



Tuesday e-Tech Alert
August 29, 2006
No.64

Limitations on Architect Liability

A recent ruling in a Connecticut Federal Court helps support the fire sprinkler industry's longstanding claim that the contractor can be responsible for system layout and detailing, but raises a red flag relative to coordination of insulation to protect piping against freezing. The case, summarized in an article in the August 2006 issue of the Construction Specifications Institute's *Construction Specifier*, dealt with a lawsuit by a developer against an architectural firm relative to the design of a new home. The architect's drawings showed the location of plumbing fixtures in a second-floor bathroom, but not the routing of piping to those fixtures or any provisions for protecting those pipes against freezing. Neither the general contractor nor the plumbing subcontractor consulted with the architect regarding the placement of insulation for the piping, and while the architect conducted site visits, he did not inspect the bathroom plumbing. Three years after the house was sold the pipes froze and resulted in substantial damage to the home. Subsequent investigation showed that there were numerous ways in which the freeze-up could have been prevented. The court was asked to decide if the architect was negligent in failing to supervise the activities of his agents, subcontractors and employees, failing to coordinate the activities of subcontractors to ensure the piping was properly insulated, approving the installation of the piping, and failing to properly protect the piping against freezing.

In his defense, the architect argued he had no duty to inspect the piping. American Institute of Architects forms B155, A205, A101Cma and A201Cma had been used for, respectively, the contract between the owner and architect, the general conditions for that contract, the contract between owner and contractor, and the general conditions of that contract.

The basic duty of the architect was described in his contract as:

“visiting the site, reviewing and certifying payments, reviewing the contractor's submittals, rejecting nonconforming work, and interpreting the contract documents”

A significant statement in A205, paralleled in A201Cma, was that

“the contractor shall supervise and direct the work, using the contractor's best skill and attention. The contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work.”

The court ruled that while the architect had a duty to inspect the construction to ensure conformance with contract documents, he was not responsible for inspecting the workmanship of contractors to ensure conformance with specific standards and codes, and that quality of workmanship was the responsibility of the general contractor.

The authors noted that a contractor is liable for failure to properly perform the work even if an architect fails to catch errors. They also noted that the contractor is responsible for construction while the architect is responsible for design, and suggested that the plaintiff in this case unwisely focused on the architect's duty to inspect the work rather than whether the architect properly designed the building.

For the fire sprinkler industry, there are two lessons here. The fact that the neither the plaintiff nor the court focused on the architect's responsibility to "design" the piping arrangement and its protection is a tacit acknowledgement that the routing of piping can be the responsibility of the contractor. The second lesson is that by placing responsibility for quality of workmanship on the general contractor, the court appeared to be placing responsibility for coordination between the piping subcontractor and insulation subcontractor at that level rather than on the design professional.

Sources:

Sabo, W. and Zahn, J, "Architect's Liability for Contractor Errors," *the Construction Specifier*, August 2006.

Great Northern Insurance Co., v. RLJ Plumbing & Heating Inc., 2006 WL 1526066 (D.Conn., May 25, 2006)

Upcoming NFSA "Technical Tuesday" Online Seminar

Topic: Concealed Spaces

Instructor: Cecil Bilbo, Jr., NFSA Director of Technical Services

Date: September 12, 2006

Determining if concealed spaces require sprinklers is often an area of confusion. NFPA 13 has defined many specific concealed spaces that do not require sprinkler protection. However, there are often field situations that leave the determination up to the layout technician. This seminar will cover the existing rules that require and allow omission of sprinklers and the common areas that can cause problems in the field. Also, spacing sprinklers when they are required in the concealed spaces will be discussed.

Information and registration for this seminar is available at www.nfsa.org or you can contact: Dawn Fitzmaurice at 845-878-4200 ext. 133 or email: dawn@nfsa.org.

Upcoming NFSA "Business Thursday" Online Seminar

Topic: Pre-Job Planning

Instructor: Michael J. Freidman, P.E.

