



Perrin Conferences North American Construction Summit

Four Seasons Hotel Las Vegas
January 17-18, 2024

Conference Co-Chairs



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National Overview of Construction Trends

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NATIONAL OVERVIEW OF CONSTRUCTION TRENDS

**PERRIN CONFERENCES
NORTH AMERICAN CONSTRUCTION SUMMIT
JANUARY 17, 2024
1:15 P.M. – 2:15 P.M.**



National Overview of Construction Trends

Steve Lokus, Assistant Vice President, Global Specialty Construction
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MODERATOR: Jason Daniel Feld, Esq., Kahana Feld, LLP

Disclaimer: *This Presentation and Discussion Reflects the Personal Views of the Presenters and Not Their Respective Firms or Companies*



NATIONAL OVERVIEW OF CONSTRUCTION TRENDS

- ❖ **EXAMINING THE DATA:**
 - ◆ (TAMI) FOR THE PAST 4 YEARS
 - ◆ BENCHMARKING FOR 2023

- ❖ **IDENTIFYING TRENDS IN THE
CONSTRUCTION INDUSTRY FOR 2023**

- ❖ **IDENTIFYING TRENDS IN
CLAIMS/CASES**

- ❖ **FORECASTING FOR THE FUTURE FOR
BOTH CONSTRUCTION TECH AND
LITIGATION/CLAIMS**



EXAMINING THE DATA

**EXAMINING THE TAMI FOR THE PAST
4 YEARS**

&

BENCHMARKING FOR 2023

AXA XL Ecosystem

An innovative business initiative that leverages partnerships and services to help our clients advance risk management, support ESG, and grow their businesses.

We act for human progress by **Protecting What Matters.**

AXA XL Ecosystem

Innovate. Adopt. Insure.



Preferred Partners Portfolio



Our portfolio of solution providers are curated to help our clients reduce risk, promote ESG, and grow their businesses.

Discounts and/or preferred terms are available for AXA XL clients.



Risk Benchmarking Services



Our proprietary Risk Benchmarking Services are designed to help our clients advance risk management through comparative assessments and personalized recommendations.



