

# Green Building Insurance

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## Abstract

This paper addresses fundamental issues in green building insurance. Thus it discusses the modernity of the insurance for such buildings, the scope of insurance liability in green insurance, the role of the judge in developing the provisions of this contract through his modernized judgment, parties to the green insurance contract and the nature of the green insurance contracts for them, along with the applicable law, and it highlights the cases that may arise between the parties. The paper concludes a number of results, most important, that the nature and novelty of green buildings may be accompanied by unusual risks in traditional buildings which requires special insurance contract to cover such risks and to create specialized experts in green buildings to be relied upon by the court in issuing decisions as the judiciary may play a major role in developing the legal rules for green building, and finally it stresses the necessity to make the green building insurance contract obligatory.

**Key words:** green building, LEED, traditional buildings, green insurance, risks, green materials

## 1. Introduction

Although green buildings have existed for decades, the green insurance policy only appeared in 2006 for commercial properties and in 2009 for residential properties. The reason for their delay is the work of the insurance companies to assess the risks associated with those buildings. Green buildings now pose new risks in a growing market<sup>3</sup>.

Traditional insurance policies condition may not be able to meet the requirements imposed by the owners on the contractors, suppliers or engineers, to cover the special and additional risks related directly to green housing. One of the additional conditions, is for example, is the designer is required to pay additional costs if the design fails to obtain a certificate Green.

The nature of the green buildings and their modernity may be accompanied by risks that are not exposed to traditional buildings. Therefore, the main problem in conventional insurance contracts is that they may not include the risks of green buildings. There is a lot of risks in green buildings which if occurred, the owner does not know whether they are covered by the insurance cover. Therefore many legal issues may arise, and when these new risks are met, the insurance companies will insist that these risks are out of coverage and the insured party will adhere to their coverage, so these issues will be raised judiciously, in addition to other issues, such as whether the liability of the insured stands at the limit of compensation for damaged materials and replace them with new materials and installation, or that the new installed materials should be according to the latest green technologies, as well as it extends to include the insurance cover of the insured to obtain a certificate, to prove that the building is a green building, Thus, there will be additional extra expenses over the real compensation for the occurred damage, which will raise a conflict between the parties, on which who bear these expenses? The insurer or the insured, so there are a lot of new issues that will - of course - be raised in case the insurance policy did not clearly mention them.

Therefore, this paper will discuss the modernity of green insurance, scope, the judge role in developing its scope, as well as parties to the green insurance contract and the nature of the green insurance contracts for them, along with the applicable law, and it highlights the cases that may arise between the parties, which include the claims of the insured (injured) against the insurance company (insurer) and the insurance company claims (insurer) against the insured.

## 2. The modernity of green building insurance.

In conventional engineering works, insurance contracts are considered as one form of liability insurance and the insurer (the insurance company) is obliged to bear the damage when the insured damage is realized. The insurance provides more protection for the insured and insurer parties and may add a beneficiary, even though the beneficiary is not a party in the insurance contract. And since the liability insurance in the construction is considered a contractual, it is characterized by the general characteristics of the contracts<sup>4</sup>.

Green buildings in general are considered to be relatively new, which had become an attractive source for individuals and companies for their many advantages beside their environmental friendly features. Everyone seeks to create buildings that are not harmful to nature, environment, to eliminate harmful carbon emissions, in addition to have many economic and legal benefits.

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<sup>3</sup>Echeverria, A. GREEN PROPERTY INSURANCE: IT'S GETTING EASIER TO GO GREEN, a Winter 2012.

<sup>4</sup> Ibrahim Saleh Attieh al-Jubouri, Legal System for the Consultation, 2013, Halabi Publications, Lebanon, Beirut, p. 285

Although the main objective of these green buildings is to achieve environmental benefits, it has been able to achieve many advantages and economic incentives; still they were able to reduce the negative impact of traditional constructions and buildings on the environment, which is considered the main goal of the green construction. All traditional buildings consume many resources, such as raw materials, electricity, and water, besides that, creating some harmful environmental effects such as debris (residues and waste of construction work) and greenhouse gases emitted from the buildings during construction. Although the green building movement has been found to be beneficial to the environment, the biggest benefit of the green building which is worth mentioning is the long-term cost savings for the owner of the building.<sup>1</sup>

The need of new laws to govern the green buildings made Countries begin to enacting legislation to deal with these green buildings, as well as insurance aspects of the legislation, in order to clarify the insurance coverage that will be included under the insurance policy.

