Workplace safety was frequently discussed as a trend in 2016 that would affect the construction industry. Since the beginning of the year, numerous publications have reported on various accidents and their consequences to the involved construction company and/or construction professional. A summary of those articles is below, as well as news of harsher penalties for construction safety violations in New York City.

- **Texas.** A Harris County jury awarded about $54 million to the family of a construction worker killed in 2013 during the renovation of Kyle Field at Texas A&M University. The worker was using the loader’s bucket to catch concrete debris being removed from the stadium. The loader had a 2,700-pound carrying capacity but was bearing a 3,340-pound concrete section as another worker was using a circular saw to cut the piece from a support column. The weight caused the overloaded Caterpillar to topple forward over the side of the stadium, throwing the worker from the loader, falling about four stories to the ground.

- **Nebraska.** Federal safety regulators have proposed $36,000 in penalties for a Lincoln construction company that employed a worker who fell to his death while installing roofing. The Occupational Safety and Health Administration says the company did not provide required fall protection that would have saved the man’s life.

- **Ontario, Canada.** Four workers died when they fell 14 stories at a construction site on Christmas Eve, 2009. In January of this year, the project manager involved in the deadly scaffolding collapse was sentenced to three-and-a-half years in prison. The construction company (Metron) was ordered to pay a $750,000 fine after pleading guilty in 2012 to criminal negligence causing death. The company’s owner, Joel Swartz, was also ordered to pay $112,500 after pleading guilty to four violations of the Occupational Health and Safety Act.

- **Pennsylvania.** A demolition contractor and a subcontractor were sentenced last month after the 2013 collapse of a Salvation Army thrift store in Philadelphia that killed six people and injured 13 others. A portion of a four-story building that was being razed fell onto the neighboring thrift store while employees and customers were inside. The subcontractor, who was operating heavy machinery the day of the collapse after taking Percocet and marijuana for medical problems, was sentenced to 7 1/2 to 15 years in prison. The demolition contractor who gutted the building from the inside, destabilizing it, rather than take it down floor by floor, was sentenced to 15 to 30 years.

- **Ohio.** A 39-year-old worker suffered multiple broken bones after he fell more than 40 feet while conducting maintenance on a crane at Timken Steel’s Faircrest Plant. The U.S. Department of Labor’s Occupational Safety and Health Administration found the company failed to provide the worker adequate fall protection. OSHA cited the steel manufacturer on Jan. 29, 2015 for two repeated and three serious safety violations. Timken Steel faces $129,500 in fines as a result of OSHA’s investigation and has been placed on the Severe Violator Program.
New York. New York City plans to quadruple penalties for construction safety violations, part of a citywide crackdown as accidents increase amid a building boom. The city will boost penalties for serious safety violations from $2,400 to $10,000, and impose a requirement that building supervisors be present at certain high-risk job sites. Further, contractors who repeatedly fail to comply will face penalties ranging from $5,000 to $25,000, and work-stop orders. The city also plans to hire 100 new enforcement inspectors by the summer. The mayor also announced additional safety measures for crane operations in the city, including restrictions on crawler cranes that would mandate workers to put the structures in safety mode when high winds are forecast. Mayor de Blasio’s announcement of the new measures, to be enforced by the city’s Department of Buildings, was done outside a building in the East Village where a construction worker died on Christmas Eve 2015 and shortly after a pedestrian was killed in a crane collapse a few days earlier.

There are other ways construction insureds can be fined and penalized. In January 2016, the U.S. Department of Justice announced that a Wisconsin-based architectural firm agreed to enter a guilty plea and pay $3 million to resolve its criminal and civil liability arising from its improper use of foreign materials on construction projects involving federal funds under the Buy American Act provisions. The firm repackaged materials and falsified documents relating to some federally funded construction projects in order to hide that it was using noncompliant foreign materials. There was no finding of liability other than the plea agreement.

Construction projects funded by the U.S. government are generally subject to laws requiring the use of domestic materials, such as the Buy American Act, the Federal Transit Administration’s Buy American provision, and S.1605 of the American Recovery and Reinvestment Act. As many of our A&E insureds work on federal government projects, they should pay attention to this potential exposure in order to avoid the affirmative prosecution of claims by the Justice Department and the associated fines and penalties.

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Credits and References
www.dowjones.com
www.wikipedia.org
www.pennlive.com
The Associated Press
Wall Street Journal
www.adviesen.com
U.S. Justice Department Publications and Documents
CBC news
www.thestar.com
Lincoln Journal Star
www.businessInsurance .com
Department of Labor, OSHA News Publications,
www.nytimes.com
www.nyc.gov
www.newyork.cbslocal.com
www.chron.com
www.oshatoday.com
www.constructiondive.com
www.cleveland.com

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