



Litigation trends in construction

As liability expands, protection is more important than ever.



Liability claims in the construction industry are growing in frequency and severity, driven by both financial and social factors. One hundred verdicts in 2018 were over \$22M across all industries, a 22 percent increase over the prior year¹. Compared to just five years ago, the sum of the top 100 verdicts in 2018 represents a 49 percent increase from 2013.¹

What's changing the liability landscape?

Shifting views on social justice: Today's jurors have more sympathy for injured plaintiffs. In addition, there's a greater focus on punishing offending companies.

Traumatic Brain Injury (TBI): Already open to subjectivity, TBI is getting more attention. This encourages attorneys to cite TBI in claims more often, driving up medical costs.²

Litigation funding: Outside investors will cover legal fees or living expenses for a stake in the suit's ultimate outcome, driving up claim frequency and severity.

Labor shortage: Construction companies face challenges in filling craft positions. Having an unskilled workforce can result in more workers compensation and construction defect claims.

Driver quality: Construction workers are hired based on their skill set. Driving can also be a necessary part of the job, creating risks when hiring skilled workers without consideration for their driving record.

What are the leading causes of loss in construction?

Falls from heights: Falls from heights are the leading cause of serious injury and death in workplace accidents in the construction industry.³

Construction defects: Construction defects are one of the top causes of litigation and disputes in the construction industry. Outcomes are difficult to predict owing to the varied application of laws across states.⁴

Work site accidents: Primary causes of work site accidents involve falling objects, tripping hazards, missing guards or protections on tools and equipment, unsafe property conditions, and unsecured premises.⁵

Recent cases⁶

\$110M

awarded to a cyclist that was injured by a falling railroad tie from an above-ground work site. It is one of the state's largest individual jury verdicts (New York, 2019)⁷

\$37M

sought for a construction defect/completed operations case as a result of delays and project mismanagement (Texas, 2019)⁸

\$26M

for a fall from heights case where the worker was not using a proper safety harness (Texas, 2017)⁹

\$26M

settlement for a TBI case where the plaintiff was not wearing a seatbelt and can walk unassisted and undertake many daily activities (Texas, 2018).¹⁰



“We can help on the risk control side, we can help on the claims management side, and then certainly our underwriters are discussing this changing landscape with brokers so we can develop programs that best fit the needs of our customers.”
— Jon Tellekamp, chief underwriting officer, Excess Casualty

How can you navigate the changing liability landscape?



Choose your insurance carrier carefully. Look for a partner who:

- Can share the latest data on how trends are impacting the frequency and severity of claims
- Understands your and your portfolio companies' industries and unique risks.
- Offers tailored solutions specific to your business
- Offers expert claims management that leads to the best possible outcomes, lowering your total cost of risk
- Provides risk control resources and frequent webinars and in-person training to help you identify and mitigate risk. Topics should include contractual risk transfer, industry-specific risk improvement tools, and product liability



Review company safety policies.

Be sure to include distracted driving, use of personal vehicles, and disaster preparedness.

- Perform regular compliance checks for employees.
- Follow through with consequences for violations.
- Update policies so employees and potential jurors take them seriously.
- Ask your legal department to evaluate third-party contracts for safety.
- Identify potential threats on your premises to protect employees and customers.



Plan for rising costs.

Increasing frequency and severity will likely make risk transfer solutions more expensive.



Get extra protection.

Revisit and consider raising limits on core, umbrella, and excess liability coverages to make sure you have the protection you need.

More resources

[The Changing Nature of Business Risk and Liability](#)

[3 Factors Fueling Today's Supersized Verdicts](#)

[Traumatic Brain Injuries: A Growing Liability Claims Trend](#)

[Motor Fleet Safety Plan and Fleet Safety Program Ideas.](#) Get essential information for implementing an optimal program.

[Driver Selection Toolkit.](#) Use this guide to control risk by hiring qualified drivers.

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To learn about Liberty Mutual Insurance's offering for construction firms and their portfolio companies, please contact your broker or agent or visit lmi.co/construction.

1 [Top Verdict Lists](#)
 2 [Evaluation Of Traumatic Brain Injury Cases](#)
 3 [Falls from Height in the Construction Industry: A Critical Review of the Scientific Literature](#)
 4 [Construction Defect and Occurrence: Still Crazy after All These Years](#)
 5 [Employer Responsibilities, Causes of Construction accidents, Who Is Liable for a Construction Site Accident?](#)
 6 Verdicts and settlements are as of year listed. Verdicts may change upon appeal. All examples involve individual plaintiffs.
 7 [NYC Transit Hit With Record \\$110M Verdict In Injury Suit](#)
 8 [HVAC Contractor Seeks \\$37M For Texas Hospital Work](#)
 9 [Canales v. Martinez, et al., No. DC1510405, 2017 WL 6967117, \(Tex. Dist. Nov. 17, 2017\)](#)
 10 [Texas driver with TBI from auto crash recovers 26 million settlement](#)