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Risk Management Tools for the Design Professional

July 2026 | Vol. XXVIIIl No. 1158

Brian K. Stewart

Brian K. Stewart, Esq., Hon. AIA-CA is a Partner with Collins + Collins, LLP in Pasadena, California and a member of the Los Angeles Chapter of the American Board of Trial Advocates (ABOTA). He is an Associate Member of ae/ProNet. The firm has 6 offices in CA and NV. His practice focuses on the defense of architects, engineers, surveyors, and other professionals in complex professional liability, serious personal injury, and construction-related disputes. He regularly advises design professionals and their insurers on risk management, loss prevention, and claims mitigation strategies.

a/e ProNet
Lynda Colucci, Executive Director
info@aepronet.org

"Nuclear" Jury Verdicts are Rising and the Effect on Design Professionals and Their Professional Liability Insurers

By Brian K. Stewart, Esq., Hon. AIA-CA
Collins + Collins, LLP | Pasadena, California

Nuclear Verdicts: A Growing Threat to the Design Profession

Over the past decade, the insurance and legal industries have seen a sharp rise in "nuclear verdicts" — jury awards generally understood to exceed $10 million, with some reaching hundreds of millions or even billions of dollars. Once associated mainly with trucking, product liability, and medical malpractice, these verdicts now present a growing concern for architects, engineers, surveyors, and other design professionals.

Design and construction claims have traditionally centered on economic losses tied to design errors, omissions, delay, or coordination failures. Increasingly, however, plaintiffs' counsel reframe professional negligence claims as public-safety cases involving indifference, preventable harm, or catastrophic risk. That shift moves jurors away from the technical standard of care and toward emotion-driven awards. It also raises the settlement baseline in ordinary cases, as headline verdicts reset expectations for plaintiffs, mediators, and insurers.

The trend creates serious challenges for design firms and their insurers. Larger verdicts increase claim severity, strain reserves, and pressure underwriting results — leading to higher premiums, higher retentions, reduced capacity, and fewer placement options for design professionals and the brokers who advise them.

Recent data underscores the risk. Construction-specific examples include a 2023 Dallas crane-collapse case in which a jury awarded more than $860 million to the family of a woman killed in a 2019 construction accident. Even where a design professional is not the principal target, such verdicts influence how plaintiffs value construction-related losses and how insurers evaluate severity.

Factors Driving Nuclear Verdicts

Several factors have contributed to the rise of nuclear verdicts affecting the design and construction industry.

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Jurors increasingly expect perfection. Modern technology, sophisticated building systems, and advanced engineering tools lead jurors to assume that accidents, failures, or defects should have been entirely preventable. When a project suffers a significant loss, jurors may treat any tangentially involved design error as unacceptable — regardless of whether the professional exercised reasonable care consistent with industry standards.

Plaintiffs' counsel have become more effective at "Reptile Theory" tactics. These strategies appeal to jurors' instinct to protect the community by casting the defendant's conduct as a broader safety threat. The case then becomes a referendum on public safety rather than a question of whether the professional met the applicable standard of care. Skillful counsel push juries to "punish" target defendants, even though most states' civil jury instructions direct jurors only to compensate, not punish. What is "reasonable" for pain and suffering is left to the jury's discretion, and so long as an award is not excessive, it will generally not be overturned by the trial judge or on appeal.

Social inflation continues to drive claim values. Claim costs are rising faster than traditional economic indicators because of changing juror attitudes, expanded liability theories, anti-corporate sentiment, litigation funding, and the normalization of very large awards. What counted as a huge verdict in 1990 or 2000 is not the same today.

Modern projects magnify the stakes. Most construction projects involve multiple stakeholders, layered contractual relationships, and substantial project values. A single design error may generate claims involving owners, contractors, lenders, insurers, and third parties, dramatically increasing litigation exposure.

Impact on Professional Liability Insurers

Professional liability insurers serving architects, engineers, and surveyors are closely monitoring these developments. As verdicts rise, insurers face greater claim severity even in cases that settle before trial, affecting reserve setting, settlement strategy, and defense spending. Carriers are investing more in expert witnesses, trial consultants, mock juries or focus groups, and disciplined litigation management to evaluate and contain exposure.

A single adverse verdict can affect an insurer's profitability for an entire underwriting year. In response, many carriers have raised premiums, increased deductibles or self-insured retentions, narrowed their appetite for certain project types, and required stronger evidence of quality control and risk management. Infrastructure, transportation, healthcare, condominiums, schools, and high-rise developments often draw enhanced underwriting review because of the potential for catastrophic losses involving bodily injury or loss of life. For design firms, the result is higher insurance costs and heightened expectations for risk management and quality control.

Loss Prevention and Mitigation Strategies

No firm can eliminate litigation risk, but proactive loss prevention is the best way to reduce the chance that a claim becomes a nuclear-verdict case.

1. Strengthen documentation practices. Good documentation wins cases. Firms should maintain complete project records — meeting minutes, correspondence, RFIs, design decisions and assumptions, site observations, and client communications. Years later, contemporaneous documentation often provides the strongest evidence that the design team acted reasonably and within the applicable standard of care.

2. Use clear and balanced contracts. Contracts remain a critical risk-management tool. Working with experienced construction counsel, firms should ensure agreements contain appropriate limitations of liability, waivers of consequential damages where permitted, well-defined scopes of services (what the professional will and will not do), dispute-resolution provisions, and clearly allocated responsibilities. Ambiguity is fertile ground for plaintiffs seeking to expand liability — the “devil’s playground.”

3. Implement robust QA/QC procedures. Formal quality-assurance and quality-control programs help identify issues before they become claims. Peer reviews, interdisciplinary coordination reviews, constructability reviews, and independent checking can significantly reduce design errors. Insurers view documented QA/QC programs favorably in underwriting.

4. Communicate early and often. Many claims stem from communication failures rather than technical mistakes. When challenges arise, design professionals should communicate promptly, candidly, and professionally with clients and stakeholders. Early identification and resolution of emerging issues frequently prevents disputes from escalating into litigation. If timelines and deadlines are unrealistic, say something — or decline the deal. Too many projects carry unrealistic time and money expectations that clients accept anyway.

5. Train personnel on risk awareness. Risk management should not be limited to ownership and senior leadership. Project managers, engineers, architects, surveyors, and field personnel should receive regular training on documentation, contract compliance, standard-of-care obligations, communication protocols, and claim avoidance. A risk-aware culture reduces exposure across the organization.

6. Engage insurers and counsel early. Potential claims should be reported to insurers promptly and in accordance with policy requirements. Early involvement of insurers and defense counsel often allows strategic resolution before suit is filed and before a matter becomes high-exposure litigation. Delayed reporting may impair defenses and increase ultimate costs. Bad situations tend not to improve with age.

a/e ProNet
Lynda Colucci, Executive Director
info@aepronet.org
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Conclusion

Nuclear verdicts are among the most significant emerging risks facing design professionals and their professional liability insurers. As juries award increasingly large damages and plaintiffs' attorneys deploy sophisticated litigation techniques, architects, engineers, surveyors, and their insurers must adapt.

The best defense combines thoughtful risk management, strong contractual protections, comprehensive documentation, effective communication, disciplined QA/QC, early insurer involvement, and experienced counsel prepared to counter emotion-based trial themes. No firm can avoid all litigation, but those that invest in proactive loss prevention are far better positioned to defend claims, control severity, and avoid becoming the next headline verdict that raises the stakes for the entire design profession.

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