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WHO'S RESPONSIBLE FOR THE SAFETY ON A JOBSITE? EVERYONE

By: David Caple

Whether you are the *Owner* of a facility, the *Engineer or Architect* of Record who will oversee the construction project, or the *General or Sub-Contractor* hired to facilitate the completion of the project, **every** interested party has a role and should know their duties regarding safety on a project.

Each of these parties plays an integral role in keeping a job safe every step of the way from pre-construction through completion.

First, a few definitions to make sure everyone is on the same page.

Competent Person – means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

EMF/EMR – Experience Modification Factor/Ratio – a calculation based on your specific workers' compensation loss experience that compares your loss history with others in your industry. The exp. mod. factor impacts the premium paid for your workers' compensation insurance. 1.0 is industry average. If your mod is 1.2, your loss experience is 20% worse than industry average and your premium will be increased by 20% (and vice versa, 0.8 represents a 20% swing below average and a premium reduction of 20%).

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3rd Quarter Dinner Meeting

Sept. 13, 2012 - Linthicum, MD

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Local & National Events

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ICRI-BWC 2nd Qtr. Meeting Wrap-Up

The May Program of ICRI-BWC was hosted at Holiday Inn, College Park, MD with over 80 attendees.

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Garrett County Habitat for Humanity

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21st Annual Golf Tournament

The 21st Annual Golf Tournament is set for
October 4, 2012

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ICRI MISSION STATEMENT

The mission of the International Concrete Repair Institute is to be a leading resource for education and information to improve the quality of repair, restoration, and protection of concrete and other structures in accordance with consensus criteria.

ICRI is an organization composed of Engineers, Consultants, Contractors, Manufacturers and other Material Suppliers, Property Managers and Owners all working together for the betterment of the industry and of all involved. Providing an open forum to speak about our work, new technologies and methods, exchange ideas.

Creating and following standards to produce the best results for all involved.

PRESIDENT'S MESSAGE



Dear ICRI-BW Chapter Members,

Time flies when you are having fun! It is hard to believe, but the end of summer is fast approaching. After dealing with the extreme heat and power outages our region encountered this summer, some of you may be anxiously awaiting the end of the summer. Others may still be looking forward to upcoming vacations with friends and family.

Whatever your circumstance, I hope that everyone has been able to juggle their work schedules and free time accordingly.

Our May dinner meeting featured Steve Gordon who gave a lively presentation titled "Everything You Ever Wanted to Know About Waterproofing But Were Afraid to Ask". The presentation gave those in attendance a better understanding of the origin of the crack injection, plaza re-waterproofing, joint repairs and restoration work we have all been a part of over the last twenty years. The dinner meeting was well attended and enjoyed by all. Please be sure to mark your calendars for our upcoming September dinner meeting which will be held on Thursday, September 13th. The venue will be Snyder's Willow Grove in Linthicum, Maryland, with the social hour will beginning promptly at 5:30 PM. The topic for the evening will be "Safety in the Structural Restoration Workplace"; a copy of the meeting flyer with additional information is included with this edition of the Aggregate and can also be found on our website at <http://www.icribwchapter.org/>. Safety is everyone's responsibility. It is extremely important that at the end of each day, we all return home safely and in one piece. Therefore, the topic is relevant to everyone in our industry including Owners, Engineers, Contractors and Suppliers. I look forward to seeing everyone there to participate. Please feel free to invite others that you feel would benefit from the presentation. Potential new members are always welcome.

Our key programs continue to move forward. We just finished our fourth year performing volunteer work at the Garrett County Habitat for Humanity location. I was amazed at the amount of work that has been performed at that location over the past four years and how that community has grown and prospered as a result of the many volunteers that donate their time and skills. I am extremely thankful to those ICRI members that have provided support over the years to this worthy cause.

Our scholarship program is moving forward and will be awarding funds to worthy students as well as ICRI members that are continuing their education.

