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“Sick Building Syndrome”: Contractors and Design Professional’s Legal Liability - Part I

One well-known public health official has stated “the ‘Sick Building’ term is a misnomer. It’s inaccurate and it enflames people. Buildings aren’t sick; people are sick.” The World Health Organization (WHO) has estimated that nearly 30% of all new and remodeled buildings worldwide may be affected with indoor air quality problems. Problems with indoor air quality may result in claims for personal injury, property damage, constructive eviction, design professional liability (design and consulting professionals) and construction defects (contractors and building owners).

Sources of indoor air pollution within a building envelope include radon gas infiltration, asbestos (product) erosion, formaldehyde and other volatile organic compounds (“VOCs”) and microbial contamination by fungi and bacteria. Health claims by affected building occupants include various respiratory symptoms, dermal rashes, eye irritation, drowsiness and dizziness and in extreme cases, Legionnaires disease and cancer.

The so-called “Sick Building” is not historically a new concern as a form of it is mentioned in the text of the biblical Book of Leviticus. However, in relatively recent times with the advent of highly energy efficient “tight” buildings and environmental control systems and because of the sealing of the buildings’ environmental envelope a variety of health problems have arisen, such as those discussed above.

Regulations and guidelines do exist but they are generally limited in scope. On a federal level, the United States and Canada have promulgated such, though in the United States it is addressed through the administrative regulations of agencies such as the Environmental Protection Agency (EPA), Department of Energy (DOE), Department of Housing and Urban Development (HUD), Department of Health and Human Services (DHHS), Consumer Products Safety Commission (CPSC), Occupational Safety and Health Administration (OSHA). Out of all of these agencies, however, OSHA has direct authority over indoor air quality and more specifically the regulation of indoor air quality in the workplace. Nor is this common on a state or local governmental level, although most states have enacted ventilation and mechanical systems standards by references to guidelines established by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE).

When a Sick Building Syndrome condition arises and parties, such as occupants and owners of the building, wish to seek redress, claims may be made against contractors and designers and consultants. Claims against contractors are based upon legal principles of contract, warranty, negligence and strict liability. Claims against design and consulting professionals are based upon negligence, breach of contract, implied warranty and strict liability. Other parties against whom claims may be made include materials manufactures, distributors and

suppliers as well as those responsible for building maintenance and upkeep. Serious controversy arises over which party or parties are best able to control or anticipate the conditions that lead to Sick Building Syndrome and should therefore become legally liable for it when it arises. Regardless, it is apparent that with continual demand for ever-more technically complicated buildings, parties alleging injury or damage from alleged indoor air quality problems will continue to seek recovery from those culpably responsible.

**Coming Next Quarter:
“Sick Building Syndrome”: Contractors and Design Professional’s
Legal Liability (Part II)**

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