are only the forces from three load cases:

- Total dead load
- Total live load
- Seismic load

## 12. Deformation of the main structure

The deformation of the main structure is calculated with a characteristic combination, which includes all dead loads and all live loads. †

For all beams, which constitute a support for machinery, the maximal deflection should be limited to  $l/1000$ .



4th package for fabrication; balance (quench, cooling, film, wrapper, tension leveller, pickling area).

- Bill of material per profile including bolts list (raw material ordering)
- Final overview drawings with part and bolt references with sections, top view including dimensioning of the beams
- Connection details
- Detailed workshop drawings
- Editable 3D steel structure model (importable in autocad)

The structural steel engineering to be performed by the CONTRACTOR will be completed using standard U.S. market profile and design methods as defined by the American institute of steel construction.

All beams will be wide flange beams (W-series).



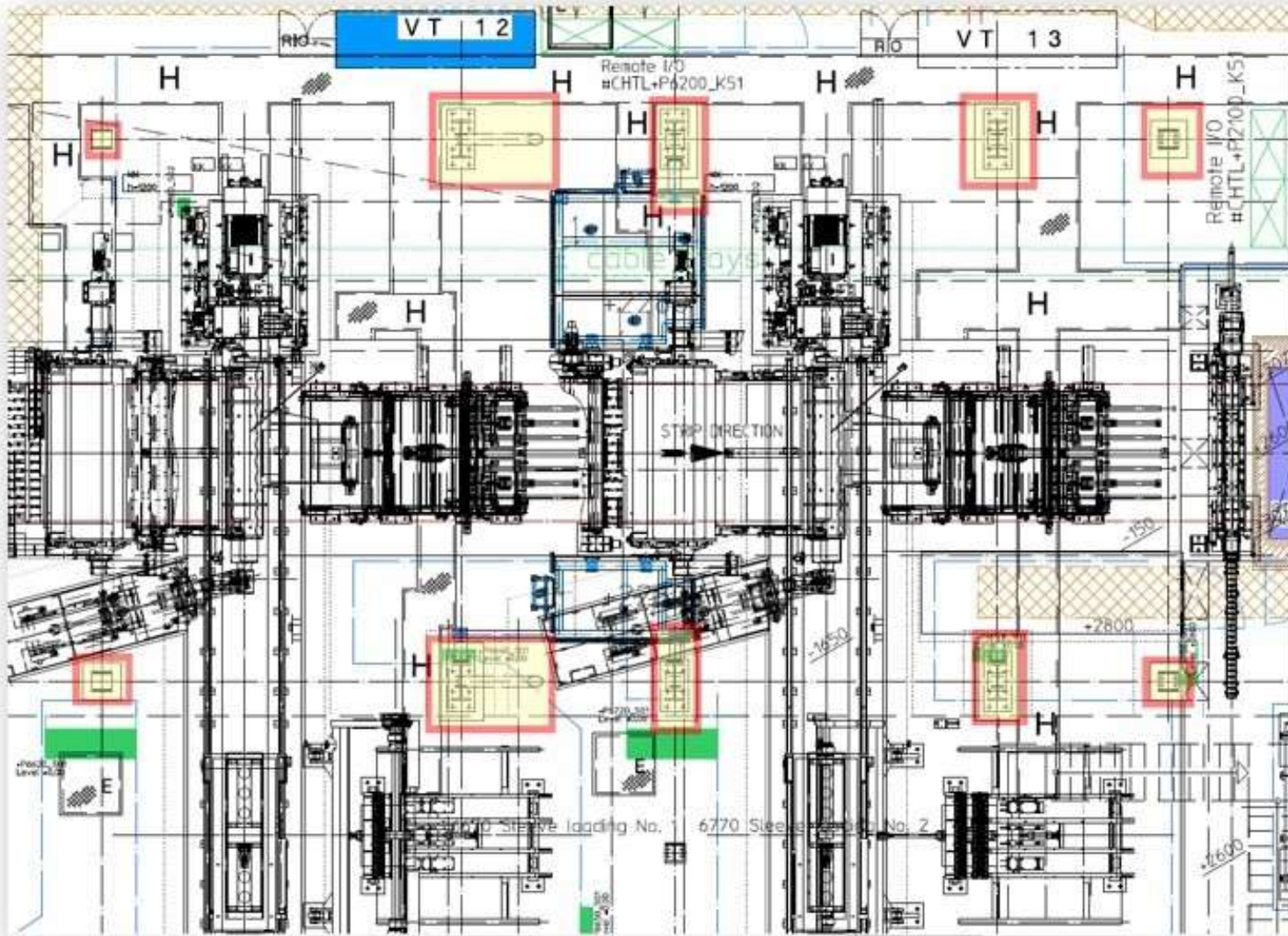
BY PROFILE TYPE

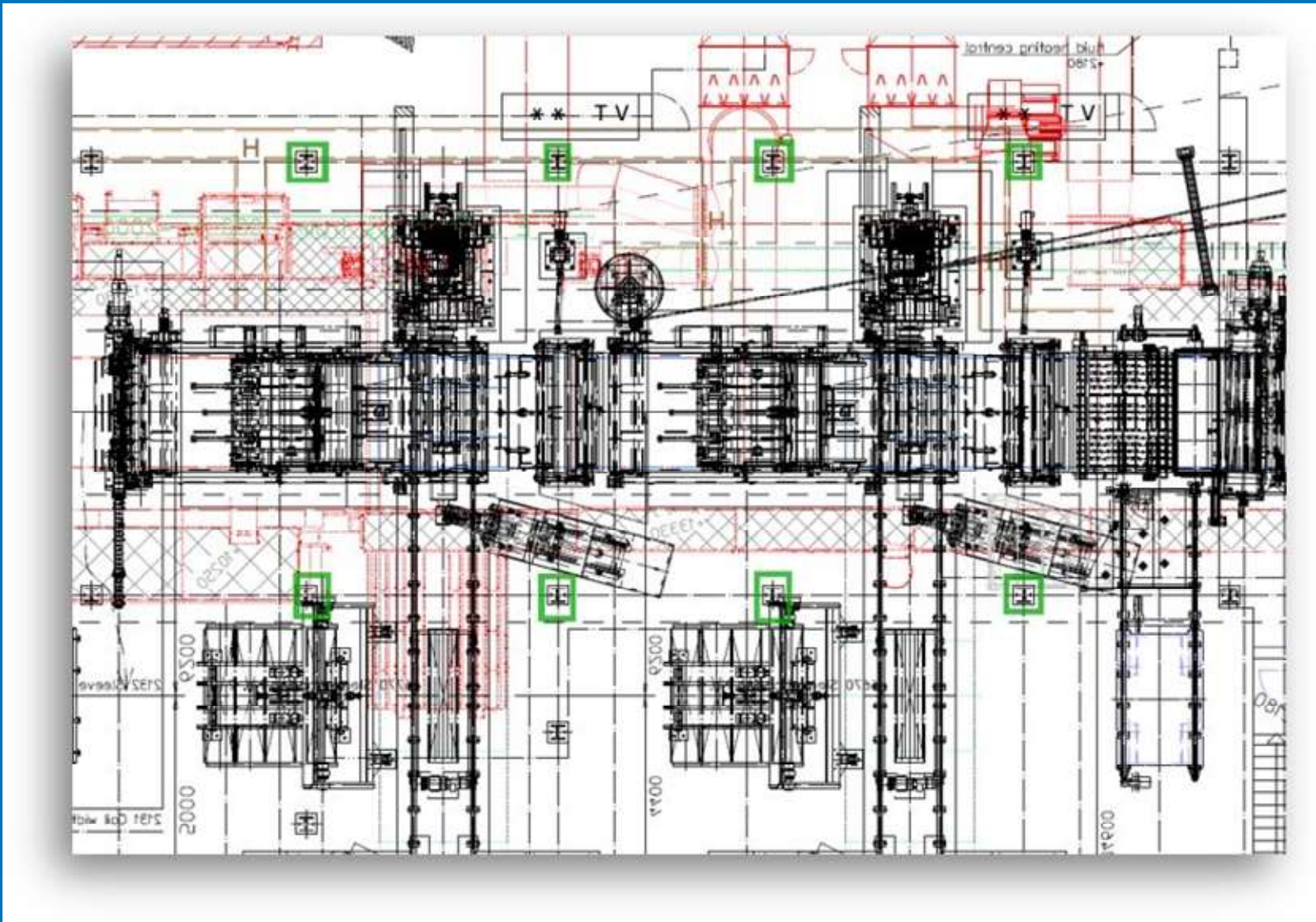
PROJECT NAME: 30015 - USA

