American Arbitration Association®

Building Resilience

The Future of Construction Disputes and Alternative Dispute Resolution (ADR) in an Ever-Changing World

Insights from the 2026 American Arbitration Association® Construction Conference

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Introduction

Construction disputes are becoming more complex as project risks increasingly cut across industries, disciplines, and jurisdictions. A delay on a renewable energy or infrastructure project may involve climate data, insurance coverage, labor availability, supply chain disruption, permitting requirements, and financing considerations. A dispute over construction design or coordination may turn on technology, data ownership, artificial intelligence (AI)-assisted tools, cybersecurity, and professional responsibility. On large and mega construction projects, these overlapping issues can become harder to manage because of the number of parties, contracts, technical inputs, and commercial interests involved.

At the 2026 American Arbitration Association Construction Conference, “Building Resilience: The Future of Construction Disputes and ADR in an Ever-Changing World,” construction and dispute resolution professionals examined how these pressures are changing the way parties plan projects, allocate risk, manage claims, and resolve disputes. Drawing on the American Arbitration Association’s expertise across industries, the conference brought together perspectives on the legal, technical, financial, operational, and cross-border issues that increasingly shape construction disputes. Across six sessions, speakers emphasized a common theme: resilient dispute resolution starts long before a formal claim is filed.

The following takeaways highlight practical strategies for managing emerging construction risks and using mediation, arbitration, dispute boards, and other ADR processes to address complex project disputes efficiently and effectively.

By Michael Powell
Vice President, Construction Division
American Arbitration Association

SESSION

01.

Sustainability and Environmental, Social, and Governance (ESG) in Construction: Climate Pressures and the General Counsel Perspective

KEY THEMES AND TAKEAWAYS

Climate Risk Is Moving to the Front End of Project Planning

Climate-related risk is increasingly shaping contract negotiation and project planning, not just claims after disruption occurs. Panelists said legal, insurance, risk, and engineering teams need to work together earlier because extreme weather, shifting site conditions, and coverage gaps can affect how risk is priced, allocated, and recovered if a project is delayed or damaged.

"[Climate risk] is just not something that we can afford to wait to address until an event actually occurs or impacts are realized," said James Cailao, assistant general counsel at MasTec.

Why it matters: Once a contract is signed, the parties' rights to time, compensation, insurance recovery, or other relief are largely fixed. Addressing climate risk during contract and project planning can help construction companies avoid being left without a clear contractual or insurance-based path to recovery.

Standard Clauses Need to Work Harder as Climate and ESG Risks Evolve

Panelists emphasized that a single dedicated contract clause does not always address ESG risks. Instead, those risks often rely on standard clauses covering force majeure — addressing major events outside the parties' control — as well as delay, differing site conditions, insurance, scope, materials, and change in law. These provisions may need more specific language, data, and assumptions to account for increasingly unpredictable project conditions.

"There's no ESG clause that we're trying to get inserted into the contract that will protect us," said Cara Peterson, senior vice president and general counsel at Adolfson Peterson Construction. "It's all your standard clauses that you kind of glance over towards the end."

Why it matters: If standard clauses are too broad or outdated, parties may end up fighting over whether an ESG-related risk was foreseeable, compensable, excusable, or already included in the contractor's scope. More precise drafting can help define those issues before they become disputes.

Risk Allocation Depends on Better Project-Specific Information

As climate-related events become more frequent and severe, panelists said parties need to be more deliberate about how they identify, price, and allocate project risks. This may include using project risk registers — planning documents that identify potential risks, assign responsibility, and track how those risks will be managed — along with updated weather data, geotechnical review, and clearer assumptions about who is responsible if conditions change.

"One of the most productive tools is a project risk register," said Steve Niparko, vice president and assistant general counsel at Flatiron Dragados.

Niparko said risk registers can help project teams and owners identify potential risks more collaboratively and decide how to address them before the project moves forward.

Why it matters: Risk allocation works best if the parties understand the risks they are assigning. Project-specific review can help owners, contractors, insurers, and counsel avoid relying on generic assumptions that may not reflect current climate, site, supply chain, or regulatory realities.

Insurance Gaps Are Becoming a Contract Risk

Insurance coverage must be reviewed alongside contract language because climate-related losses may not be covered as broadly as parties expect. Builder's risk, business interruption, temperature exclusions, geothermal issues, high deductibles, and other coverage limitations can create significant exposure if the insurance program and contract are misaligned.

"Risk has to be involved at the very front end of these to make sure that your coverage and your contract terms are aligned because the coverage is not worth anything if your contract terms don't align with what your insurance policy says," Peterson said.

Why it matters: If insurance does not cover the loss, parties need to know whether the contract provides another path to relief. Aligning coverage and contract terms before work begins can help reduce disputes over who bears the loss when climate-related damage, delay, or disruption occurs.