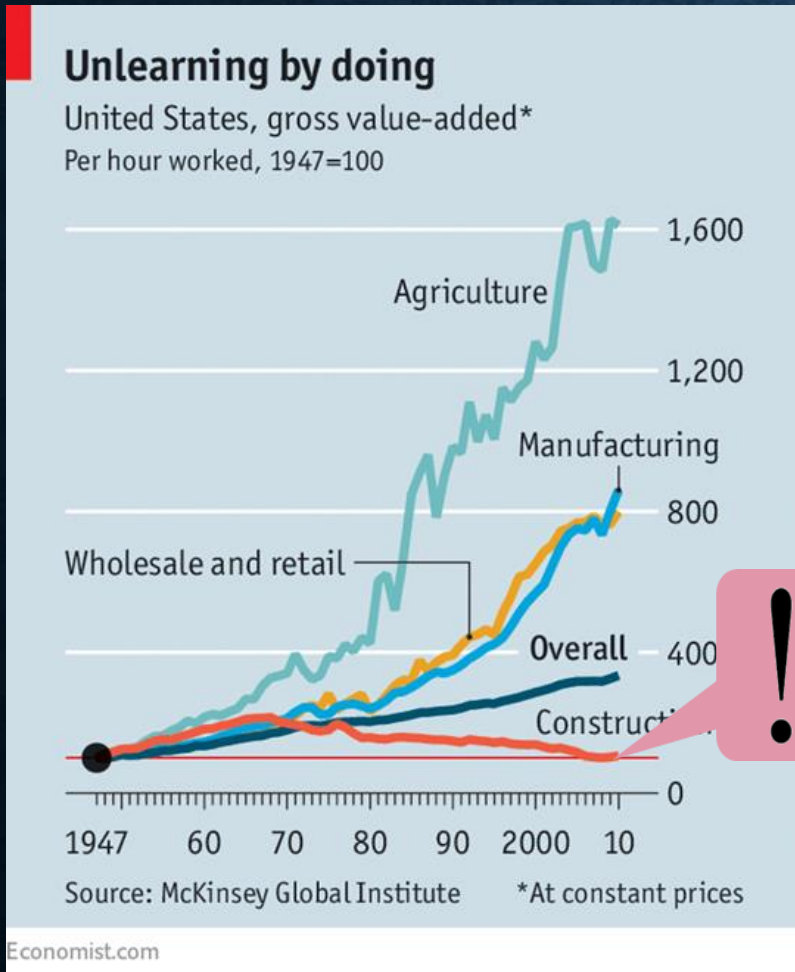
Thought Leadership



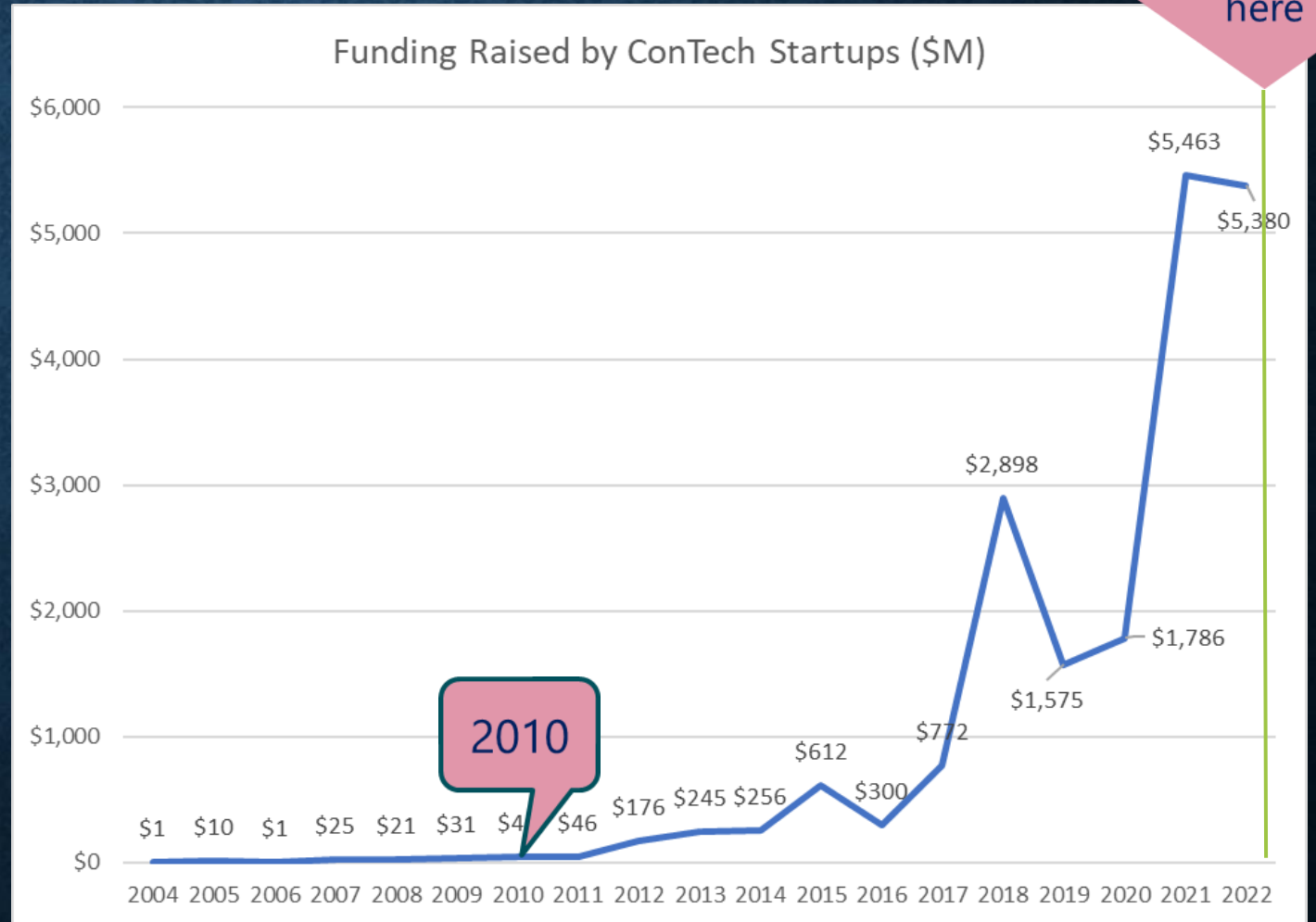
Promoting a culture of innovation across the industries we serve through educational content, roundtable peer networks, and knowledge-sharing workshops.

