



The California

Contractor

News for the Western Regional Master Builders Association

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July/August, 2008

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!!!

At a Glance

Law Talk: 'Substantial compliance' revisited

Accidents: Learn the cause, find the solution

Are we doing all we can regarding the environment?

... and more

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!!!



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



'Green' is the new black when it comes to roofs

Summer's in full swing, and that means hot days – hot enough to have to turn on air conditioners. But what if we could lower that need – just a little bit? According to the United States Department of Energy, the average air-conditioned home releases two tons of carbon dioxide into the atmosphere at energy is consumed – and as homeowners collectively lay out a total of \$11 billion a year to cool those homes.

Today, there isn't an easy solution to the challenges of energy use and pollution, but there is an easy way to cut back on both and add some other cost-saving benefits in the process: elastomeric roof coatings. Elastomeric roof coatings protect flat roofs from UV light as well as damage from wind and rain. They are

also white – and therefore help reduce cooling costs. The technology behind these coatings are a mainstay in an environmentally advanced portfolio that specialty materials company Rohm and Haas has been developing for the last 30 years.

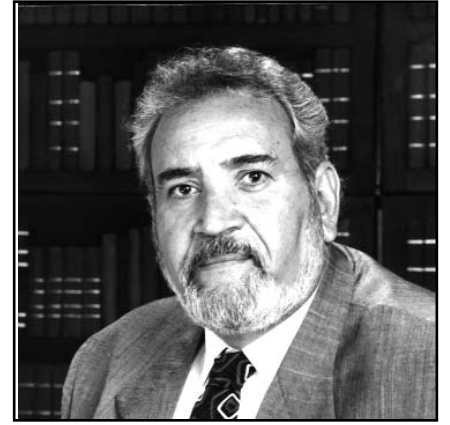
Because they are white, elastomeric coatings reflect more sunlight before it becomes heat. Traditional flat black roof coatings, such as asphalt, absorb sunlight and radiate heat. These elastomeric coatings also protect against cracking because they themselves expand and contract as part of the roofing material. The result is a cooler and longer-lasting roof, lower ambient air temperatures and energy savings for the entire building.

Please see GREEN ROOFS, page 4

LAW TALK



By Sam Abdulaziz
Abdulaziz, Grossbart & Rudman



Substantial compliance with the license law revisited

A recent California case has created a buzz in the construction industry. It revisits the Doctrine of Substantial Compliance with the License Law. As is sometimes common, the first few paragraphs give insight as to the court's thoughts regarding the case. The very first paragraph states:

"In this case, a subcontractor on a large commercial contract has suffered the consequences of its failure to complete the application process and obtain the requisite contractor's license(s) before signing two separate contracts."

This tells you that the Court was leaning towards allowing the subcontractor to collect the money. It talks in terms of the application process and not whether one is licensed.

There was also a second issue as to whether a proper license was held to perform a second contract. That will not be discussed here.

The Court held that the statute does not state that compensation may be sought only for completed contracts where the contractor was licensed start to finish.

We are only going to be discussing the Doctrine of Substantial Compliance.

MW Erectors, Inc. (MW) was a subcontractor. It entered into a subcontract on October 11, 1999. Work began on or before December 3, 1999. MW obtained its C-51 Structural Steel contractor license on

December 21, 1999. When a dispute occurred, the prime contractor terminated MW. The reasons for the termination are not at issue because the prime contractor argued that MW was owed no money because the License Law kept it from collecting. MW argued that the exceptions in the Doctrine of Substantial Compliance would allow it to collect for what was done.

There appears to be no issue of the qualifications for licensure of the sole owner and president of MW. He appeared to have substantial experience in the classification for licensure. However, that was not one of the issues. Business and Professions Code section 7031 states in pertinent part:

"(a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of

this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of the act or contract, regardless of the merits or the cause of action brought by the person...."

