

# **Liability and The Standard of Care after 9/11**

## **The Construction Standard of Care After 9/11**

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<http://www.zdlaw.com/enews/rtm-security.php>

*“This article will address a design-builder's obligation to design and construct projects so that they comply with the evolving standards of the industry, whether enacted statutorily or by technological innovation.”*

*“To the extent that a design-builder's conduct is below the standard of care, such action constitutes negligence, and liability results if someone or something is damaged. The crucial determination as to whether the conduct is below the standard of care, and thus negligent, relates to foreseeability, i.e., could the harm or injury incurred have been foreseen.”*

*“An apt illustration of foreseeability is found in the 9/11 attacks. Prior to 9/11, the deliberate use of a commercial jet airplane as a weapon was, thankfully, beyond the collective imagination of the nation, much less design-builders. Since 9/11, the risk of an airplane terrorist attack is ever present. As a result, liability against the original designers of the World Trade Center is probably remote, due to the lack of foreseeability of the nature of the 9/11 attacks in the mid-1960's when the World Trade Center was designed. However, design-builders who do not design and build in conformity with the lessons learned from 9/11 risk liability.”*

*“The fact that a building code in a particular municipality has not yet been amended to include new safety features or technological advances, does not, by itself, provide a safe haven from liability for damages incurred by a terrorist attack.”*

*“It should come as no surprise that New York City, having been the subject of two separate terrorist attacks, has made a determined effort to upgrade its building code to incorporate lessons learned from the 9/11 disaster. On June 24, 2004, Mayor Michael Bloomberg signed Local Law 26 of 2004 which incorporated most of the recommendations of the World Trade Building Code Task Force, which was formed in March of 2002. This task force was a collaboration of public and private interests that worked in record time to recommend legislation that would enact into law most of the conclusions reached in the investigation of the World Trade Center collapse. Local Law 26 is not only prospective for new construction, but includes retroactive requirements for existing buildings of a certain size, i.e. usually over 75 feet in height.”*

*“The world we live in changed drastically on 9/11, and we must all adapt to these changes. In construction, design-builders must be cognizant of the increased obligation to design and construct buildings which utilize and incorporate appropriate design and technology to minimize the effect of potential terrorist attacks. Anything less will simply endanger the occupants of the building, the public in general and increase the risk of tremendous liability.”*