The modernity of green buildings may provoke disputes between parties in insurance contracts, because these buildings may contain new untested systems, which leads to limited engineering solutions to address bugs in them. Or maybe such solutions if existed are unique or monopolized by specific companies. On the other hand, the executors of these buildings will covet the profits due to the large lack of specialists in these buildings, through the implementation of these works in large amounts or lack of implementation of the construction according to green technical standards. The green insurance contract will therefore be the refuge for filling these gaps.

The scope of insurance coverage for green building components is still under development. Most insurance policies are likely to rule out the use of certain materials or the exclusion of certain systems. On the other hand, insurance companies may be wary of the repercussions of these new buildings with a negative impact. Other architects, engineers and contractors may face the problems of insurance companies and disruptions in the issuance of insurance certificates for green buildings. The implication is that insurance companies (guarantors of liability) are cautioned against contracts because of the modernity of green buildings in general, green insurance contracts in particular, and their lack of understanding of the risks associated with this new type of construction. Insurance models have shown that insurance companies do not expose themselves to losses, which means, not to pay damages for more than the premiums paid by the insured, therefore they seek to achieve profits. So when someone ask the insurance company for insurance to his green buildings, the insurance company will be alerted of green buildings failure, causing fear that will be reflected in the increase of the insurance premium<sup>2</sup>.

### **3. The scope of insurance liability in green insurance**

Article 922 of the Jordanian Civil Code states: "Insurance against personal accidents, work and theft, breach of trust, guarantee of cars, civil liability, and all incidents that have been customarily governed by private laws may be insured."

As it is noted that the above article has given the contracted parties, a risk insurance from civil liability, and of course this includes; engineers and construction contractors' responsibilities for their professional errors to be covered by insurance contracts. The insurance company is obliged to pay the victim when this liability is met and under the terms of the insurance contract.

The meaning of green buildings is very broad. This expression shortens a large integrated process, from green design to partnership between parties, to the adoption of special materials to suit these buildings, as well as the mechanisms used for construction and construction methods, which are characterized by special techniques, energy consumption through reliance on natural energy sources such as the sun, rationalization of water consumption. In addition, to studying the environmental impact on the building and therefore turning the negative factors to positive. Therefore, the comprehensive coverage of the insurance contract will include all details of the green construction, including the materials used, and all the required green practices.

In contrast, there are no agreed global definitions of green buildings and green materials, therefore, governments or independent bodies have issued special green building standards. For example, the US Green Building Council (USGBC) has passed several criteria to recognize green buildings, which include the leading standards in energy design and efficiency.

It is clear that green buildings have a wide scope, far wider than conventional buildings, which require that insurance coverage of green buildings is much wider than those of conventional buildings. When looking at the green insurance contract, we will find that it will cover many more items compared to conventional buildings insurance contracts, On one hand, the contracted party with the insurance company may be the owner, the engineer or the contractor and may be a third party (the tenant of the building after its completion). While On the other hand, there will be a wide range of works in the insurance contract compared with traditional contracts. For

<sup>1</sup> Alfano J. ,Can We (Anti)Trust LEED?: An Analysis of the Antitrust Implications for the Green Building Movement, Boston College Environmental Affairs Law Review [Vol. 41:427 2014]

<sup>2</sup> )Cheatham C. , Insurers Still Unsure of Green Building Risks, Kaplaw green and sustainable law, 2010, available <https://www.greenbuildinglawupdate.com>

example, the green building contract may include vast green areas in the surfaces of green buildings, and such item is often, not included in the insurance coverage of traditional buildings.

Green roofing (vegetable roofing) known in green buildings, by using soil and plants to isolate the roof, to reduce heat loss in the winter and reduces summer cooling costs. However it has disadvantages; since it may add extra weight of soil and vegetation that threatens structural integrity and the possibility of collapse, in addition to rainwater accumulation that adds extra weight to the roof structure<sup>1</sup>. The policy is likely to include specific exceptions to cover loss from moisture, drought, temperature changes, insects, rodents, birds, animals, rain, snow, frost, sand or dust, all of which do not exist in traditional buildings<sup>2</sup>. Which may cause additional liabilities to the insurance company.

Beside the above, the green insurance contract will cover also unconventional systems for heating, cooling, rationalization of water consumption, power generation systems such as solar cells, recycling equipment and buildings, beside other matters.

Usually, insurance policies usually cover error, omissions, claims for physical injury, physical damage to property, and claims for compensation for economic losses (physical damage and moral damage). Therefore, the scope of the insurance may be extended to additional risks when a LEED certificate is submitted, exposing architects and partners to the risk of increasing the insurance coverage.

Some green elements may be excluded and not covered. Traditional buildings insurance policies - specifically – may exclude covering some green elements, such as green roofs. The insurance policy may exclude the failure to grow green surface plants specifically. In which the most common failure of these green roofs, are due to force majeure, breakdown, or structural defect, design defect or direct cause such as the amount of rain, or the size of snow or ice<sup>3</sup>.

