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**CONSTRUCTION MANAGEMENT THOUGHT LEADER:
8 TRENDS IMPACTING COMMERCIAL
CONSTRUCTION LITIGATION IN 2023**

(Philadelphia, PA) It's time for Resolution 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 will likely 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.

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, we predict that inflation will continue to rise in 2023. For projects with contracts that don't provide significant leeway for increases, expect disputes. Contracts for future projects will need to address both normal and extraordinary price fluctuations 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 and cause delays, leading to an increasing number of disputes and litigation.

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 will become readily available to those willing to pay the price.

5) As the recession continues in 2023, delivered quality and collection will supplant delays and price increases as the leading issues instigating disputes.

As the economy cools and interest rates increase, the overall number of construction projects are likely to decrease. If so, labor and supply issues will diminish while collection and value justification will increase.

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

The construction industry 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, offers valuable potential in limiting disputes, especially in the area of change orders, a leading cause of disputes.

7) 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 will be utilized as the likelihood of one's case going to court is diminished.

8) The government becomes an even larger factor in construction, labor and disputes.

The passage of IIJA increases the influence of the government in construction projects and payment in 2023. In addition, the issue of Federal, state and local health and safety laws, rules and guidelines may exacerbate the current worker shortage and impact worker productivity. In some instances, that will make claims of labor inefficiency even tougher to navigate and to prove.

"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 minimize disputes,” said Gallagher.

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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