

# THE LIABILITY OF BUILDING GREEN

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# THE LIABILITY OF BUILDING GREEN

Risk and Liability in the Construction Industry

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GBI, VP of Marketing and Membership



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## GBI Mission

- The Green Building Initiative is working to accelerate the adoption of green building practices that result in energy-efficient, healthier and environmentally sustainable buildings.



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## What is the GBI?

- Formed in 2004; 501(c)(3) non-profit
- Headquartered in Portland, OR
- Dedicated to accelerating adoption of green building practices
- Help homebuilder associations start green building programs with their builder members
- Own US License to Green Globes environmental assessment and rating system



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# Green Globes™



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# GBI Members/Supporters



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# How to Ask Questions:



## Polling Question #1

- Which industry do you represent?
  - Architects
  - Engineers
  - Building Owners and Managers
  - Contractors and Commercial Builders
  - Home Builders
  - Developers
  - Government
  - Environmental
  - Manufacturer
  - Legal



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## Ujval Vyas, Ph.D., Esq.

- Ujval Vyas is the principal of Alberti Group, a Chicago-based interdisciplinary consultancy specializing in emerging issues in the building industry including sustainability and high-performance buildings, BIM, and alternative project delivery systems. He has lectured and published extensively on legal and business risks in the sustainable building marketplace, covering large-scale policy, insurance, legal, and technical issues. Prior to becoming an attorney, Dr. Vyas taught and lectured at architecture schools at both the undergraduate and graduate levels in the United States and Canada, and served as the director of the Institute for Architecture and the Humanities in Chicago. Dr. Vyas can be reached at [uvyas@albertigroup.net](mailto:uvyas@albertigroup.net).



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## Polling Question #2

- Do you believe that green building adds an additional layer of risk to your projects?
  - Yes
  - NO

## Introduction- Ujval Vyas, Ph.D., Esq.

- Is there such a thing as green building risk?
- Why are we here today?
- Introduction of speakers and overview of today's format
- How does this panel fit in with our next two presentations?

## Stephen Del Percio, Esq.

- Stephen Del Percio is a construction attorney in the Manhattan offices of Arent Fox, where his practice focuses exclusively on assisting clients in the design, construction, and real estate industries on matters ranging from construction contract and corporate drafting to litigation. Mr. Del Percio holds a degree in civil engineering and worked as project manager on a high-rise office building in Times Square prior to becoming an attorney. He is a frequent author and lecturer on green building issues and is also the publisher of greenbuildingsNYC, an online journal that profiles green projects in the New York City area, as well as discusses the broader legal issues implicated by green design and regulation. Mr. Del Percio can be reached at [delpercio.stephen@arentfox.com](mailto:delpercio.stephen@arentfox.com).



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## Stephen Del Percio, Esq.

- Green Construction Law Overview
  - *Legislative Challenges*
    - Political Process
    - Constitutional Law
    - Antitrust
  - *Potential Causes of Action Arising Out of Green Projects*
    - Fraud
    - Negligence
    - Negligence per se
    - Breach of Contract
    - BIM, Trademark, & Insurance Implications

## Fred Butters, Esq.

- Fred Butters is an attorney with the Bloomfield Hills, Michigan law firm of Thomas M. Keranen & Associates, P.C, which specializes in design professional and construction-related issues. Prior to becoming an attorney, Mr. Butters was a practicing architect, working on large corporate and manufacturing projects throughout the United States and internationally. Mr. Butters is approved defense counsel for a number of major insurance carriers, concentrating his practice in the defense of claims against architects and engineers. He has successfully defended clients throughout the United States on claims aggregating well over one hundred million dollars. He has also co-chaired a number of legislative task forces and has repeatedly spearheaded successful legislative initiatives that involve and affect the practice of architecture. Mr. Butters can be reached at [fbutters@tmklawpc.com](mailto:fbutters@tmklawpc.com).



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# Fred Butters, Esq.

