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## Is the Architect Supervising the Project?

In this litigious era, architects frequently get caught in the legal swamp of lawsuits. A common situation is where a construction worker is injured. Under the workers' compensation acts of many states, the worker's employer is often immune from a lawsuit. In an effort to recover the big damages that the worker seeks, other parties must be brought in as targets. These targets may include the owner, the A/E, and other contractors. If the worker is an employee of a subcontractor, the general contractor is a good target, but if the general employs that worker, the only real defendants left are the owner and A/E. On many governmental projects, the owner may enjoy some form of statutory immunity, leaving only the poor architect and its consultants as viable defendants. This article will examine this scenario and the provisions incorporated in the standard AIA documents that may help the architect out of such a mess.

Because the injured worker does not have a contract with the architect, and because of the nature of the injuries, the worker will likely file a tort action against the architect. The allegation will be that the architect was negligent, causing the injury to the worker.

Generally, to prove liability in a negligence action, the worker will have to prove that the architect owed the worker a duty, that the architect breached this duty, and that as a result of this breach, the worker sustained injuries. Usually, the complaint will allege that the architect had a duty to supervise the construction activities. This implies a duty to supervise the safety activities at the jobsite. Some complaints will directly allege that the architect had a duty of safety and that this duty was breached. A variation on these allegations is that, although the architect initially had no such duties, he voluntarily undertook these duties during the course of the project and then breached those duties.

Let's take a common example. The architect is hired by the owner under a letter agreement. There is no discussion in the agreement about whether or not the architect is to supervise the work or is in charge of safety. If a worker is injured, many courts will fall back on the old "master builder" model of the architect to find that the

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architect was actually in charge of safety at the project. If a worker is injured, then whoever was in charge of safety is automatically in breach of its duty to provide for jobsite safety.

The AIA language found in several of its agreements, including the various Owner-Architect Agreements and the General Conditions, specifies that the general contractor and not the architect is solely in charge of safety. The documents reinforce this with language with terms designed to delineate the responsibility for design to the architect and for construction to the contractor. For instance, the following language appears in AIA Document A151-1997:

**2.6.5** The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

Similar terminology is found in other AIA agreements, as well as the numerous other documents that are modeled on the AIA language. Thus, it would seem that by using documents that clearly define the architect's duties as not including any responsibility for safety, the architect should be able to avoid lawsuits by injured workers. However, because the law allows an architect to "volunteer" for additional responsibilities, clever lawyers often allege that the architect undertook to supervise the project or to be responsible for safety. If the architect participated in safety meetings, directed the contractors in how to set up scaffolding or other construction procedures, or ever told or directed any worker how to do the work, then the architect may be deemed to have undertaken these additional duties that are specifically excluded by the AIA documents.

To avoid such an unpleasant situation, the architect must be ever vigilant to leave a clear paper trail. There should be no documents of any type that would indicate that the architect participated in any

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safety discussions. If the general contractor wants to discuss any safety measures at the weekly project meeting, the architect should excuse himself from that meeting, and make a note of that fact in the minutes. Better yet, the safety meeting should be held separately, without the presence of the architect. If the general contractor copies the architect with meeting minutes from that safety meeting, the architect should return those minutes with a letter that explains that the architect has nothing to do with safety and will not accept any documents relating to safety, or means, methods, techniques, sequences or construction procedures.

Architects must take the word “supervise” out of their vocabulary. Only the contractor supervises the construction. The architect may observe the work, but only for the limited purpose of determining whether, *when the project is completed*, the work will conform to the contract documents, and whether payment is due to the contractor. The architect’s only concerns are that the work will be satisfactory, will be done on schedule, and will be done on budget. How this is accomplished is the contractor’s concern, not that of the architect. The architect’s job is to design, and the contractor’s job is to build.

Examine all specifications prepared for each project to make sure that any reference to safety or to construction procedures makes clear that these matters are solely the contractor’s responsibility. Try to keep references to methodology to an absolute minimum. When preparing these documents, ask whether a particular section refers to something in the completed building (proper) or whether it refers to a construction method or sequence (improper). Only if necessary to assure that the final building will comply with the contract documents should any such references be included in the specifications or elsewhere.

Unfortunately, it is necessary to practice defensive document preparation. All drawings, letters, notes, photos and other documents for a project will be made available to the plaintiff’s attorney who will carefully scour these documents for any evidence that the architect undertook any responsibility for safety. Make sure that you understand and comply with your contracts, particularly the parts that allocate project responsibility.

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