

Construction Claims Finance: Assessing and leveraging value, optimising cashflow, resolving claims at an early stage

Authors: Mitch Dearness, Edward McCullagh and Andrew Roberts

In challenging economic conditions, construction businesses face intense pressure to maximise revenue and optimise cashflow. Legal claims are valuable assets in this context and should be prioritised. However, the upfront cost of advancing construction claims often prevents companies from doing so.

Omni Bridgeway's Construction Claims Finance can help, by meeting the cost of targeted legal and expert analysis, enabling businesses to identify the fair value of claims, present them robustly and resolve them swiftly – ideally by settlement.

This blog explains how Construction Claims Finance helps construction companies to:

- ascertain the fair value of complex claims at an early stage
- access market-leading legal and expert advice
- improve the chances of settlement at a fair value, avoiding uninformed compromise
- resolve claims swiftly at no upfront cost, optimising cashflow and avoiding formal proceedings where possible
- make claims robust, positioning them for adjudication or formal proceedings absent settlement

The cost-benefit dilemma with construction claims

Claims are part of doing business in the construction industry. They occur frequently and can generate significant revenue, making them valuable assets when handled competently. Too often, however, claims are neglected and their asset value underestimated, ignored or, worse still, left to an insolvency practitioner to chase when it is too late.

For well-known economic and geopolitical reasons, global construction insolvencies increased by around 11% in 2023 and are forecast to increase by 7% in 2024.¹ In many major economies such as the UK, insolvency rates are even higher.²

In this context, why is it that many construction businesses still procrastinate over pursuing good claims, settle them at a fraction of their value, or even write them off completely?

In most cases, the reason is that it costs too much to prosecute construction claims properly. Cashflow pressures, working capital shortfalls and staff cutbacks only exacerbate the problem, such that in difficult economic conditions where cash is needed most, claims revenue is even harder to access.

Can legal finance help unlock fair value in construction claims?

Traditional litigation funding allows claimants to pursue good claims in arbitration or litigation at no upfront cost. Funders agree to pay all associated legal expenses in return for a share of the proceeds if (and only if) the claimant wins an award or achieves a settlement and money is recovered. This can save a company years of budgeted legal spending over the lifetime of a dispute, releasing capital for investment in other parts of the business.

As the funding is fully non-recourse, unlike normal lending, it is not recorded on the company's balance sheet. Significantly, it also means a funder assumes all downside risks and costs associated with a claim, ensuring the claimant saves on legal spend and benefits financially irrespective of the outcome. Put another way, the company extracts value from the claim even if it ultimately fails.

However, for every successfully funded construction claim, there are many more good claims that have failed to attract finance. Three obstacles tend to suppress the take-up of litigation funding in the sector:

1. Traditionally, funders only commit to financing a dispute when they are confident the claim has substantial value and good prospects of winning in arbitration or court.

1. Allianz Research Global Insolvency Outlook 2023-25, 18 October 2023.

2. Construction News, "Mayday for almost 8,000 construction firms". 23 January 2024.

Whilst this is understandable, because funders stake their capital on the success of the claim, it can limit access to finance for complex and document-heavy construction claims which have not reached litigation or arbitration readiness. Many contractors cannot or will not frontload the necessary cost and resources to substantiate their claims for a funder's assessment. But with more flexible financing options, could a funder take on that upfront cost?

2. Most funders focus on claims which are on the path to a finally binding judgment or award. Whilst for several reasons this is understandable, it may not align with a construction company's preference – or contractual obligation – to attempt to resolve its dispute by commercial settlement, adjudication or mediation and avoid the drag of formal proceedings. However, could a funder who understands the various ways of resolving construction claims finance faster and more efficient outcomes and help more businesses?
3. Litigation funding is not always the right commercial fit for a construction business. Due to the cost of funding – commensurate with the high-risk nature of the investment – claims with lower quantum relative to the cost of litigation or arbitration often fail a funder's criteria. This is because the funder's necessary return on investment would leave the claimant with an unsatisfactory share of the proceeds. But could financing at an earlier stage resolve this problem by reducing budgets based on avoiding litigation or arbitration and/or by increasing the ascertainable preliminary claim value?

What is Omni Bridgeway's Construction Claims Finance product?

Omni Bridgeway's investment managers have assisted many construction businesses with traditional litigation funding in recent years. Now, we have developed a bespoke construction product that addresses the three common obstacles above and supports a wider range of deserving claims.

