

## Green building litigation: No tsunami, but the tide will rise

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Despite predictions that the construction industry would be inundated with Green building lawsuits, at this time there have been few reported lawsuits with direct Green building implications. There are several possible explanations for this - the cataclysmic downturn in the economy, the lack of measurement and/or disclosure of building performance that would make performance failures more apparent, or the possibility that Green building disputes are being subject to resolution in private arbitration or otherwise being settled.

However, the number of Green building lawsuits and reported decisions on Green building issues will inevitably grow as Green building mandates and pursuits proliferate - and we return to a robust construction market in coming years. In the interim, those limited number of lawsuits that do make their way into the courts will provide insight into the various ways that sustainability will factor into construction related disputes.

For example, a new case out of New York, and an earlier case out of Maryland, are illustrative of how a project's Green building attributes or developer's sustainability objectives can factor into claims and litigation in an unanticipated manner - with potential implications for all project participants.



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