Some clauses in contracts between architects and owners can create liability risks for architects, but you do have ways to minimize the risks.

Architects are not typically sophisticated contract drafters. A lawyer can be an important resource for an architect during the contract-drafting stage to keep an architect’s liability within his or her insurance coverage, and even to limit an architect’s liability exposure. This article will explain the risks associated with various clauses in an architect-owner agreement, how to deal with minimizing those risks the best, the standard of care for architects, and the risks associated with green building design.

Understanding an Insurance Policy

An architect needs to have a good understanding of his or her insurance policies and what they cover. Generally an architect can obtain two types of insurance policies: a commercial general liability policy (CGL) and a professional liability policy. A CGL policy will cover an architect for property damage and bodily injury that are the result of non-professional negligence. A professional liability policy provides insurance coverage for an architect’s professional negligence.

Not all professional liability policies are the same, and it is important for an architect to understand his or hers so that provisions in a contract between an owner and the architect will not exclude coverage under the policy. Liability that an architect assumes by contract is generally not covered under a professional liability policy unless the conduct would create liability through a breach of the standard of care. Claims for damages arising from contract terms that contain guarantees and warranties typically are not covered if the guarantees or warranties require performance beyond the professional standard of care. A professional liability policy also usually only covers the negligence of the insured architect and the liability that he or she assumes due to the negligence of his or her sub-consultants that work under a contract between themselves and the architect.

By understanding a professional liability policy, an architect and his or her attorney can draft a contract to include coverage for the architect’s scope of services.

Contracts and Contract Drafting

The types of contracts between owners and architects in the construction industry are oral contracts, letter agreements, formal written manuscript contracts, standard form American Institute of Architects contracts or other standard form contracts.

It is unfortunate but oral contracts are still used from time to time by architects for design services. One architect in his 60s recently said that he designed many of the banks in town on a handshake. The obvious problem with an oral contract is that when disputes do arise, the parties don’t agree on what the terms of the oral contract were and litigation frequently follows with unpredictable results.
Letter agreements are also used to confirm a previous verbal agreement and may contain some additional terms. A letter agreement typically is signed by the owner and returned to the architect. It generally contains a statement of the services at a price. The problem with these agreements is that similar to oral agreements, too many issues are not dealt with and become difficult to prove when a disagreement later arises.

Formal written contracts are sometimes used by an architect and an owner. They are frequently drafted by an owner with language favorable to the owner. The language of the contract can create insurance coverage issues for an architect because it may remove coverage for certain conduct. Unfortunately, architects eager to obtain work will sometimes sign whatever owners want them to sign to get jobs. These contracts can often become problematic later for the architects when disputes arise because the language is favorable to the owners and create coverage issues.

The American Institute of Architects (AIA) contract documents are the most widely used form contracts in the architecture design profession. The AIA was founded in 1857. Working with the National Association of Builders, which later became the Associated General Contractors of America, the AIA published its first standard form document in 1888 entitled “The Uniform Contract,” consisting of three pages. The Uniform Contract clarified the AIA view of the appropriate roles of an owner, an architect, and a contractor during the construction process. The AIA has a committee of members that create and revise AIA contract documents. The AIA has attempted to produce documents that represent the consensus of the design and construction community. It seeks comment from industry organizations representing owners, contractors, lenders, subcontractors, engineers, insurance and surety interests when drafting new documents or revising an existing one. Since 1967, the AIA has revised the A201 document and associated agreements and forms every 10 years to keep current with the industry. The A201 family of documents was last revised in 2007. The benefit of using the AIA family of documents is that they have been in use for over 100 years and have a long history of case law interpreting the provisions, which enable parties to contract with a more predictable outcome should any dispute arise under the contract.

The AIA documents are identified by a letter prefix to identify the type of agreement. For example, documents dealing with owners and architects are found in the “B-Series.” The different types of agreement or documents are the A-Series (owner-contractor documents); the B-Series (owner-architect documents); the C-Series (architect-consultant documents); the D-Series (miscellaneous documents); the E-Series (exhibits); and the G-Series (contract administration and project management forms).