Our Chapter will continue to be busy during the Fall. Upcoming events that you should put on your schedule include:

- The 21st Annual Golf Outing which will be held on October 4th at Glenn Dale Golf Club. Jay Whitton and Mike O'Malley will be organizing the event this year. Begin to organize your foursomes today. This will be a great opportunity to sharpen your golf game before you attend the Fall Convention.
- ICRI BW Chapter Outstanding Project Awards - Many of you have completed interesting projects during the last year. This program provides you with an opportunity to share the challenges, successes and accomplishments of your project with your colleagues. Applications are due September 14th and the top three projects will be presented at the November dinner meeting. Please contact Oscar Valenzuela by phone at 301-881-1441 or e-mail at oscarv@skaengineers.com for information.
- ICRI will be holding the Concrete Slab Moisture Testing Program on October 9th - October 10th in Baltimore, MD. More information can be found at <http://www.icri.org/Certification/CertificationInfo.asp>
- The November dinner meeting will be held on Thursday, November 1st at which time we will hold the 8th Annual Baltimore Washington Outstanding Project Awards Program.
- The ICRI National Fall Convention is scheduled for November 7-9, 2012. The convention will be held at the Rancho Las Palmas Resort and Spa in Rancho Mirage, CA. The topic for the convention is "Life Cycle Repairs - Sustainability". Pack up the golf clubs and get in a few rounds between technical sessions. Registration information can be found at www.icri.org.
- The Annual Fall Seminar will take place on December 6, 2012. More information to follow.

Finally, the success of our programs is dependent upon participation from our membership. Elections for new Board members will take place this fall. The Board is always looking for new members to serve on the Board. This is your chance to volunteer and make help to improve our Chapter. Chris Carlson, our 2011 Past President, is the chair of the Nominating Committee and is taking nominations for candidates. Please contact Chris by phone at 410-740-2233 or e-mail at ccarlson@etc-web.com if you want to be considered.

As you can see, we have a full agenda between now and the end of the year. Let's make sure we continue to have fun!

If you have any questions, comments or suggestions, please feel free to contact me by phone at 410-298-2669 or e-mail at pomalley@c-p-rinc.com.

Patrick O'Malley

THE BALTIMORE WASHINGTON CHAPTER OF ICRI

Thursday, September 13, 2012

Snyder's Willow Grove Restaurant
841 Hammonds Ferry Road
Linthicum, MD 21090
410-789-1149
Exit 8, I-695



Advance Reservations by 09-06-12:	\$50
After 09-06-12 & Non Members:	\$60
4:00	Board Meeting
5:30	Social Hour
6:30	Dinner & Presentation

"SAFETY IN THE STRUCTURAL RESTORATION WORKPLACE"

OUR FEATURED SPEAKERS



Alan Lederman, CIH, CHMM
Froehling & Robertson, Inc.

Alan Lederman is an environmental professional with a comprehensive background in the environmental health and safety field and is also an accredited Certified Industrial Hygienist (CIH) and Certified Hazardous Material Manager (CHMM).



Chuck Brienza, CHST
Concrete Protection & Restoration, Inc.

Charles has worked in the construction industry for 23 years. His career includes new construction, renovation, residential and commercial. For the last 12 years, he has been a full time safety professional. Currently, he is the Director of Safety at Concrete Protection and Restoration, Inc., where he ensures the safety of over 200 people.



David Caple
Pinnacle Safety Network, LLC

David Caple has worked in the Restoration Industry Since 1993. He has specialized in Occupational Safety and Health Since 2005 and he was a Contributor to ICRI Guideline No. 120.1-2009 Guidelines and Recommendations for Safety in the Concrete Repair Industry.

