



The California

Contractor

News for the Western Regional Master Builders Association

Vol. 33 - No. 4
April, 2008

At a Glance

Law Talk: Ability to sue and be sued

Asbestos: What do you need to know?

Get back to safety basics

Protect your business from the dangers of identity theft

... and more

Great rates for 2008!

As you probably know, your association, Western Regional Master Builders Association (W.R.M.B.A.), is no longer working with the State Compensation Insurance Fund. We have partnered with Heffernan Insurance Brokers to bring our members a new workers' compensation insurance program with **AMAZING** rates.

Check out the 2008 base rates comparison below and make sure to get a quote for your company A.S.A.P!!!

Workers' Comp Class Code	New Heffernan 2008 base rate*	Compare	SCIF 2008 base rate	Class Code Description
5645	\$20.16	vs.	\$31.95	Construction- N.O.C.
5482	\$5.18	vs.	\$8.00	Painting or Decoration- Over \$23
5474	\$11.06	vs.	\$17.08	Painting or Decoration- Under \$23
5606	\$1.92	vs.	\$2.96	Construction Executive Supervisor
5213	\$7.71	vs.	\$11.89	Concrete Construction
5205	\$5.30	vs.	\$8.19	Concrete or Cement work
5140	\$3.87	vs.	\$5.98	Electrical work- Over \$27
5190	\$5.17	vs.	\$7.98	Electrical work- Under \$27
5183	\$7.78	vs.	\$12.03	Plumbing- Over \$24
5187	\$4.40	vs.	\$6.80	Plumbing- Under \$24
5447	\$5.15	vs.	\$7.95	Drywall/ Wallboard Application- Over \$25
5446	\$9.50	vs.	\$14.59	Drywall/ Wallboard Application- Under \$25
5348	\$5.54	vs.	\$8.54	Tile or Stone Work
5028	\$7.30	vs.	\$11.31	Masonry- Over \$23
5027	\$10.50	vs.	\$16.21	Masonry- Under \$23

* All 2008 rates are the filed base rates and do not include any individually earned merits or credits. Actual rates may be lower.

Our new workers' compensation program through Heffernan Insurance Brokers offers a substantial savings over the State Fund rates. To participate in this new program, be sure to get your quote today!!!

Call Heffernan Insurance Brokers at: (866) 500-6359 and let them know you are a member of Western Regional Master Builders Association. If you currently use a broker for your insurance needs, you may have your broker call **Tangram Insurance** to get the same program and rates, at (800) 676-2213 ext. 662 and speak to **Riley Binford**.

Don't miss out on these savings! Call today for a quote!!!



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

(866) 500-6359

CSLB reminds do-good contractors they must hold a license to work in natural disaster areas

The Contractors State License Board (CSLB) reminds contractors that they must hold a valid California contractor's license, in the appropriate classification, in order to perform most work on homes and other structures damaged or destroyed in a wildfire, flood, mudslide or other natural disaster.

Some out-of-state contractors and unlicensed California contractors want to help with rebuilding in disaster areas. However, it is illegal and punishable as a felony to perform contracting work in a declared disaster area without a California contractor's license. Punishment may include a fine of up to \$10,000 or up to 16 months in state prison.

The CSLB along with other agencies such as the Department of Insurance, local district attorney's offices, sheriff's departments, and the Governor's Office of Emergency Services conduct undercover sweeps in disaster zones, and check the licenses of contractors working or soliciting work in these areas.

"Some unlicensed contractors have good intentions and want to help homeowners rebuild," said CSLB Registrar Steve Sands. "But, the reality is, they must be tested and licensed by the CSLB to do so legally,"

Anyone who contracts for or bids on a job that totals \$500 or more (labor and materials) must hold a contrac-

Please see **DISASTERS**, page 4

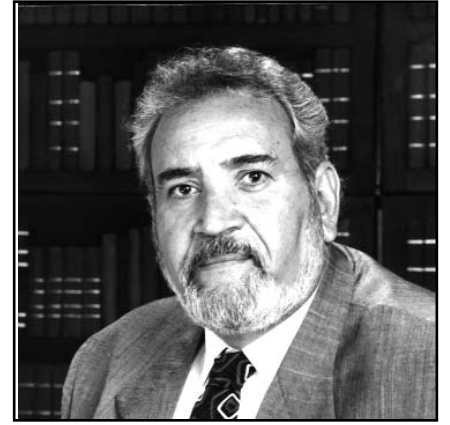
Please visit your association, Western Regional Master Builders Association, at its new website: www.wrmba.com



