

5.52 PROFESSIONAL LIABILITY OF AN ARCHITECT/ENGINEER
(Approved 11/95)

A. General Duty Owing

In this action plaintiff contends that defendant was negligent because he/she did not comply with the standard of care that the law imposes upon him/her while performing the work of his/her contract with _____. Plaintiff contends that as a result of defendant's negligence plaintiff suffered injury for which damages are sought.

To decide this case properly you must know the standard of care imposed by law against which defendant's responsibilities as an architect should be measured.

An architect represents that he/she has and will use the degree of knowledge, skill, judgment and taste ordinarily possessed and used by the average architect in the profession.¹ Further, the architect's conduct must be measured by the standard architectural practice, in the same or similar communities, at the time the architect was performing his/her services. Thus an architect has the duty to have and to use that degree of judgment, knowledge, skill and taste which architects of ordinary ability possess and exercise, in the same or similar communities, at the time the

¹ This charge is equally appropriate for other design professionals, such as: engineers, land surveyors, professional planners, etc. However, the term "taste" would be deleted from the standard applicable to professional engineers and other non-aesthetically oriented design professionals.

architect performs his/her services. This is the standard by which to judge the architect in this case.

The law does not expect or require perfection. Unsatisfactory results, alone, are not necessarily evidence of lack of skill or proper care. Thus, if you find that the architect has exercised that degree of knowledge, skill, judgment and taste which is possessed and used by the average architect, you may not find him/her liable for negligence even though unsatisfactory results may have occurred.

Further, where, according to standard architectural practice, the work involves matters to be subjected to the judgment of the architect, the architect is allowed to exercise that judgment. An architect is not liable if, in the exercise of that judgment, in accordance with accepted standard, a bad result occurs. If in the exercise of his/her judgment an architect selects one or two or more courses of action, each of which under the circumstances has substantial support as proper practice in the architectural profession, the architect is not negligent even if the course chosen produces a poor result.

However, an architect who departs from standard architectural practice cannot excuse himself/herself from the consequences by stating it was an exercise of his/her judgment. If the exercise of an architect's judgment causes him/her to do that which standard architectural practice forbids, he/she is negligent. Similarly, an architect is

negligent if his/her judgment causes him/her to omit doing something which under the circumstances is required by standard architectural practice.

Simply stated, then, the obligation or duty which the law imposes on an architect is to bring to his/her client that knowledge, skill, judgment and taste ordinarily possessed and exercised in similar situations, in the same or similar communities, in his/her field at the time of the undertaking. If you find that the defendant has complied with this standard, he/she is not liable to the plaintiff, regardless of the result of his/her work. On the other hand, if you find that the defendant has departed from this standard of care, and that such departure has resulted in injury or damage, then you should find the defendant liable for his/her negligence.

Cases:

For a definition and discussion of the scope of the duties owed by an architect to his/her client, *see Sykes v. Propane Power Corp.*, 224 N.J. Super. 686 (App. Div. 1988); *Walker Rogge, Inc. v. Chelsea Title and Guar. Co.*, 222 N.J. Super. 363 (App. Div. 1988), *aff'd*, 116 N.J. 517 (1989); *Restatement (Second) of Torts*, Section 299A (1975); *Bloomsburg Mills v. Sordoni Construction Co.*, 164 A.2d 201, 203 (Pa. 1960); *Bonadiman-McCain, Inc. v. Snow*, 6 Cal Rptr. 52, 60 (Cal App. 1960); *Paxton v. Alameda Cty.*, 259 P.2d 934 (Cal. App. 1953); *Chapel v. Clark*, 76 N.W. 62 (Mich. 1898); *Coombs v. Beede*, 36 A. 104, 104-105 (Me. 1896). With respect to the fact that an architect is not an insurer, guarantor or warrantor of a perfect result, *see Wills v. Black & West Architects*, 344 P.2d 581 (Okla. 1959); *Major v. Leary*, 268 N.Y.S. 413 (App. Div. 1934).