In general, force majeure, or other reasons, owner error, and others fault are one of the reasons that left the responsibility of the executors of the engineering works, whether in a traditional or green buildings. Therefore, there must be conditions for force majeure to exclude responsibility, in which the accident could be unexpected or could not be voided<sup>4</sup>.

The wide scope of the green insurance contract will provide a mechanism against the multiple green building risks, and it is usually the case of a certified professional officer such as LEED who will show in this claim, whether or not the covered risk is realized. Green insurance will be an attractive source of green investment, as well as access to economic incentives or other benefits or to benefit from lease contracts for these green buildings, and to make continues insurance contract to meet the leasing requirements of the tenants on the basis that the building is certified by a certain certificate from Leeds<sup>5</sup>.

Compulsory insurance also supports civil liability in terms of guaranteeing the rights of the injured, ease of recognition by the judiciary, appropriate compensation, avoidance of the risk of debtor insolvency and other benefits<sup>6</sup>. Therefore, it is proposed that the Jordanian legislator make the insurance contract in green buildings compulsory, providing that there are determinants of this insurance, such as; insurance need to be compulsory for buildings with an area of more than 1,000 square meters, and compulsory insurance coverage for third party liability insurance (as in compulsory motor insurance).

#### **4. The judge role in developing the scope of green insurance**

Green construction contracts are concerned also with a new technology machines that are operating the buildings and its special materials. Therefore, the insurer will have a very difficult time in determining his responsibilities. Therefore, to identify this responsibility the judiciary must look many law suits to start having the general frame of such responsibilities.

However, the lack of green building law suits in general, and green insurance contracts in particular, make it difficult to define this responsibility in this period.

In general, a clause may be included in the contract that provides the maximum compensation for damages due, if a law suit or a claim is filed so that this amount is the maximum limit available in the insurance policy. Limits of liability may be enforceable under the terms of the contract, but they should always be pointed out clearly so that there is no ambiguity in the intention of either party<sup>7</sup>.

The design of green buildings adds contractual problems to construction projects, which should be

<sup>1</sup> Ibid

<sup>2</sup> Ozog E., Developments In Green Building Insurance, March 2010, The Practical Real Estate Lawyer

<sup>3</sup> Echeverria, A. GREEN PROPERTY INSURANCE: IT'S GETTING EASIER TO GO GREEN, a Winter 2012.

<sup>4</sup> Hashem Ali Al-Shahwan, Civil Liability of the Consulting Engineer in Construction Contracts, 2009, Dar Al-Thaqafa, Jordan-Amman, pp. 142-145.

<sup>5</sup> Andre G., Green Building: Design and Construction Contract Issues, 2012, <http://www.klgates.com>.

<sup>6</sup> Mohamed Hussein Mansour, The New in the Field of Insurance and Security, Beirut Arab University Scientific Conferences, 2007, Halabi Journalism, Lebanon, Beirut, p. 191.

<sup>7</sup> O'Connor H., 10- ARCHITECT'S PROFESSIONAL LIABILITY RISKS IN THE REALM OF GREEN BUILDINGS, Research Journal [www.perkinswill.com](http://www.perkinswill.com) 2012 / VOL 04.02, available at <<https://perkinswill.com>> last visit 16-5-2016

considered in the planning stages to avoid litigation in the future. Therefore, identifying the responsible party in the event that the constructed green building failed to obtain the green certificate may not become the subject of a judicial dispute. This is considered a new area of law enforcement, with very limited court cases, and if there are any cases, they might have been sold outside the courts<sup>1</sup>.

Although the green construction sector has not seen much legal issues related to green building, many construction and legal workers are looking at the potential risks that might happen to green buildings, since they had built their analysis of potential claims on how to take advantage of the existing theories of traditional constructions and legal claims, and link them to green buildings. The studies assume or expect that most claims will be based on breach of contract, deception, fraud or negligence<sup>2</sup>. Therefore, the judiciary will have a great role in applying the legal rules that fit the green buildings, as it is not expected that the judges will apply the traditional legal rules to the dispute in the insurance contract in the absence of a specialized law.

The standard of care for participants is used by the court to prove negligence or malfeasance by the participants of the building construction whether he is an architect, a civil engineer or a doctor. The court may use an expert witness to testify by the profession standards. This proof shall help the court to understand what the ordinary architect does in the same circumstances and if the architect follows the defendant's standard or does not. If the same standard is not followed, the court shall judge for the engineer's negligence and assess the damage<sup>3</sup>.

