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The Design And Consulting Professionals' Legal Standard Of Care And How It Applies

As a basis for determining the legal liability of any practicing professional in the United States, whether the profession involves medicine, law, the design and consulting professions, etc., besides contractual obligations undertaken, reference is always made to the "professional standard of care." In most basic terms, this represents a standard of performance and conduct on the part of a professional practitioner which the recipient of its services and third parties affected by them have a right to expect as part of the practitioner's recognized professional standing. Furthermore, it is the standard which, if the professional fails to meet it, and if injury or damages result, is the basis for legal liability attaching to the practitioner. Conversely, if the professional meets this standard, having done so provides a defense to claims of professional negligence by parties seeking recovery against the professional practitioner. (Please see the discussion of Tort Law in our Winter Quarter 1999 Newsletter).

In specific regard to design and consulting professionals practicing in the United States, one could say that each state has some variation on a professional liability standard derived from the English common law. But broadly, the body of American law more or less presents two general views, usually referred to as the "majority" and "minority" views as the basis for the various states' case law precedents, their statutory law by way of legislative action as well as being actually iterated in civil jury instructions.

Probably one of the earlier statements of what would be considered the majority view in the United States was in the case of Coombs v. Beede 89 Mass.187, (1896). Finding in favor of the architect the court held:

"The responsibility resting on an architect is essentially the same as that which rests upon the lawyer to his client, or upon the physician to his patient or which rests upon anyone to another where such person pretends to possess such skill and ability and some special employment and offers its service to the public on account of his fitness to act in the line of business for which he may be employed. The undertaking of an architect implies that he possess skill and ability, including taste, sufficient to enable him to perform the required services at least ordinarily and reasonably well; and that he will exercise and apply in the given case his skill and ability, his judgment and taste, reasonably and without neglect. But the undertaking does not imply or warrant a satisfactory result. It will be enough that any failure shall not be by the fault of the architect. There is no implied promise that miscalculations may not occur. An error in judgment is not necessarily evidence of a want of skill or care, for mistakes and miscalculations are incident to all the business of life."

Under the broad heading of what would more or less be considered the minority view in the

United States, some courts have chosen to increase the standard of liability for the design or consulting professional from negligence to an implied warranty or strict liability standard. These courts suggest that the design professional impliedly warrants general fitness of design, if not fitness for the particular purpose that a project is to serve. While there were other issues involving a possible oral warranty separate from a customary undertaking for professional services, the representative case of Tamarac Development Company v. Delamater Freund & Associates, PA., 234 Kan.618, (1984), provides a very interesting discussion which would disagree with the majority view stated above. In essence, the Kansas Supreme Court held that while certain professionals such as doctors and lawyers are not subject to an implied warranty for their services, the work of architects and engineers is to be so held. The court's reasoning was to the effect that the work performed by architects and engineers is an "exact science", or rather is subject to the application of science, measurement and mathematics, and that therefore one who contracts with an architect or engineer has the right to expect an exact result.

As one can see from this discussion, it is very important for a design or consulting professional to be familiar with and conversant about these views, recognizing that their professional liability may be perceived somewhat differently from one state to another. Equally important, however, is the need to recognize these issues in contractual language for retention for services.

Coming Next Quarter:
A recent important case precedent for defining actionable construction defects, AAS v. Superior Court.

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