CONSTRUCTION INDUSTRY

JULY 2026

ANDERSON KILL

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New York, NY / Boston, MA / Los Angeles, CA / Newark, NJ
Philadelphia, PA / Shelton, CT / Washington, DC

A Note From the Practice Chairs

We are pleased to share an exciting expansion of Anderson Kill's Construction Industry Group and the services we provide to owners, developers, contractors, subcontractors, design professionals, and others throughout the construction industry.

For many years, Anderson Kill has been one of the few law firms with established practices in both construction disputes and construction insurance recovery. This unique combination allows us to guide clients through virtually every stage of a construction conflict—from project disputes and claims to the often-overlooked battles with insurance companies over coverage for those losses. When construction problems arise, we have the experience to help clients pursue practical solutions all the way through final resolution.

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Earlier this year, we introduced services dedicated to Data Center construction. Today, as reflected by our latest Construction Industry Newsletter, we are expanding our capabilities even further.

Under the leadership of new shareholder Brad Gerstman, we now offer government relations services tailored to the needs of the construction industry. Brad's experience helps clients navigate the increasingly complex intersection of construction, public policy, regulatory issues, and government decision-making.

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We are also strengthening our support for construction companies facing fraud, cybercrime, and related financial losses through Anderson Kill's Cyber Insurance Recovery Group, co-chaired by shareholders Josh Gold and Luma Al-Shibib. As fraud schemes and cyber threats continue to target businesses across the construction sector, our team helps clients maximize insurance recovery and respond effectively when these incidents occur.

By bringing together construction litigation, insurance recovery, government relations, and cyber-fraud protection, Anderson Kill offers a comprehensive platform designed to help construction industry participants manage risk, protect their interests, and achieve their business objectives.

We look forward to continuing to serve our existing clients and to building new relationships throughout the construction industry. If you would like to discuss how these expanded capabilities can support your organization, we would welcome the opportunity to connect.

All the best,

Dennis J. Artese & Allen R. Wolff

When the Money Vanishes: How Construction Firms Can Combat Wire Fraud and Recover Insurance Proceeds

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You receive an email from a trusted supplier asking for payment of an unpaid invoice. The email appears like your usual correspondence and includes a typical invoice you receive from the supplier. It mentions that the supplier has a new account at a different financial institution and provides different wire instructions. Since the email appears legitimate, you wire the money, however, you do not receive any confirmation of receipt from the supplier like you always do. When you call the supplier and ask if it received your payment, the supplier has no idea what you are talking about. You then realize you have been duped by a cybercriminal pretending to be your supplier.

This scenario – and ones similar to it – have become increasingly common in the construction industry. The complex chain of contractors, owners, suppliers, and vendors involved in construction projects provides many potential targets for cyber fraud. In fact, the construction industry was the third most targeted industry worldwide for cyberattacks in 2024.

The most common type of cyber fraud in the construction industry is Funds Transfer Fraud. It occurs when a cybercriminal makes a seemingly legitimate request for a money transfer and manipulates you or your financial institution into sending funds to a fraudulent account. The use of AI has increased the frequency and sophistication of these types of attacks.

In many cases, financial losses can be irreversible if the scheme is not promptly discovered and reported to authorities. Law enforcement and your bank may be able to electronically trace and "claw back" some or all of the stolen funds – but only if reported within the first 72 hours of the transfer. Beyond that initial window of time, however, victims are unlikely to recover their transferred funds because cybercriminals quickly convert the money into cryptocurrency or move it through multiple bank accounts.

Funds Transfer Fraud Insurance Coverage May Help Mitigate Your Losses in the Event of a Cyber Fraud Incident

If you do experience cyber fraud, insurance may respond and cover some or all of your losses. A broker well-versed in the construction industry can advise you about the types of policies or coverages needed to protect against Funds Transfer Fraud. Typically, coverage for cyber fraud is available under crime and cyber policies – although other policies may also offer coverage. If you suffer a loss, ask your broker to provide notice of the claim under all your potentially applicable insurance policies.

Because policies can vary significantly in their terms and exclusions, it is critical for policyholders to be aware of what their specific policies say.

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Funds Transfer Fraud coverage, which is usually found in crime policies but may also exist under cyber policies, insures against losses stemming from wire fraud. In typical cases, a fraudster impersonates a legitimate party with which you conduct business, such as a vendor or supplier, and tricks you into wiring or transferring money to the fraudster's account. In most of these scenarios, the cybercriminal will use social engineering techniques, such as theft of a customer's or supplier's email credentials, to execute its fraudulent scheme.

Insurance companies seeking to reduce their liability may raise non-compliance with policy conditions as a defense to coverage.

