



Legal Hot Topics: A panel discussion

OVERVIEW

- Basic Liability Issues
- Insurance Issues
- COVID-19 – Liability and Insurance Issues
- Evolving Standard of care
- New Health Crisis – many unanswered questions
- COVID-19 Immunity Statutes
- COVID-19 New Tools
- Other Hot Topics

Review of the Basics:

Professional Standard of Care

Professional Liability - Key Concepts

Standard of Care

“. . . [I]n the absence of an express contractual provision to the contrary, the architect does not guarantee the owner a perfect plan or a satisfactory result. The Architect is not liable for mere errors of judgment. His/her liability attaches only when their conduct falls below the standard of skill and care exercised by others engaged in the same profession in the same locality. *Seiler v. Ostarly*, 525 So. 2d 1207 (La. App. 5 Cir. 1988); *Sams v. Kendall Const. Co.*, 499 So.2d 370 (La. App. 4 Cir. 1986).

- In Louisiana, a contract is the law between the parties:

“Contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law. Contracts must be performed in good faith.” La. C.C. Art. 1983

- A contract is an agreement between parties whereby rights and obligations are created.
- Insurance coverage may be lost if the Architect assumes liability in excess of the standard of care through contract.

OVERVIEW

- The Architect's Standard of Care in Louisiana is well-settled.
- This standard may be modified if the architect **contractually commits** to perform **in excess of his or her standard of care**.

- Examples:

“highest level of care”

“with no material errors or defects”

“in accordance with all applicable codes, laws, and regulations of any governmental entity”

Potential Liability Arising from Contract Language

Contractual Liability

SAMPLE POLICY LANGUAGE:

EXCLUSION:

This Policy does not apply to:

Contractual Liability

- That part of any CLAIM(S) based upon or arising from liability of the INSURED assumed under any contract or agreement.
- This exclusion does not apply to liability for DAMAGES arising from a WRONGFUL ACT(S), for which the INSURED would have been liable for in the absence of such contract or agreement.

EXCLUSION:

Express Warranties and Guarantees

1. That part of any CLAIM(S) based upon or arising out of express warranties and guarantees.
2. This exclusion does not apply to a warranty or guarantee by the INSURED that the INSURED'S PROFESSIONAL SERVICES are in conformity with the standard of care applicable to such PROFESSIONAL SERVICES or that the INSURED'S CONTRACTING SERVICES are in conformity with the standards applicable to such CONTRACTING SERVICES.

Problem Words

- Absolutes
- Superlatives
- Words of Promise or Guaranty
- Words with multiple meanings and interpretations

Covid-19

Insurance issues

Professional Liability

- Report all potential claims timely

Commercial Office Package & General Liability

- Many questions about insurance related to COVID still exist
- New questions arise daily
- Still uncertainty and confusion regarding how insurance might or might not respond to COVID-related claims

Commercial Office Package & General Liability

- **If a client or other 3rd party claims to contract COVID in my office, do I have coverage from my general liability policy?**
 - Depends on the specifics of the policy and the situation.
 - Coverage requirements usually include:
 - Insured must be legally liable
 - Question for the courts.
 - Injury caused by a failure to act prudently

Commercial Office Package & General Liability

- Injury must be caused by an “occurrence”
 - Is spreading the disease an occurrence?
 - Too many variables for a “yes” or “no” answer
- No exclusions that apply
 - Is there a “disease-related” exclusion?
 - Is a virus considered a “pollutant”?

Business Income (BI)

- **Does my business income policy pay for my income loss due to COVID-related business closures?**
 - For the standard BI coverage to apply, there must be damage to property by a covered cause of loss.
 - Big question is will courts determine that a virus causes “physical damage”.

- Courts disagree on whether suits can even be brought by insureds related to the question.
- **Question of Civil Authority coverage** – usually coverage must be triggered because the civil authority restricts access to the area because of wide-spread physical damage making the area unsafe – Again, can a virus cause “physical damages”?
- These are not the only questions but likely will be the first ones to be addressed.
- Other exclusions may apply – Virus exclusion, etc.
- We will never tell you not to make a claim. Not your agent’s job to determine coverage.

Workers Compensation (WC)

- **Is my employee covered under WC if they contract COVID?**
- Is there something peculiar or unusual about the work that increased the chance that the employee would contract the disease – Doctors, Nurses, etc.
- Rules by State vary and are subject to change.
- When in doubt, submit the claim.

