

## [Is the Sky Actually Falling \(On Green Building\)?](#)



I have spoken on many occasions here at Construction Law Musings [and elsewhere](#) about [the risks](#) and [rewards](#) for contractors found in [sustainable construction](#). The rewards were fairly apparent. New markets, government incentives and the desires of owners to be "green" clearly point toward a need for contractors to get into the sustainable building game.

However, when I was first writing my [Eeyore like thoughts](#) most of the thoughts of all us construction attorneys were speculative. Whether because wholesale "green" construction was relatively new or because the court process was relatively slow, there were not many ways to test if our, shall we say "less optimistic," predictions were going to come to pass.

For better or worse, several of the more dire predictions have come true. One major green construction debacle is the Destiny USA litigation. I cannot possibly set out all of the various issues as well as my friend and colleague Chris Cheatham does in his [e-book about the project and its aftermath](#) (.PDF). I highly recommend this e-book and the posts found at Chris' [Green Building Law Update](#) blog for those of you interested in how the IRS, the USGBC and the Green Bonds Program interact to cause many a pitfall for construction and design professionals.

Another scenario that has always been at the back of my mind is the potential liability found in the engineering aspects of these construction projects. As I have said before, contractors, subcontractors and engineers are all interacting with new building materials or using tried and true materials in new ways. This type of innovation is both laudable and risky. Without years of engineering data or an eye toward the potential future issues, AEC professionals can get caught in a liability bind.

This scenario came to a head in the case of the [Chesapeake Bay Foundation](#) building in Montgomery County, MD. In that case ([described well at GBLU](#)), the Foundation wanted "green" building materials in their local headquarters. The Foundation then used ["green" Parallams](#) in the construction of the roof truss system (among other elements of the building) in order to meet its goal. Despite assurances from the supplier of the parallams, a Weyerhaeuser subsidiary, that these beams would survive exposure to the elements, the parallams began to rot and the building became potentially unsafe. Needless to say litigation ensued.

At the risk of sounding like I'm saying "I told you so," these scenarios are just the sort of scenarios that my colleagues and I have been discussing. I am far from happy to be among a group of folks that have been shown to be correct. I am fully behind the move to sustainable building and do not want to see these hopefully isolated incidents put a damper on that laudable movement. However, these examples show the need to anticipate risks and work with [construction attorneys](#), architects and engineers knowledgeable in the practical and legal aspects of risk management in sustainable building.

On a more optimistic note, and despite the title of this post, I do not believe that the sky is falling. If anything, these incidents should give us the ability metaphorically to get our umbrellas up and anticipate these risks better in the future. With the added knowledge that these cases provide, we can carefully move forward to a future in construction with a strong sustainable base.

*Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.*