- **The Design Professional's Perspective**
  - Standard of care
  - Professional liability insurance
  - Availability of coverage
  - Contract issues

## Polling Question #3

- Have you ever made changes to contract provisions or contract language when participating on a green project?
  - Yes
  - No

## Paul D'Arelli, Esq., LEED® AP

- Paul D'Arelli, Esq., LEED® AP, is a shareholder with Greenberg Traurig, P.A. As a LEED® accredited professional, Mr. D'Arelli is one of a handful of attorneys across the country that have joined a national community of design, planning and other professionals who have recognized the significance of green building trends on human and environmental health, and have responded by receiving accreditation through the U.S. Green Building Council. He is actively assisting clients in a variety of green building and sustainability initiatives. Mr. D'Arelli works collaboratively with other Greenberg Traurig attorneys across many disciplines to manage a host of legal and risk management issues inherent in the implementation of a green building strategy. Mr. D'Arelli serves as counsel on two south Florida mixed use LEED® Neighborhood Development Pilot Projects. He is also a licensed California general contractor and has prior experience as a builder. Mr. D'Arelli can be reached at [darellip@gtlaw.com](mailto:darellip@gtlaw.com).



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# Paul D'Arelli, Esq., LEED® AP

- The Owner's Perspective
  - Pursuit of a third-party certification or building performance objectives creates risk that must be comprehensively managed through all project documents:
    - Design and construction contracts
    - Leases
    - Project governance documents
    - Marketing materials
    - Insurance policies
  - Source of risk:
    - Rating expectations
    - Performance expectations
  - Potential solutions?

## Dan Murphy P.E., LEED® ESD, Senior Vice President

- Mr. Murphy has been designing and specifying HVAC, electrical, plumbing, life safety, and fire protection systems for High Rise Commercial, Institutional, and Custom Residential type buildings for the past 35 years. In his current position of Senior Vice President, Director of Codes and Standards and Director of LEED™ Practice at Environmental Systems Design, Inc., Chicago, he is responsible for corporate guidance and philosophy related to Building and Fire Codes and the proper application of Standards and Procedures related to LEED™ Design, sustainable energy models, and renewable energy concepts. Mr. Murphy can be reached at [dmurphy@esdesign.com](mailto:dmurphy@esdesign.com).



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# Dan Murphy P.E., LEED® ESD, Senior Vice President

- Green Construction Risk Management in Practice
  - Scope of Services
  - Energy Analysis vs. Actual
  - “Defeatable” Energy Conservation Features

# Green Building Risk in Practice

- *Examples*
  - Ujval Vyas
  - Stephen Del Percio
    - *Case law?*
  - Fred Butters
    - *Design professionals?*
  - Paul D'Arelli
    - *Owners?*
  - Dan Murphy
    - *Design professionals?*

# Green Construction Risk - Moving Forward - Follow Up Questions

- Do most real estate industry decision-makers understand the risks that they may be exposing themselves to when weighing the possibility of third-party green building certification?
  - *Paul D'Arelli*
- Are industry stakeholders considering the capacity of purportedly green buildings to deliver a higher level of performance? How does the concept of a “zero net-energy building” increase risk for engineers?
  - *Dan Murphy*
- How can the insurance industry assist design professionals in ensuring that adequate insurance coverage exists in connection with green projects? Which stakeholder is in the best position to drive the creation of such a policy, to the extent that one doesn't already exist?
  - *Fred Butters*

## For More Information:

- To learn more about becoming a member of the GBI please visit: <http://www.thegbi.org/commercial/use-green-globes/join.asp>
- If you would like a 30-day-free trial of Green Globes please visit: <http://www.thegbi.org/lp/trial-b.asp>
- Visit [www.EDCmag.com](http://www.EDCmag.com) to see if you qualify for a FREE subscription!



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# Panel Discussion & Questions from Audience



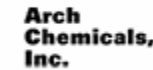
## Polling Question #4:

- What did you think of today's webseminar?
  - Very valuable
  - Valuable
  - Neutral
  - Not very valuable
  - Not valuable at all

# GBI Members/Supporters



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## Liability of Building Green

- **July 16:** Regulatory Issues that Add to Construction Risk
- **Aug 27:** How Insurance Plays a Role in Construction Risk
- Register at [www.thegbi.org](http://www.thegbi.org)