Therefore, the researchers believe that the judges will try to break from the traditional rules to more appropriate rules in dealing with the legal conflicts between the insurer and the insured, and in the absence of general legislation dealing with green buildings and special legislation dealing with issues of green buildings insurance, then the best way to deal with such issues, is for the judge to develop judicial decisions to help the parties. In light of legislative vacuum, and of course, the beginning will be by the court requesting the expertise of specialists in green buildings; to help the judge to understand the technical aspects of the subject, apply the traditional laws in a broad sense and the judge will surely take the new technical issues under consideration.

For example, the judge may take into consideration when he rule for compensation for green buildings that the value of compensation is higher than the value of compensation in traditional buildings, because the nature of the raw materials and the methods of installation are of higher financial value. On the other hand, the judicial decisions constitute a source of guidance. Therefore, to present a case to the judiciary, it is suggested that the parties' lawyers consider similar cases before the courts and because there are no legislative texts, these decisions will have power in the courts.

##### **5. Parties to the green insurance contract.**

The parties to the green insurance contracts are the insured, the insurer and the beneficiary. In this research, we will try to explain the civil or commercial nature of the parties to the green insurance contract. These parties will establish legal relations, which will create legal bases for their rights and obligations. Jordanian civil law states in article 920 that: "Insurance is a contract to which the insurer is liable to pay the insured or to the beneficiary who stipulated the insurance in his favor an amount of money or salary, income or any other financial compensation in the event of accident to the insured or in the case of occurrence of the risk specified in the contract against a fixed amount or periodic installments paid from the insurer to the insured".

The insurer is always the insurance company, therefore it is the responsibility of the insurance company to pay for the damages to the insured in the event of the occurrence of the insured risks. While the Insured may be the Employer, the Engineer or the Contractor and all such parties may contract with the Insurer either separately or collectively a single insurance contract.

In all cases, there are general obligations to everyone contracted in the insurance contract including: payment of the premiums required by the insurance company, the obligation to inform the insurer to verify the insured risk and notify the insured of any significant changes in the contractual terms of the original construction contract. One of the important commitments of the parties involved in the green building is their commitment to build according to special technical requirements of green construction and the implementation of work according to traditional construction rules, and this may be an important reason that the insured should be careful not to be within the compensation range of the insurance company.

The (owner) of the building (the insured – the injured party) may claim against the (the engineers or the contractors), where the owner asks to compensate him for damage caused to his green buildings, for example not obtaining the platinum certificate which was agreed upon, and instead receiving a silver certificate. Or else the insured (contractor or engineer) may claim against the insurance company, in this case, the insured may have

<sup>1</sup>Zimmer M. and Rohleder J., 8- Green Building Risks: Avoiding Litigation Traps., Energy Litigation Journal. Winter 2010, Vol. 9 Issue 2

<sup>2</sup>O'Connor H., 10- ARCHITECT'S PROFESSIONAL LIABILITY RISKS IN THE REALM OF GREEN BUILDINGS, Research Journal [www.perkinswill.com](http://www.perkinswill.com) 2012 / VOL 04.02, available at <<https://perkinswill.com>> last visit 16-5-2016

<sup>3</sup>Manies R. , AIA, Esq. (2014), WHITE PAPER: Managing the Risks and Embracing the Benefits of Going Green Prepared for The AIA Trust February 2008 revised: September 2014, P15, Available <http://www.theaiatrust.com> (April 1, 2017)

paid the injured party what is equivalent to his damages according to estimation approved by the judge.

### **5.1 A green construction insurance contract between the insurance company and the owner**

In general, the owner of the green building seeks to enter into an insurance contract with a specialized company, seeking to guarantee his right to implement it as he wishes. On the other hand, some countries consider it a must for the owners to have compulsory insurance for their properties.

One of the problems the owner may face with the insurance companies is the insurance company's reliance on traditional insurance contracts for the green buildings. The inaccurate valuation of the time and cost of green building repair will lead to big conflicts. The green building assessment process is undoubtedly higher than the existing traditional buildings, therefore, the cost of repairing or rebuilding green buildings will be more expensive than repairing or reconstructing the traditional building.

The US Green Building Council estimates that environmentally friendly homes can cost a 3-5% more in construction costs, therefore, Under the traditional building insurance policies; the landlord should take into account that insurance companies may not recognize the increase in property value and increase the cost of rebuilding green buildings after the loss. In addition, green reconstruction may take longer than conventional reconstruction due to green building methods or limited availability of green building products<sup>1</sup>.

Here, we should consider which law is applicable, whether civil or commercial, must be disclosed to the parties of the green building insurance contract if the owner (the insured) is a natural person or a legal person.