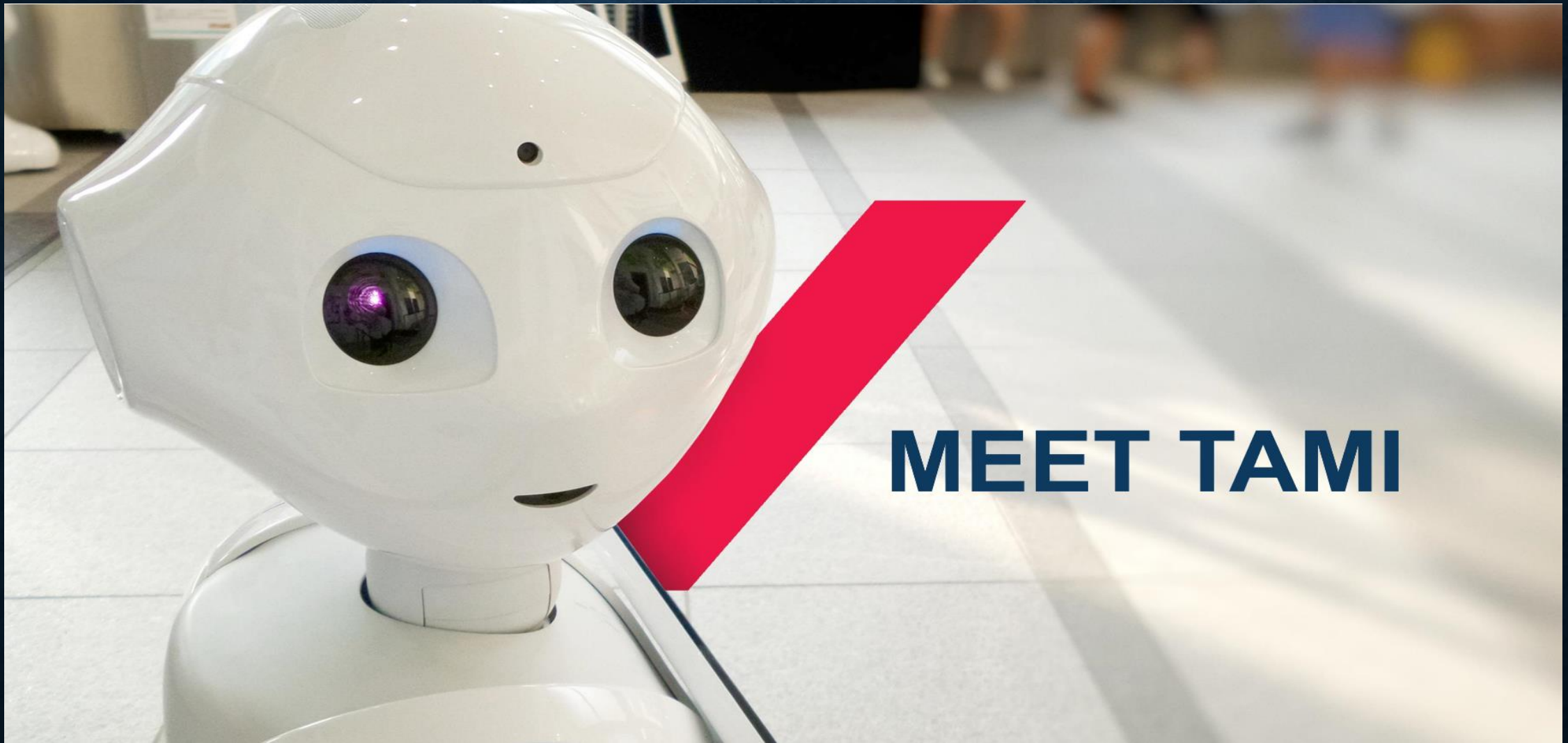
ConTech Historical Data

WHERE WE'VE BEEN



WHERE WE'RE GOING



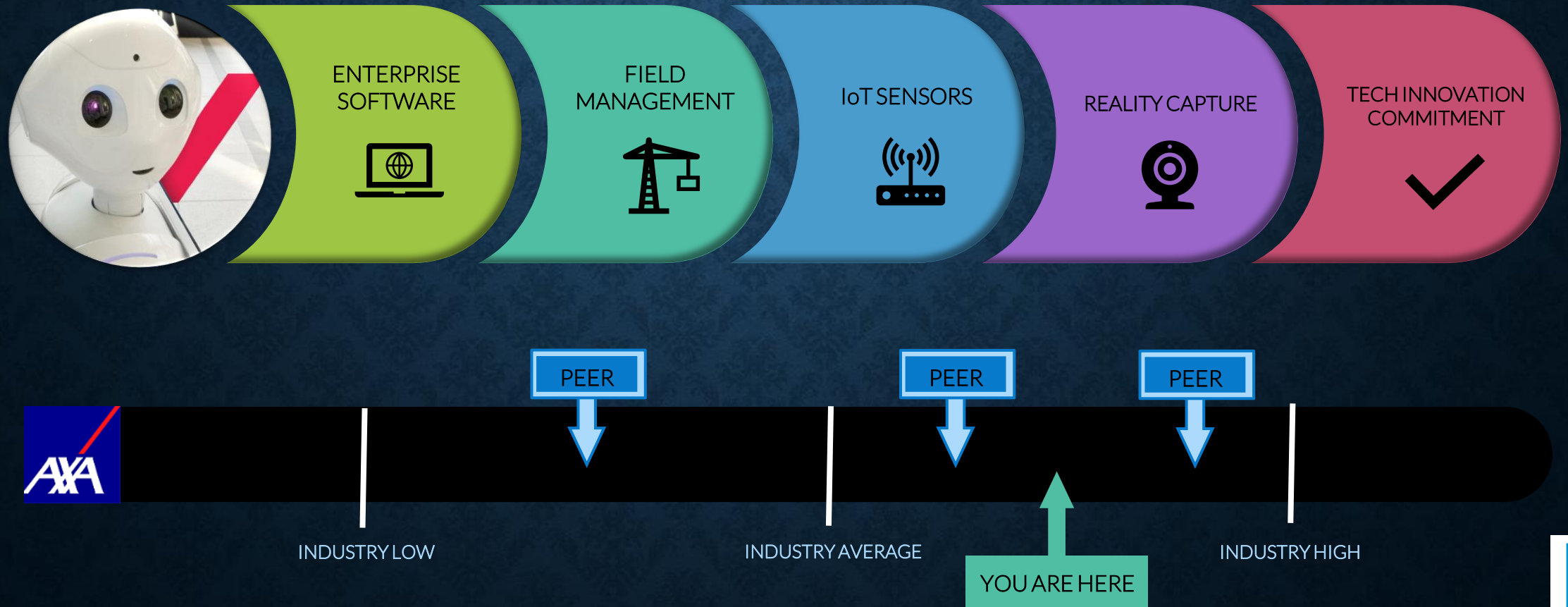


