

# Construction Thought Leader On: Evolutionary Trends Regarding The Expert Witness' Role In Construction Disputes

*The evolving use of experts as part of the overall project team, from the start, will be an effective way of minimizing disputes.*

MT. LAUREL, NEW JERSEY, UNITED STATES, August 26, 2024 /EINPresswire.com/ -- According to

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Today's use of experts in construction dispute resolution is evolving to engage them earlier in the dispute resolution timeline in a role as trusted adviser in collaboration with the legal team.”

*James Gallagher, P.E., F.ASCE,  
Principal, Resolution  
Management Consultants*

the American Bar Association, experts, who are not attorneys, can have various roles in cases. “They can assist with (i) assessing the value of a case; (ii) formulating claims, counterclaims, and defenses; (iii) drafting discovery requests and responses; (iv) reviewing documents; (v) challenging the other side's experts;” and other functions. That said, the expert's role as a litigation expert witness has been the primary function related to the engagement of experts. However in recent years, and especially during the pandemic, fewer construction disputes are reaching the litigation stage. Due to court backlog, the expense of bringing cases to trial, the length of time to complete litigation and other factors, many more cases are resolved prior to litigation.

According to James Gallagher, P.E., F.ASCE and Principal at Resolution Management Consultants, Inc., “Today's use of experts in construction dispute resolution is engaging them earlier in the dispute resolution timeline. I believe that the experts' role continues to evolve as one of trusted adviser or consultant within the dispute resolution unit, especially in collaboration with the legal team.”

Gallagher observes that the highly specialized knowledge and experience of experts is being more effectively channeled for use outside of the litigation phase, assisting owners, architects, engineers, construction companies and others throughout the construction process, including:

- The proactive use of experts.

More and more projects are bringing in experts, during the project planning phase, to review the

process with an eye towards minimizing potential risk points.

- Utilizing experts to develop project strategy.

The function of architects, engineers and builders is to build a structure, a mission that can overlook risk point. Experts assessing their plan, especially through the implementation of game theory analysis, can bring a valuable perspective in weighing alternative courses of action with the potential to reduce areas of dispute.

- The use of experts as advisers, throughout the project.

Project teams can utilize experts, as oversight, to get a “second opinion” about the operation and development of the project as it progresses. Experts can be especially valuable overseeing highly technical areas to identify risk points and eliminate them before they influence the project.

- Bringing in experts to assess the dispute, once it occurs.

Experts can provide an objective perspective to construction dispute resolution. They can assess the circumstances surrounding the dispute and the value of pursuing various courses of action.

- The expert as dispute strategist.

Experts can function as dispute resolution strategists, recommending options and strategies for resolving disputes more effectively.

- Utilizing experts during the phases prior to litigation.

Once a dispute reaches the arbitration or mediation phase, experts can often provide a depth of insight into the dispute that can have a dramatic effect on influencing the parties to work towards resolving their issues.

Of course, the traditional use of experts during the litigation phase and in the courtroom continues to be an important utilization of experts. However in today's resolution environment, experts can help construction-related companies in minimizing their exposure, risk and costs.

Said Gallagher, “Especially now, as such protocols as Building Information Modeling (BIM)



James Gallagher - P.E., F.ASCE,, Principal, Resolution Management Consultants, Inc.

enhance collaboration, people want to identify and eliminate potential risk areas well before they become disputes. The evolving use of experts as part of the overall project team, from the start, will be an effective way of minimizing disputes.”

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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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