LAW TALK



By Sam Abdulaziz
Abdulaziz, Grossbart & Rudman



The ability to sue and be sued

Any time an individual, company, corporation or other entity decides that it wants to file a lawsuit against another individual or company, etc., the plaintiff must establish that it has the capacity as well as the right to sue. These are two separate legal concepts.

“Standing to sue” is defined as the one who has the right to relief in court. What this means is that the person who is suing the other person in court has a claim against that other person. A simple example would be where one person might be injured as a result of an automobile accident, but another person attempts to sue for those injuries. This other person clearly lacks standing to sue because he or she has no right to that relief in court.

The “capacity to sue”, however, is a different concept. “Capacity” is defined as the ability to sue. A minor may not have the capacity to sue. Some business examples of the capacity issue are corporations and businesses doing

‘Standing to sue’ is defined as the one who has the right to relief in court. What this means is that the person who is suing the other person in court has a claim against that other person.

business under a different name. Corporations are granted authority of specific corporate powers given to them by the Secretary of State. Other entities operate under fictitious business names, i.e., Jim Jones doing business as ACME Construction. In order to have the capacity in court, you must be able to prove to the court that you are in fact a corporation, or alter-

natively, you are in fact the individual you say you are and that you are doing business under the fictitious business name that you have sued under. Failure to establish this capacity will keep you from either prosecuting your action or defending yourself if you are being sued.

“Capacity to sue” is much different than “standing to sue”. If an individual or business lacks standing, it more than likely will never be able to correct that lack of standing. However, lack of capacity often times can be corrected.

Common situations with regard to the lack of capacity come up in the area of corporations and fictitious business names. Corporations may have their corporate powers suspended for one reason or another and the likely reason is for failure to pay taxes. If a corporation filed a lawsuit, and its corporate powers have been suspended, it will be kept from prosecuting its action or defending itself.

In one case, the issue of

whether a corporation could defend itself due to lack of capacity came before the court. The defendant who was being sued was a

corporation. The plaintiff found out that the corporation had been suspended several months previously for failure to pay taxes. On the day of trial, the plaintiff brought this fact up to the court and upon review, the court determined that the corporation had lacked capacity because its corporate powers had been suspended. The attorneys representing the defendants asked the court for a continuance of the trial to correct its corporate status and bring it back in line. The trial court denied this request and allowed the plaintiff to obtain the relief that they had requested by way of a default judgment. This is basically a judgment entered without any defense whatsoever.

The defendant filed an appeal and upon review the Appellate Court overruled the lower court stating that the lower Court abused its discretion by not allowing the corporation to be given an opportunity to revive itself by bringing the corporate taxes current. As you can see, capacity can be, and often is, corrected. In this set of facts, the corporation must be given an opportunity to revive itself and if it does so before the matter has actually gone to trial, the corporation is deemed to have revived itself and thus can proceed with the prosecution and/or defense of itself without any penalty.

This same situation applies for those with fictitious business names. One of two things generally happens in this area. Either the individual just forgets altogether to file and publish a fictitious business name statement and operates under the name without filing any type of paperwork to establish their entitlement to that name, or, they forget to renew their fictitious business name. In these instances, the business must be given an opportunity to correct itself, i.e., publish and file a renewed fictitious business name statement. As long as you have your fil-

ing in place before you go to trial, you will be given the opportunity to bring your case to the court and seek the relief that you feel you are entitled to. Even if you don't have your status correct, you should always ask for a continuance to give yourself the opportunity to correct your problems.

