



## Whence Green Building?



It has been a while since I last "mused" on [sustainable \(or "green"\) building](#). Since my [last post on the subject](#) much has been in the news, and most of it negative in some way. While much good has occurred to advance the sustainable building cause, recent news on this front has shed an unnecessarily negative light on the concept.

On the mixed blessing front, the false advertising lawsuit by Mr. Gifford against the [USGBC](#) has [been dismissed](#). The case was not, however, dismissed on its merits. The case was dismissed, not because Mr. Gifford did not have a point (that has yet to be decided), but because Mr. Gifford was the wrong person to bring the suit. The technicalities and a more in depth analysis can be [found at the Green Building Law Blog](#) authored by my friend Shari Shaprio (@[sharishapiro](#)). Because Shari and others have done such a good job in their discussions of this dismissal, I won't go into any depth here.

While this particular lawsuit was dismissed, it did highlight a potential issue with green building claims. Without going into the particular claims of LEED and the USGBC, the real issue is whether making claims of energy efficiency and other environmental benefits of green construction can lead to problems. The answer, in my mind, is YES. As I've stated before, making claims that can't be substantiated (whether because the data just doesn't exist yet or these claims are for sales purposes) [can do more harm to the cause than good](#). Making claims that cannot be backed up with facts is worse than never making them in the first place. In short, I do not know if Henry Gifford would have won his lawsuit on its merits, however, I do think that we need to be careful in making claims such as those listed in the lawsuit in an area of construction that does not have the history behind it to create any certainty about these claims.

One other green related story that has dominated the headlines, and which shows the danger of making energy promises you can't keep, is the [Solyndra](#) "scandal." Agree or disagree with the politics of the story (and please do not turn the comment section here into a political debate, this is not a political blog), Solyndra is instructive because it is another case (like that of [Destiny USA](#)) where government money was used to fund a failed "green" enterprise. In a nutshell, the federal government gave a loan to Solyndra, a solar panel manufacturer. Solar panel prices have plummeted and now Solyndra is in bankruptcy. As discussed by my fellow construction lawyer, Chris Cheatham (@[chrischeatham](#)) [at his Green Building Law Update](#) Solyndra has other implications on

green construction. While I agree that there are parallels between Destiny USA and Solyndra, the main issue that I see is the headlong rush to fund anything "green."

I am fully behind a careful and well thought out move toward sustainability. However, more and more instances of high profile failures seem to be surfacing. Media effect or no, a perception could be created that [the sky is falling](#) relating to sustainable construction. As a [construction attorney](#) and LEED AP, I cannot help but think that despite the welcome enthusiasm we need to take a breath, slow down and consider the long term consequences. Until we do so, we will continue to see high profile "failures" that overshadow the progress that has been made.

I would love to hear your thoughts. Am I wrong? If so, how?

Image via [Wikipedia](#)

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