The prime contractor relied on the words "at all times during the performance of the act or contract...." The Court held that the statute does not state that compensation may be sought only for completed contracts where the contractor was licensed start to finish. This was the holding of some very old appellate cases. Rather, the interpretation that the court fashioned was to allow a contractor to seek compensation for any act if he or she alleges having been duly licensed during the performance of the act. The Court stated, "the blatant meaning of the words would indicate that the act in question, the one for which a license is required, is the same act for which compensation is sought." It relied heavily on the word "act" rather than the word "contract."

In other words, as long as the contractor alleges that he or she was duly licensed during the entire period of time that he or she performed the acts for which compensation is sought, his or her suit is not necessarily barred just because the license was not in place when work on the contract was initially undertaken.

The Court also looked at the subdivision (e) of Business and Professions Code section 7031, which dealt with exceptions to the Doctrine of Substantial Compliance. There, the Court stated

"...the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing, the person who engaged in the business or acted in the capacity of a con-

tractor (1) had been duly licensed as a contractor or in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) did not know or reasonably should not have known that he or she was not duly licensed...."

Again, relying on the word act, the Court threw out all of the work done prior to the licensure and stated, "The contractor could collect for work done after licensure." In the second page of the opinion, the Court stated, "We conclude that, in the situation described, the statutory provision permits the contractor to recover compensation for acts performed while licensed and that being the case, the contract is neither illegal nor void."

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 can be reached at 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@agr-law.net. On the Internet, visit our Website at www.agr-law.net.

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SAFETY MATTERS



Safety training for illiterate workers

An often-overlooked area of safety is the training of workers who can't understand or read English or can't even read at all. If workers can't read and understand instructions, they may be missing your safety message and end up doing a job unsafely, handling dangerous chemicals or operating machinery incorrectly, putting themselves or other workers at risk. As their employer or supervisor, you must ensure that all your workers understand any safety information that's given.

Besides risking worker health and safety, illiteracy can also affect work production or compliance. Illiteracy may not always be readily noticed because workers may not want to admit their difficulties or they may be so eager to work that they'll bluff their way through training sessions in order to please the boss.

Next time you review your company's training material, try doing it without reading a word. You may find that your training programs are causing your workers who cannot read to completely miss your safety message. Don't assume because workers attended training and were nodding their heads that the hazards, safety rules or practices presented were understood. Expand your training methods so that they satisfy both literate and illiterate work-



ers' needs. Here are suggestions on how this can be done:

- Present the material to match the steps they'll take on the job. Make sure workers understand why the training material is important to their health and safety.
- Workers should be able to immediately practice and apply new knowledge and skills. If workers don't understand safety training information well enough to use it on the job, the training has not been effective.
- Vary your training program using different

methods. Along with any written material, show pictures and include demonstrations, role-playing, repeat-back or show-me techniques.

- Workers who are not English-literate, may learn by visuals so use videos, drawings or graphics. However, make sure the visual demonstrates the correct action you want them to take. You don't want workers to mimic an incorrect visual.

- When speaking, use short, simple words and sentences or have someone available to translate into the workers' native language.

- Insist on questions from trainees after a session to let you know what should be reviewed.

After any training has been given, supervisors should continue watch workers do their jobs to identify if additional training is necessary. There should be immediate feedback if workers are doing their job safely or incorrectly.

Most of these tips are relatively simple and inexpensive solutions, but the safety payoff can be enormous. Remember, training is only effective when workers understand and use what they've learned.

Accidents: Learn the cause, find the solution

Accidents on construction projects cause too many painful injuries and claim far too many lives. Our primary concern when we discuss the factors or causes behind an accident is to find a way to prevent a recurrence. The cause of an accident can be found in two areas -- Unsafe Acts and Unsafe Conditions.