Workers Compensation (WC) continued

- **Are employees covered while working at home?**
 - Questions that will be asked:
 - Was the employee where the employer expected him/her to be?
 - Was the employee furthering the work of the employer at the time of injury? Working or playing?
 - If you have employees working from home in another state, be sure to check with your carrier.

Property Insurance

- If you have vacated some office space or shut down branch offices, be sure to check with your agent on coverage – Vacant vs unoccupied.

Covid-19 - Liability Issues

- **Design issues**
- **Jobsite safety**
- **IDM for contractor delay claims**
- **Legislative immunities**

COVID-19 Liability Issues

- READ YOUR CONTRACT for COVID-19 changes

§ 8.4 Delays, Disruptions, Suspensions, or other Impacts Arising out of or Relating to COVID-19

§ 8.4.1 If the Contractor is delayed at any time in the commencement or progress of the Work by causes beyond the Contractor's control directly arising out of or exclusively related to COVID-19 and/or any governmental, regulatory actions, and/or orders arising out of or exclusively relating to such (collectively, "COVID Delays"), Contractor may be entitled to an equitable adjustment to the Contract Time and Contract Sum to account for any such delays, pursuant to Sections 8.4.1.1 and 8.4.1.2.

COVID-19: Design Issues

- Design delay? Put the Owner on notice of “reasonable cause” for delay (B101, §3.1.3)
- Government approvals likely delayed (§§3.1.5 and 3.1.6)
- Time to discuss with the Owner “reasonable contingencies” in the project time and budget (§5.2)
- Additional Services? “necessitated by the enactment or revision of codes, laws, or regulations” (§4.2.1)

COVID-19: Jobsite safety Issues

- who is normally responsible for *jobsite* safety?
- **B101-2017: §3.6.1.2** (“Architect shall not have control over...or responsibility for safety precautions...in connection with the Work”); see also A201-2017 §4.2.2 (“...Architect will not have ...responsibility for ...safety...”)
- **A201-2017: §10.2 Safety of Persons and Property**
 - Contractor “Shall take reasonable precautions for safety”
 - Contractor “Shall Comply with ... lawful orders of public authorities bearing on safety of persons”

COVID-19 Jobsite Safety Issues

- Contractors have numerous COVID-19 resources

Keep Workers Safe, Keep Construction Going
a Special Message from AGC of America CEO Stephen E. Sandherr

SHARETHIS

Coronavirus (COVID-19)

AGC is committed to providing our members with valuable resources and updates during these challenging times. You can navigate to topic-specific news and information by using the blue tabs or browse the latest updates by simply scrolling to the bottom of this page. AGC will continue to monitor the situation and update the information on these pages accordingly.

Safety, Health & Environmental Resources

COVID-19 Basics

Advocacy Efforts

Economic Impacts

Contract Resources

Infrastructure Impacts

Labor, HR & Paid Leave Impacts

Risk Management Information

Tax Impacts

Federal Work

Webinar Information

AGC Surveys

Daily Member Updates

workingsafe.agc.org

Weekly Safety Tips

ConstructorCast

Paycheck Protection Program

COVID-19: IDM for Contractor Delay Issues

- A201-2017, §10.4 Emergencies – Additional compensation or time claimed for “emergency affecting safety of persons or property” per Art. 15(Claims and Disputes) and Art. 7 (Changes in the Work)
- Gov. has declared an “emergency” under the Louisiana Health Emergency Powers Act – includes “infectious diseases”.

COVID-19: IDM for contractor claims

Issues

- How to determine the length of the delay or amount of cost?
- IDM may consult with “persons with special knowledge” – cost? “may request Owner to authorize retention” (A201, §15.2.3)
- IDM may decide “lacks sufficient information” (A201, §15.2.2)
- Not liable for decisions rendered in good faith (A201 - §4.2.12)

COVID-19 Resources

- **AIA website**
<https://www.aia.org/pages/6280670-covid-19-resources-for-architects>
- **AGC website** - <https://www.agc.org/coronavirus>

COVID -19 Immunity Statutes

LA RS 9:2800.25(A) – Limitation of Liability for COVID-19 (General Immunity)

No person, business, or government entity shall be liable for injury or death resulting from exposure to COVID-19 through the performance of its business operations unless:

- Failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations;
- If multiple procedures apply, must comply with any one set of procedures; and
- The injury was caused by gross negligence or wanton or reckless misconduct.

