

CONSTRUCTION PROJECTS

ENVIRONMENT
& WELL-BEING
WITH PROFITS

CONSTRUCT
ION LAW
SOCIETY OF
AMERICA

NOVEMBER 29,
2018
THE
HARVARD
CLUB
NEW YORK
CITY

ROGER W.
BRADLEY,
ESQ.

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SYRACUSE,
NY 13202

PRESENTATION

I. PERSPECTIVE

II. THE PAST

III. THE PRESENT

IV. LEGAL ISSUES

V. THE FUTURE

I. PERSPECTIVE

Looking to the
FUTURE by
reference to the
PRESENT and
how we got
here.

PAST:

300 versus

PRESENT:

12,000

205,830

6.2 billion

20 trillion

FUTURE:

?

II. THE PAST

A. THE STRUCTURE

- i. Projects insensitive to environment
- ii. Projects waste of Resources
 - Energy use
 - Energy generation
 - Water
 - Heat
 - Light
 - Transportation of Materials and Equipment
 - Life Cycle

B. NEXT STEP

- i. USGBC
- ii. Issue Tree Hugging v. Profits
- iii. Snapshot
 - +2000 AIC/AIA (CNY) Presentation SRF
 - ONLY 1 architect
 - ONLY 1 AIA Article in \pm 2 years re Green Building
 - USGBC- from 0-12,000

II. THE PAST

C. THE PEOPLE

i. WELL-BEING v. PROFIT

- Insensitive to indoor air
- Insensitive to lighting issues
- Insensitive to residents
- Insensitive to worker
- Insensitive to customer
- Insensitive to students & faculty
- EPA Studies

III. THE PRESENT

A. THE BUILDING

i. USGBC

ii. STANDARDS

- The Criteria
- The Certification
- Structures
- Other Entities- ARC, Center for Green Schools, EDGE, GBCI, GRESB, Green Apple , Home Build, Greenbuild, Portsmouth, PEER, SITES, Bream, Casbee, International Green Building Code

B. WELL BEING/THE PEOPLE

i. IWBI

ii. GRSB

iii. ESG

IV. THE MARKET

■ CONSTRUCTION & INVESTMENT IS DICTATED BY THE MARKET

- Examples of changes in market analysis and expectations:
 - 2005 ESG- Environment, Social, and Governance
 - 2005 Study “Who Cares Wins”
 - 2006 PRI- Principles for Responsible Investment

Q: Does fiduciary duty trump social investment?

A: The answer lies in the numbers:

ESG-Investing estimated at over \$20 trillion AUM

PRI- Over 1600 members; over \$70 trillion under management
(*Forbes Article July 11, 2018*)

V. EXAMPLES OF MARKET IMPACT

- **USGBC** *as of October 2017
 - More than 12,000 national members
 - More than 18,000 Greenbuild attendees (Los Angeles)
 - 167 countries and territories with LEED projects
- **LEED Projects**
 - 2.2 million certified square feet per day
 - More than 205,830 certified gross square meters per day
 - More than 92,200 total commercial + LEED ND projects
 - More than 92,000 total commercial projects
 - More than 19.3 billion total commercial square feet (excludes ND)
 - More than 1.8 billion total commercial square meters (excludes ND)
 - More than 29,000 certified commercial projects
 - More than 6.2 billion certified commercial square feet
 - More than 577 million certified commercial square meters
 - More than 1.6 million residential units registered or certified with LEED
 - 2,000 K-12 projects certified
 - More than 4,200 higher education projects certified
 - Nearly 3,900 higher education projects registered
 - 961 state government projects certified

[USGBC Statistics]

VI. INCENTIVES, REQUIREMENTS & PROFITS

■ **EXAMPLES:**

- Executive Order 13, 423
- Executive Order 13, 514
- California Green Buildings Building Code
- Tax Credits
- Tax Deductions
- Grants
- Awards
- Governmental Programs

VII.LEGAL ISSUES

A. LITIGATION

- OFFICES
- SCHOOL
- CONDOMINIUMS
- PROPRIETARY SPECIFICATIONS v. PERFORMANCE SPECIFICATIONS

B. PARTIES

- OWNERS
- LENDERS
- CONTRACTORS
- SUPPLIERS
- INSURERS
- CERTIFIERS

SOUTHERN BUILDERS, INC. v. SHAW

DATE	2007
BUILDING	23 UNIT \$7.5 Million luxury condominium in Crisfield, MD
OWNER	Shaw Development
CONTRACTOR	Southern Builders
CONTRACT	Environmental sound “Green Building” with Silver LEED Certification
	Mechanics Lien & Center claim
DISPOSITION	Case settled
SHAW	Goes bankrupt
Lessons learned	<ul style="list-style-type: none">• Proper plan and specifications• Parties’ competence in Green Building• Define responsibilities

CHESAPEAKE BAY FOUNDATION

DATE	2000
OWNER	CHESAPEAKE BAY FOUNDATION
ARCHITECT	Smith Group –using “Green design”
CONTRACTOR	Clark Construction Group
SUPPLIER	Weyerhaeuser, Perma Post, (leaks in 2001/2001)
OSTENSABLE CAUSE	Parallams not treated with Poly Clear 2000 as certified by Perma Post
REPAIRS	CBI, Clark, Smith-approx. \$9 million
DISPOSITION	Primary action settled at \$3.5 million
3RD PARTY ACTION	Weyerhauser v. Perma Post
DEFENSES	Statute of Limitations and Proximate Cause
DISPOSITION OF 3RD PARTY ACTION	Judgement for 3 rd Party Defendant based on proximate cause. Design was defective & product would fail in any event

VIII. LEGAL ISSUES

■ OTHER CASES:

- *Gidumal v. Site 16/17 Development LLC (NY)* –Complaint alleged a failure to meet LEED Gold Certification in connection with uninsulated pipes and excessive airflow from outside the building. Case dismissed on procedural grounds.
- *Bain v. Vertex Architects (Illinois)*- Action against architect including for failure to obtain LEED Certification; plaintiffs motion to dismiss granted with prejudice.
- *Air Conditioning Heating & Refrigeration v .City of Albuquerque (NM)* -Challenge by plaintiffs to energy standards enacted by city. Court granted plaintiffs summary judgment on the grounds that the city regulations were preempted by Federal Law (compare Building Industry Association v. Washington State Building Council-Federal Court found that the Washington Building Code was not preempted by Federal Law)

IX. THE FUTURE

Profits to drive new ideas for advancing the environment and personal well-being based on construction of buildings, neighborhoods, and

... Cities?

