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# Construction Attorneys Brace for Impact of Tariff Uncertainty

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Michael Subak, a partner with Troutman Pepper Locke, was quoted in the June 17, 2025 [Law360](#) article, “Construction Attorneys Brace for Impact of Tariff Uncertainty.”

An old line in construction goes: “Labor’s local, procurement’s global,” noted Michael P. Subak, who leads the construction practice group at Troutman Pepper Locke LLP. “It’s an unusual project that doesn’t have an international component as it relates to the major equipment and materials,” he added.

“It’s an increased awareness that risk allocation should be part of the negotiating process,” Subak said. “For the sophisticated clients, this has always been an area of real focus, and I think the industry as a whole now understands the importance of focusing on these kinds of clauses.”

“There’s a bit of a back and forth right now in terms of the risk allocation on something which we don’t know,” Subak said. “Clearly something’s going to change, but we don’t know how big that thing is yet. That does make for some interesting conversations.”

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Before the announcement of the new tariffs, the construction industry entered 2025 with what Subak called “a fair bit of measured optimism.”

Subak of Troutman said that while there have been recent signs of slowing in housing construction, sectors that have been in high demand, notably data centers, have remained strong.

“The equipment that goes into those [data centers] is highly, highly specialized. It’s a big part of the overall cost, and then at the same time, demand for those is very, very high,” he said. “And so, at some point the end user is going to make a business decision as to can it afford to wait or not — what is the cost of certainty, so to speak.”

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While it varies between sectors and individual projects, the cost of procurement outside of labor tends to account for 40% to 50% of overall project costs, Subak said.

“So, whether or not that’s a \$10 million project or a \$10 billion project, it is going to be a significant driver of success on your project,” he said.

Looking even further down the road, if the president’s stated goal of using tariffs to return manufacturing to the U.S. comes to fruition, factories could draw workers away from construction, which is always struggling to find more skilled workers, Subak said.

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Larger contractors are likely to have more sophisticated pre-purchasing contracts, which might provide some insulation and a competitive advantage, Barnett and Subak said.

“Just as I think most people are saying at the consumer level, eventually, the consumers will end up paying for the increased tariffs. I think the same thing is true in the construction sector, which is eventually, the consumers, i.e., the owners or project stakeholders, will end up absorbing the cost of the tariffs,” Subak said.

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“You can understand it from both sides,” Subak said. “If you’re an owner, you want cost certainty. And if you’re a contractor, it does not seem fair that you should bear the risk of what some people view as a political situation playing out through tariffs.”

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Litigation also comes with its own costs and risks, and the uncertainty over how long the tariffs will remain in place may keep contractors from bringing lawsuits quickly, Subak said.

“Until we know how big this issue is, I think the default will be the contractor is not going to take the risk,” he said. “Once it settles down, it might be, ‘OK. Now, it’s baked into our overall price,’ and so then they might be able to take the risk.”

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Whether it’s a court decision staying or allowing tariffs or a decision by a sovereign nation to change tariff levels, the construction industry is looking for certainty and just wants the issue to get resolved one way or the other so it can focus on moving forward, Subak said.

“It just adds to the uncertainty right now, and I think folks are looking for both the dialogue and the decisions to settle in,” he said. “I think the industry can absorb challenges. It’s the uncertainty of the challenges which makes it difficult.”

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