The AIA also classifies its documents to refer to the type of project or the project delivery method. As of 2012, the AIA had the following document families: conventional contract documents (A201); construction manager as advisor contract documents; construction manager as constructor contract documents; design build contract documents; integrated project delivery contract documents; interiors contract documents; international contract documents; small projects contract documents; digital practice documents; and contract administration and project management forms.

The AIA has continued to keep pace with the changes in the industry and to create new documents to meet the needs of the industry.

**Contract Terms in Owner-Architect Agreements to Avoid**

When your client is not working with an AIA contract but instead is subject to a contract drafted by an owner, you need to examine all the clauses carefully and edit them as necessary to keep coverage in play. The following are some examples of clauses that have come from actual contracts with recommended edits. These are only examples to help illustrate the concepts and should not be relied on in your particular case. You should review your policy and discuss contract changes with your client’s insurance carrier.
Fiduciary Duties

Sometimes a contract contains language that attempts to create a fiduciary relationship between an owner and an architect. A fiduciary duty is the highest duty imposed under the law and exceeds the standard imposed under the professional negligence standard and therefore is likely not insurable under a professional liability policy. It is, therefore, important to change any language in an agreement that might suggest that a fiduciary duty exists to preclude a party from arguing that an architect owed a fiduciary duty. Below is an example from the 2007 edition of Consensus Docs 240, Agreement Between Owner and Architect/Engineer, edited to disclaim a fiduciary duty.

- § 2.2 Relationship of the Parties. The Design Professional agrees to exercise the Architect/Engineer’s skill and judgment consistent with the Standard of Care. The Architect/Engineer represents that it possesses the licensing to perform the required services. The Owner and Architect/Engineer agree to work together on the basis of good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. The Owner and Architect/Engineer shall endeavor to promote harmony and cooperation among all Project participants. Nothing in this paragraph shall be interpreted to create a fiduciary relationship between the Owner and Architect/Engineer.

Error-Free Design

An owner may attempt to insert a clause that obligates an architect to correct all errors and omissions or to correct drawings to the owner’s satisfaction. These clauses imply that an architect guarantees a perfect design, and this is not the standard of care required under the law. Therefore, these clauses may not be insurable. Below is an example of how to redraft an “error-free design” clause to make negligence the standard of care.

- If any of the services under this contract have been negligently performed, then, at the option of said County Agent, any such services shall be performed anew by the Provider and at the cost and expense of the Provider.

Warranties and Guarantees

An owner may present a contract that contains a clause or language that requires an architect to guarantee or to warrant his or her services. Any warranty or guarantee may be excluded from coverage under a specific exclusion or the contractual liability exclusion in an insurance policy. When an owner attempts to do this, you should revise those provisions to exclude words such as “warrants,” “guarantees,” or “ensures” as in the example below.

- Consultant shall perform the Services under this Agreement in conformance with the standard of care and quality practiced by professionals experienced with projects similar to the Project.

Compliance with Laws and Codes

Owner agreements may have language that requires an architect to comply with all laws. However, laws sometimes conflict and are subject to more than one interpretation. Therefore, an architect may not be able to comply with “all” of the laws, and language requiring this may be interpreted or viewed as a warranty. Therefore, those clauses should be modified to make clear that an architect will use professional care to comply with laws.

- Consultant shall employ professional care to comply with all requirements of any applicable federal, national, state, or local law, code, statute, rule or regulation and reasonable interpretations of the same.

Liability for Another’s Fault or Negligence

Sometimes an owner’s agreement may contain clauses that make an architect responsible for the mistakes of others. Under an architect’s professional liability policy, these are likely not covered. Examples follow, along with explanations about how to deal with them.
In the example below, an architect would likely have no coverage and may have liability for the errors of an owner’s consultants. The additional language makes clear that an architect intends to disclaim that result.