Omni Bridgeway's Construction Claims Finance is accessible at an earlier stage in a claim's development, bringing cash forward on claims that may not need to be litigated. It is therefore more suited to the range of disputes encountered by parties to construction contracts. This includes claims which are subject to multi-tier dispute resolution procedures involving forms of adjudication or mediation. It also includes claims arising in earlier phases of a construction project. In all cases, Construction Claims Finance promotes commercial settlement and ADR strategies over diving headlong into formal proceedings.

Crucially, in contrast to traditional litigation funding, claims need not be refined and substantiated to arbitration or litigation standard to qualify for Construction Claims Finance.

Rather, the product itself funds a limited scope of independent legal and expert consultancy work, and leverages Omni Bridgeway's sophisticated case assessment process developed over 35+ years, to arrive at a risk-adjusted net present value of a set of claims. This provides a claimant with an informed view of their position and galvanises their claims to withstand fair and reasonable scrutiny.

This approach has three functions, all focused on bringing cash forward:

1. It maximises the chances of achieving the claim's fair value by way of amicable settlement;
2. It makes the claim sufficiently robust for fast-track adjudication or expert determination if applicable; and
3. It informs Omni Bridgeway's due diligence requirements if formal proceedings are ultimately required.

Hence, using Construction Claims Finance, a construction company can unlock the value of its claims without the costly upfront outlay that too often prevents claims from being fairly and properly resolved.

How do Omni Bridgeway's interests in the claim align with the claimant's?

Underpinning Construction Claims Finance is a focus on commercial alignment between the claimant and funder at every stage of the dispute process. Construction Claims Finance focuses on the fair value of the claim, asking the questions a commercially minded construction business can be expected to prioritise:

- What price would be commercially and economically sensible for both parties to accept to avoid a costly and lengthy formal dispute?
- What is the most efficient and effective way of quantifying that price and persuading the counterparty to pay it?

If the strategy recommended and implemented by the funded legal and expert team generates a settlement opportunity at the ascertained fair value of the claim, the asset can be monetised. Upon payment of the settlement sum, Omni Bridgeway receives a pre-agreed fee in return for its investment.

If the claim cannot be resolved at fair value without arbitration or litigation, Omni Bridgeway can support the claimant to pursue a binding award or judgment where appropriate. In any case, as with traditional litigation funding, Omni Bridgeway receives no return unless and until the claim is resolved and proceeds received.

Aside from paying legal and expert costs, how does Omni Bridgeway add value?

Omni Bridgeway specialises in analysing complex disputes through a commercial lens, working with and managing disputes professionals, and understanding how disputes are resolved. As such, we have a unique perspective on disputes and a vast network of leading lawyers and consultants. Omni Bridgeway's construction team combines decades of experience in construction disputes and has the skillset and network to match.

Hence, aside from the funding, users of Omni Bridgeway's Construction Claims Finance benefit from partnering with Omni Bridgeway through:

- enhanced access to leading lawyers and experts on quantity surveying, planning and technical issues, often at preferential rates;
- access to construction-specialist investment managers, who serve as an experienced, objective and commercial sounding board at every stage of the dispute process;
- the application of Omni Bridgeway's sophisticated case assessment process developed over 35+ years, to arrive at a risk-adjusted net present value of outstanding claims; and
- the additional credibility, financial strength and resolve associated with Omni Bridgeway's support for the claim.

Importantly, all of these benefits enhance the prospects of efficiently resolving the claim at a fair value.

Conclusion

In the construction industry, good claims are valuable assets and important sources of revenue that should be prioritised, not least of all in a challenging economy. Any construction business seeking to maximise revenue and optimise cashflow should be asking these questions:

- What is the fair asset value of our claims?
- How quickly can we convert that value to cash?
- How can we do that cost-efficiently with minimised risk?

Omni Bridgeway's Construction Claims Finance helps to answer these questions and facilitate the best strategy to monetise claims at no risk or upfront cost to the claimant.

For more information on Construction Claims Finance, contact the Omni Bridgeway construction specialist in your region.

A complete overview of Omni Bridgeway's legal finance options for construction be accessed here:

[Dispute Finance for the Construction Sector](#)



Mitch Dearness

Investment Manager
+65 8792 3893
mdearness@omnibrigeway.com



Edward McCullagh

Investment Manager, Senior Legal Counsel
+971 52 438 7623
emccullagh@omnibrigeway.com



Andrew Roberts

Investment Manager, Senior Legal Counsel
+44 20 3968 6061
aroberts@omnibrigeway.com