In conclusion, it is best if all of you who are involved in litigation check with the Secretary of State, if you are a corporation, and make sure that the status of your company is in line with both the Franchise Tax Board and the Secretary of State. For those of you who do not operate under a fictitious business name, make sure that your filing is up-to-date and that you have filed the documents that you are required to file.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for 30 years. He has written a book called “California Construction Law” which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the “Pay-If-Paid Clause.” Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. The documents are of a general nature and are intended to highlight areas of the subject matter and should not be used as a substitute for specific legal advice. You should seek the aid and advice of a competent attorney and/or accountant instead of relying on the presentation and/or documents. Sam Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at info@agrlaw.net. On the Internet, visit our Website at www.agrlaw.net

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To receive these discounted admission coupons... call the Association office at (800) 823-4038



SAFETY MATTERS



Get back to safety basics

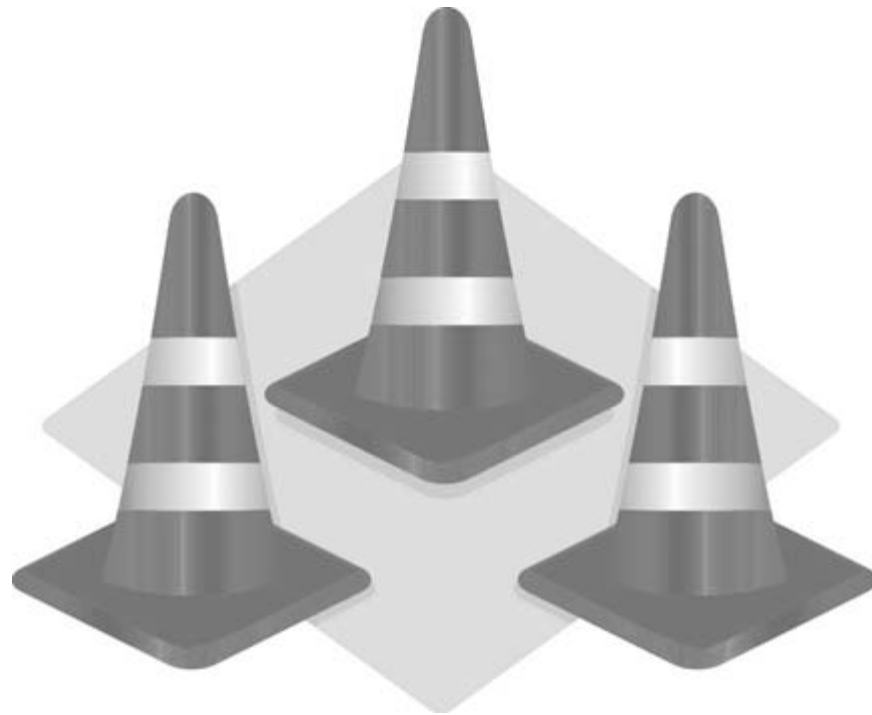
By Ken J. Helfrich

What makes a safety program effective? There is no question that the reduction of your claims frequency through effective safety management and claims handling provides a competitive business advantage.

The most important component of safety excellence is providing management leadership and commitment. A company's top leadership team must demonstrate a strong, genuine, continuous, and personal commitment to safety. Leaders must:

- * Communicate a vision and integrate goals for addressing safety
- * Define roles and responsibilities
- * Require accountability from all employees
- * Allocate resources to support programs
- * Conduct assessments to support changes
- * Take pro-active measures

The second most important component is employee involvement. Involvement incorporates activities that pro-actively identify hazards as



an important component of an effective safety program, including the use of job safety analysis, physical surveys, employee safety training, safety meetings, and job safety observations. Employee involvement includes the following:

- * Visible and consistent commitment by management
- * Individual development program and training

- * Constant communication
- * Understanding and awareness of company safety policies and procedures
- * Recognition and reward for good work and safety performance

Safety excellence is based on the implementation of a measurement system. A Loss Control Specialist from Employers Direct Insurance

Company can help your company lay the groundwork and create a plan with your team that will identify your loss sources and also list the steps to control identified exposures.