**Owner’s Retained Consultant Example**

The Architect shall incorporate into the Construction Documents the design recommendations, drawings, and specifications of the Owner’s consultants, including, but not limited to, the environmental consultant, **but the Architect shall not be responsible for the accuracy or completeness of any work provided by the Owner’s consultants.** The Owner shall require that its consultants be professionally licensed and be covered under professional liability insurance, and shall further require that they sign and seal their own design documents prior to submitting to the Architect.

Even when an architect uses an AIA contract, an owner may attempt to make changes that can affect coverage. For instance, an owner may take § 6.3 of the AIA document B103-2007, which is printed in the example below, and make changes requiring an architect to redesign at his or her own expense due to the owner’s cost estimator’s mistakes. Those changes, which are contained below, should be rejected. You should not allow a change to be made to § 6.3.

**Owner’s Cost Estimator Example**

§ 6.3 The Owner shall require the Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect may rely on the accuracy of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall review the Cost Consultant’s estimates for **scope and completeness with reference to the construction documents;** and the Architect shall report to the Owner any material inaccuracies and inconsistencies, and omissions noted during any such review.

Section 3.6.4.2 of the AIA document B101-2007, which is printed below, deals with an architect reviewing a contractor’s submittals. Here again, an owner may delete and add language to the AIA contract as has been done below that makes an architect liable for a contractor’s means and methods. An architect needs to reject these types of edits or risk assuming potential uninsurable liability for a contractor’s submittals.

**Review of Contractor’s Submittals Example**

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents, **and compliance with all laws, codes, ordinances, and industry standards.**

An owner may attempt to modify § 3.6.2.1 of AIA document B101-2007 to make an architect liable for defects by one or more contractors. Do not allow edits this section such as those below because they create liability for an architect for a contractor’s errors, which can jeopardize coverage. In the example, below, the stricken text represents the language that you want to retain, as opposed to text that you want to remove; but you will want to strike the added text as well so that an owner cannot argue that the contract imposed a duty on an architect to inspect and to report deficient contractor work. This is discussed more in the section “General Responsibilities.”

**Contractor’s Construction Errors Example**

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become familiar with the progress and quality of the portion of the Work completed, and to determine, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) deviations from the Contract Documents and from the most recent construction schedule, and (2) **endeavor to guard the Owner from** defects and deficiencies in the Work.
There are several important issues to recognize in the § 3.6.2.1 example above, both the text deleted and the text added by the hypothetical owner, so that the section remains true to an architect’s best interests and will not have undesirable effects. First, it requires observations rather than inspections. Second, it only requires an architect to report known deviations from the contract documents. Third, it only obligates an architect to report observed defects in the work. All of these are critical and should not be altered.

However, there is one good reason for an architect to modify § 3.6.2.1. The number of site visits or frequencies should be specifically stated. Section 4.3.3 of B101 provides an opportunity to do this. Take it! Section 3.6.2.1 can be modified as follows:

“The Architect shall visit the site as otherwise required in § 4.3.3 to become generally familiar . . .”

Don’t leave the number and timing of visits open to interpretation; an architect is the best professional to judge how frequently and when he or she should visit a site.

Standard of Care

An owner may attempt to insert language into § 2.2 of AIA document B101-2007 that elevates the standard of care to uninsurable levels with phrases such as “The architect shall perform its services to the highest standards . . .” Section 2.2 in B101-2007 reads as follows and should not be altered to include such language.

• § 2.2 The architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the project.

The author does recommend adding the following language to the end of § 2.2 to make clear that no warranties are being provided and that no fiduciary relationship is being created.

THE ARCHITECT MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, REGARDING THE ARCHITECT’S SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. The Architect shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create any agency or fiduciary relationship.