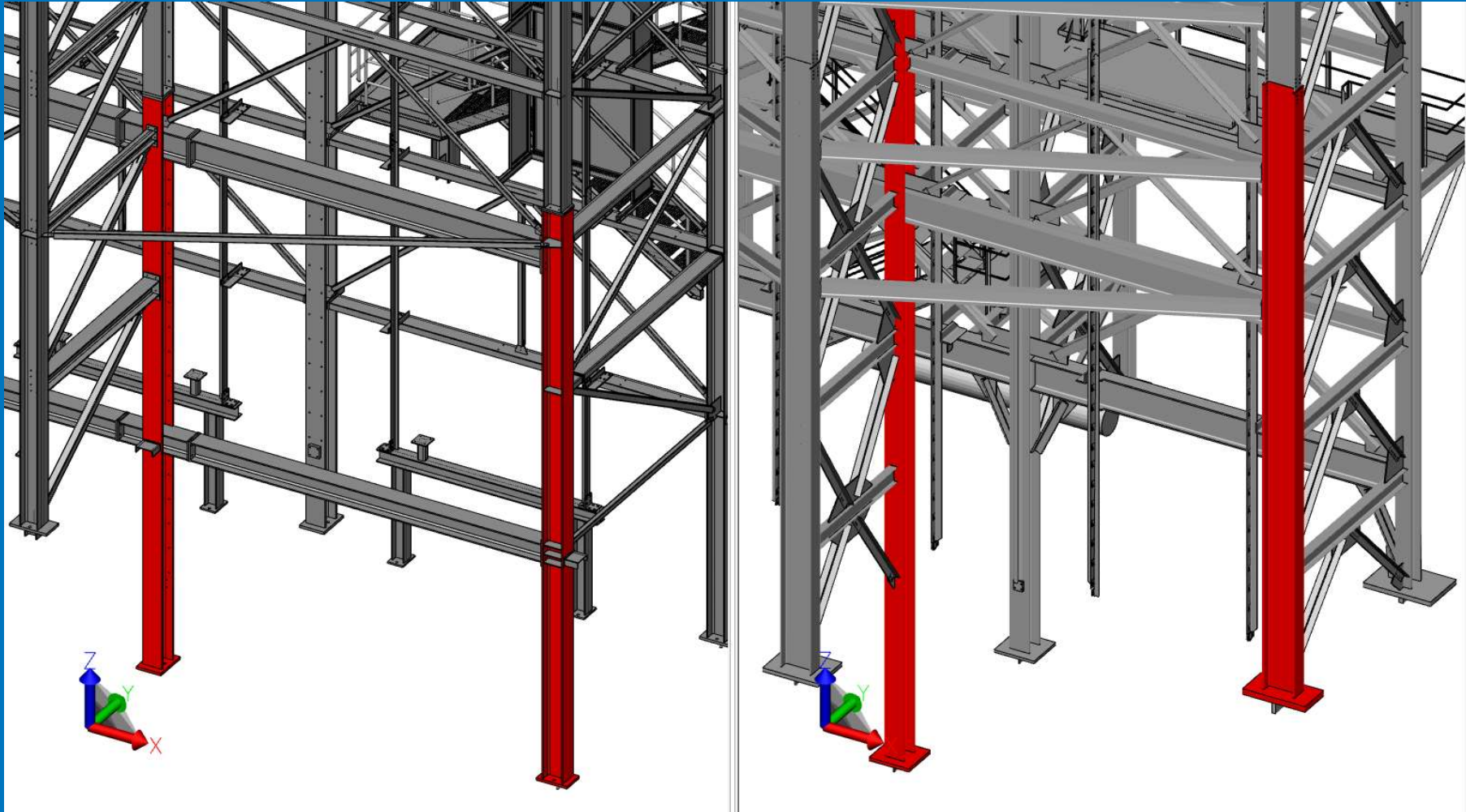


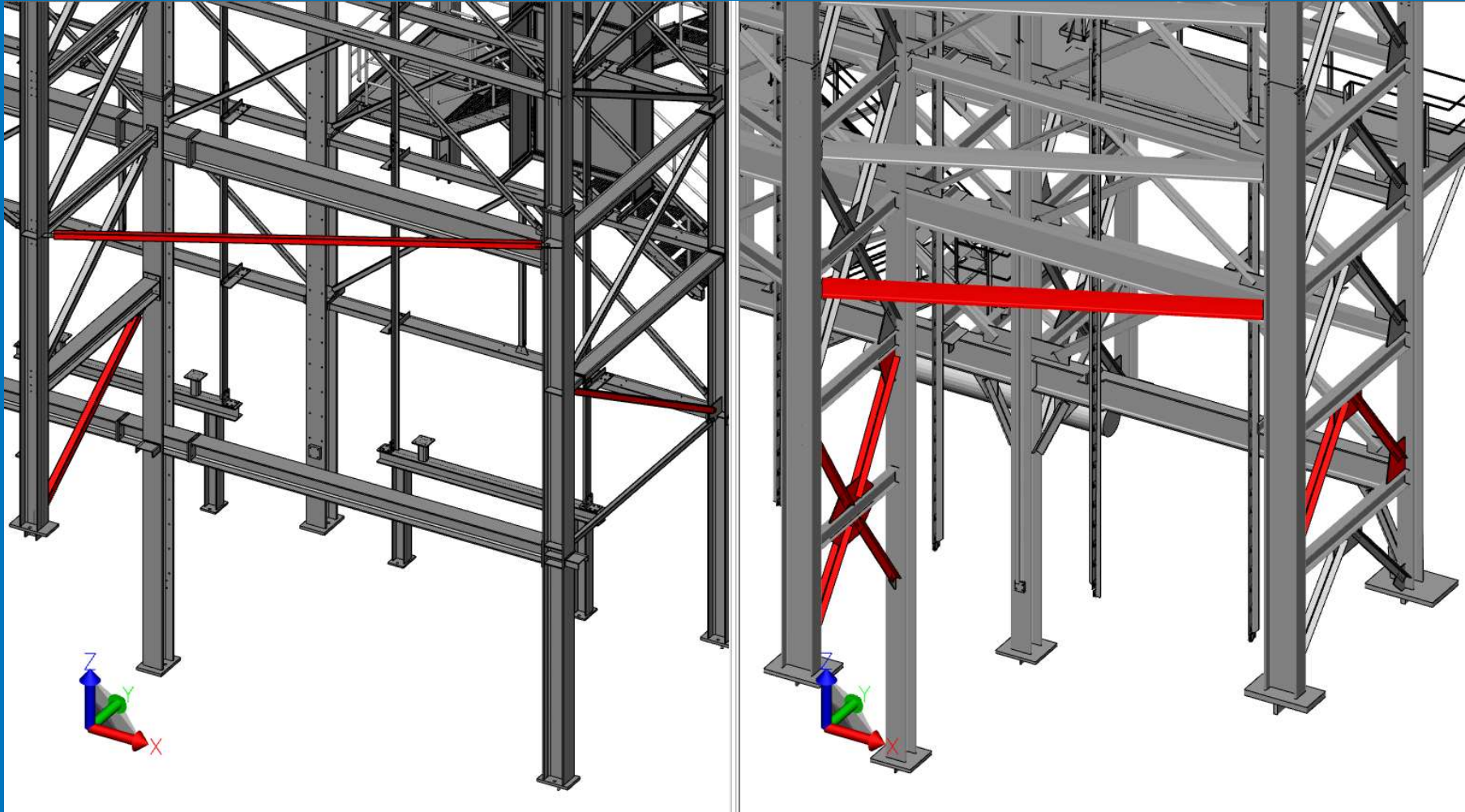
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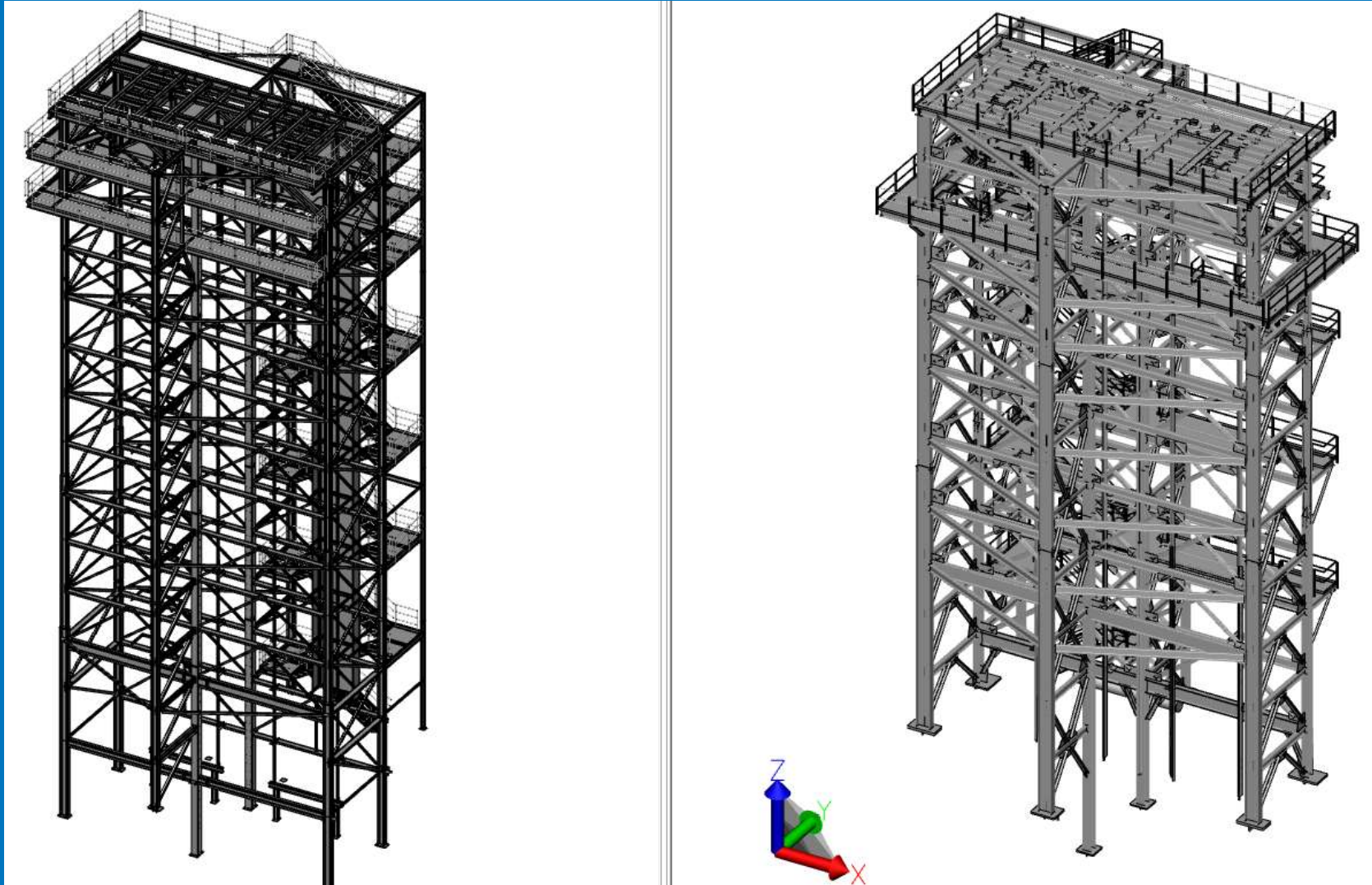
Profile	Grade	Qty.	Length	Area (in.2)	Weight (lbf)
W44X335	A36	4	22'-1 3/4"	40056	7424
W44X335	A36	4	21'-5 7/8"	38875	7204
Totals for: W44X335			174'-6 1/2"	315727	58509
W40X503	A36	4	29'-6 5/16"	52196	14872
W40X503	A36	4	27'-0 13/16"	47871	13633
W40X503	A36	8	22'-11 9/16"	40662	11567
W40X503	A36	4	20'-4 1/8"	36049	10245
W40X503	A36	4	19'-8 1/4"	34895	9915
Totals for: W40X503			570'-2 1/2"	1009339	287199
W30X235	A36	26	54'-5 9/16"	79133	12844
W30X235	A36	52	54'-3 9/16"	78895	12806
W30X235	A36	30	26'-6 7/8"	38683	6267
Totals for: W30X235			5036'-8 15/16"	7320477	1187873











