

The Design Professional Roundtable

# Recent Legal Developments That Impact New Hampshire Design Professionals

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Design Professional Roundtable  
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- I. The New Hampshire Supreme Court Strengthens A Legal Defense For Design Professionals
  - The Economic Loss Doctrine
  - Plourde Sand & Gravel v. JGI Eastern, Inc.

## A. Factual Background Of The Case

- No contractual relationship between Plourde and JGI
- JGI did not provide the services upon which Plourde relied

## B. The Court's Decision

- Definition of economic damages
- New Hampshire Design professionals – as contractors have always been – are now insulated from claims brought by claimants that seek to recover from such professionals only purely economic damages.

## C. Practical Applications and Impact of the Economic Loss Doctrine

- Contractors and subcontractors claims
  1. No contractual relationship between the design professional
  2. The damages sought must be purely economic
  3. The contractor must not have relied to its detriment upon representations made by the design professional

## II. New Hampshire Courts Must Now Allocate Responsibility – In Civil Litigation – To All Responsible Parties

- In most states all responsible parties – unless actually joined to a law suit – are not considered in the allocation of responsibility

## A. Apportionment of Responsibility To All Responsible Parties is Now The Law

- The DeBenedetto decision

## B. Practical Impact Of The DeBenedetto Decision To Design Professionals

- Particularly suited to construction project lawsuits

- Practical considerations
  1. Discuss with your legal counsel
  2. Contractual language should assist in the allocation of responsibility
  3. Immunity, bankruptcy or dissolution of a potentially responsible party is no longer a “protection”

## C. House Bill 143

### III. Prevention Of Claims When Acting As A Town Engineer/Architect

#### A. The Typical Scenario Where An Engineer Provides Services To A Town

- Engineer protects the Town
- No relationship with the developer or developer's engineer/contractor
- Vulnerability to suit in this typical scenario

## B. Preventing And/Or Structuring A Defense To Claims

- Distance the engineer from the developer
  1. Payment
  2. Flow of communication

- Restructure the engineer/Town relationship
  1. Confirm the Town engineer is acting as a Town “employee”
  2. Appropriate documentation
- Rely upon the Plourde Sand & Gravel v. JGI Eastern, Inc. decision

## IV. The Good Samaritan Law And Design Professionals

A. The “Good Samaritan” statute – RSA 508:12 – provides protection to those that aid injured persons (but only when such aid is “medical”).

- Encourages physicians to assist the injured without fear of lawsuits
- The statute extends as well to any lay person, but only to the extent such services are “medical”.

## B. There is no similar “immunity” for good Samaritan architects that provide “only” design services

- There is no statute that immunizes a design professional that acts for the good of society or individuals
- The provision of such services – and the resulting assumption of a “duty” – may expose the professional to a malpractice-based lawsuit.

## V. Miscellaneous Developments

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