#### **5.1.1 The owner is a natural person:**

In the event that the insurance contract is concluded between a green building owner in his personal capacity with the insurance company to obtain an insurance policy to achieve insurance coverage of the conditions stated in the insurance policy, therefore, the nature of the contract to the owner in his personal capacity is considered civil contract, and at the same time is considered a commercial contract for the insurance company, As the insurance in Jordan is within the framework of specialized companies, the work of these companies is commercial in accordance with Article 6 of the Commercial Law. For example, a person who has contracted to build a house with green building technology contracts with the insurance company to secure the green building or compensation if the green technology is not realized. Contracts either construction contract or insurance contract are considered civil contracts for the owner.

#### **5.1.2 The owner himself is implementing green commercial building.**

If the owner is a commercial company or does business personally for green building, this represents the majority of commercial green buildings compared to green buildings. As the work for the owner or his company is commercial by virtue of its nature or by virtue of the law, the commercial law applies to it. Therefore, the business will be commercial for both the owner and the insurance company.

It worth mentioning that the green insurance contracts, in addition to the fact that they are modern and therefore the absence of many insurance issues and therefore there is difficulty in limiting the risks of these contracts, and at the same time there are green insurance contracts that are not comparable to traditional buildings, and these new contracts between the insurance company and the owner of real estate insurance. This type of insurance protects the building that uses an alternative energy system (renewable energy) in case of power outage. This type of insurance may provide compensation for loss of income resulting from the sale Excess Power of the Local energy Company, and additional costs for the purchase of alternative electricity, utilities or government fees or permits and others when they are re-alternative energy system for homeowners again<sup>2</sup>.

One of the modern insurance contracts in the field of renewable energy is the insurance of the green building which has an installed renewable energy system. The owner of the property contracts with an insurance company in the event of renewing the renewable energy equipment under certain conditions that will be under the insurance coverage, and since the scientific advancement in this technology is considered fast and rapid, to a point that it urge the home owners to make a new contracts to replace the old energy systems with new more advanced and higher capacity renewable energy systems.

### **5.2 The green insurance contract between the insurance company and the engineer**

This part deals with the insurance contract that is held between the engineer and the insurance company to guarantee any liability that may be caused by the engineer as a result of his fault for any reason in terms of defects in the green building or failure to achieve the green certificate or a certain level of this certificate. Therefore, the owner will ask the engineer to compensate him for this damage because the parties are connected by an engineering contract.

The contract signed between the owner and the engineer is a construction contract, so the engineer's legal

<sup>1</sup> Echeverria, A. GREEN PROPERTY INSURANCE: IT'S GETTING EASIER TO GO GREEN , a Winter 2012.

<sup>2</sup> Zona R., Roll K. and LawZ., Sustainable/Green Insurance Products, Deloitte Development LLC, 2014, <https://www.casact.org>.

work sometimes through the authorization of the owner does not mean that the contract turned from a construction contract to agent contract, on the contrary it remains a construction contract, because the main duties of the principal is materialistic even if it contain some related legal acts, these acts do not change the fact that the contracting agreement is contract because the element of the construction is the dominant<sup>1</sup>.

It is necessary to state the nature of the Engineer's work according to his position of work and it is as follows:

#### **5.2.1 The Engineer works as a contractor:**

The Law of Commerce exempts from the applying the commercial law those who do mental work and give the civil character to these works, such as the work of the engineer, lawyer and accountant.

Therefore, the work of the engineer who contracted with the insurance company to insure certain damages in the green buildings will be considered to be subject to the civil law, while the work of the insurance company will remain commercial in any case.

#### **5.2.2 The work of the Engineer through a contracting company:**

In this case, the engineer works under the cover of a certain commercial company. Accordingly, the company's work under this framework is considered commercial, and the engineer is a follower and the labor law applies. If the contracting company contracted through its employee engineer with a certain insurance company to guarantee part or all of its green engineering work, Such as maps or supervision of implementation or supervision, the contract will be commercial for the insurance company and the contracting company and therefore subject to the commercial law while the contract between the engineer and contracting company remains subject to civil and labor laws.

There is no doubt that when contracting companies and the insurance company are working under the commercial law this will make them more cautious in their contract with each other, because the commercial environment is more severe than the civil environment in many respects, such shorter prosecution, commercial evidence, as well as supposed solidarity.

### **5.3 The green insurance contract between the insurance company and the contractor**

Usually, the construction works, especially for the green buildings, are by construction companies specialized in certain fields, such as solar cells and manufacture of green roofs for green buildings. While sometimes, the construction company contracts with the owner to build his green building in its entire details, and may contract with subcontractors.