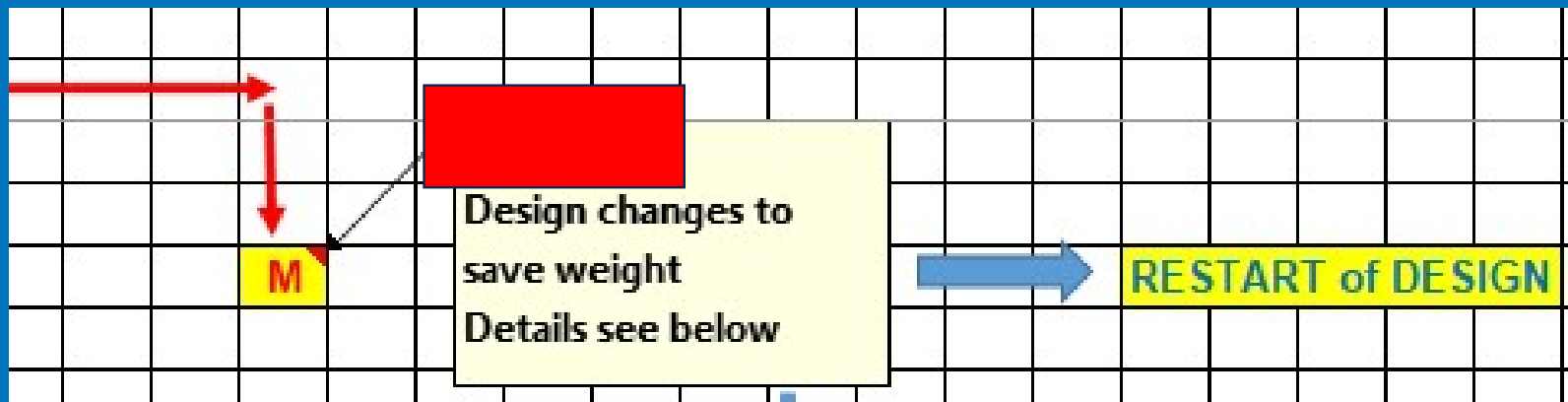




# „A RANDOM CASE“

THE DEVELOPMENTS:  
DISRUPTION OF SCHEDULE  
CLAIM FOR DELAY AND COSTS

04

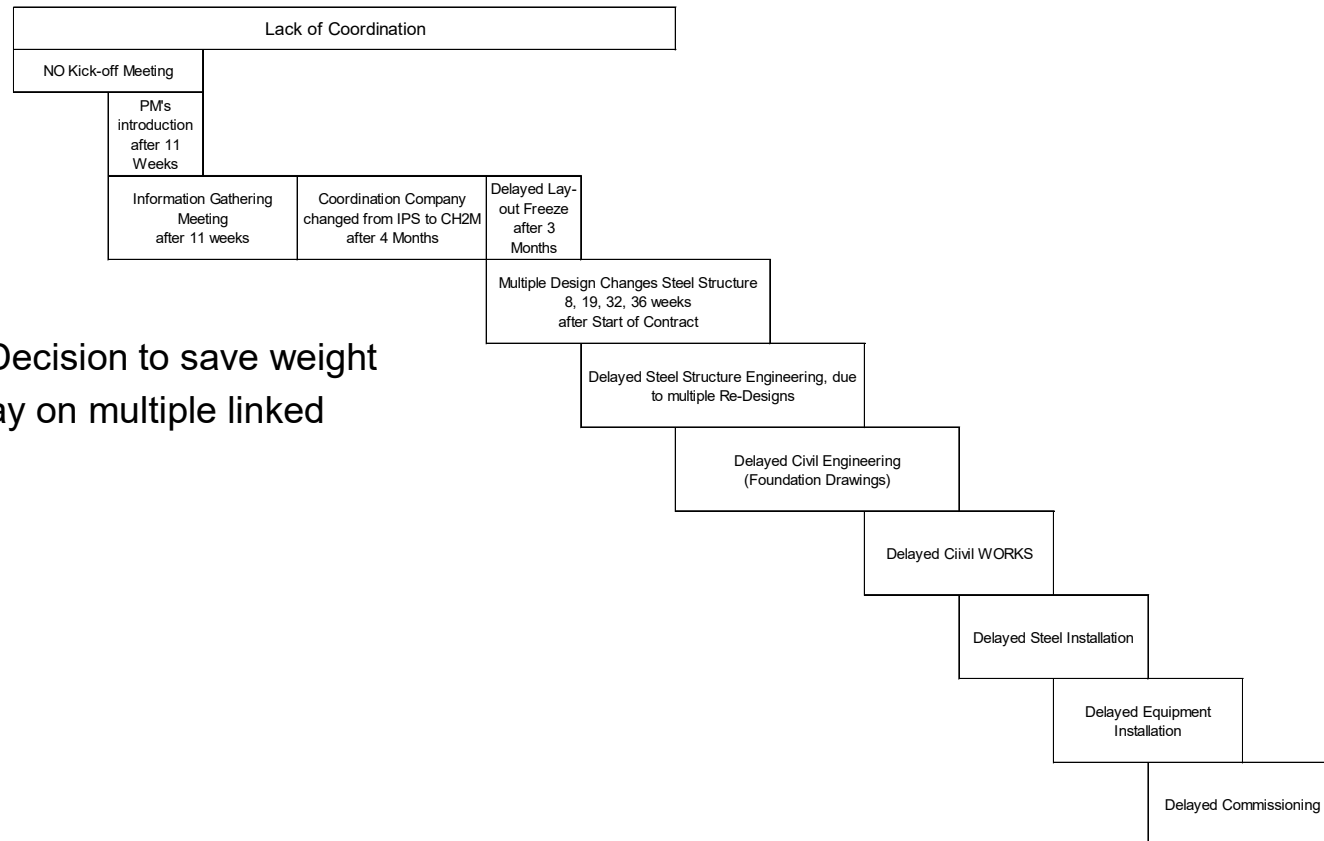




# PROJECT DELAY



## Summary



→ Design changes and final Decision to save weight were too late and caused delay on multiple linked processes.