LA RS 9:2800.25(B) – COVID-19 Limitation of Liability for Event Planner

No business event strategist, association meeting planner, corporate meeting planner, independent trade show organizer or owner, or any other entity hosting, promoting, producing or otherwise organizing an event of any kind, shall be held liable for any **civil damages for injury or death** resulting from exposure to COVID-19 through the performance of hosting, promoting, producing, organizing, planning or owning a tradeshow, convention, meeting, association produced event, corporate event, sporting event, or exhibition of any kind, unless such damages were caused by the **gross negligence or willful or wanton misconduct**.

LA RS 9:2800.25 – Workers' Compensation (Employer Immunity)

An employee whose contraction of COVID-19 is covered under the Louisiana Workers' Compensation Law shall have no remedy based in tort for such exposure against his employer unless the exposure was intentional.

An employee whose contraction of COVID-19 is NOT covered under the Louisiana Workers' Compensation Law shall have no remedy in tort for such exposure against her employer unless the exposure was caused by intentional act.

LA RS 29:773: Limitation of liability for Personal Protective Equipment during the COVID-19 public health emergency

No person that designs, manufactures, labels, or distributes PPE in response to COVID-19 shall be liable for civil damages for injury or death caused by such PPE, unless caused by gross negligence or willful or wanton misconduct.

No person who uses, employs, dispenses, or administers PPE shall be liable for civil damages for injury or death resulting from such PPE, unless:

- Failed to substantially comply with the applicable procedures established by federal, state, or local agencies which govern such PPE; and
- The injury was caused by the person's gross negligence or wanton or reckless misconduct.

LA RS 29:773 - Limitation of Liability for the Restaurant Industry

No owner, operator, employee, contractor, or agent of a restaurant shall have civil liability for injury or death due to COVID-19 infection transmitted through the preparation and serving of food and beverage products, unless:

- Failed to substantially comply with Proclamation Number 25 JBE 2020 and any subsequent related proclamations and applicable COVID-19 procedures established by a federal, state, or local agency, and
- The injury was caused by gross negligence or willful and wanton misconduct.

LA R.S. 29:735.3.2 – Immunity for Emergency Efforts

During a declared state of emergency (including COVID-19), any person or business that renders disaster relief or products **outside the typical course and scope of their operations**, shall not be liable to the recipient for resulting injury, death or property damage as follows:

- If rendered in coordination with the **federal government**, the state, or its political subdivisions, and
- Except in the event of **gross negligence or willful misconduct**.

LA RS 29:735.3.1 – Immunity for Volunteers

During a declared state of emergency (including COVID-19), any person or business that gratuitously and voluntarily renders disaster relief or products, shall not be liable to the recipient for any resulting **injury, death or property damage** as follows:

- If rendered in coordination with a government agency.
- Except in the event of **gross negligence or willful misconduct**.
- The immunity does not apply to unlicensed persons providing services for which a license is required.

LA RS 17:439 – Immunity to Schools for COVID-19

- Public and nonpublic schools, school systems, governing authorities, charter schools, and their officers, employees, and agents shall not be held liable for any civil damages for injury or death resulting from exposure to COVID-19.
- There shall be no cause of action related to a person contracting COVID-19 at a public or nonpublic school, bus, or at a sponsored event, which is based on the actions or failure to act by school officers, employees, or agents.
- This shall not affect the right of any person to receive benefits provided under the Louisiana Workers' Compensation Law.
- Exception - If the action or failure to act was in violation of a policy, rule, or regulation adopted by the school or was in violation of any procedure mandated by law or by rule or regulation adopted by a federal or state agency,
- The action or inaction is determined to be grossly negligent or wanton or reckless misconduct.
- The school governing authority shall not adopt a policy, rule, or regulation that imposes a lesser standard than what is prescribed in by the State Board of Elementary and Secondary Education in accordance.

COVID-19 Federal Legislation

- Proposed Federal legislation to limit liable for Covid-19 claims caused by an act or omission of the person acting in good faith.
- Applies to interstate commerce activities.
- Good faith means acting in compliance with the recommendations of the CDC and/or other public health authority.
- Excludes willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of others.
- Preempts state laws unless such laws provide greater protection from liability.

WHAT IS GROSS NEGLIGENCE?

