

# CONSTRUCTION MANAGEMENT THOUGHT LEADER: 7 TRENDS IMPACTING COMMERCIAL CONSTRUCTION LITIGATION IN 2023

*2023 is going to be challenging for the construction industry; like a vortex year, where past, present and future factors can all combine to instigate disputes*

PHILADELPHIA, PA, USA, January 31, 2023 /EINPresswire.com/ -- It's time for Resolution



We anticipate 2023 will be an active year for construction disputes & litigation; an industry caught between pre-pandemic contracts & a future of uncertain labor, price, supply & inflation issues."

*James Gallagher - Principal,  
Resolution Management  
Consultants*

Management Consultants, Inc.'s annual prediction of trends impacting construction disputes and litigation in 2023.

James Gallagher, Principal at Resolution Management Consultants, Inc., said, "2023 is going to be highly challenging for the construction industry as it is shaping up to be a vortex year, where past, present and future factors can all combine to instigate disputes. Continuing uncertainties this year, especially from the big four of labor, pricing, supply and inflation has the ability to negatively affect timelines and budgets, leading to an increased number of disputes and litigation."

Gallagher has identified the following trends influencing construction disputes in 2023, from a risk analysis and construction claims perspective:

1) The expanding concept of responsibility - defining liability even when effected by outside influences.

While contracts have always focused on the project at hand, exculpatory clauses, such as force majeure, have been largely perfunctory with less attention devoted to defining responsibility for damages caused by forces outside the project and control of the contracting parties. Going forward, contractual agreements will need to broaden perspective to more effectively define culpability, even from the impact of outside influences.

2) Inflation affecting material prices will continue to rise and push the limits beyond contractual terms.

As if the 2022 material price increases haven't been enough, inflation is predict to continue to rise in 2023. For projects with contracts that don't specifically allocate responsibility for escalating material price increases, expect disputes. Contracts for future projects will need to address both normal and extraordinary price fluctuations, properly allocate responsibility based on the parties' expectations and their potential to affect costs and budgets.

3) Labor shortages will continue to influence timeline disputes. The lack of skilled labor continues to affect quality of performance and contribute to project delays, leading to an increasing number of disputes and litigation.



James Gallagher - Principal, Resolution Management Consultants

4) Supply chain issues will continue to trigger disputes, but its effects may lessen later in the year.

Although the supply chain is still a factor affecting timeline disputes, this has the potential to correct itself as prices rise and demand falls. As demand falls and the value of the dollar stays strong, materials may become more readily available to those willing to pay the cost to accelerate procurement to minimize the impact to project performance.

5) Increased use of digital management and record keeping (over paper records) in the construction industry, has the potential to reduce the number of disputes.

The ability to render proper and timely decisions as project events unfold is dependent on possessing real-time data and information. The construction industry, however, is decades behind other industries in adopting digital record keeping, but 2023 may be the year that this finally gains momentum. Digital record keeping, because of its greater accuracy and immediate access, offers valuable potential in avoiding or minimizing the occurrence of disputes, especially in the area of change order negotiation and management, a leading cause of disputes.

6) Courts continue to dig out of their post-pandemic backlog in processing cases, leading to more cases settling or going to mediation.

The number of cases settling or going to mediation continues to grow as courts work to process a backlog of cases slowed from the pandemic shut down. Going forward, new resolution strategies are expected to be explored and utilized, as the likelihood of one's case going to court

is diminished.

7) Contractors need to comply with expanded Buy-American requirements.

The passage of the Infrastructure Investment and Jobs Act (IIJA) is expected to increase the spending that will be made available to advance transportation, water and power and communication infrastructure projects. Along with this increase to the civil and commercial sector, the Buy-American requirements have been expanded to apply to all federally funded infrastructure projects. As such, state agency rules that may have applied prior to this change, may no longer apply. Contractors need to assure that they are meeting these expanded requirements for use of domestic goods and materials on their projects to avoid potential impacts and delays that may arise from their failure to comply.

“We anticipate that 2023 will be an active year for construction disputes and litigation, as the industry is caught between pre-pandemic contracts and a future of uncertain labor, price, supply and inflation issues. Companies that best anticipate outcomes and facilitate flexibility in negotiations and contractual obligations are those that will be in the best position to minimize disputes,” said Gallagher.

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About Resolution Management Consultants, Inc.

Resolution Management Consultants, Inc. (RMC) is a nationally recognized consulting firm headquartered in Marlton, NJ. There are two sides to the business: the construction planning and management aspect – helping clients build more successful projects – and the litigation aspect – should matters go to court, providing analysis and testimony as expert witnesses. Founded in 1993 by veterans in the construction, contracting and engineering professions, RMC has assisted numerous private owners, public agencies and contractors in either achieving project goals or resolving cost and time disputes between the contracting parties.

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