

THE "GREEN" ARCHITECT: An examination of liability in a Green World

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What does it mean to be "Going Green"? For design professionals it may mean increased exposure to liability. The growing national trend to promote environmentally friendly construction and achieve sustainable design has been the source for recent legislation enacted in New Jersey and around the country. While efforts in New Jersey began several years ago with regulations requiring new school construction to be designed according to LEED® guidelines, recent legislation now requires that the design and construction of certain public buildings meet an LEED® silver rating (or the equivalent two globe rating of the Green Globes Program). These legislative developments certainly have garnered most of the attention in the arena of green building. But the question remains as to the effect that such developments may have on the standards of care and potential liability for the design professional in a Green World.

In New Jersey, architects, engineers, landscape architects, and other design professionals are held to the same standard of care as the average design professional in the same or similar communities. In that regard, design professionals are required to use that degree of judgment, knowledge, skill, and taste which design professionals of ordinary ability possess and exercise, in the same or similar communities, at the time the design professional performs his or her services. However, in light of recent legislation which seemingly sets the standards to which the design itself must comply, will the design professional now be held to the standard of the average "green" architect (or the average "green" engineer or landscape architect)? Moreover, standardized construction contracts, such as the new AIA documents, now emphasize the green movement and even place obligations on architects to educate their clients on environmentally responsible design and to advocate the use of environmentally friendly building materials. Will we eventually see that the average architect (or, again the average engineer or landscape architect) for standard of care purposes is in fact the average "green" architect? This seems likely.

The green architect should expect to see an increased emphasis placed on the preparation of project specifications and details, the review of product submittals, and in the performance of contract administration in the Green World. Keeping in mind that green certification is driven by the number of points achieved, the design professionals' performance should be driven accordingly in the preparation of specifications and details as well as in the review of product data. High performance sustainable construction implicates several new design techniques. Traditional specifications and details may be inadequate for these modern designs (eg. light shelves result in additional building penetrations requiring the need for additional flashing, end dams, etc., which should be detailed on the construction documents).

Additionally, while specific products cannot be green-certified, several product factors will assist in achieving the desired green points and certification (eg. waste management, recycled content, and embodied energy totals of the products used will affect the green points awarded). Technical data should be reviewed carefully before being stamped "Approved" to ensure maximization of green points. Finally, while "means and methods" have never been within the scope of the design professionals' charter, the nature of green building and sustainable design places added significance on the design professionals' administration function. The project must be viewed as a single building system, rather than as individual systems and components, since the green project will be measured as a whole and not based on one or two building systems (eg. a high performance geothermal system will not realize its full potential if the exterior wall system is substandard). When observing the project "for general conformance with the design" the green architect must remember that the "design" is the green building itself.

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