MEET TAMI

TECH ADOPTION MATURITY INDEX

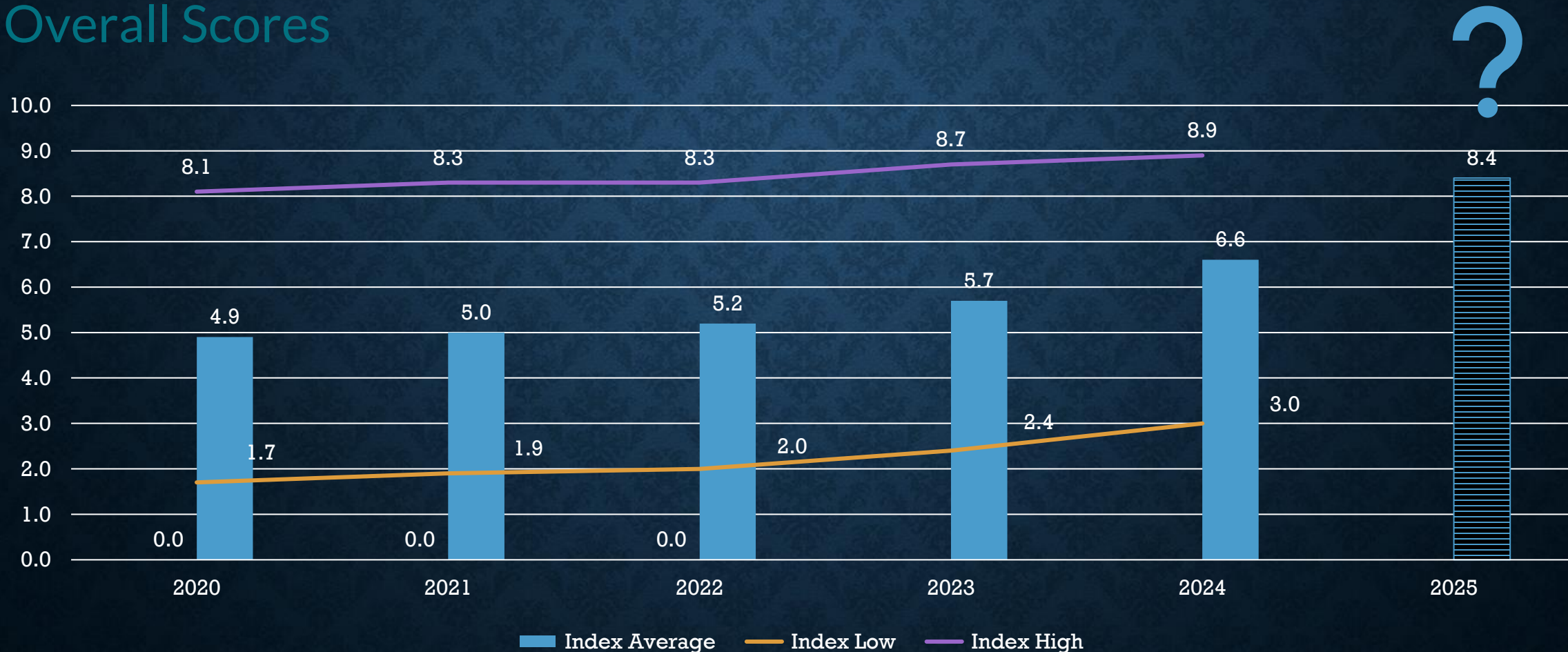
AXA XL Technology Adoption Maturity Index