- **Not defined in the architectural rules of conduct but listed as a basis for disciplinary action by the licensing board.**
- **It is defined in the engineering rules as lack of reasonable care...**
- **Louisiana case law defines it as:**
 - Lack of even slight care and diligence;
 - Willful, wanton, reckless conduct that falls between intent to do wrong and ordinary negligence;
 - Entire, utter, complete or extreme lack of care.

RULES OF CONDUCT FOR AN ARCHITECT

- Primary duty is to protect the **public's health, safety, and welfare**.
- Requires reasonable care and competence – compliance with the technical knowledge and skill ordinarily applied by architects in good standing, practicing in the same locality (**Standard of Care**).
- Shall take into account the applicable **federal, state, and local** building laws/regulations.
- May rely on the **advice of other professionals** (attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws and regulations.
- Shall not knowingly design a project in violation of such laws and regulations.
- Shall not undertake a project without the required knowledge (**Competence**).
- May retain a consultant to supplement its capacity.
- Must take appropriate action if his employer or client violates law or regulations that materially and adversely affect the public's health and safety.


LA Administrative Code, October 2019, Chapter 19

COVID-19 – New tools

COVID-19 NEW TOOLS

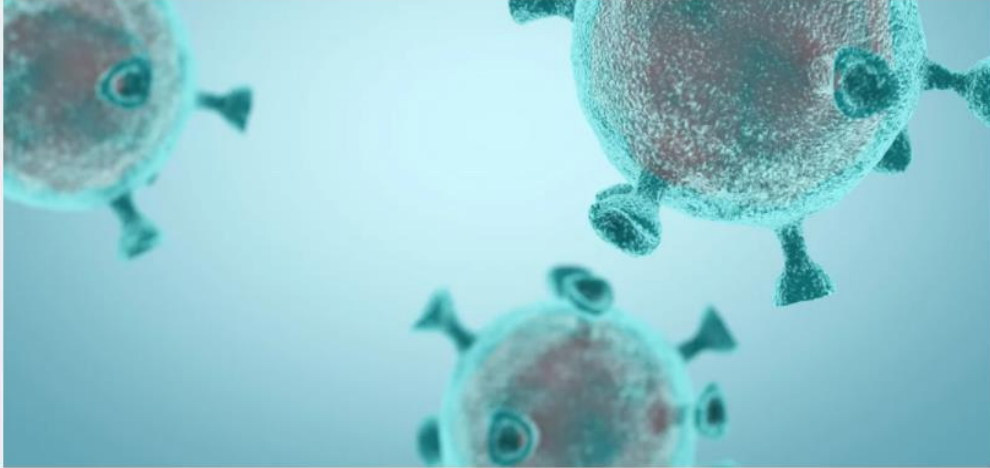
- What implications for architects?
- What is the architect's role?
- What impact to the standard of care?
- Where to start?

COVID-19 NEW TOOLS



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As we navigate this unprecedented crisis in our global community, AIA is committed to equipping our members with the information they need to help navigate these uncertain times. This page is intended to provide guidelines, policies, and tools for our members and will be updated frequently as new resources become available.

Business

Design

Economy

Career

HR


Legal

Relief

Free

Business planning

AIA recognized for COVID-19 response



ASAE recognized AIA as one of "100 Associations That Will Save the World"

[Read more >](#)

COVID-19 media coverage

Read news and information covering how the architecture community is responding to the COVID-19 pandemic.

[Media coverage >](#)

Component Connect

Component leaders and staff

COVID-19 NEW TOOLS

- **AIA response to unprecedented health crisis in global community**
- **AIA as a resource for industry guidelines, policies, and tools for architects:**
- **Design strategies for safer buildings as a public health solution:**
 - Reduce spread of pathogens in buildings
 - Allow for physical distancing
 - Promote physical and mental well-being
 - Accommodate alternative functional needs
- **Risk management plan to assess hazards, apply architectural/engineering standards, and reduce risk**
- **Strategies to re-occupy buildings safely**
- **Specialty design considerations for health care facilities, senior living communities, schools, day care facilities**
- **Other industry guidelines: ASHRAE, AGC, CDC, OSHA**

COVID-19 NEW TOOLS

- **AIA Re-occupancy Assessment**
- **AIA goal – to promote best practices**
- **Purpose – to ensure health, safety and welfare of the public or end-users**
- **Architects are in a unique position to coordinate mitigation strategies to reduce risk of exposure**
- **Use in conjunction with Risk Management Planning Tool**
- **Coordinating building features with operational practices**
- **Multiple (sometimes inconsistent) considerations require holistic approach: security, life safety, accessibility, resilience, green features, sustainability, industrial hygiene, ability to respond to natural or biological disasters**

Other Hot Topics

Duty to the Public and Reliance upon Contractual Provisions

Duty Owed by Architect

An architect owes the same duty and degree of care to third parties (the public, end users, sureties, workers, etc.) as is owed to the owner.

