

9 Trends Influencing Commercial Construction Disputes & Litigation In 2025

The high cost of litigation will spur demand for more agile resolution & mediation strategies designed to resolve issues more quickly, before they get to court

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construction industry showed remarkable resilience in 2024, maintaining its bounce-back from the pandemic and demonstrating overall stability in the face of an increasingly complex economic, technologic and political environment. As we look ahead to 2025, construction is an industry on the cusp of transition that will be shaped by each of those three factors and other elements including: a growing number of infrastructure projects coming online, interest rates stabilizing at a higher level, supply chains strengthening, technology alleviating some skilled personnel limitations and other influences. Construction resolution thought leader James Gallagher, Principal at Resolution Management Consultants, Inc. said, “In the construction industry, growth, complexity and change

typically breed disputes. How disputes are handled will be the major story in 2025. The high cost of litigation will spur the demand for more agile resolution and mediation strategies designed to resolve issues more quickly, before they get to court.”

Gallagher has identified the following trends having the greatest impact on triggering commercial construction disputes and litigation in 2025:

1) Growing reliance on Building Information Modeling (BIM) and other design-build strategies making accountability more complex.

Building Information Modeling (BIM) and other design-build strategies are innovative construction-related technologies that facilitate enhanced collaboration. In theory, BIM and others offer the potential to reduce the number of disputes. As inventive as these technologies may be, they also have shortcomings that potentially increase their potential to trigger disputes. For example, one drawback from using BIM is the length of time it takes for the system to update and communicate changes and potential “clash points” to participants. Sometimes

updating occurs after it's already too late to alter anything. As well, BIM remains limited in scope because it only focuses on the structural, mechanical, engineering and plumbing aspects of the project, leaving out a number of important functions. Although there is no doubt that solutions will be developed. In the meantime, disputes will arise.

2) Nascent implementation of generative artificial intelligence (AI) in construction applications.

The construction industry has traditionally been slow to embrace new technologies. However in 2025 AI continues to be in the early stages of implementation within the construction industry. In the long run, AI has the potential to advance construction practice in many applications such as design & planning, safety, management, robotics and more. For now, there is potential for AI disputes engaging over such issues as cybersecurity, unauthorized access to proprietary data, data mismanagement and other issues. In the legal world in general, many of these AI issues have yet to be properly defined nor have precedents been established. One way to prevent AI-related disputes is to rewrite contracts to define AI policy, information ownership, data management, utilization and other AI issues.

3) Inflation continuing to stay at elevated levels.

In the recent past, there was little or no inflation. Over the last couple of years, inflation has increased, raising the cost of construction materials and personnel. Disputes will arise because increase in prices will not have been accounted for in existing bids and contracts. Inflation also influences litigation as the cost of going to trial increases.

4) Interest rates, too, are predicted to stay elevated.

Contracts that were negotiated when interest rates are lower, will be more difficult to fulfill or complete now that rates are higher, and materials and personnel are more expensive. Also, with higher interest rates, many owners and developers are expected to pause or stop their projects, leading to timeline and completion disputes.

5) The supply chain transitioning from offshoring to onshoring.

The industry has been plagued by offshore supply chain disruptions over the last few years, leading to a new concept called onshoring where construction manufacturing is brought back



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from Asia to factories in North & South America. At some point, the efficiencies of a more efficient onshoring supply chain may offer stability and cost reductions. However, until the supply chain stabilizes, one way or the other, there will continue to be disruptions that cause disputes.

6) Changes in the Federal administration.

The new Presidency, Congress and appointments will affect the agencies and the laws and rules they prioritize. Changes will affect construction, labor, safety, environmental, DEI and other aspects of construction, leading to disputes.

7) Tariff effects.

Like inflation, tariffs on building materials, can be disruptive to pricing and availability and lead to disputes.

8) Skilled labor availability.

A shortage of skilled labor will result in those less skilled handling tasks and management, as well as timeline and completion issues. Although we see an increase in use of robots and artificial intelligence in construction in 2025, it still has a long way to go. Meanwhile, inconsistencies in staffing, skill quality and performance will continue to be a source of disputes and litigation this coming year.

9) Expert witnesses are not just for court anymore.

The role of expert witnesses will evolve in 2025. They will be brought in earlier in the dispute process to provide reports and testimony. This will help influence earlier settlements, since proceeding to litigation has become so costly and takes so much time.

Said Gallagher, "The economy, technology and politics make 2025 an increasingly complex year for the construction industry as it strives to grow while adapting to transitional influences. Although we expect the number of disputes to grow, those proceeding to court should actually decrease, due to the time and cost needed to pursue litigation. The evolution of agile alternative dispute resolution strategies will prevail."

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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