Technology Adoption Maturity Index (TAMI) is a unique benchmarking service that compares a contractor's level of technological maturity against the industry index and their peers



AXA XL Technology Adoption Maturity Index

Overall Scores



AXA XL Technology Adoption Maturity Index

Overall Movers



ENTERPRISE SOFTWARE

Average moved from 8.0 to 8.3 based on the following:

↑ CRM (Customer Relationship Management)



FIELD MANAGEMENT

Average moved from 6.6 to 7.4 based on the following:

↑ Alternative Production Methods & Materials
↑ Supply Chain & Material Mgmt.
↑ Worker Mgmt & Injury Prevention



IoT SENSORS

Average moved from 3.2 to 4.0 due to the following:

↑ Water Mitigation
↑ Other IoT Sensors & Apps



REALITY CAPTURE

Average Score moved from a 3.7 to 5.7 due an increase in all categories:

↑ UAS (Drones)
↑ Augmented Reality
↑ Virtual Reality
↑ Imagery
↑ Digital Twin
↑ Laser Scanning / LIDAR / GPR



TECH INNOVATION COMMITMENT

Average Score moved from a 6.0 to 6.5 due to the following:

↑ Innovation Budget as a percent of revenue

2023 TRENDS IN TECH ADOPTION

TOP ADOPTED TECH

- ❖ ERP (4.9)
- ❖ Project Management (4.9)
- ❖ Cloud Collaboration (4.5)
- ❖ CRM (4.4)
- ❖ Bidding & Estimating (4.4)
- ❖ Quality Management (4.4)
- ❖ Laser/LIDAR/GPR (4.4)

TOP LAGGING TECH

- ❖ Fleet Telematics (1.5)
- ❖ Worker Wearables (1.0)
- ❖ Digital Twin (1.0)