B. Expert Testimony to Prove Standard of Care²

Negligence is conduct that falls below a standard of care required by law for the protection of persons or property from foreseeable risks of harm.

In a suit against an architect, jurors normally are not qualified to supply the standard of care by which to measure the defendant's conduct. Based upon their common knowledge alone, without technical training, jurors usually cannot know what conduct constitutes standard architectural practice. Therefore, ordinarily, when an architect is charged with negligence, the standard of practice by which his/her conduct is to be judged must be furnished by expert testimony; that is to say, by the testimony of persons who by knowledge, training or experience are deemed qualified to testify and to express their opinions on standard architectural practice.

As jurors, you should not speculate or guess about the standards which the average architect should follow. In a case such as this, you as jurors must determine what is standard architectural practice from the testimony of the expert witnesses who have been heard in this case. After hearing such testimony and deciding what standard architectural practice is in the circumstances of this case, you as jurors must then determine whether the defendant has complied with or whether defendant has

² If the failure of the architect's performance is so clear that professional negligence may be found without the aid of expert testimony, this instruction is unnecessary.

departed from that standard of care. If you find that the defendant has complied with this standard, he/she is not liable to the plaintiff, regardless of the result of his/her work. On the other hand, if you find that the defendant has departed from this standard of care, and that such departure has resulted in injury or damage, then you should find the defendant liable for his/her negligence.

Cases:

If the failure of the architect's performance is so clear that professional negligence may be found without the addition of expert testimony, this instruction is necessary. As to the necessity of expert testimony in architectural malpractice cases, *see Walker Rogge, Inc. v. Chelsea Title and Guar. Co.*, 222 N.J. Super. 363 (App. Div. 1988), *aff'd*, 116 N.J. 517 (1989); *Covil v. Robert & Co., Assoc.*, 144 S.E.2d 450 (Ga. App. 1965); *Pittman Construction Co. v. City of New Orleans*, 178 So.2d 312 (La. App. 1965); *Paxton v. Alameda Cty.*, 259 P.2d 934 (Cal. App. 1953).

C. Common Knowledge May Furnish Standard of Care

Negligence is the failure to comply with the standard of care required by law to protect a person from foreseeable risks of harm. Negligence in an architect's practice is the architect's failure to comply with the standard of care required by law in the performance of his/her duties. Usually it is necessary to establish the standard of care by expert testimony, that is, by testimony of persons who are qualified by their training, study and experience to give their opinions on subjects not generally

understood by persons who lack such special training or experience. In the usual case, standard architectural practice by which to judge defendant's conduct cannot be determined by the jury without the assistance of expert testimony.

However, in some cases, such as the case at hand, the jury may determine from its common knowledge and experience the standard of care by which to judge defendant's conduct. In this case, plaintiff contends that defendant violated the duty of care he/she owed to plaintiff by doing _____/by failing to do _____. In this case, therefore, it is for you, as jurors, to determine, based upon common knowledge and experience, what skill and care the average architect would have exercised in the same or similar circumstances. It is for you as jurors to say from your common knowledge and experience whether defendant did something which the average member of his/her profession would not have done or whether defendant failed to do something or failed to take some measure that the average member of his/her profession would have done or taken in the circumstances of this case.

NOTE TO JUDGE

Where there has been expert architectural testimony as to the standard of care but the standard is one which can also be determined by the jury from its common knowledge and experience, the jury should determine the standard of care after considering all the evidence in the case, including the expert architectural testimony, as well as its own common knowledge and experience.

After determining the standard of care required in the circumstances of this case, you should then consider the evidence to determine whether defendant has complied with or departed from that standard of care. If you find that defendant has complied with that standard, he/she is not liable to the plaintiff, regardless of the result of his/her work. On the other hand, if you find that the defendant has departed from that standard of care, and that such departure has resulted in an identifiable injury or damage, then you should find defendant liable for his/her negligence.