Policies providing coverage for Funds Transfer Fraud may include various conditions. Insurance companies seeking to reduce their liability may raise noncompliance with policy conditions as a defense to coverage. To maximize recovery, you must understand any conditions to coverage. For example, before making the wire transfer, your company may need to verify the wire transfer request by calling the vendor or supplier. Usually, the insurance policy will require that the verification call is made to a previously agreed-upon telephone number on file for the vendor or supplier. Additionally, you may need to keep a contemporaneous record of the verification call and submit this document as part of the insurance claim submission. Furthermore, any changes you make to a customer, vendor, or client's wire instructions may require a written request from the customer, vendor, or client on their letterhead, and reference their account number or passcode. Also, you may have to observe a waiting period before you can wire money after making changes to the bank account information in a customer, vendor or client's file. While these are some of the common conditions found in policies covering funds transfer fraud, your policy may have different conditions.

Your insurance company may argue that it does not have to cover your claim if you fail to satisfy the conditions of the policy. This underscores the importance for businesses – including those in the construction industry – to read their policies, understand any requirements to coverage, and incorporate those requirements into their standard operating procedures. Remember that every policy is different so not all conditions will be the same across different policies or different coverages.

Additionally, your loss may trigger coverage under more than one provision in your policy and may implicate several different policies. For example, computer fraud coverage, typically found in crime policies, offers broad coverage for losses resulting directly from fraud through the unauthorized use of a computer, and some courts have held that computer fraud coverage responds to cover losses from cyber crimes – including wire transfer fraud. Also, social engineering coverage under either your cyber or crime policy may also respond to your claim; however, social engineering coverage may have a separate sublimit that is lower than the policy's per claim limit. Thus, it is important to discuss your claim with your broker and ask your broker to provide notice of the loss under all potentially implicated policies.

Conclusion

Cyber fraud poses a significant and growing threat to the construction industry. The combination of high-value wire transfers, complex project teams, and

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significant email and computer reliance for payment and project management makes construction companies particularly vulnerable to Funds Transfer Fraud. Your insurance policies provide a meaningful way to mitigate your losses, but your ability to recover for your losses largely depends on policy language.

To maximize coverage, you should

1. Review your insurance policies to understand their coverages and requirements.
2. Incorporate any policy requirements into your standard business procedures (for example, call back verification for wire transfers).
3. Train your employees to be aware of what fraudulent requests look like and institute strong internal controls and verification requirements.
4. Contact the FBI and local authorities ASAP to report the cybercrime. In some cases, funds can be traced and recouped if the crime is reported early enough.
5. Ask your broker to provide notice of your loss under all potentially applicable policies.

Government Relations: A Strategic Advantage for Construction

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Construction projects don't just face insurance and legal challenges—they often encounter regulatory, political, and operational obstacles that can delay projects, increase costs, or create significant business risk.

Recognizing this reality, Anderson Kill has expanded it slate of construction solutions available to clients with the addition of the firm's new Government Relations group to provide clients with strategic advocacy before government agencies, regulators, elected officials, and policymakers throughout New York. Our Government Relations team assists owners, developers, contractors, construction managers, architects, engineers, lenders, and industry organizations in navigating matters involving the New York City Department of Buildings (DOB), FDNY, DEP, DOT, HPD, OATH, City Hall, the New York State Legislature, and numerous state and local agencies.

Our work extends well beyond traditional government relations. We help clients address regulatory and permitting challenges, Stop Work Orders, agency enforcement actions, legislative and regulatory issues, infrastructure and utility matters, community concerns, public-private initiatives, and other governmental issues that can affect the timing, cost, and success of construction projects.

A unique strength of our platform is the close collaboration between our Government Relations professionals and Anderson Kill's construction lawyers, insurance recovery attorneys, and investigations team. Construction matters frequently involve overlapping legal, regulatory, insurance, and governmental issues. By coordinating these disciplines from the outset, we help clients develop comprehensive strategies designed to protect projects, minimize disruption, and resolve challenges more efficiently.

We are pleased to announce the expansion of our services for construction clients by the addition of our Government Relations group, led by Brad Gerstman, and including former New York City Department of Buildings Commissioner Rick D. Chandler, whose decades of leadership and regulatory experience provide clients with exceptional insight into New York City's construction environment. Whether planning a new development, responding to agency scrutiny, managing a project in crisis, or navigating complex government processes, Anderson Kill's team provides coordinated legal, regulatory, and strategic guidance to help keep projects moving forward.

If you need legal counsel for traditional construction or insurance issues, or for any assistance with New York City or State government, regulators, or agencies—we're ready to help!

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Known as the Policyholder Powerhouse™, Anderson Kill is a pioneer in insurance coverage litigation: we have more experience in litigating, trying and settling insurance coverage disputes than any other law firm. As the only four-time winner of Business Insurance's **Legal Team of the Year**, our firm has an extraordinary record of obtaining insurance coverage for policyholders in connection with all manner of insured losses. The firm has offices in New York, NY; Boston, MA; Los Angeles, CA; Newark, NJ; Philadelphia, PA; Shelton, CT; and Washington, DC.

We invite you to contact the authors with any questions.