ESG Disputes May Look Like Traditional Construction Claims

Panelists noted that ESG-related issues may not appear as standalone claims. Instead, they often become part of familiar construction disputes over delays, costs, defective work or materials, regulatory compliance, or project disruptions. The difference is that the underlying cause may involve climate conditions, environmental requirements, insurance coverage, or specialized materials, making the dispute more technical than a standard delay or cost claim.

"It's not so much a specific ESG claim. It's your standard claims," said Steve Rohr, general counsel at Vortex Companies. "It's a delay. It's a cost overrun ... The difference is that a lot of that basis might be from an ESG-type event."

Why it matters: ESG-related disputes may arise through ordinary construction claims, but resolving them can require technical knowledge of project design, site conditions, materials, climate impacts, insurance, and regulatory requirements. Parties may need to identify those issues early so they can preserve the right evidence, involve the right experts, and avoid treating a technical dispute as a routine claim.

SESSION

02.

Labor and Supply Chain Pressures: ADR's Role in Managing Workforce and Material Disruptions

KEY THEMES AND TAKEAWAYS

Labor and Supply Chain Pressures Are Creating a "Perfect Storm" for Project Delivery

In today's construction market, disruption has become harder to isolate, price, and manage. Instead of treating labor and supply chain problems as one-off project issues, parties may need to revisit budgets, schedules, procurement plans, staffing strategies, and the labor and material expectations that shaped the original contract.

"I'd say industry-wide and across virtually every sector, there's been almost a perfect storm of dynamics that have arisen," said Sean Dillon, founder of Dillon ADR and Law and American Arbitration Association panelist. "Whether it's labor shortages, tariffs, geopolitical uncertainty, or material volatility, and then fuel prices going up ...."

Panelists said parties should address these issues early and directly, including through updated contract language, notice, documentation, project-level conversations, and ADR when necessary.

Why it matters: Labor and supply chain disruptions can affect pricing, staffing, procurement, schedule commitments, and risk allocation throughout a project. Addressing these issues while work is still underway can help parties preserve project momentum and avoid larger disputes later.

Labor Shortages Are Forcing Earlier and More Direct Owner Conversations

Labor shortages are affecting project budgets and schedules, particularly on complex projects that require large numbers of skilled workers. Tiana Towns, senior legal counsel at Gilbane Building, said the company began seeing labor concerns on data center projects, where trade contractors were seeking additional budget for labor attraction, subsistence, and other costs tied to bringing workers to the jobsite.

"We realized there's mass [labor] shortages across the board," Towns said. "That creates an issue that's now impacting the budget."

In response, Towns said Gilbane is raising these concerns with owners early, especially when labor and material availability, or the supply chain conditions that shaped the original contract, no longer reflect current conditions.

Why it matters: When labor assumptions change, parties may need to revisit budget, schedule, staffing, and contract expectations before the issue becomes a formal dispute. Early communication can help preserve project relationships while creating a record of the disruption.

Force Majeure and Delay Claims Need More Specific Contract Language and Better Notice

Panelists emphasized that force majeure provisions are only as useful as the contract language and the process the parties follow when a disruption occurs. Labor shortages, material delays, abnormal weather, pandemics, tariffs, and other disruptions may create disputes over whether an event qualifies for relief, whether the contract requires notice within a specific time period, and whether the contractor can show a causal link between the event and the delay.

“Notice is key to every claim that goes on,” said Denise Motta, of counsel at Wilson Elser and American Arbitration Association panelist. “But with that notice, I think you have to start the conversation.”

Motta said notice should do more than preserve a party’s rights. It should also start a practical discussion about how the issue will be addressed before it causes broader project impacts.

Why it matters: A force majeure clause may not resolve a dispute if the contract is vague, notice is late, or the impact is not documented. Clear provisions, timely notice, and early communication can help parties determine whether the disruption is excusable, compensable, or both.

Material Price Volatility Is Raising the Stakes for Contract Drafting

Material escalation now extends well beyond tariffs and can involve market volatility in steel, lumber, batteries, semiconductors, and other critical project components. These issues are driving disputes over escalation clauses, thresholds for relief, risk sharing, and whether contractors or subcontractors purchased materials in time to qualify for relief.

“Volatility in pricing … is one of the biggest reasons we’re seeing an emergence of disputes,” said John Gazzola, partner at Troutman Pepper Locke. “And it’s broader than just tariffs.”

Gazzola said parties need to consider how much risk they are willing to assume for price escalation, whether relief will be available, and, if so, the threshold for relief and how it will be measured.

