

# Construction CPM Conference News

01aug19 Vol. 2020 No. 9

B Resort, Disney World, Florida  
JANUARY 19 – 22, 2020

For 2020 we return to Disney World  
We have booked six meeting rooms over three full days.  
Two keynotes – Seventy breakouts – Six networking events – One conference

The July issue of The Florida Bar Journal reports “On its own authority, the Florida Supreme Court has revisited and reversed its 2017 opinion and approved using the *Daubert* standard in the procedural evidence rules to qualify expert testimony and witnesses in trials.” Construction CPM Conference discussed the then continuing controversy in our Mock Trial of 2017 when we were last at Disney World. As our Judge Marshall explained, *Frye* is good in California, *Daubert* is the rule in Texas and Federal courts, and “who knows” in “battleground Florida.” See <http://www.fplotnick.com/constructioncpm/2017Videos/FRI100.html> forward to 31:30. Welllll we’re back in Florida and the topic is **HOT**. Only last year in *DeLisle v Crane Co.* “the court specifically rejected .. *Daubert* .. and reaffirmed .. *Frye* .. as it has used for decades.” But back in 2013 the legislature of Florida amended the Florida Evidence Code adopting the *Daubert* standard. Florida’s Supreme Court asserted the Legislature did not have authority on this “procedural” rule. And so for the past six years the Florida legal community has had some confusion over which Rule rules.

Many attorneys chose to deal with both rules in offering their client’s and challenging the opposition’s expert report. While this continues to be FRED’s suggested approach, we have seen many attorneys changing approach with each new promulgation of the Court, often in the same case, as it winds its way through the speedy justice system.

So what is the difference between *Frye* and *Daubert*? Or between multiple definitions of *Frye* and of *Daubert* in various courts as they disagree on what each standard includes? Watch the video at 31:30 or do you own Google or other research. But we will visit this important issue which may determine if your report will be allowed in court at Mock Trial 2020. As we are the experts to be heard or silenced, perhaps we can share our thoughts on “*Quis custodiet ipsos custodes?*” or who should guard the fact finder from “junk science.”

What determines if analysis is junk science or Truth? We experts know that CPM or just about any engineering analysis is inexact and requires professional judgment or a “factor of safety.” “Professional Judgment” sounds very much like *Frye*, “take my word because I am the expert and know more than you.” If durations used in the CPM plan are only estimates, and recognizing the mathematical rules of merge bias upon the CPM logic network, we know the calculated completion date likely has less than 100% likelihood. We know the softwares we use do not truly record the logic plan (who says “start B three days after starting A even if A works one day and stalls?”) We may not even be able to explain exactly how the softwares we use perform calculations. Please

explain to the judge why your careful analysis is any better than the Ouija board used by the opposing expert.

Many of our sessions at Construction CPM Conference revolve around these questions. We hope you will learn three or more software solutions and be able to explain why they get slightly differing answers. We offer sessions on theory as to why solutions may calculate differing answers. We offer sessions on RISK, COST, BIM, LEAN and other topics that may influence the answers calculated by your software. Project Showcase sessions offer practical advice for the professional to appreciate and apply that “factor of safety” to the too certain answer printed by your software.

We meet each year with the goal that our projects may be completed on time or perhaps earlier to gain a bonus. Oh yes – and to meet and greet friends old and new and have a good time as we learn and work together.

**Our B Resort & Spa Housing Rate is \$169\*/night**

of course, after resort fees and taxes, this is actually \$201.38/night

Best education – best entertainment – best networking – best friends – all at best affordable rates.

[Construction CPM Conference](#) – Our tenth year – January 19-22 2020 at Disney World