Calandro Development, Inc. v. RM Butler Contractors, Inc., 249 So.2d 254 (La. Ct. App. 1 Cir. 1971); *American Fidelity Fire Ins. Co. v. Pavia Byrne Engineering Corp.*, 393 So.2d (La. Ct. App. 2d Cir. 1981)

Duty Owed by Architect

The architect was not liable for contractor injury resulting from boiler explosion during commissioning caused by improper installation.

- Architect's contract with the owner required site visits to generally observe the progress and quality of the work to determine if it satisfied the Contract Documents.
- Duty owed to owner to ensure compliance before acceptance
- Under the contract the architect had no duty to supervise the contractor's method of doing the work.

Day v National U.S. Radiator Corp., 241 La. 288, 128 So.2d 660 (1961)

Duty Owed by Architect

- **Architect owed duty of care to painters injured by lead paint at work site.**
- **Injuries arose from alleged defective services.**
- **Architect was notified of lead paint concerns by building occupants.**

Young v. City of Plaquemines, 818 So.2d 892 (La. App. 1 Cir. 5/10/02)

Duty Owed by Architect

- Engineering firm that designed bridge widening project did not have a contractual duty to review erection procedures used to construct a column from which a rebar cage collapsed, causing a construction worker to fall to his death.
- Engineer reviewed only the items specifically requested by the construction manager.
- Firm fulfilled its contractual obligation to DOTD by verifying that the contractor work complied with the plans.

Maldonado v Kiewit Louisiana Co., 152 So.3d 909 (La. App. 1 Cir. 5/30/14)

Duty Owed by Architect

- Engineer sued in worksite injury alleging some responsibility to supervise construction or site safety.
- Court found that the only way a legal duty to act can arise is if the engineer's contract imposed the obligation on the engineer.
- Court concluded, based on careful contract review, that the engineer had no contract obligation to supervise construction or site safety.

Black v. Gorman-Rupp, 791 So.2d 793 (La. App. 4 Cir. 2001)

Duty Owed by Architect

- Building owner was liable in class action lawsuit by employees for damages for adverse health effects suffered as a result of exposure to mold.
- Owner was aware of employees' complaints.
- Failed to make effort to determine cause of adverse health effects.
- Owner purposefully allowed a persistent water intrusion problem that resulted in mold.

Walters v Department of Social Services, 15 So.3d 1128 (La. App. 4 Cir. 6/17/09)

Duty Owed by Architect

- Injured laborer sued engineer for negligence caused by collapse of a drainage trench during a project managed by firm.
- In determining the duty owed to an employee of a contractor by an engineering firm also involved in the project, the court must consider the express provisions of the contract between the parties.
- Engineer hired by school board to manage installation of underground drainage pipes did not have a contractual duty to guarantee the safety of laborer.
- Construction contract provided that contractor was solely responsible for safety and had exclusive control over the means and methods of construction.
- Engineer did not assume a moral duty to guarantee laborer's safety.

Young v. Hard Rock Construction, L.L.C., 292 So.3d 178, (La.App. 5 Cir. 3/17/20)

Duty Owed by Architect

- **Suit by accident victims injured when westbound vehicle crossed over emergency lane of bridge and struck victims' eastbound vehicle brought action against engineer retained to conduct bridge safety study.**
- **No duty to recommend installation of barrier.**
- **Evidence failed to establish that engineer's recommendation against installation of median barrier deviated from standard of care.**
- **Dilemma of whether to install barrier was complex, multifactor issue without clearcut answer.**
- **Engineer's recommendations were therefore and exercise of professional judgment.**

Duty Owed by Architect (con't.)

- **Feasibility of safety scheme had to satisfy competing criteria/goals:**
 - Significant reduction in serious vehicular accidents;
 - must not result in a significant decrease in traffic capacity;
 - must not seriously reduce the effectiveness of handling accidents, emergencies and interruptions;
 - must adapt to the existing structure without significant over-stressing;
 - must be capable of being constructed in a reasonable period of time
 - must produce greater safety at a construction cost commensurate to the benefit achieved.