General Responsibilities

Section 3.6.1.2 of AIA document B101-2007 should not be altered at all. The 1997 draft of § 3.6.1.2 of B101 contained language that created a duty obliging an architect to “[e]ndeavor to guard the owner against defects and deficiencies in the work of the contractor.” That language was eliminated because someone could argue that it imposed a duty on an architect to inspect for defects and to report them.

Section 3.6.1.2 of B101-2007 reads as follows:

• § 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

Architects should not agree to any modification to this original language. The importance of this provision is that it makes the following clear: The architect has no control over the construction means and methods or safety precautions, and the architect has no responsibility for acts of the contractors.
Indemnification Clauses

Often an owner will require an architect to indemnify and to defend the owner against claims. These clauses may not be insurable under an architect’s professional liability policy. Generally, indemnification clauses should be avoided by architects. If an owner insists on an indemnity clause, an architect should consult his or her insurance broker and possibly an attorney for guidance on wording for an indemnity clause that would not preclude insurance coverage.


§ 8.1.3 of AIA document B103-2007 reads:

• § 8.1.3 The Architect shall indemnify and hold the Owner and the Owner’s officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect’s duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

Contract Terms to Consider Including

When analyzing a contract between an owner and an architect, an architect’s attorney should consider adding clauses that manage and allocate risk.

Limitations of Liability

Limitations of liability clauses are one way to apportion risk in a contract between an architect and an owner. The reason that an architect may want this clause in a contract is to allocate the potential risk that the architect is willing to accept for the fee that he or she has been paid. The limitation of liability clause can be drafted in different ways. It can, for example, limit claims against an architect to an amount not to exceed the architect’s fee, some other sum, or the amount of available insurance coverage. You should understand that limitation of liability clauses may be subject to state law requirements or may not be unenforceable in your state. The AIA does not include limitation of liability clauses in its standard form agreements, but there is sample language in AIA document B503-2007, which is the Guide for Amendments to AIA Owner-Architect Agreements.

AIA document B503-2007 reads:

• Neither the architect, architect’s consultants, nor their agents or employees shall be jointly, severally or individually liable to the owner in excess of the compensation to be paid pursuant to this agreement or $______ dollars, whichever is greater, by any reason or any act or omission including breach of contract or negligence not amounting to willful or intentional wrong.

Waiver of Consequential Damages

The AIA professional services agreements and construction contract and subcontract forms all include a universal mutual waiver of consequential damages. Consequential damages are those damages that are an indirect cost. Examples would be lost profits, lost rents, and lost productivity resulting from a construction defect. The direct damages would be the cost of correcting defective work.

An example of a waiver of consequential damages is found in AIA B101-2007, § 8.1.4, which reads:

• § 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination of this Agreement, except as specifically provided in Section 9.7.

Insurance

An owner often requires an architect to have certain types and amounts of insurance coverage. An architect should also understand what type of insurance an owner has. The AIA professional services agreements and construction contract forms contain waivers of subrogation that assume that an owner carries property insurance. The effect of a waiver can make an owner’s property
insurance the source of recovery for an insured loss and prevent the insurer from bringing subrogation actions to recover the amounts that it has paid. All of the AIA professional services agreements and construction contract and subcontract forms include a universal waiver of subrogation for losses covered by an owner’s required property insurance.

Standard of Care
An architect is held to the standard of care of what a reasonable architect would have done under the same or similar circumstances in the same or similar locality. State courts have defined that duty in different ways.

A Texas court defined it as follows: “A contract for professional services gives rise to a duty by the professional to exercise a degree of care, skill and competence that reasonably competent members of the profession would exercise under similar circumstances.” Dukes v. Philip Johnson/Alan Ritchie Architects, P.C., 252 S.W. 3rd 586, 594 (Tex. App. – Fort Worth 2008, pet. denied).