Generally, the contractor is often a specialized company. The Jordanian Trade Law stipulates in Article 6 that contracting works are considered a business for those who do them. So, the contract between the construction company and the insurance company will be commercial for both sides. Therefore, the contractor must be careful in his contract with the owner, where he must protect himself by concluding an insurance contract to cover any defects or errors in the implementation of these green works, and the contractor to pay attention to ensure the insurance coverage of all risks.

Although the contractor can protect himself from lawsuits against his liability through proper insurance coverage, through contracting with an insurance company, the insurer will be the guarantor of any liability to the contractor and according to the compensatory ceiling of the insurance contract. However, the LEED certification, whose green contracts refer to contractor and owner obligations, gives broad powers, which may increase contractor liability.<sup>2</sup>

Important things to be defined by the insurance policy are the general liability of the contractor and the coverage of the owner's claim for various losses, such as loss of tax exemptions, grants, or other incentives in case of delay.<sup>3</sup>

The contractor may be one of the renewable energy project companies that make an insurance policy for the liability and risks of its power generation work, therefore it will be protected from unforeseen risks while working in the installation of solar cells, wind fans, hydraulic devices and others. Insurance contract between the energy company and the insurance company in terms of scope and period of coverage, such as in the period of construction of renewable energy for the building, or may continue the insurance coverage until after the operation or until the end of maintenance or warranty, and of course it will depend on the insurance premium Coverage and the duration of coverage.

### **5.4 The Green insurance contract and third parties**

Third parties are those who are not connected to the green building contract, ie, the independents from the green construction contract. Therefore, it is possible for any party to enter into an insurance contract for their benefit when the damage is realized. In other words, non-beneficiaries are people who do not have any legal association with the builders, and who are not considered workers and technicians. For example, those who are exposed to

<sup>1</sup> Tariq Kazim Ajil, mediator in the contract of entrepreneurship, 2016, Dar al-Senhoury, Lebanon - Beirut, p55.

<sup>2</sup>Buckner Company, Liability Exposures for Green Contractors, 2010 <http://blog.buckner.com>

<sup>3</sup>Zimmer M. and Rohleder J., 8- Green Building Risks: Avoiding Litigation Traps., Energy Litigation Journal. Winter 2010, Vol. 9 Issue 2

the dangers of green building, such as pedestrians next to the work site, are considered foreign persons from parties and executors of green building. Other employees such as employees of the owner, engineer or contractor, also "others" does not include the subcontractors.

In any case, the (injured) third parties can refer to<sup>1</sup>:

1. The owner, engineer or contractor as a building guardian in accordance with the general rules of civil liability.
2. The insurance company because it is more powerful and a guarantee to get compensation, and has a direct invitation and enough to accept the claim verify the responsibility of the insured by virtue of the absolute.

The insurance company can refer to the insured for the amount of the payment to the third party(s) if the liability of the insured is realized due to fraud or serious negligence or breach of the insurance contract obligations as a breach of execution of construction work conditions.

## **6. Claims of insurance contract.**

### **6.1 Claims of the insured (injured) against the insurance company (insurer).**

Article 929 of the Jordanian Civil Code stipulates that "the insurer shall perform the guarantee or the amount due to the insured or the beneficiary in the agreed manner when the risk is realized or the time limit specified in the contract." Meaning; there is a right that will arise for the insured or the beneficiary once the insured risk has been met or the term has been met. Therefore, if the insurer sustained from paying, the right of the insured or the beneficiary will arise and he will come forward to the judicial authorities and initiate proceedings against the insurer for violating the terms of the insurance contract between them.

Article 930 of the Jordanian Civil Code states that "the insurer liability shall not be resulted in insurance against civil liability unless the victim claims the beneficiary after the accident that caused the liability." Meaning that the insurance company cannot be required to pay compensation unless the insured or the beneficiary claim, For example, if an engineer or contractor contracts with an insurance company to assume his civil liability for damages caused by the failure to achieve a green construction certificate and the building does not achieve this certificate, the engineer or contractor cannot claim the insurance company to pay for the breach, unless the owner or the person responsible for the construction claim against the engineer or contractor.

In the same principle, the French Insurance Act, in the first paragraph of Article 124, stated "in liability insurance, the insured is liable only if the injured party claims the insured either amicably or before the court following the occurrence of the harmful act set forth in the contract."

In any case, the insurance company will pay the amount of compensation to the injured party only. That stated in article 931 of the Jordanian Civil Code stipulates that "the insurer shall not pay to other than the injured person the amount of insurance agreed upon in whole or in part, as long as the injured person has not been compensated for the damage he suffered. (In our example, the owner or the contractor) to the injured person (for example, the owner of the green building), were the insured may claim the insurance company for what he had paid to the beneficiary.