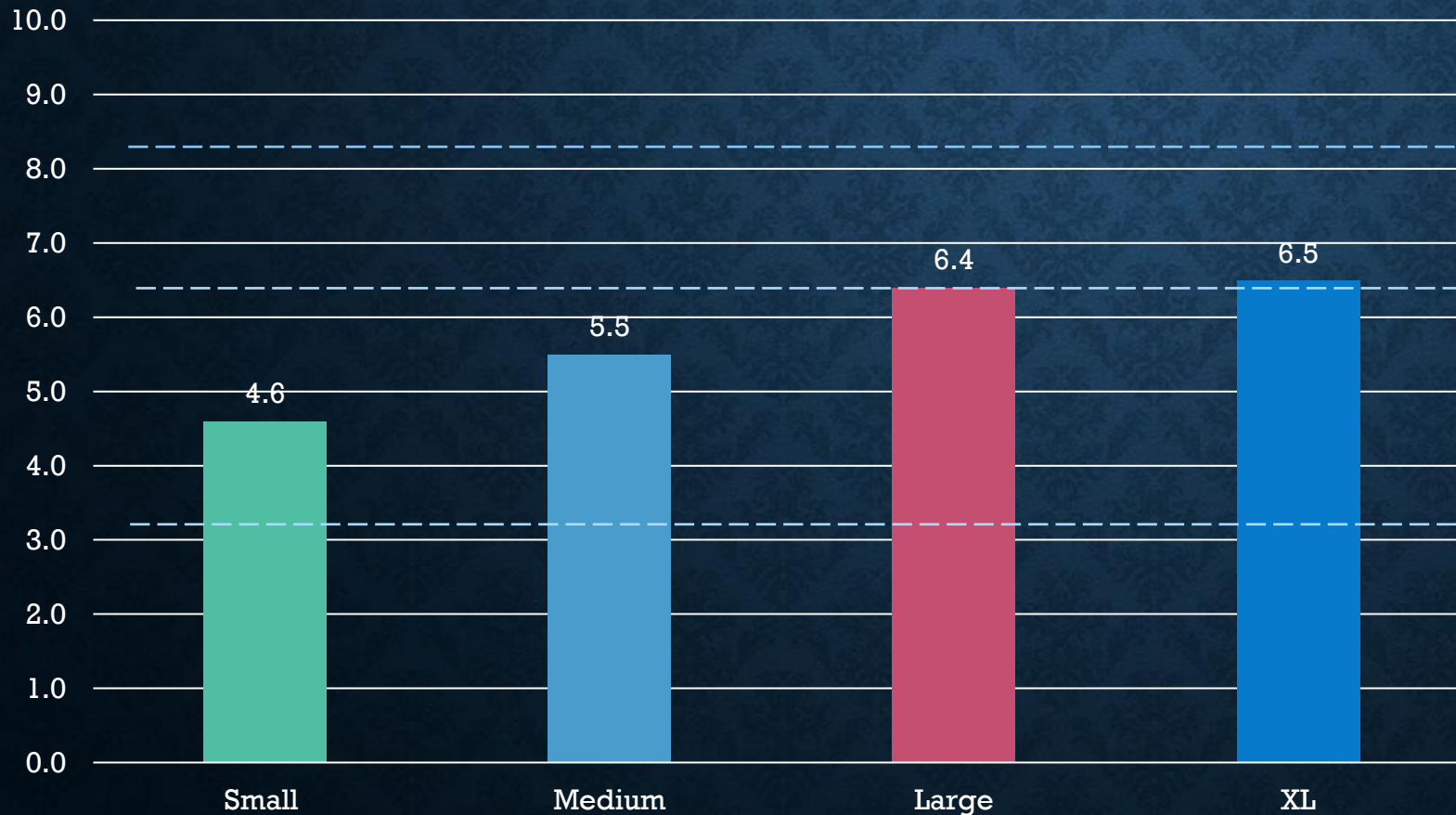
TOP EMERGING TECH

- ❖ All Reality Capture
- ❖ Alternative Production Means & Methods
- ❖ Water Mitigation IoT
- ❖ Worker Protection & Management
- ❖ Supply Chain Management

AXA XL Technology Adoption Maturity Index

TAMI Data

All Time Averages by Company Size



Index
High 2024 (8.9)

Index
Average 2024 (6.6)

Index
Low 2024 (3.0)

Small <\$500M

Med. \$500M-\$1.5B

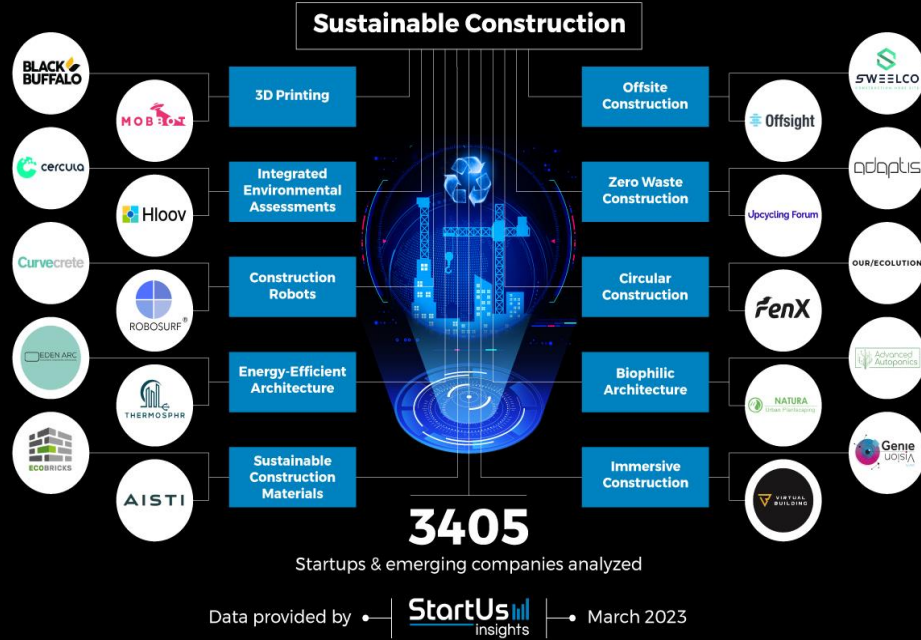
Large \$1.5B-\$4B

Extra Large >\$4B



**IDENTIFYING TRENDS IN
CONSTRUCTION
INDUSTRY FOR 2023**

Top 10 Sustainable Construction Trends in 2023



10 CONSTRUCTION INDUSTRY TRENDS IN 2023

Below, you'll learn more about the trends in the construction industry to expect in 2023 and the coming years.

1. Smart and High-Tech Protective Equipment
2. More Efficient Technology
3. Green Construction
4. More Diverse Workforce
5. Cloud Computing
6. Remote Work and Mobile Access
7. Increasing Material Costs
8. Modular and Offsite Construction
9. Rise of Smart Cities
10. Increasing Pressure on the Bottom Line

Data provided by: StartUs Insights (3/23) and Trimble Viewpoint Network Study (C. Heller, 2023)



What will be the biggest challenges in 2023?