Carter v. Deitz, 556 So.2d 842 (1990)

Public Works Project issues

Public Works Project issues

- *Mandamus proceedings* - Getting the Contractor paid “All public entities shall promptly pay all obligations arising under public contracts when the obligations become due and payable under the contract.” La. R.S. 38:1291 A:
- Review of the Contractor’s application for payment and the Architect’s certification.
- Conflicting appellate court decisions create confusion on significance of Architect’s certification
 - Either (1) no deduction for liquidated damages (4th Cir) or (2) deduction allowed, but LD’s to be assessed in a *summary* court proceeding (1st Cir)
- So what does the Architect do?

Public Works Project issues

- Legal issue, not an architectural issue - Review the Pay App based upon normal contract completion status.
- AND, check your General Conditions, Advise the Owner, in writing:
 - *§ 9.5 Decisions to Withhold Certification* : (1) defective Work not remedied, (3) failure of the Contractor to make payments, failure of the Contractor to make payments, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages

Public Works Project issues

- Where will you put that?

Application and Certificate for Payment

TO OWNER:

PROJECT:

APPLICATION

PERIOD TO:

CONTRACT

FROM CONTRACTOR:

VIA ARCHITECT:

CONTRACT

PROJECT N

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
AIA Document G703*, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM \$ _____

2. NET CHANGE BY CHANGE ORDERS \$ _____

3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ _____

4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ _____

5. RETAINAGE:

a. _____% of Completed Work
(Columns D + E on G703) \$ _____

b. _____% of Stored Material
(Column F on G703) \$ _____

Total Retainage (Lines 5a + 5b, or Total in Column I of G703) \$ _____

6. TOTAL EARNED LESS RETAINAGE \$ _____

(Line 4 minus Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ _____

(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$ _____

The undersigned Contractor certifies that the Work covered by this application is in accordance with the Contract Documents, which previous Certificates for that current payment shown here.

CONTRACTOR:

By: _____

State of: _____

County of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public:

My commission expires: _____

ARCHITECT'S CERTIFICATE

In accordance with the Contract Documents, this application, the Architect certifies that the Work is in accordance with the Contract Documents. AMOUNT CERTIFIED.

Reliance upon Manufacturers

Reliance upon manufacturers - problem

- Hazards with reliance upon manufacturer specifications
- Consider all the products in Sweet's Catalogue and
 - the sample specifications/drawings the manufacturers offer
- *What obligation does the manufacturer owe the architect?*
- Answer: Maybe none, **Detrimental Reliance not accepted in recent federal case**
- **Solutions?**

Reliance upon manufacturers - solutions

- EJCDC – E-500: “Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.”
- “Delegated design” - not the word used in the A201: “§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy....[see the section]
- Best: Careful design coordination between the product and the project
- Warranty : of the product for that project

Reliance upon manufacturers

- **Peremption** - 5 years to file suit or arbitration
- **Applies to claims against manufacturers of building systems products**
 - E.g. Centria “insulated metal panel system”
 - So, if you have a product-related dispute, claim to manufacturer early
 - Tell your lawyer

Recent changes to OFPC Designer Contracts

OFPC Designer Contract changes

- **§103. Definitions** – “Standard of Care—The designer and their professional consultants shall perform their services consistent with the skill and care ordinarily provided by similar professionals practicing in the same or similar locality under the same or similar circumstances”.
- **§107. Available Funds for Construction (AFC)** – “The owner will take into consideration abnormal escalation in construction costs that can be substantiated prior to bid” – was not deleted, BUT... OFPC expects the designer to be aware of sharp increases in steel, concrete, or if the area is recovering from a recent named storm.
- **§109. Compensation – change orders** – “designer will be notified of any claims of error or omission designations made to a change order prior to execution by the owner”
- **§115 Accounting records** – “Records of direct reimbursable expenses and expenses

OFPC Designer Contract changes

- **§115 Accounting records** – “Records of direct reimbursable expenses and expenses pertaining to additional services on the project, and for services performed on the basis of multiplier...shall be kept...[GAAP] and shall be furnished...to the owner...on request”.
- **Not stated but clearly expected** – Basic Services include geotechnical and surveying
 - *“Designers should not select firms for services who are not licensed and adequately insured.”*

Thank you.