

As Construction Safety Week Ends, We Consider the Rise of Criminal Liability for Construction Accidents

By Christopher D. Meyer and Cheri T. Gatlin
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“To err is human; to forgive divine.” Alexander Pope,
“An Essay on Criticism.”



Today marks the end of Construction Safety Week 2018, a combined effort by the Construction Industry Safety (CISI) group and the Incident and Injury Free (IIF) CEO Forum. Together these entities are comprised of 80 national and global construction firms, with a goal of promoting safety in the construction industry. Concern for safety is apparent on construction projects throughout the country and world, as evidenced by daily/weekly construction briefings and the familiar “___Days Since a Lost Work Accident” signs. People that work in the Construction Industry know firsthand the dangers and want to see their co-workers go home safely to their families after a long day. In addition, time is money in this business. Safe projects are more likely to be profitable projects due to lack of delays and prevention of claims for jobsite injuries. For employers, criminal liability for job site construction accidents is more and more a concern. Mainstream headlines highlight several cases where construction accidents = criminal charges.

From the well-publicized October 21, 2016 drowning of two construction workers in Boston after a trench in which they were working collapsed, to the March 18, 2018 pedestrian bridge collapse at Florida International University (FIU), which killed 6 and injured 9 more, construction accidents that result in loss of life are commonly viewed as more than “accidents.” There appears to be a trend toward construction incidents being investigated by various agencies for criminal liability. Inevitably, accidents happen in every area of life, from “fender bender” automobile accidents to high profile construction accidents, which result in extensive property damage and, unfortunately at times, loss of life. When, though, is an accident something more?

With regard to the Boston trench collapse, the Suffolk County District Attorney’s office presented evidence of manslaughter against the employer—both as a corporate entity and the company’s owner—related to the accident. There, the deceased were killed when underground materials supporting a hydrant in an allegedly unshored hole they were digging gave way and the hydrant burst, flooding the trench. Prosecutors claim the employer was pushing the men to work faster because the project was behind schedule. Motions to Dismiss manslaughter charges were considered and denied, leaving the employer and its owner subject to criminal prosecution. In an industry where liquidated damages and other pressures lead to acceleration, this is a headline of note.

In Florida, we await all the facts on the FIU bridge collapse, a decision by the Dade County State Attorney's office on possible criminal action. However, a charge of "Culpable Negligence" could be in play. In Florida, the crime of Culpable Negligence is defined as a course of conduct "showing reckless disregard for human life, or for the safety of persons exposed to its dangerous effects, or . . . which shows wantonness or recklessness . . . [or] an indifference to the rights of others as is equivalent to an intentional violation of such rights."

As Construction Safety Week concludes, Burr congratulates all our clients that participated in the activities. Focusing on safety is critical to the industry's success and the life and livelihood of those who rely upon it.

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