Continuous safety improvement is the final component of an effective safety program. This is a process-oriented approach that emphasizes contributions to long-range and permanent solutions:

- Phase 1: Gain management commitment and involvement (vision and leadership)
- Phase 2: Establish a baseline (snapshot of "as is")
- Phase 3: Set goals (where company "should be")
- Phase 4: Implement strategies (close the gap between "as is and "should be")
- Phase 5: Review and adjust (reach for where company "could be")

Ken J. Helfrich is assistant vice president of field services at Employers Direct Insurance Company. Email him at khelfrich@employersdirect.com.

Protect your workers from asbestos in construction

Asbestos is the name given to a group of naturally occurring minerals. Asbestos differs from other minerals, in that it forms long thin fibers instead of crystals. There are six different minerals, divided into two groups, included in the asbestos family. The two groups are Serpentine and Amphibole, and are based on the differences of their crystalline structure. Serpentine forms a sheet or layered structure. Amphiboles form a chain-like structure. Asbestos fibers are naturally occurring and stay airborne very well.

Where do you find asbestos?

Asbestos is used in many products because of their high tensile strength, flexibility, and resistance to chemical and thermal breakdown. Asbestos is used in insulation, fire-proofing materials, automotive brakes, cement and wallboard materials, floor tiles and roofing materials.

Chrysotile (a member of the Serpentine group) is the most common type of asbestos found in buildings. Chrysotile makes up 90-95% of all the asbestos in the United States. The federal government declared a moratorium on asbestos production in the early 1970's. Installation of these products continued into the early 1980's.

Who is at risk of asbestos exposure?

The construction trades most at risk from asbestos are insulators, plumbers, pipefitters, electricians,



sheet metal workers, roofers, bricklayers, painters, and steel workers. Any construction worker may be exposed occur during maintenance, remodeling, renovation or demolition of older buildings.

How can you become exposed?

Disturbing asbestos materials may generate airborne asbestos fibers. Asbestos is only dangerous if it becomes airborne. To be a significant health concern, asbestos fibers must be inhaled over an extended period of time. Asbestos fibers then accumulate in the lungs. As exposure increases, the risk of asbestos related diseases also increase. As long as asbestos containing materials are not damaged, the asbestos fibers do not become airborne and do not pose a health threat.

Asbestos related diseases

Asbestosis is a scarring of the lung tissue. The scarring impacts the

elasticity of the lungs and lowers its ability to transfer oxygen and carbon dioxide. Asbestosis is a slowly progressive disease, taking 15 to 30 years to fully develop.

Mesothelioma is a type of cancer. This disease attacks the lining of the space holding the lungs, called the pleura. Mesothelioma is considered to be exclusively related to asbestos exposure. Mesothelioma may take 30 to 40 years to develop.

Lung Cancer is a malignant tumor in the lungs. The tumor grows through the surrounding tissues, invading and blocking the air passages of the lungs. The time between exposure to asbestos and the occurrence of lung cancer may take 20 to 30 years. It should be noted that there is a multiplying effect between smoking and asbestos exposure, which creates a high susceptibility to lung cancer.

How to protect yourself?

Before you disturb asbestos (loosen the fibers) you must have special training. OSHA requires a "competent person" to be designated for all worksites that will involve asbestos work. The competent person should inspect the jobsite regularly, be knowledgeable of personal protective equipment, and supervise the work to be done to ensure all safety measures are being taken to prevent exposure to asbestos.

More Information

For more detailed information and updates, visit the website maintained by the Occupational Safety and Health Administration at <http://www.osha-slc.gov/SLTC/asbestos>.

If you have any concerns or questions, contact your company's health and safety representative.



OSHA CORNER

Cal/OSHA Safety Publications

Please visit the following address on the web to download helpful safety posters, guides and pamphlets for a safer workplace.

<http://www.dir.ca.gov/dosh/PubOrder.asp>

New identity theft prevention resource available to businesses

A new report issued today by the Identity Theft Prevention and Identity Management Standards Panel (IDSP) helps to arm businesses, government agencies, and other organizations with the tools needed to protect themselves and their customers against the theft and misuse of personal and financial information. Developed through a partnership of more than 70 leading organizations from the public and private sectors, the IDSP has created a single, comprehensive resource that promotes access to and implementation of tools and processes that can help to minimize the scope and scale of identity theft and fraud.

The report is freely available as a .pdf download from the Panel's website (www.ansi.org/idsp).

