



2021 CLM Construction Conference

Sept 22nd – 24th 2021

San Diego, CA

Managing and Litigating Construction Claims During a Pandemic: Making Do or Embracing Permanent Changes?

Impact of the pandemic on claims adjusting, attorneys defending construction claims, the court system, and the process of resolving construction claims.

Changing Risk and the State of the Construction Market. As reported in the Insurance Journal in an article titled *How Coronavirus Is Changing Claims, Risks, Work, Habits, Supply Chains and More*,¹ Covid-19 has caused varied impacts to different industry segments:

The magnitude of the COVID-19 pandemic as an economic loss events is unprecedented for companies and insurers alike and claims trends and risk exposures are likely to evolve in both the mid- and long-term as a result of the pandemic, according to a new report Covid-19 – Changing Claims Patterns from Allianz Global Corporate & Specialty (AGCS).

With the reduction in economic activity during lockdown phases, traditional property and liability claims have been subdued, most notably in the aviation and cargo sector, but also in many other industries with fewer accidents at work, on the roads and in public spaces, the report notes.

“The coronavirus outbreak has reduced risk in some areas while, at the same time, changing and heightening it in others. The wider changes in society and industry brought about and accelerated by the pandemic are likely to have a long-term impact on claims patterns and loss trends in the corporate insurance sector,” AGCS Chief Claims Officer Thomas Sepp says in an interview on AGCS’ website. “The growing reliance on technology, shift to remote working, reduction in air travel, expansion of green energy and infrastructure and a rethinking of

¹ Published October 7, 2020, <https://www.insurancejournal.com/news/international/2020/10/07/585705.htm>

global supply chains will all shape future loss trends for companies and their insurers.”

In the construction industry, however, workflow has remained steady during the pandemic and is increasing. An article in Forbes titled *2021: Building Momentum in The Construction Industry Post-COVID-19*² reports an uptick in jobs in a growing housing market:

Projects that have been sidelined for months are finally coming off the drawing boards and receiving funding. Amid an ongoing housing market boom, the construction industry added 110,000 jobs in March, recovering over 80% of the jobs lost over the course of the COVID-19 pandemic.

An article in The Street titled *COVID Forged Big Changes in the Construction Industry*³ details a report from Oxford Economics on the increase in construction activity during 2020, and the boom to be expected over the coming years:

Despite the COVID lock downs, zoom classrooms, and empty malls and offices, the construction industry saw little pain during the pandemic over 2020, concluded Oxford. In fact, the industry enjoyed robust growth, as total put-in-place spending surpassed \$1.4 trillion nationally. That is 4.7% higher than construction spending in 2019, according to Oxford.

In terms of how this growth shakes out regionally and by sector:

Cities and states with strict lock-down rules like New York had gave the industry a tough time. So, did, to some extent, places with looser regulations but a high dependency on travel and tourism, like Florida. But other locations, like Texas were booming. In fact, the Lone Star State held the largest construction market at \$196 billion in 2020, thanks to a growth in manufacturing, power generation, and transportation.

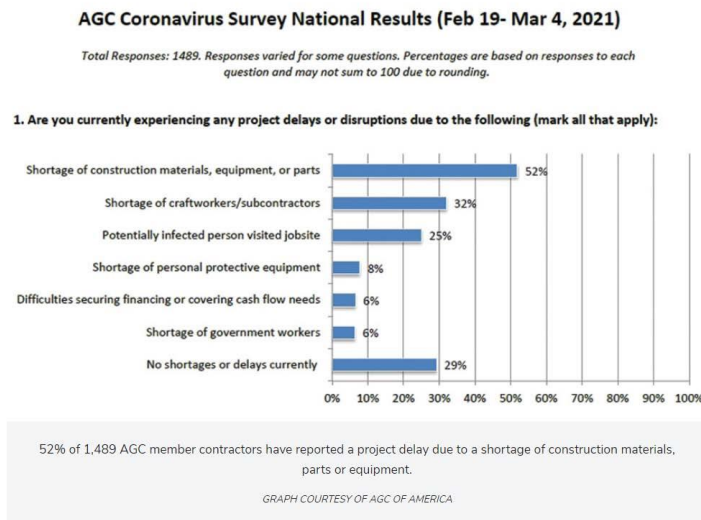
At the same time, residential building, which jumped 11% last year, was the main driver of growth nationwide, especially in the latter two quarters, according to Oxford. Spending on offices and recreation and amusement facilities, however, took a hit.

² By Frank Sorrentino, published April 22, 2021
<https://www.forbes.com/sites/franksorrentino/2021/04/22/2021-building-momentum-in-the-construction-industry-post-covid-19/?sh=3924e4e7533e>

³ By Adam Smith, updated March 21, 2021, <https://www.thestreet.com/investing/covid-forged-big-changes-in-the-construction-industry>

With all the conversations in the news regarding the proposed federal infrastructure bill – and regardless of what kind of infrastructure ultimately gets funded - we can assume an added strain on an already tight labor market. According to the 2020 Construction Outlook Survey by the Associated General Contractors of America (AGC),⁴ 81% of construction firms have trouble filling both salaried and hourly craft positions, and 72% anticipate labor shortages to be the biggest hurdle in the next year.

Coupled with supply chain challenges, it is evident that the construction industry is heading into a more stressful situation. A graph published in an Engineering News Record article titled *What's Behind the Materials Price Spikes?*⁵ notes that 52% of commercial contractors surveyed report project delays due to a shortage of construction materials, parts, or equipment.



With these forces at play, we anticipate an increase in long term construction defect claims.