# LESSONS LEARNED / CONCLUSIONS

## - TAKE AWAYS

- Be Aware of Local Legislation and Regulations during Tender Stage
- Get Things Right Prior Contract Signing
- Enlist at an Early Stage a Contract and Claim Manager
- Monitor Frequently the Contract Clauses vs. The Actual Proceedings
- Keep Sustainable & Professional Records
- Submit Notices to the Relevant Contract Parties
- Pick your fights carefully
- Engage Local or International Experienced Legal Support

Variante 1



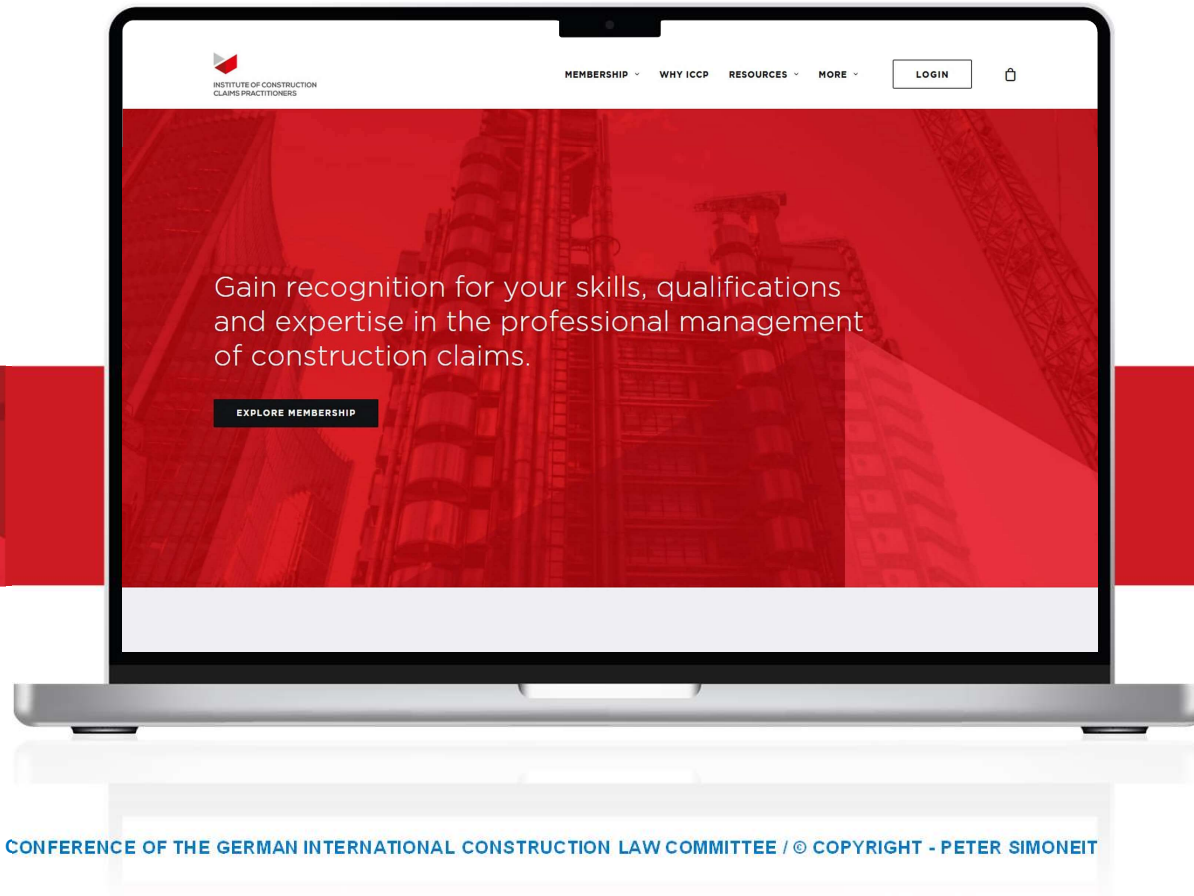
**„MOST IMPORTANT TAKE AWAY“**



**KEEP  
CALM  
AND LET A  
CLAIM  
MANAGER  
HANDLE IT**



# „CRY FOR HELP“ - WHEN, WHICH SPECIALIST TO INVOLVE? About the “Institute of Construction Claims Practitioners”



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**REGIONAL**  
**REPRESENTATIVE**  
FOR THE ICCP



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# „Q&A“ - DO YOU HAVE QUAESIONS?