The insurer shall be liable to pay according to the legal judgment for the victim regardless of its value, and when the liability is realized for the insured, the insured and the insurer shall indemnify the injured party and thus the victim shall have a direct right before the insurance company and this right shall be proved for all the damages covered by the insurance contract<sup>2</sup>.

As for the period of limitation of the claims of the insured towards the insurance company, it is three years from the accident or from the date of knowledge of the accident occurrence and this is provided for in the first paragraph of Article 932 of the Jordanian Civil Code, "The claims arising from the insurance contract are not heard three years after the incident or the awareness of the related parties in its occurrence".

### **6.2 The claims of the insurance company against the insured.**

In general, breach of the obligations of the insured will give the right to the insurer to file a lawsuit because of that. Article 927 of the Jordanian Civil Code enumerated these obligations as follows:"

1. The agreed amounts shall be paid within the period specified in the contract.
2. At the time of contract all the information that the insured is interested in knowing need to be stated in order to assess the risks he takes upon himself.
3. To notify the insured of what happens during the duration of the contract of things leading to increase these risks".

Therefore, one of the most important of these obligations is the payment of agreed insurance payments

<sup>1</sup> Mohamed Hussein Mansour, The New in the Field of Insurance and Guarantees, Beirut Arab University Scientific Conferences, 2007, Halabi Publications, Lebanon, Beirut, p. 200)

<sup>2</sup> Mohamed Hussein Mansour, The New in the Field of Insurance and Guarantees, Beirut Arab University Scientific Conferences, 2007, Halabi Publications, Lebanon, Beirut, p. 195)

because insurance companies, based on mathematical and statistical operations, offset the total premiums received and the percentage of risks achieved in previous periods. Article 920 of the Jordanian Civil Code states that the payments is a cash amount paid by the insured to the insurer, such as a specific cash amount or installments. The payments is calculated by the insurance companies through statistical operations and probability theories, and represents the net (equivalent to the risk insured against it), plus the burden of installments, expenses and profits.

While the researcher believes that this article will cause a big problem in stating the instalment value in the green buildings, because the value of losses expected to occur could not be estimated, and cannot achieve a accurate balance between what is paid from the insured and what is paid by insurer because the danger in green buildings is not known, and according to Jordanian insurance law, unlike other countries, The value of payments are not specified, therefore, the determination of payments by insurers will be not accurate and causing great variation from one company to another.

While the French insurance law is more open in this area it states the insurer obligations in the second paragraph of Article 113, as follows:

- 1- Payments or insurance contributions shall be paid on the agreed dates.
- 2- Responding accurately to the insured's questions, especially in the risk declaration form that the insured will question on the basis of, when the contract is concluded on the circumstances that would make the insurer assess the risks to which he is responsible.
- 3- Declare during the validity of the contract, the circumstances that arise either to aggravate the risks or to create new ones, and thus making his responses to the insured incorrect or invalid.
- 4- Notify the insured immediately upon his knowledge or to the maximum extent within the time limit specified in the contract, about any incident requiring the insurance of the insured.

Consequently any breach by the insured's obligations will allow the insurance company to file a lawsuit. These claims to the insurance company against the insured share their themes in traditional and green buildings such as claims for insurance premiums, lawsuits, contract annulment and other suits.

One of the claims of the insurance company in green building contracts, which are unmatched in conventional buildings, for example, when the insured risk does not include the risk against failure to obtain a green certificate; or the risks not to include obtaining the efficiency of a special economic system, but rather a traditional system, and not to ensure the engineer poor consultation to the owner by not giving him the right green alternatives.

There are claims to the insurance company against the insured if the latter is acted in a bad faith, by providing misleading data or fraud. The law gave the insurance company the right to contract annulment and the demand for the remaining installments. This is stipulated in the first paragraph of Article 928 of the Jordanian Civil Code: "If the insured has unlawfully mocked something or made an incorrect statement in a way that reduces the importance of the insured risk deliberately or cheated on the fulfillment of what he promised to provide, the insured may request the annulment of the contract to his favor, with the award of the installments due before this request."

The first paragraph of Article 928 of the Jordanian Civil Code corresponds to article 8, paragraph 8, of the French Insurance Act, which states: "**a way from ordinary cancellation reasons**, the insurance contract shall be canceled in the event of insurer truth concealment or intended false declaration by the insurer when he changes this secrecy or this False declaration regarding the subject of danger or mitigated it according to the belief of the insured, even if the hidden or distorted risk by the insurer even if it has no impact on the occurred accident". The second paragraph of the same article stated that: "If cheating or bad faith is prevented, then the insurer must, upon his request of annulment, repay the insured the installments that he paid or refund them. As well as the 9<sup>th</sup> paragraph of Article 113 of the French Insurance Act, which states that: "The hiding or lying of the insured or his false statement, in the case the failure to prove his ill-intention does not lead to the invalidity of insurance."