Why it matters: Once a material escalation dispute reaches formal resolution, the project may already be under serious pressure. Addressing escalation, substitutions, procurement timing, and risk sharing at the contracting stage can help reduce later disputes over cost and delay.

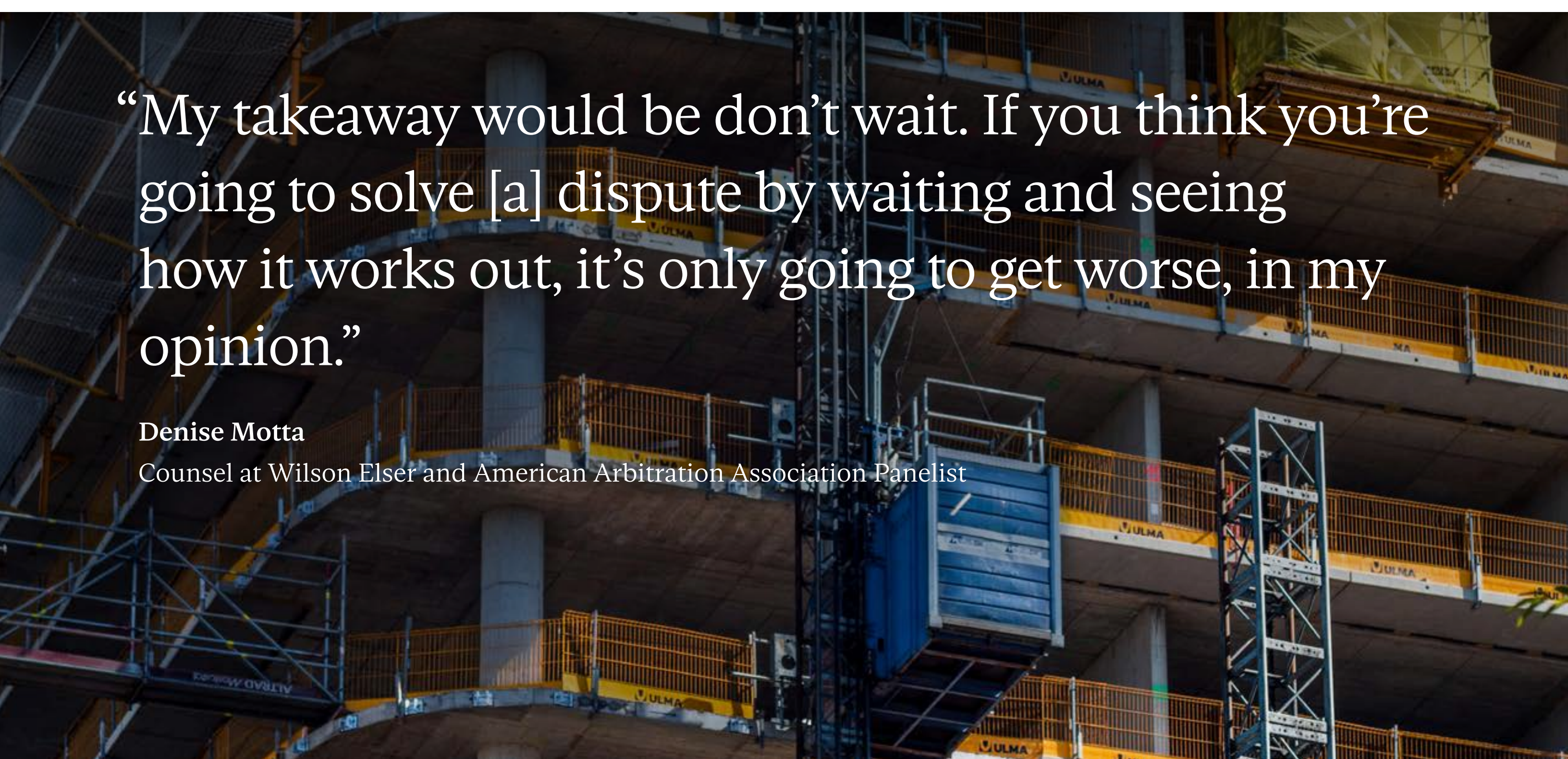
ADR Tools Can Help Resolve Disputes Before They Derail the Project

Panelists emphasized that parties do not need to wait until the end of a project to address disputes. Early mediation, early neutral evaluation, Dispute Avoidance and Resolution Boards, and, in some cases, targeted arbitration for interim relief or discrete issues can help parties resolve change orders, delay issues, pricing disputes, and technical disagreements while work continues.

"There are so many great ADR options you can use in early stages of dispute, and they don't have to be siloed," Dillon said. "You can use them as hybrids. Why not combine an early mediation with early neutral evaluation?"

Motta also emphasized the value of acting quickly: "My takeaway would be don't wait. If you think you're going to solve [a] dispute by waiting and seeing how it works out, it's only going to get worse, in my opinion."