The Minnesota Supreme Court stated the standard as follows: “One who undertakes to render professional services is under a duty to the person for whom the service is to be performed to exercise such care, skill and diligence as men in that profession ordinarily exercise under like circumstances.” City of Eveleth v. Ruble, 225 N.W. 2d 521, 524 (Minn. 1974).

Because the standard of care obligates an architect to do what a reasonable architect would do under similar circumstances, it is important that the scope of an architect’s services is clearly defined.

Causes of Action
While on occasion plaintiffs will file causes of action against architects for negligent misrepresentation, breach of warranty, breach of fiduciary duty, or negligence per se, the vast majority of complaints against architects allege breach of contract or professional negligence.

Breach of Contract
In most architect owner contracts, there is a clause that contains the standard of care for the architect. For example, Section 2.2 of AIA B101-2007, Standard Form of Agreement Between Owner and Architect, reads:

- § 2.2 The architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The architect shall perform its services as expeditiously as is consistent with such professional skill and care in the orderly progress of the project.

Many claims for breach of contract allege that an architect breached this provision of the contract by failing to perform consistent with the professional skill and care provided by architects practicing in the same or similar locality under the same or similar circumstances.

Professional Negligence
Professional negligence has been defined above in the “Standard of Care” section. This is the most common cause of action against architects. What was reasonable for an architect to have done under the same or similar circumstances in the same or similar locality usually involves a battle of the experts. Plaintiffs’ experts will tend to demand near perfection of an architect in the plans and specifications while defense experts will testify that it is rare that any set of plans is perfect and contains all the design details. The experts will use state statutes, administrative codes, city ordinances, building codes, and professional society guidelines to establish the standard of care. The types of professional societies that might be relied on by experts are the AIA, the American Society of Civil Engineers (ASCE), the National Society of Professional Engineers (NSPE), and the American Society of Mechanical Engineers (ASME).

Plaintiffs commonly allege professional negligence claims against architects falling into three areas. First, plaintiffs commonly allege professional negligence stemming from defective plans and specifications. These claims arise when an architect has an incorrect detail in his or her plans, or more commonly, when the plans don’t contain a specific detail that then leads to issues such as water infiltration.
Second, plaintiffs regularly allege professional negligence stemming from insufficient observation of contractors’ work. Architects are required to undertake periodic, on-site observations, but as the AIA contract makes clear, they are not obligated to make inspections. These cases arise when contractors do poor work and an architect is blamed for not having caught the poor work when he or she made on-site observations. Even though an architect is not required to inspect the quality of the work, a plaintiff’s expert often will testify that had an architect performed proper on-site observations, he or she would have noticed the defects. Plaintiffs’ lawyers request photos taken by an architect during on-site observations to see whether the construction defects that a case deals with are visible in the architect’s photos. If the defects are visible in the architect’s photos, the plaintiff’s expert or experts generally argue that the architect fell below the standard of care because he or she did not observe them. For example, in Black + Vernooy Architects v. Smith, 346 S. W. 3rd, 877 (Ct. App. 2011), Smith, a visitor to the home, was severely injured when she fell from a balcony after it collapsed. In that case, the architect’s drawings called for the balcony to be attached to the exterior wall of the house by bolting it to an inch and a half rim joist and another inch and a half of wood blocking. The balcony was not attached to the house using bolts, a rim joist, and blocking, but was instead nailed to a half-inch of plywood. The photographs taken by the architect during on-site observations showed that the balcony was not attached in accordance with the design drawings. The plaintiff’s expert testified that the architect fell below the standard of care because a reasonable and prudent architect would have identified the balcony defects when the on-site observation photographs were taken and would have brought the deficiencies to the attention of the general contractor and required that they be corrected. The jury found negligence against the architect and apportioned 10 percent liability. The jury also found 70 percent against the general contractor who built the home and 20 percent against the framing subcontractor who installed the balcony. On appeal by the architect, the appellate court reversed, ruling that the architect owed no duty to visitors of the home and had no responsibility for catching contractor errors because the architect had no control over their work as indicated in the language in the contract with the owner. While ultimately the architect was not liable, this is a good example of how photos taken by an architect during on-site observations are used against an architect.