As for the prosecution of the claims of the insurer against the insured, according to article 932 of the Jordanian Civil Code, which is three years according to what have been stated earlier. There is an exception provided by the Jordanian legislator that the period of limitation shall not apply for this period. If the insured has concealed important information or presented misleading data, the limitation period shall be valid for three years from the date of the insurance company's knowledge of these matters. This is stated in the second paragraph of Article 932 of the Jordanian Civil Code: "The validity of this date in the case of concealment of the insured data related to the insured risk or provide incorrect data only from the date of knowledge of the insurer". The second paragraph of Article 932 of the Jordanian Law, meets paragraph one of Article 114 of the French Insurance Act, "All claims arising out of the insurance contract shall be annulled after two years from the incident that arose from it. However, this period does not apply if:

- 1 - The concealment of the insured risk or omission or false or incorrect statement, except as of the day of the insurers' knowledge.



2- Accident occurrence, shall be taken into consideration from the day on which the persons concerned are aware of it if they prove their ignorance until this day. "

On the other hand, the Jordanian legislator verified that the insurer (insurance company) need to replace the insurer for what he had paid, this replacement means that the insured who is effected but the insurance company paid the compensation for this damage to the insured, therefore the insurance company will replace the insured in the establishment of the case against the perpetrator of the harmful act. As stated in Article 926 of the Jordanian Civil Code, "The insurer may replace the insured for his payment of a guarantee for damage inflicted in the insured by filing a law suit for the caused damage that caused the liability of the insured, The unintentional damage of the assets and branches of the insured or of his spouses and those who live with them or a person for whom the insured is responsible for his actions".

Article 926 of the Jordanian Law corresponds to article 121, paragraph 12, of the French Insurance Act, which states: "The insurer is entitled to pay the insurance compensation, within the limits of the compensation, shall be entitled to the rights and claims of the insured against third parties, whom his personal act caused the harm that made the insurer responsible".

On the other hand, the insurer can terminate the insurance contract before the time stated in the contract. In this case, the insurer should inform the insured, it is also important that the insured must know the nature of this termination, meaning that the termination notification must be limited and clear.

Finally, there is possibility of the participation of more than one, such as the contractor, engineer and others in a collective insurance contract. The insurance can be divided according to the interest of the owner, to collective insurance for the benefit of the participants, that is to say that everyone will participate in a collective insurance contract and share the premiums owed to the insured among the participants, and there is collective insurance for the benefit of the insured<sup>1</sup>.

The responsibility of the parties to the contract for the green building project is always participatory (such as engineers, contractors, suppliers and anyone involved in the design, construction or execution of the green building), and the result is the same for all to obtain a green certificate, so the researchers suggest that they conclude one collective contract for the benefit of all participants to cover their professional responsibility or the failure of obtaining a green certificate for the building or failure to reconstruct the building with the same green specifications.

At the same time the owner to make a collective insurance contract to reduce the liability of all participating parties for not obtaining the green certificate, and therefore the insurance company will pay the compensation for reconstructing the building to be a green building, and this collective insurance should be for the benefit of a person or a company or a certain entity.

## 7. Conclusion

The nature and novelty of green buildings may be accompanied by unusual risks in traditional buildings. The main problem with conventional insurance contracts may not include the risks of green buildings. Therefore, there is a need to have a special green contract that considers all the related factors, in terms of their novelty and scope, which includes their own designs, green materials and building mechanisms, especially in the absence of legislation and contracts for the insuring the green buildings, which must take into account this privacy.

In addition, most of the modern systems used in green buildings are still not known for long-term damage, which may raise many legal problems. Since the judiciary will play a major role in addressing the conflicts between the parties in green building issues, especially in the absence of laws in Jordan that cover these works. Therefore, it is proposed the creation of specialized experts in green buildings to be relied upon by the court in issuing decisions that fit the nature of these buildings. There is no doubt that the judiciary will play a major role in developing the legal rules suitable for green buildings through court's rulings that are considered one of guiding resources.

Also the nature of contracts between the parties in green buildings is commercial in nature and subject to the application of commercial law. It is well known that the commercial environment is more severe than the civil environment in many ways, such as the shortest limitation and commercial proof, as well as supposed solidarity, which would protect against liability. It is propose to the Jordanian legislator to make the green building insurance contract obligatory for its advantages in supporting civil liability, in terms of guaranteeing the rights of the injured, and the ease of establishing the judiciary of liability.

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