> **Why it matters:** Early ADR can help parties preserve relationships, protect project momentum, and avoid turning every disruption into a full-scale arbitration or litigation. On active construction projects, fast and focused dispute resolution can be as important as the outcome.



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Denise Motta
Counsel at Wilson Elser and American Arbitration Association Panelist

SESSION

03.

Financial Risk, Insurance Challenges, and Statutory Payment Claims

KEY THEMES AND TAKEAWAYS

Strong Demand Is Not Easing Project Risk

Panelists said the construction industry is facing an unusual market dynamic: significant public and private work is available, but the conditions for delivering that work are increasingly difficult. Labor shortages, material volatility, tariffs, power demands, and data center growth are putting pressure on project performance, pricing, and risk allocation.

"We are chasing over $2.2 trillion of work per year in U.S. construction but face supply, labor, and performance challenges to adequately attend to all that work," said Daniel E. González, partner at Hogan Lovells and American Arbitration Association panelist.

González noted that, in a typical boom cycle, contractors may be more willing to absorb losses and move on to the next project. But in the current market, the obstacles to delivering available work are creating disputes over performance, payment, schedule, and responsibility.

Why it matters: High demand does not eliminate financial risk. When projects are plentiful but harder to staff, price, supply, and complete, owners and contractors may face more disputes over whether project commitments can realistically be met and who should absorb the added costs.

Payment Laws Are Changing the Balance of Risk

Panelists discussed how state payment laws and contract payment provisions are reshaping construction finance disputes. These rules can affect when contractors and subcontractors must be paid, whether payment can be withheld, what notice must be given when payment is disputed, and what remedies may be available if payment does not move down the project chain.

"Look at what those prompt pay statutes require when you're not going to pay," said Michael Suga, partner at Varela Lee. "Some of them actually have some fairly specific language about if you're not going to pay, that you have to give specific notice regarding the non-payment."

Suga said the requirements vary by state, which can create risk when parties assume their contract alone determines when payment is due, when payment can be withheld, or what notice is required.

> **Why it matters:** Payment disputes often turn on state-specific requirements, not just the contract. Owners, contractors, and subcontractors need to understand whether payment laws, lien rights, or bond claim procedures create obligations or remedies that override or limit negotiated terms.

Contract Drafting Can Help, but It Cannot Solve Every Risk

Panelists emphasized that contract language remains important, especially provisions that address major disruptions, rising costs, legal or regulatory changes, work stoppages, and responsibility for unexpected project risks. But they also cautioned that parties cannot rely on contract language alone if project conditions make performance difficult or if subcontractors and suppliers cannot realistically absorb the risk assigned to them.

"The recurring question across these provisions — something we've been negotiating for years — is whether they meaningfully clarify risk allocation or simply shift unexpected project risks downstream," said Todd Bressler, partner at BBG Construction Law.

Bressler noted that the most effective way to manage these risks is at the drafting stage, with continued engagement among owners, subcontractors, and suppliers as conditions evolve, allowing parties to address cost increases, delays, substitutions, and contract adjustments in real time before surprises become disputes.

> **Why it matters:** Strong contract language matters, but risk-shifting provisions are only useful if the parties understand them and can realistically perform under them. In a volatile market, practical planning may be as important as the written clause.

Termination Disputes Are Becoming More Common and More Consequential

Panelists said owners and general contractors appear more willing to terminate for default — a decision often described as the "nuclear option" because of the stakes involved. These termination disputes can raise difficult questions over payment, completion costs, defective work, warranties, liquidated damages, and whether the termination was proper.

"I am seeing a lot quicker willingness on the part of owners and general contractors to terminate for default," said Daniel Gross, of counsel at Woods Aitken and American Arbitration Association panelist. "I've seen some [projects] where completion was 90, 95% and termination occurred."

Gross also noted that companies backing construction bonds are seeing more termination-related claims and higher losses when replacement contractors inherit defective work or unresolved project problems.

> **Why it matters:** Termination can shift leverage, expose significant financial risk, and create disputes that are difficult to unwind. Parties considering termination need to account not only for the contract language, but also for completion risk, warranty issues, bond claims, and the cost of proving the termination was justified.

Payment Bond and Surety Issues Require Early Attention

Panelists warned that payment bonds can create procedural and timing challenges if they are not aligned with the underlying construction contract. Payment bonds are issued by sureties to help protect subcontractors and suppliers if they are not paid. Disputes may arise over notice, default procedures, contract balance, forum selection, joinder, and whether an arbitration award can bind the surety.

"If you know you've got a bond [in] play, don't just kick that can down the road," Gross said. "Take it on actively and make sure you know all three parties — the surety, the principal, and the claiming party — are all aligned to the extent you can."