Date: September 14, 2006

Planning is an all-encompassing term and it directly relates to maximizing profitability on a construction project. It is also a process that is continuous and needs to be adaptable to circumstances as they evolve on a project. The best opportunity to maximize profits is before a project gets underway, when there is a chance to be proactive rather than reactive. The course will cover the basics of internal pre-job meetings, as well as discussion points to be conducted with

the prime contractor/owner and other subcontractors. The process is to be inclusive and to communicate to all stakeholders.

Information and registration for this seminar is available at www.nfsa.org or you can contact: Dawn Fitzmaurice at 845-878-4200 ext. 133 or email: dawn@nfsa.org.

2006 Basic and Advanced Technician Training, NICET Inspection Seminars

The NFSA is the only organization that offers two-week basic technician training seminars, 3-day advanced technician training seminars, and NICET-oriented inspection and testing review seminars at various locations across the United States. The 2006 schedule still includes the following dates and locations:

2-week Basic Technician Training

October 16-27, 2006 – Philadelphia, PA

3-day Advanced Technician Training

October 3-5, 2006 – Minneapolis, MN

3-day NICET Inspection and Testing Certification Review

September 6-8, 2006 – Dallas, TX

November 14-16, 2006 – Anchorage, AK

For more information, contact Nicole Sprague using Sprague@nfsa.org or by calling 845-878-4200 ext. 149.

NFSA In-Class Training Opportunities

NFSA also offers in-class training on a variety of subjects at locations across the country. Here are some upcoming seminars:

Two-day NFPA 13 Overview & Intro to Plan Review	Carol Stream, IL	Aug 30-31
Hydraulics for Fire Protection	Carol Stream, IL	Sept 1
Two-day NFPA 13 Overview & Intro to Plan Review	Eugene, OR	Sept 11-12
Hydraulics for Fire Protection	Eugene, OR	Sept 13
Basic Seismic Protection (1/2 day)(AM)	Eugene, OR	Sept 14
Underground Piping (1/2 day) (PM)	Eugene, OR	Sept 14
Introduction to Sprinkler Systems (1/2 day) (AM)	Dublin, OH	Sept 19
Basic Seismic Protection (1/2 day) (PM)	Dublin, OH	Sept 19
Two-day NFPA 13 Overview & Intro to Plan Review	Dublin, OH	Sept 20-21
Introduction to Sprinkler Systems (1/2 day) (AM)	Appleton, WI	Sept 26
Underground Piping (1/2 day) (PM)	Appleton, WI	Sept 26
Standpipe Systems (1/2 day) AM	Kansas City, MO	Sept 26
Underground Piping (1/2 day) PM	Kansas City, MO	Sept 26
Two-day NFPA 13 Overview & Intro to Plan Review	Seattle, WA	Sept 26-27
Inspection, Testing & Maintenance	Appleton, WI	Sept 27

Pumps for Fire Protection	Kansas City, MO	Sept 27
Inspection, Testing & Maintenance	Kansas City, MO	Sept 28
Hydraulics for Fire Protection	Seattle, WA	Sept 28
Pumps for Fire Protection	Appleton, WI	Sept 28
Two-day NFPA 13 Overview & Intro to Plan Review	Meridian, ID	Oct 3-4
Inspection, Testing & Maintenance	North Las Vegas, NV	Oct 3
Residential: Homes to High-Rise	North Las Vegas, NV	Oct 4
Hydraulics for Fire Protection	Meridian, ID	Oct 5
Standpipe Systems (1/2 day) (AM)	North Las Vegas, NV	Oct 5
Underground Piping (1/2 day) (PM)	North Las Vegas, NV	Oct 5

For more information or to register, visit www.nfsa.org or call Michael Repko at 845-878-4207, email: seminars@nfsa.org.

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In the promotion of the fire sprinkler concept, the National Fire Sprinkler Association represents all fire sprinkler industry interests including fire sprinkler contractors, manufacturers and suppliers of fire sprinklers and related equipment and fire protection professionals. Established in 1905, the National Fire Sprinkler Association provides publications, nationally accredited seminars, representation in codes and standards-making, market development, labor relations and other services to its membership. Headquartered in Patterson, New York, the National Fire Sprinkler Association has regional operations offices throughout the country.