As a construction worker you control the first cause, Unsafe Acts. For example: a worker uses equipment that is defective or damaged, or they may use good equipment in a careless or other unsafe manner. Other examples of unsafe acts include disregarding posted warning signs, failure to wear a hard hat, smoking near flammables or explosives, working too close to power lines, handling chemicals or other hazardous materials

improperly, putting your body or any part of it onto or into shafts or openings and lifting material incorrectly. (Just a short reminder -- always lift with your legs while keeping your back straight.)

The second accident factor or cause is Unsafe Conditions which can be found on many construction sites. Examples include inadequate or improperly installed guard rails or a lack of any guarding at all which most certainly will lead to an accident. Insufficient illumination, poor ventilation, electrical grounding requirements not observed, too few fire extinguishers available, containers that are not labeled, careless disposal of waste or excess material -- these are just a few of many unsafe conditions that may be caused by co-workers, subcontractors, or the general con-

tractor.

You can make a difference by taking the time to perform your work safely and reporting any unsafe condition you discover to your supervisor immediately.

When the cause behind the accident is found, you'll find that safety on the job plays a major part in preventing that accident from occurring again. If everyone on the job cooperates, injury and death statistics will be reduced and it will be much safer for you to do your job.

Accidents - Learn the cause, find the solution. Ultimately the jobsite and your job will be safer.

Talk safely, drive safely with new cellular phone laws

July 1st triggered two new cell phone laws. The laws are a result of SB 1613 and SB 33 that Gov. Arnold Schwarzenegger signed into law in September 2006. The first prohibits all drivers from using a handheld wireless telephone while operating a motor vehicle. The second forbids motorists under 18 from using either a wireless telephone, or hands-free device.

If you are an adult driver, here's what you need to know:

You may use your handheld cell phone to make emergency calls to a law enforcement agency, a medical provider, the fire department or other emergency service agencies.

You can be pulled over by a law enforcement officer just for using a handheld cell phone.

The fine for a first offense is \$20 and subsequent fines will be \$50. With the addition of penalty assessments, the fines can be more than triple the base fine amount.

The law applies to out-of-state

drivers.

The violation will be reported to the DMV, but they will not assign a violation point.

The law does not prohibit you from dialing a wireless handheld telephone while driving, only talking on the phone.

The law does not prohibit you from text messaging, but a law enforcement officer can pull you over and cite you if he feels you were distracted and not operating your vehicle safely.

Bluetooth or other earpieces are legal, but you cannot have both ears covered.

You may use the speaker phone function of your wireless telephone.

The use of a "push-to-talk" feature is prohibited unless you are operating a commercial motor truck or truck tractor (excluding pickups), implements of husbandry, farm vehicle or tow truck.

For those drivers under 18, here are the new rules:

Drivers may not use a wireless phone, pager, laptop or any other electronic communication or mobile service device to speak or text while driving. The exception is for emergency situations to call police, fire or medical authorities.

Parents may not give permission to children under 18 to use a wire-

less phone or other electronic communication device. This law also applies to an emancipated minor.

The minor may not use a built-in "hands-free" feature if the car has one.

The law applies to drivers under 18 even if there are passengers over 25 years old in the vehicle.



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>

The environment: Are we doing all we can?

According to the results of a new nationwide Harris Poll of 2,602 U.S. adults surveyed online between May 5 and 12, 2008 by Harris Interactive:

Almost three-quarters (72%) of U.S. adults believe their personal actions are significant on the environment while just over one in five adults (22%) believe their actions are not significant;

Women are much more likely than men (77% versus 67%) to believe that their actions are significant. In fact over one-third (35%) of women believe their actions are very significant on the environment compared to 21 percent of men who believe the same;

Republicans are less likely to say their personal actions on the environment are significant (63% vs. 78% for Democrats and 77% for Independents);

More than half of U.S. adults have made changes in their lives that they believe will help sustain the environment;

When it comes to making changes, Independents are the most likely to have done so (63%), followed by Democrats (57%) and Republicans (44%).

