



## Kaplin Stewart

*Attorneys at Law*

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### Learn More:

A Look Ahead Through  
Green-Colored Glasses

Going Green Makes Sense,  
But Revise Your Documents  
Accordingly

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## NOT SO FAST – A CHALLENGE TO L.E.E.D. CERTIFICATION

As concerns about the environment and energy efficiency have moved to the forefront of consumers' minds in recent years, there has been a huge push towards L.E.E.D. Certification by owners and other elements of the construction industry. Run by the U.S. Green Building Council, the program has been developed into a sophisticated system of accreditation for those in the industry and certification of environmentally friendly buildings.

The case of *Gifford v. U.S. Green Building Council*, brought in federal court in New York City, is now calling the entire system into question. What started as a class action lawsuit challenging the validity of the entire L.E.E.D. Certification program is now a claim by a number of design professionals seeking to end the program and collect damages as a result of its operation. At the center of the case are claims that U.S.G.B.C. has used deception and fraud to convince consumers that its program is superior to others that promote and measure energy efficiency.

More specifically, the Plaintiff's case alleges that the U.S.G.B.C. has violated the Lanham Act, engaged in deceptive trade practices and false advertising under New York law, and engaged in willful misconduct. The claims are serious ones and Plaintiffs offer a number of factual allegations in support of their case. Among the most significant are that U.S.G.B.C. was formed by a marketing professional and a real estate developer with no real experience in construction or energy efficient buildings, that the data used to support their claims of providing the most energy efficient buildings is artificially skewed and is missing essential information that if provided to the public would significantly change how the public viewed the program, and that its failure to have a system in place and to independently verify that the design criteria of the buildings as presented in the certification process were actually met is misleading.

In short, the Plaintiffs claim that the entire L.E.E.D. Certification program is based on misrepresentations that have been relied upon by consumers and that U.S.G.B.C. – through effective, but deceptive marketing – has cornered the green building market and injured the ability of professionals who are not L.E.E.D. certified to compete in the green building market. A critical element of their case, it seems, is that other programs like the Energy Star System result in more energy efficient buildings. Plaintiff's allege, however, that U.S.G.B.C. is crowding these programs out and depriving owners, design professionals, and contractors of an opportunity to achieve the real environmentally friendly and energy efficient buildings available to them through programs other than L.E.E.D.

The case remains in its early stages, but it should be followed closely. Regardless of where you stand on environmental issues or green building, the impact of this case will be monumental. If the Plaintiffs are successful in convincing the Courts of their case, the large and growing sector that is dependant on L.E.E.D. will come crumbling down. Conversely, if U.S.G.B.C. successfully defends the case, its position in the market may be solidified for a long time.

For more information or questions you may have regarding construction law, please contact Joshua C. Quinter at 610.941.2521 (jqinter@kaplaw.com). You can also contact any member of our Construction Law Group.