Launched in September 2006, the IDSP was established by the American National Standards Institute (ANSI) and Better Business Bureau (BBB) to identify and catalog existing standards, guidelines, and best practices related to identity theft prevention.

Panel members considered the entire life cycle of identity management: from the issuance of identity documents by government and commercial entities, to the acceptance and exchange of identity data, and to the ongoing maintenance and management of identity information. Hundreds of documents – including the applicable laws, regulations, proposed legislation, white papers, and research studies and reports – are identified in the catalog.

The report also includes recommendations for business and government agencies to:

- * enhance the security of identity issuance processes to facilitate greater interoperability between the government and commercial sectors;



- * improve the integrity of identity credentials;
- * strengthen best practices for authentication;
- * augment data security management best practices such as the use and storage of Social Security numbers;
- * create uniform guidance for organizations on data breach notification and remediation;
- * increase consumer understanding of ID theft preventative strategies, including the benefits and limitations of security freezes.

“We brought together a diverse group of identity protection experts to create a valuable and accessible resource – something that was needed but didn't yet exist,” explained Joseph Gurreri, chairman of the IDSP, and president of CorporatePlanningGroup.NET. “Together, we identified a broad spectrum of materials that can be used by businesses and government agencies to strengthen the way they protect the personal data for which they are responsible.”

“The IDSP report is a much-needed approach to fight a crime that totals \$49.3B and affects 8.4 million victims each year,” said James van Dyke, president and founder of Javelin Strategy & Research. “As businesses and government agencies standardize their identity-handling processes, fewer people will be victimized, more criminals will be thwarted, and the costs of identity crimes will drop.”

“The organizations involved in the IDSP have demonstrated their commitment to reducing a major threat to consumers and the economy,” said Gurreri. “Now it is time for other market players to join forces with us to combat identity theft and bolster fraud prevention.”

About IDSP

The Identity Theft Prevention and Identity Management Standards Panel (IDSP) is a cross-sector initiative that works to create a single resource of standards and guidelines that businesses and other organizations can use to prevent and respond to identity theft and fraud. Jointly sponsored by the American National Standards Institute (ANSI; www.ansi.org) and the Better Business Bureau (BBB; www.bbb.org) the IDSP's nine founding partners are AT&T; ChoicePoint; Citi; Dell Inc.; Intersections, Inc.; Microsoft; Staples, Inc.; TransUnion; and Visa Inc. Founded in September 2006, the Panel leverages ANSI's unique expertise as coordinator of the U.S. standards and conformity assessment system with BBB's extensive experience in advancing trust in the marketplace, and includes participation from all affected marketplace stakeholders. For more information, visit www.ansi.org/idsp.

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Disasters: License must be in the correct classification

Continued from page 1

tor's license from the CSLB. There are exceptions, including working as an employee of a licensed contractor or taking jobs that are valued at less than \$500.

To become licensed, one must submit an application for review, verify four years of journey-level experience in the trade to be licensed (general, plumbing, etc.), pass a two-part examination (trade and business/law), secure a license bond, and provide workers' compensation insurance for employees. The entire process can take up to six months.

“The process to become licensed is in place to make sure, to the extent possible, that contractors have the qualifications and experience necessary to perform contracting work. It is not something that can or should be done overnight,” said Sands.

A contractor's license can be verified on CSLB's Web site, www.cslb.ca.gov, to see if it is active and in the right classification for the work to be done. You can also check for legal complaints, the correct business name, address and workers' compensation insurance coverage for employees.

THE CALIFORNIA CONTRACTOR
4153 Northgate Blvd., #6
Sacramento CA 95834

THE CALIFORNIA CONTRACTOR ISSN 0194-9721. Published monthly except bi-monthly July-August and November-December by SMC Publishers, 4153 Northgate Blvd., #6, Sacramento CA 95834. The California Contractor is devoted to the interests and concerns of contractors and their associations. Annual Subscription is \$12.00, available through membership in the Western Regional Master Builders Association. Periodicals Postage Paid at Sacramento, California. POSTMASTER: Send address changes to The California Contractor, 4153 Northgate Blvd., #6, Sacramento CA 95834