Gross noted that, when arbitrators learn a bond claim may be part of the dispute, it may be worth raising the issue with the parties early. That could include discussing whether the surety should be brought into the arbitration by agreement or whether the parties and surety can agree that the surety will be bound by the arbitration award.

He also encouraged parties to address the issue at the front end where possible, including by incorporating the arbitration provision from the underlying contract into the bond.

Why it matters: If the bond and contract point parties toward different ADR processes, a dispute can split into multiple tracks, delaying recovery. Aligning bonds, contracts, and dispute resolution procedures early — and addressing whether the surety should participate in or be bound by the arbitration — can help reduce procedural disputes when payment or performance issues arise.

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SESSION

04.

Technology, Building Information Modeling (BIM), and AI Accountability in Design and Coordination Disputes

KEY THEMES AND TAKEAWAYS

AI Is Making BIM More Powerful, but Human Judgment Still Matters

Panelists discussed how AI is being integrated into BIM, the digital modeling process used to coordinate design and construction information. AI can help generate design options, forecast risks, summarize project data, update drawings, and run environmental simulations. But the panel emphasized that AI remains a tool, not a substitute for professional judgment.

“AI is not going to change or replace the professional design judgment,” said Pasha Ameli, managing director at Ankura. “It is going to be a tool that’s going to remove friction between the intent of the designer and different scenarios that they run.”

Ameli also warned that AI can produce mistakes, making review and verification essential before design teams rely on its output.

Why it matters: AI can help project teams test options faster and identify potential risks earlier, but design professionals remain responsible for checking the work. As AI becomes more common in design and coordination, disputes may turn on whether the human review process was reasonable.

BIM Models Need Clear Contract Status

One of the most important questions in digital construction is whether the BIM model is part of the contract. If the model is treated as a contract document, parties need to know which version controls, who may update it, and what level of reliance is permitted. If it is not treated as a contract document, disputes may arise when parties build or price work based on information in the model.

“Perhaps the single most important question in digital construction today is a deceptively simple one,” said John M. Cook, partner at Fox Rothschild and American Arbitration Association panelist. “Is the BIM model a contract document?”

Cook said silence on that issue can create real consequences, especially when multiple parties are updating and relying on the model throughout the project.

Why it matters: BIM models are dynamic, not static. Without clear contract language, parties may later disagree over which model version governed, who was responsible for an error, and whether reliance on the model was justified.

Digital Coordination Risks Must Be Assigned Up Front

BIM and AI-enabled workflows create new questions about responsibility for model accuracy, updates, version control, cybersecurity, data integrity, and AI-generated outputs. Contracts may need to specify who manages the model, who validates updates, who controls access, and who bears the loss if data is corrupted or an AI-assisted output is wrong.

"Your contracts need to address who's responsible for maintaining data integrity, what protocols are required to do that, and who bears a loss if there is a cybersecurity event that compromises model accuracy," Cook said.

The panel also discussed the need to define modeling responsibilities, including who models what, when updates occur, and how reliable each model element is at each project stage.

Why it matters: Digital project delivery can improve coordination, but it also creates new paths for error and dispute. Assigning responsibility before a dispute arises can help reduce fights over model discrepancies, coordination failures, AI-assisted errors, and corrupted project data.

AI Is Changing How the Standard of Care Will Be Evaluated

Panelists said AI does not eliminate professional responsibility. Instead, it may change how courts, arbitrators, and advocates evaluate whether a design professional acted reasonably. As digital tools evolve quickly, disputes may focus on whether reliance on a BIM model or AI-generated output was reasonable under the circumstances.

"AI is here. It's changing the way, but the professional responsibility is not disappearing," said Y. Lisa Colon, partner at Saul Ewing. "The professional responsibility is the professional responsibility."

Colon said the core question will remain whether the professional used ordinary and reasonable care, skill, and diligence, but technology will influence what is considered reasonable in each project context.

Why it matters: The legal standard may remain familiar, but the facts are changing quickly. Arbitrators and mediators may need to assess not only what the design professional did, but also which tools were used, how they were checked, and whether reliance on them was reasonable at that time.