This non-commissioned survey, conceived and developed by Harris Interactive with valuable input from The Nature Conservancy, also found that:

Although the phrase "environmental sustainability" appears to be pop-



ular, it may not be registering with all Americans. Over half (58%) say they have not heard the phrase "environmental sustainability" used while 42 percent have heard it;

Just under half of Echo Boomers (those aged 18-31) and Gen Xers (those aged 32-43) have heard the phrase used (46% and 47% respectively), while just three in ten (30%) Matures (those aged 63 and older) have heard it used.

After assessing initial familiarity, Harris Interactive provided a definition of "environmental sustainability" (i.e., taking from the earth only what it can provide indefinitely, thus leaving future generations as much as we have access to ourselves). In this case:

Just over half of Americans (53%) say they have done something to change their lifestyle to make it more environmentally sustainable, while one-quarter (25%) say they have not.

Education seems to play a role in whether people have made a change. Just under half of those with a high school education or less (46%) have changed their lifestyle compared to two-thirds (65%) of those with a post

graduate degree.

What Lifestyle Changes are People Making?

Almost everyone who has made a change to their lifestyle is recycling (91%);

Seventy-three percent are paying bills online and/or receiving paperless statements;

Just about half (49%) are buying more locally produced food and/or goods;

Many are buying green household products (47%) and installing resource friendly appliances (46%);

Some are no longer purchasing plastic water bottles (30%), commuting to work in ways other than by car (16%), carpooling (16%), changing light bulbs (4%) and buying a hybrid (3%).

But not everyone is doing something to change their lifestyle. The top reason cited by one-third (34%) of those who have not changed their lifestyle is that they do not know what to do. Three in ten (29%) say that they haven't changed their lifestyle as it won't make any difference followed by 22 percent who say they just tend to forget until afterwards to do something differently. One in five (19%) have not done anything as it is too expensive while one in ten (10%) say they don't have the time.

"This poll shows that green living is certainly at the forefront of our minds," said Stephanie Meeks, acting

president and CEO of The Nature Conservancy, which advised Harris Interactive on the development of this latest poll. "Yet people are getting lost in the maze of information on how to lessen our environmental impact. The bottom line is that even the smallest lifestyle change can have significant impact in the long-run."

So What Does it All Mean for Our Future?

Thinking about the future and the possibility of living a sustainable life, two-thirds of Americans (67%) say it will be possible for people to actually live an environmentally sustainable life, while 22 percent say it will not be possible. One thing to note is that just one in five (20%) say it definitely will be possible while almost half (47%) believe it probably will be possible. And while 64 percent of those with a high school degree or less say it will be possible, more adults (78%) with a post graduate degree believe the same.

Regina Corso, Director of The Harris Poll, said, "In the end, the environment and sustainable living are issues that will not be going away anytime soon. As we move into the November presidential election, it will be interesting to see how much of an impact, if any, the environment has on the campaign. And how this impacts the tone of the election may be a sign as to how it would influence either a McCain or Obama White House."

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Green roofs

Continued from page 1

Elastomeric roof coatings also have the potential to help save lives. According to the United States National Weather Service, heat is the leading weather-related killer. More than 400 Americans die from heat-related illnesses in a typical year, more than killed by lightning, tornadoes, floods, and hurricanes combined. Most of these deaths take place among the elderly and poor, who cannot afford air conditioning. Cities like Philadelphia have begun housing initiatives enlisting the use of white elastomeric roof coatings and are seeking increased standards for new and replacement flat roofs above the current state building codes.

Lastly, not only does an elastomeric-coated roof save energy and lives, but it reduces landfill waste and provides substantial savings in maintenance and replacement costs. Roof repair used to mean tearing off the aging roof and replacing it, but with proper maintenance, elastomeric-coated roofs can last much longer than traditional roofs. Maintenance is limited to occasional cleaning with a hose or power washer and reapplication of the coating on average every 7 to 10 years.

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