61%
Hiring & labor shortage challenges



15%
Supply chain bottlenecks & material price fluctuations



10%
Threat of entering a recession

TRENDS IN CONSTRUCTION 2023

- Increase in renewable and infrastructure projects – which tend to be larger and more complex (i.e., “mega projects”) → leading to multi-party, high dollar and more complex claims.
- Continuing decline of office/commercial projects
- Interest rate will drive many projects in early 2024
- Increase in injuries and fatalities → unsafe job sites
- Labor shortage will continue to be an issue in construction.
 - Especially qualified skilled labor
 - Aging out of certain trades/highly trained construction professionals



TRENDS IN CONSTRUCTION - 2023

- Supply Chain delays
 - Not as wide-spread as during COVID, but still an issue, especially for certain sectors
 - Impact of severe weather increasing
- Material Price Fluctuation
 - As above, not as wide-spread as previous, but still an issue for certain materials
 - Prices are high and that has been deemed the “new normal”
- Delays are continuing to worsen
 - Design defects caused by the accelerated design process (due to rising interest rates, etc.)
 - See above causes
- Change in Scope of Projects caused by market conditions

The background of the slide is a blue-tinted collage. At the top, there are two large construction cranes against a light sky. Below them, there are architectural blueprints and technical drawings spread out on a surface. In the bottom right corner, there is a logo for Perrin Conferences, which consists of a stylized 'P' and 'C' inside a square, with the text 'PERRIN CONFERENCES' underneath.

IDENTIFYING TRENDS IN CLAIMS

NATIONWIDE

- **Use of Public Adjusters in 3rd party claims is becoming more prevalent**
 - Typically used in 1st party claims, there has been a rise in their utilization when there is damage to a neighboring building resulting in property damage
 - This is regardless if the 3rd party turned in a claim to its 1st Party carrier or not
- **Third Party Litigation Funding is being used in Construction Claims (BI, PD and CD)**
 - Typically reserved for large Tort matters, funding is being made available on individual cases now
 - Leading to prolonged litigation and less mediations
 - “ Funders recognize that bankrolling numerous longshot lawsuits seeking enormous sums may prove a successful strategy even if only a single case results in a nuclear verdict.”- taken from a Funding website (more in a later session)

NEW YORK

A study done by judicialhellholes.com indicated that frequency of injuries on construction projects in New York has decreased, but the number of Scaffold Law cases has nonetheless increased by 500 percent since 1990. This indicates that the Scaffold Law no longer serves the intended purpose of protecting workers but is rather utilized by plaintiffs' lawyers to inflate non-serious injury claims and reap the benefits of absolute liability.

- 8 of the top 20 personal injury settlements in 2021 involved Labor Law claims. Settlements in those cases averaged about \$4.9 million and ranged from \$3 million to \$11 million
- A typical Labor Law 240(1) claim will settle for above \$1 million. Where a neck or back surgery is involved, the claim value is between \$2 million - \$3 million or more.
- Third-party litigation funding and predatory lending has also gotten worse in recent years resulting in large liens/payments owed to lenders.
- Fraud has become rampant – plaintiffs will have “accidents” after being on the job a handful of days, get a settlement and then go to another jobsite and repeat the process

Wrongful Death Statute (NY) – Gov. Hochul vetoes the proposed expansion for a second time.

FLORIDA

Florida Construction Defect Statute of Limitations/Statute of Repose

- Florida enacted SB 360 and maintained its four (4) year Statute of Limitations **but reduced the Statute of Repose for construction defect claims from ten to seven years**. Florida's SB 360 also changes the "trigger date" for the statute of limitations and repose. Rather than running from the date a property owner takes possession, the statute(s) begin to run with the earliest of the following events: the issuance of a temporary certificate of occupancy, certificate of occupancy or certificate of completion, or the date of abandonment of construction, if construction is not completed, or the date of abandonment of construction if construction is not completed.

Florida Tort Reform

- The statute of limitations for filing of negligence cases has changed from **four (4) years to two (2) years**. This change applies to causes of action **accruing** after the effective date of the bill.
- Courts will apply "modified contributory negligence", which means that a claimant's recovery will be reduced by his or her *pro rata* share of negligence unless the claimant is determined to be greater than 50% at fault. If the claimant is determined to be more than 50% at fault, then he or she will be barred from recovering **any** damages in a negligence case. (Does not apply to Med-Mal cases)
-

FLORIDA (cont'd)

- If a claimant is referred to a health care provider by his or her attorney, disclosure of the referral is permitted, and evidence of the referral is admissible. In addition, the financial relationship between a law firm and a medical provider, including the number of referrals, frequency, and financial benefit obtained, is relevant to the issue of the bias of a testifying medical provider.
- **Florida Statute 627.428, the attorneys' fee statute is repealed and the provisions of the Offer of Judgment/Proposal for Settlement statute apply. Also repealed is Florida Statute 631.70, the attorneys' fee statute applicable to FIGA.** In cases in which attorneys' fees are awarded pursuant to a proposal for settlement or the declaratory judgment statute, **multipliers may only be awarded in rare and exceptional circumstances where there is evidence that competent counsel could not otherwise be retained.**

Plaintiff firms filed over 250,000 lawsuits the day before this reform went live in March 24.