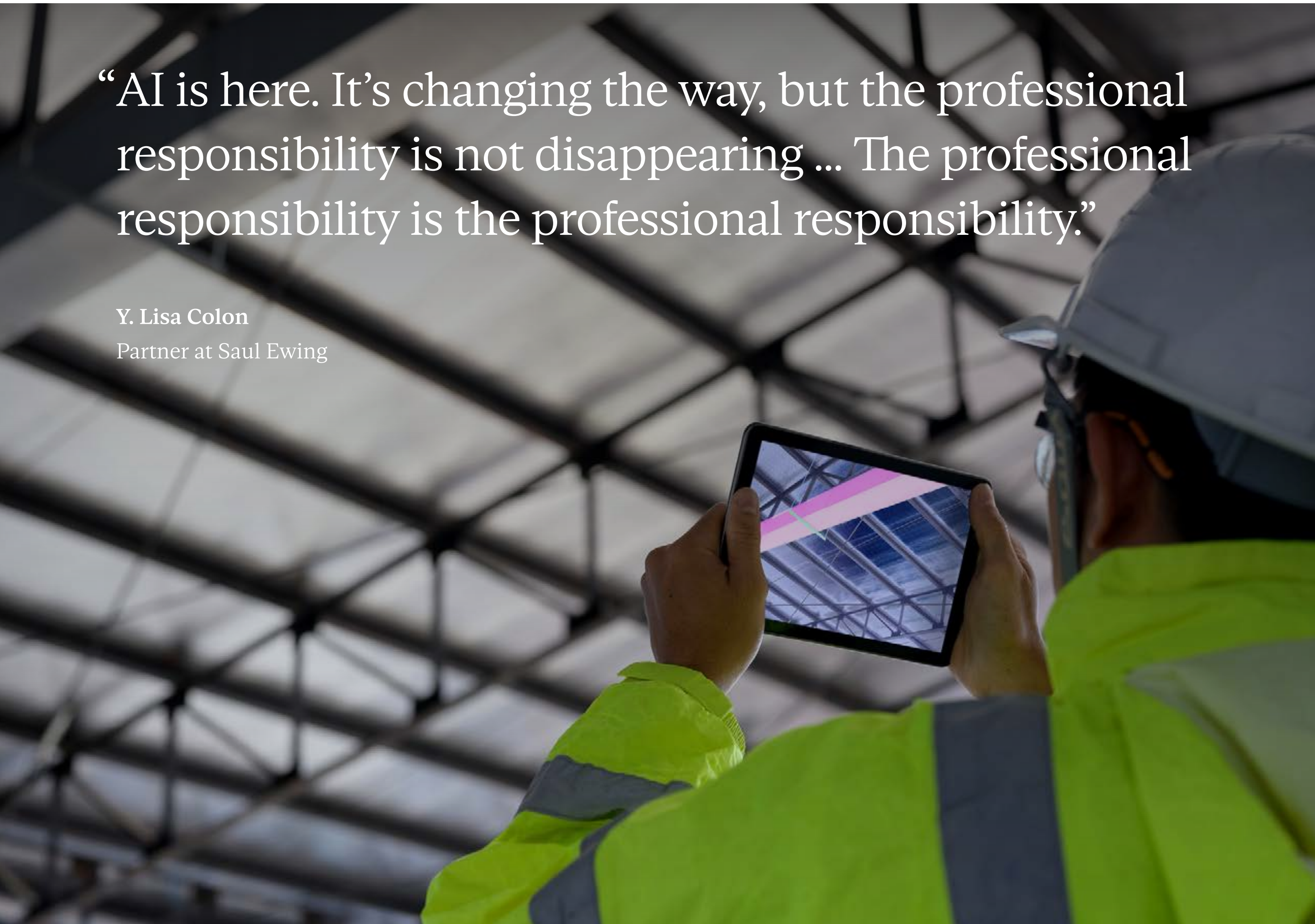
Digital Evidence in ADR Will Require More Technical Fluency

Panelists noted that AI and BIM disputes may raise complex evidentiary questions about how digital tools were used and whether the results were properly reviewed. These issues can quickly expand the scope and cost of discovery if the parties and neutrals are not prepared to manage them.

Carson Fisk, shareholder at Andrews Myers, described a case in which opposing counsel questioned an expert about his use of AI, including which platform he used, what prompts he entered, what information he provided to the system, and how AI contributed to the final report.

"It's an incredibly tricky question," Fisk said, regarding how parties, counsel, and arbitrators should evaluate an expert's AI-supported analysis.

Why it matters: Technology-driven disputes may require arbitrators and mediators who understand construction and digital workflows. Technical fluency can help keep disputes focused on the key questions: what information was used, who relied on it, whether it was verified, and whether that reliance was reasonable.



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SESSION

05.

Global Mega Projects and Cross-Cultural Dynamics in Transnational Construction

KEY THEMES AND TAKEAWAYS

Cross-Border Mega Projects Require More Than Technical Expertise

Panelists emphasized that international construction projects are complex not only because of their size, engineering, financing, and logistics, but also because of the cultural and legal environments in which they are built. Contract interpretation, project governance, decision-making authority, documentation practices, and communication expectations may vary significantly across jurisdictions and cultures.

