

# Advanced Technology And Litigation Risk In The Construction Industry

*Is It Too Early to Look to the Courts for Definitions of Accountability Relating to the Use of Cutting-Edge Advances - 4 Issues to Consider*

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Legal risks stemming from the use of AI, robotics, building information modeling, game theory and other advances are still very much a work in progress and far from being settled in the courts.”

*James Gallagher, P.E., F.ASCE,  
Principal, Resolution  
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/EINPresswire.com/ -- A recent article in the Wall Street Journal said, “Every company that uses generative AI could be responsible under laws that govern liability for harmful speech, and laws governing liability for defective products.” (<https://www.wsj.com/tech/ai/the-ai-industry-is-steaming-toward-a-legal-iceberg-5d9a6ac1>). As the construction industry continues to embrace and grow its use of advanced technology, have the legal liability risks from the use of those technologies been adequately considered?

Construction management thought leader James Gallagher, Principal at Resolution Management Consultants, Inc., cautions, “Legal risks stemming from the

use of artificial intelligence, robotics, building information modeling, game theory and other advances are still very much a work in progress and far from being settled in the courts.”

Particular issues that concern Gallagher include:

- Privacy - the right to use other’s information in your activities.
- Privacy - the right to take your information and share it with others, including competitors, in the form of artificial intelligence.
- The “Hallucination” effect - the effect from false or misleading information being presented as fact.
- Point of liability - where does the buck stop or the liability arise? For example, does an end-user share in the liability of its technology partner?

Gallagher observes that in its current form and application in the construction industry, advanced technology has the potential to open the door to unanticipated risks and errors. Gallagher believes that it is currently too early to be able to look to the courts for guidance on the level of liability one might anticipate.

Gallagher provides an example relative to building information modeling, or BIM. Is BIM a “partnership” or not a partnership. If so, am I my brother’s keeper? If so, do all partners share in ownership of liabilities and proprietary information, including 3rd party issues that arise from, an as yet to be defined claim issue or dispute that one of the participants is facing?

Gallagher has identified several areas of potential risk of which construction companies should be wary:

- Technology, and especially artificial intelligence, is based on assumptions. Incorrect or incomplete assumptions can skew or influence liability.

- Technology is based on data. Where does the data emanate? If data is skewed, incomplete, false or lacking the authority to use it, it can open the door to disputes. For example, the courts are a long way from defining Section 230 of the Communications Decency Act of 1996, where a 3rd or 4th party construction company can be held liable even if it has nothing to do with the accumulation of data.

- Scalability usage has the potential to be limited or skewed. When one bases game theory algorithms on limited or incomplete information, risk can be increased.

- Technology benefits from Internet of Things (IoT), which may have its limits in construction, both from having “things” able to synchronize, as well as having synchronization issues relating to machine communication in compatible languages. Things can get lost in the translation.

- Technology can be at risk for stealth security or a cyber-attack of the root company that manifests itself in performance of its client construction company.

- Technology can intrude on privacy and intellectual property rights and cause knowledge acquisition issues, leading to disputes and litigation.

Said Gallagher, “Advanced technology, as it relates to the construction industry, is still the “wild west” as it relates to the courts, decisions, liability, risk and disputes. Because we are still in the early stages, companies should bring in experts who have the depth of knowledge in this area in



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order to best limit disputes and litigation.”

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About Resolution Management Consultants, Inc.

Resolution Management Consultants, Inc. (RMC) is a nationally recognized consulting firm headquartered in Marlton, NJ. There are two sides to the business: the construction planning and management aspect – helping clients build more successful projects – and the litigation aspect – should matters go to court, providing analysis and testimony as expert witnesses. Founded in 1993 by veterans in the construction, contracting and engineering professions, RMC has assisted numerous private owners, public agencies and contractors in either achieving project goals or resolving cost and time disputes between the contracting parties.

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