Some large firms issued internal communications that there will be no courtesies provided to insurance companies or defense counsel in Florida and that every lawsuit will be accompanied by a policy limits demand.

TEXAS

Texas Construction Defect Statute of Repose

- Effective June 9, 2023, Texas has shortened its statute of repose from the existing ten (10) year statute for builders of new homes to six (6) years under specific conditions. The significantly shorter statute of repose bars suits against construction contractors (as defined by the Residential Construction Liability Act (Texas Property Code Section 27.001) for:
 - Detached one-and two-family homes and townhomes
 - Filed six years after the substantial completion of such homes,
 - Where the contractor also furnished a written warranty in compliance with the statute.

Under the ***Texas Civil Practice & Remedies Code Section 16.009***, persons who construct or repair improvements to real property cannot be sued for defective or unsafe conditions of the property or deficiencies in the construction or repair of the improvement later than 10 years after substantial completion of the improvement, except in certain narrow circumstances. The statute applies not only to suits for construction defects, but also personal injury, wrongful death, contribution, and indemnity.

The written warranty must contain a: (1) 1-year warranty for workmanship and materials; (2) 2-year warranty for plumbing, electrical, heating, and air-conditioning delivery systems; and (3) 6-year warranty for major structural components. The key is a written warranty must be extended to the homebuyer at the time of purchase for the statute to be triggered.

ILLINOIS

In *Acuity v. M/I Homes of Chicago LLC* (Nov. 30, 2023), Illinois' highest court **abrogated** the long-standing rule applied by Illinois appellate courts that damage to third-party property is required to establish "property damage" caused by an "occurrence."

Instead, the court held that property damage to an insured's negligent work is caused by an accident and, therefore, constitutes an "occurrence" under a liability insurance policy's initial grant of coverage. The court's ruling in *Acuity* has effectively changed the landscape for how insurers may respond to construction defect claims in Illinois.

Insurers can no longer disclaim the duty to defend in construction defect cases on the ground that there is no property damage caused by an occurrence, even where the only damage alleged is to the named insured's work.

Because many property damage claims arise following the completion of a construction project, an insurer that issued liability policies to a general contractor as the named insured may now find that it cannot rely on a lack of occurrence argument or the business risk exclusions to deny coverage.

This may make it more difficult for the insurer to transfer the risk to other insurers that provided coverage to a general contractor as an additional insured.



**FORECASTING FOR THE
FUTURE FOR BOTH
CONSTRUCTION TECH
AND LITIGATION/CLAIMS**

CONSTRUCTION TECH FOR 2024 AND BEYOND....

- ❖ **AI ENABLED TECH WILL PLAY A BIGGER AND BIGGER ROLE IN CONSTRUCTION, AS WE GRAPPLE WITH BOTH THE LABOR CHALLENGES WE ARE FACING AND THE MASSIVE AMOUNTS OF INFORMATION WE NEED TO LOOK AT TO IDENTIFY LESSONS LEARNED, AND EMERGING TRENDS.**
- ❖ **TECHNOLOGIES WILL CONTINUE TO PROVE THEIR VALUE IN PREVENTING AND REDUCING THE SCOPE OF CONSTRUCTION CLAIMS, ESPECIALLY AROUND DOCUMENTATION, WATER MITIGATION, AND FLEET MANAGEMENT. THIS WILL RESULT IN GREATER ADOPTION AND A MORE OBVIOUS ROI.**
- ❖ **TECHNOLOGY WILL BECOME MORE INGRAINED AS CRITICAL IN DELIVERING ON CONSTRUCTIONS' SUSTAINABILITY PROMISES AND ASPIRATIONS. MOST TECHNOLOGIES DELIVER SOME FORM OF SUSTAINABILITY BENEFIT, BUT FIRMS ARE NOT NECESSARILY "TAKING CREDIT" FOR THEM AT THIS TIME.**



CONSTRUCTION CLAIMS FOR 2024 AND BEYOND....



Continued claims impacted by labor shortages and supply chain issues



Construction claims for delays, changes in design, design-build projects and inflation (price adjustments)



Increased claims due to lack of training, skilled workmanship, lack of proper supervision/oversight/management



Increased claims due to lack of proper safety at the job sites – more accidents



Uncertainty of claims impacted by technology – automated projects, robotics, 3D printed, etc.



Forecasts for the 2024 construction market are described as “muted” and a “mixed bag”

QUESTIONS?

Thank You To Our Panel:

Steve Lokus, Assistant Vice President, Global Specialty Construction
Navigators Insurance, a brand of The Hartford

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MODERATOR: Jason Daniel Feld, Esq., Kahana Feld, LLP

KAHANA:FELD