Dealing with the here and now - access to sites and physical evidence. In present claims handling, property owners have been reluctant to allow access or have imposed significant restraints on access because of social distancing restrictions and perceived liability risk. Examples include lockdowns of congregate facilities such as assisted living centers, homeowner's sensitive to infection, and business owners concerned over employee health and safety. The ability to jointly inspect claim sites and to caucus on site among adjusters, parties, experts, and counsel has been significantly diminished.

⁴ At https://www.agc.org/sites/default/files/Files/Communications/2020_Outlook_Survey_National.pdf

⁵ By Jeff Yoders, published March 24, 2021, <https://www.enr.com/articles/51477-whats-behind-the-materials-price-spikes>

Regulatory issues - delay. The key issue here is compliance with state laws and administrative rules which impose duties on insurance claims practices. These generally require insurers to investigate, negotiate and settle claims promptly. Violation of mandated timelines may lead to regulatory consequences or bad faith litigation. The circumstances of delay are inherently factual.

Bottlenecks. New suits are being filed while existing suits stagnate on court dockets because of the inability to process a high volume of trials. This results in higher pending claim counts and strains existing resources.

Unfamiliarity. Remote communications (mediations, large group meetings) by video remain clumsy. Some thrive on the efficiency of these expanded platforms (zero travel time and cost), while others are challenged with distractions and limited attention spans. Yet others suffer from social anxiety or are just bothered by or uninterested in being a focal point on camera.

- Tools developed to manage construction claims remotely.

Workarounds to access problems have involved more pre-planning of site investigations, and better collaboration on fair and balanced testing protocols. Examples include off site preparation of testing apparatus and investigations using a single camera person providing a recorded video feed to multiple recipients (plaintiff and defense). Eliminating the need for onsite presence can increase participation by remote (out of state) clients. Involving the claims professionals in real time investigations and allowing them to view the evidence in context and from different angles results in a better collective grasp of the issues at hand.

- The move towards efficient claims resolution.

While recent technological advancements in claims handling are likely to remain in place after pandemic restrictions are eased, core client (insured) communication skills, information conveyed in an informed, clear, and authentic voice, remain critical to every company's business model and bottom line. The key is to balance improved efficiency without sacrificing personal service. These issues are juxtaposed in a Risk&Insurance article titled *Remote Loss Adjusting Vs. Boots on the Ground: Why Both Are Crucial for Top-Notch Claims Performance*.⁶

During the pandemic in Europe, for instance, some of our teams have increased remote loss adjusting for property and auto claims by over 70%. These types of claims readily lend themselves to automation, providing fast-track coverage

⁶ By Ian Thompson, published February 7, 2021 <https://riskandinsurance.com/remote-loss-adjusting-vs-boots-on-the-ground-why-both-are-crucial-for-top-notch-claims-performance/>

confirmation, loss adjustment and payment straight into the customer's bank account.

But even with less complex claims, we are never going to remove the need for expertise and problem solving when it is required.

Insurers need to focus on continuous training, investing in sustaining core technical skills not only in the traditional property/casualty lines, but also with an eye towards emerging risks such as cyber....

Putting time into establishing a relationship only to see it abruptly end is understandably exasperating. Insurers ... that invest heavily in training, developing, and supporting employees find that their people feel more valued and are far more likely to stay with the company. That pays off for the insurer, broker, and customer.

When a loss occurs, the takeaways for efficient claims management is to properly handle client expectations, through clear verbal communications and in reservation of rights letters:

Understand that the client needs information on coverage, out of pocket costs and time frames to resolution.

Claims professionals need to collate and convey this information promptly.

The author relates the new gold standard on integrating claims data with larger account risk management information systems:

As well as underpinning automation, claims data and insight have become increasingly important to customers.

It is no longer enough to provide the traditional metrics that risk managers once looked for regarding claims activity. They need much more than just details on the claim amount and a projection of when it will be settled.

The rise of risk management information systems has made it possible to analyze large amounts of data that help assess risks and provide insight into how losses can be prevented.

Claims data is therefore valuable as another feed into risk management systems, enabling informed decisions to be made on where best to invest in prevention and mitigation. Such data can increasingly be shared directly between insurers and customers through APIs, speeding up reporting and avoiding the need for

information to be laboriously reshaped in the transition from one system to another.

Of course, even in the smaller account setting, relationships are built by engaging in personal contact, conveying information clearly and by providing consistent, reliable service.

- Tips to managing the remote workplace.

In a Risk&Insurance article titled COVID-19 Forced Claims Adjusters to Work from Home. Here's How It Turned Out,⁷ the author describes the tension for those moving from some work from home (e.g., one day a week) to full time work from home:

The struggle is, in an office setting, it is a very collaborative effort. If an adjuster has a question about a statute or a claim, they can just look to their right or look to their left, he explained.

Being home alone, there is an inability to collaborate with co-workers and have that same support system. The metrics we use to measure our performance have not slipped at all...

The divide appears to be in the personal willingness or ability to adapt to new tools:

When we moved to work from home the hardest part for our more seasoned adjusters was getting set up...

Once they got set up, they were excellent. The younger generation loves it. The ability to work from home is probably going to be a pretty good recruiting tool for that next generation of adjuster.

In the scheme of things, the author advocates that the insurance industry move to proactively manage the forces of technological change in claims handling, rather than reacting to it.

Ultimately, even after the country heals, individual organizations will have to take the lessons learned and apply them to their cultural roadmaps.

⁷ By Nina Luckman, May 4, 2020, <https://riskandinsurance.com/claims-adjusters-working-from-home-it-works/>

Being a claims examiner is a very collaborative occupation, they really value being able to connect with their teammates and work through issues on claims — that social piece really cannot be underestimated. Some of our staff clamored for remote work and work from home opportunities, and what we have heard repeatedly is that many of them have realized that they really want more of a hybrid approach...