"Know your client, know the culture, know who you're working for and be prepared for it," said Drew Baiter, managing director at Secretariat and American Arbitration Association panelist.

Baiter described how negotiation styles can vary significantly across cultures, including settings where relationship-building, bargaining, and extended in-person discussions are central to how business gets done.

Why it matters: On cross-border projects, misunderstandings can arise long before a formal dispute. Understanding local business practices, communication styles, and decision-making norms can help parties manage expectations and reduce conflict during both contracting and project delivery.

Local Partners Can Help Bridge Cultural and Operational Gaps

Panelists said local knowledge can be critical on international projects, particularly when contractors are working in unfamiliar legal, labor, regulatory, or cultural environments. A local joint venture partner may help explain local construction practices, labor dynamics, owner expectations, and community or Indigenous considerations that outside contractors may not fully understand.

"It's essential," said Brian Davidson, managing partner at DFL Legal, discussing the role of joint venture partners on international construction projects.

Davidson described a project in British Columbia in which an international contractor later identified the absence of a local joint venture partner as one of its biggest regrets, as it contributed to execution problems and unresolved project-level conflicts.

Why it matters: Local partners can help translate not only language, but also expectations. On mega projects, this local context may be essential to managing labor, permitting, procurement, community relations, and owner communications before problems become disputes.

Choice of Law Can Be More Complicated Than the Contract Suggests

Parties need to understand which laws may apply to an international project before the dispute arises. Even if a contract selects New York law or another familiar governing law, local law may still control employment, environmental, tax, permitting, financing, property, or project-site issues. State involvement may also introduce treaty rights or other public international law considerations.

“Always be aware of the law of the place where you are and what treaties apply, if any,” said Jennifer Morrison Ersin, counsel at Bradley Arant.

Ersin noted that contractors may have treaty rights even when working under a private contract, particularly if state action interferes with a foreign investment.

Why it matters: A governing law clause may not answer every legal question on a cross-border project. Parties need to understand the full legal landscape, including local law, project-site obligations, financing rules, and potential treaty protections.

Dispute Resolution Clauses Need to Match the Realities of International Projects

Panelists discussed the importance of stepped dispute resolution processes, including project-level negotiations, senior management escalation, mediation, DARBs, arbitration, and other tools. They also noted that international construction contracts may use different forms and terminology, such as Federation of Consulting Engineers contracts, which can differ significantly from U.S. construction forms.

“For most every international contract I’ve had for a mega project, there’s been some form of stepped dispute resolution,” said Wendy Venoit, managing partner at Cozen O’Connor and American Arbitration Association panelist.

Venoit said parties should understand the dispute resolution process before a conflict arises, including whether a DARB is required and whether it is intended to issue binding or nonbinding decisions.

Why it matters: International project disputes can become more difficult when parties do not understand the process they agreed to use. Clear dispute resolution clauses can help avoid procedural fights and provide a path for resolving issues before they escalate into full arbitration.

International Arbitration Can Offer a Neutral, Enforceable Forum

International arbitration is often preferred over litigation for cross-border mega projects because it offers a neutral forum, the ability to select a neutral seat, and the benefit of international enforcement conventions. Panelists also discussed how international arbitration often differs from U.S. litigation or domestic arbitration, including more limited document production, written witness statements, fewer depositions, and a stronger emphasis on contemporaneous project records.

"If you have an international mega project and you're not forced into some remote state court or country court, international arbitration is the way to go," Venoit said.

Panelists also emphasized that experts in international arbitration are expected to assist the tribunal, not simply advocate for the party that hired them.

Why it matters: Cross-border construction disputes often involve multiple legal systems, languages, documents, witnesses, and experts. Arbitration can provide a neutral and enforceable forum, but parties need to understand how evidence, document production, witness statements, translation, and expert testimony may work differently from U.S. proceedings.

"If you have an international mega project and you're not forced into some remote state court or country court, international arbitration is the way to go."

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Managing partner at Cozen O'Connor and
American Arbitration Association Panelist

SESSION

06.

The Evolution of Construction Mediation: Timing, Strategy, and the Mediator's Expanding Role

KEY THEMES AND TAKEAWAYS

Early Mediation Can Create Strategic and Economic Value

Panelists emphasized that mediation is increasingly being used earlier in the life of a construction dispute, rather than only on the eve of arbitration or trial. Early mediation can help parties exchange information, test arguments, assess risk, and resolve disputes before legal costs and business disruption increase.

"The longer cases go on, the more expensive they are going to be to settle," said Luis Prats, shareholder at Carlton Fields and American Arbitration Association panelist.

Prats said robust mediation can be one of the most cost-effective ways to resolve a case or, if it does not settle, better prepare the parties for arbitration or litigation.