Third, plaintiffs usually allege professional negligence stemming from “value engineering.” Value engineering,” or “VE,” although not value based and not an engineering function is perhaps the most risky of all professional design services. The Clare Boothe Luce quote “no good deed goes unpunished” should spring to mind after participating in a case involving the results of “value engineering.” Beware of this: When an architect accepts a “VE” suggestion and changes his or her construction documents, he or she owns the result. The only way to deal with an owner directive to accept a doubtful “VE” change is to insist upon an enforceable release, defense, and indemnity to make the change. Otherwise, the good deed of being a “team player” may be punished if the VE change later proves not to function properly. So, let’s say that an architect refuses to make the change, based on reasonable professional judgment, but an owner directs the contractor to implement the change in the field. In that event, the contractor is practicing architecture (or engineering), and the change, if the contractor makes it, will then be nonconforming work. The architect then must follow that work through all pay applications and the certificate of substantial completion as “owner accepted non-conforming work.” Finally, if a lender is involved, the lender must be notified.

Risk to an Architect in Green Building Design

Green building design can be generally defined as the integration of design, materials, and technology to achieve an environmentally sustainable building operated to minimize the total environmental impacts. Many state and local officials are requiring that new buildings achieve net-zero
energy efficiency by dates in the not too distant future. Net-zero buildings are buildings that send back as much energy to the grid as they consume.

There are several liability risks in designing these types of buildings. One of the risks stems from how the LEED certification process works. There are LEED submittal templates that are completed online by participants in a project including the architect. They attest that the requirements for a point or a credit have been completed. When the architect signs the template verifying the accuracy of the information provided, the architect has arguably guaranteed that a specific green building component has been fulfilled. As stated earlier in this article, a guarantee can create insurance coverage issues in a professional liability policy. One of the ways that an architect should try to avoid that liability is for the architect and owner to agree in writing that the architect’s signature on the LEED template is only for satisfying the LEED rating system and is not a guarantee on the architect’s behalf.

Another area of concern for architects is that owners often want an architect to guarantee that a building will achieve a particular LEED certification or that the building will achieve a particular performance level. Architects should not guarantee a particular LEED certification or that a building will achieve a particular performance level because that guarantee can lead to the architect not having insurance coverage. Architects should always tie their services to the standard of care of a reasonable architect.

In addition, there is also a liability risk if a project becomes certified beyond the LEED level sought by an owner. In such a case, the building owner may attempt to file a claim for unnecessary additional costs. The architect should attempt to protect him or herself by contracting away any liability should this outcome occur.

Another liability risk that an architect may have stems from relying on the representations made by the manufacturers of “green” building products. Every year manufacturers introduce more building products into the market with various representations regarding performance. Architects have to be careful not to make representations about a product’s performance or guarantee that a product will perform in a particular manner. Again, these representations can lead to liability risks that are not insurable. Architects should protect themselves in the owner and architect agreements by stating that they are not guaranteeing the performance of any of the products and are only performing their services to the standard of a reasonable architect under the same or similar circumstances.

Conclusion

Architects are far more interested in designing buildings than in drafting contracts. It is important that attorneys understand their clients’ insurance policies and how to draft or to modify an architect’s contract with an owner to tie the architect’s services to a negligence standard and keep coverage in play. While owners may like clauses that contain phrases such as “warrants” and “guarantees,” once an owner knows that these words may jeopardize an architect’s insurance coverage, the owner often agrees to modifications that tie all of the services that the architect will provide to the standard of care of a reasonable architect under the circumstances. An architect’s attorney should also be mindful that there are clauses that the architect should consider to limit exposure and use them to protect the architect. Lastly, with the push toward green building, architects are likely to have more risk in the future. As lawyers, you should advise your clients about those risks and help them minimize them.

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