Why it matters: Waiting until the end of discovery or the eve of a hearing may create pressure, but it can also increase costs and make settlement harder. Earlier mediation can help parties understand the strengths and weaknesses of their positions before the dispute becomes more entrenched.

The Mediator's Role Is Becoming More Active

Construction mediators are increasingly acting as process managers, not just facilitators who appear on the day of the mediation. That may include pre-session calls, helping parties identify missing information, encouraging document exchange, coordinating with insurers, and assessing whether the parties are ready for a productive session.

"You want a mediator who's hands-on and not just available on the day of mediation," said Matthew Argue, owner of One Mediator and American Arbitration Association panelist. "Someone who's going to be a process manager and have early involvement before the mediation session."

Panelists noted that the format of mediation can also affect how the mediator works with the parties. Remote mediation can create flexibility, while in-person mediation may be useful when relationship dynamics, body language, or informal conversations could help move the parties toward settlement.

"Personally, I prefer in-person mediation over virtual because I get a lot out of body language," said John Carpenter, executive vice president and general counsel at Shimmick Construction. "And I think a lot of stuff can end up happening in the hallway."

Why it matters: Construction disputes often involve technical issues, multiple parties, insurance questions, and ongoing business relationships. A more active mediator can help structure the process, so the parties arrive prepared to negotiate, with the right documents, decision-makers, insurance information, and expert input in place.

Mediation Advocacy Should Be Framed Around Settlement

Panelists said mediation advocacy should be designed to move the parties toward settlement, not simply to win arguments. Opening statements, mediation briefs, joint sessions, private caucuses, and demonstratives should help the other side understand the risks of continuing the dispute and the business reasons to compromise.

"When you're in a mediation, and you're making your opening statement, if you're the plaintiff, you are trying to persuade someone to separate himself or herself from their money," Prats said. "If you're the defendant, you're trying to persuade the plaintiff to take less than what the plaintiff is asking for."

Prats cautioned against overly aggressive presentations and emphasized the value of giving the other side a path to compromise while preserving dignity.

Why it matters: Mediation is not a trial presentation. Effective advocacy requires preparation, credibility, empathy, and a clear understanding of what the other side needs to hear before it can make a business decision to settle.

Complex Construction Mediations May Need More Structure

Multi-party construction disputes, insurance coverage issues, expert analysis, and technical claims may require a more structured mediation process. That may include phased sessions, separate meetings with insurers, expert-focused discussions, co-mediators, mediator's proposals, or nonbinding neutral evaluations.

Karen Layng, CEO of M.A.I.T. Co. and American Arbitration Association panelist, emphasized the value of pre-meetings and expert input before the mediation session. "I start out with pre-meetings, and I think they are one of the most critical aspects of any mediation," she said.

Panelists also discussed how technology, including AI-supported document review and case preparation, may help parties organize large records and identify key evidence more efficiently.

Why it matters: Complex construction disputes rarely settle through a single conversation. A structured approach can help parties break large disputes into manageable pieces, address insurance and expert issues separately, and use the mediator more strategically to move toward a durable settlement.

Conclusion

The issues discussed throughout the conference point to a construction industry in which dispute resolution strategy must keep pace with increasingly technical, interconnected project risks. Climate risk, labor shortages, supply chain disruption, insurance gaps, evolving technology, cross-border project delivery, and financial pressure are no longer separate concerns. They often converge on the same projects, contracts, claims, and relationships.

For parties involved in construction projects, resilience depends on more than responding well after a dispute arises. It requires earlier planning, clearer risk allocation, better documentation, stronger communication, and dispute resolution processes matched to the project and the problem. Mediation, arbitration, dispute boards, early neutral evaluation, and other ADR tools can help parties address conflict before it threatens project momentum or business relationships.

As construction projects continue to grow in scale and complexity, experienced dispute resolution forums with construction and cross-industry expertise will remain essential to helping parties resolve disputes efficiently and fairly.

About the American Arbitration Association

The American Arbitration Association is a not-for-profit organization and the leading provider of ADR services globally. For a century, it has helped parties resolve disputes fairly and efficiently through arbitration, mediation, and other dispute resolution processes across a wide range of industries.

Through its Construction Division, the American Arbitration Association administers disputes across the full spectrum of the construction industry, including commercial, civil, infrastructure, residential, and environmental projects. Its roster of construction arbitrators and mediators includes experienced professionals with the industry knowledge and technical expertise needed to help parties address complex disputes.

The American Arbitration Association is developing technology-supported tools to help parties and arbitrators manage disputes more efficiently. The AI Arbitrator is currently available for two-party, documents-only construction disputes, with additional dispute types expected in the future. The Resolution Simulator, launching in August 2026, will be available for two-party, documents-only construction and commercial, business-to-business matters.

Learn more at adr.org.