OUR FEATURED PRESENTATION

This presentation will include:

- A Presentation on Industrial Hygiene: Prevention of Exposure to Contaminates in Construction by Alan Lederman
- A review of ICRI Publication, *Guidelines and Recommendations for Safety in the Concrete Repair Industry (No. 120.1-2009)* presented by Chuck Brienza
- A Panel Discussion reviewing Industry Codes & Statutes with a Q&A. Panelists are Alan Lederman, Chuck Brienza and David Caple

REGISTRATION DEADLINE IS September 6, 2012 **NO-SHOWS WILL BE BILLED**

Please email (mikeprizzi@metrosealant.com) or print this page and fax to **Mike Prizzi**, Secretary, at 410-789-7406 no later than September 6, 2012. Checks to ICRI BWC may be turned in at the meeting or mailed with your form to:

Mike Prizzi, Secretary
ICRI BW Chapter
C/O Metro Sealant & Waterproofing Supply
1041 W. Nursery Road
Linthicum, MD 21090

You may also register and pay online at

www.ICRIBWChapter.org

Name: _____
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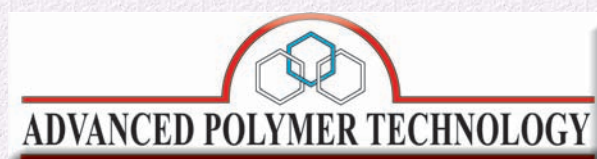
PLATINUM



GOLD



SILVER



Upcoming Chapter Events

- Sept. 13, 2012 ICRI-BWC 3rd Quarter Dinner Meeting
Baltimore, MD
- Oct. 4, 2012 ICRI-BWC Golf Tournament
Glen Dale, MD
- Nov. 1, 2012 ICRI-BWC 4th Qtr. Awards Banquet
College Park, MD
- Dec. 6, 2012 ICRI-BWC Fall Technical Seminars

Upcoming National Events

- Oct. 9-10, 2012 ICRI SLAB MOISTURE TESTING
CERTIFICATION PROGRAM
Baltimore, MD
- Nov. 7-9, 2012 ICRI 2012 FALL CONVENTION
Theme: Life Cycle Repairs —
Sustainability
Rancho Las Palmas Resort and Spa
Rancho Mirage, CA
- Feb. 4, 2013 ICRI 2013 WOC KICK-OFF PARTY
Venue: TBD
Las Vegas, NV
- Mar. 20-22, 2013 ICRI 2013 SPRING CONVENTION
ICRI celebrates its 25th anniversary! -
"Looking Ahead"
Tradewinds Islands Resorts
St. Pete Beach, FL

2012 2nd QUARTER MEETING WRAP-UP

On May 10, 2012, over 80 members from the Baltimore Washington Chapter gathered to enjoy dinner and listen to the featured presentation relating to waterproofing systems. The May Program of ICRI-BW Chapter Meeting featured Mr. Steve Gordon from Preservation & Protection Systems, Inc. (PPSI) presenting a very fluid program covering "Everything You Ever Wanted to Know About Waterproofing But Were Afraid to Ask". Steve has specialized in Building Envelope Systems for the past 40 years.

Steve presented the ICRI chapter audience with a comprehensive history of below grade and plaza deck waterproofing systems, focusing on material technologies and real world experiences. The discussion included the woes of construction joint detailing; the correct procedures for installing waterstop; the installation and proper location of expansion joints; the proper location of floor drains; and the need for axonometric design as well as the critical installation influences that affect watertight integrity. The audience took a walk thru the changes in technology from early coal tar pitch and asphalt built up membranes to cold fluids, sheets and finally hot rubberized asphalts. The presentation concluded with an immersion experience in deep foundation lagging and sheet piling new construction challenges.

Steve's lively, humorous and comprehensive overview of all the challenges of new construction gave the ICRI chapter members a better understanding of the origin of much of the crack injection, plaza and joint re-waterproofing, and restoration business we have performed for the past twenty plus years.



Social Hour in FULL Swing



Steve Gordon



Dinner's Served



Marty Fischer serving up some Tall Tales!

Marty Fischer



Cindy Nunn



Rick Edelson and Dave Rodler



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Wrap-Up

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Tom Ouska and Steve Gordon



Steve Gordon



Pat O'Malley



Tom Ouska and Chris Carlson



Tom Ouska

INDUSTRY OUTREACH Garrett County Habitat for Humanity

On Wednesday, July 25th, members of the ICRI BW Chapter travelled to Oakland, MD to begin their volunteer work for the Industry Outreach Program. This was the fourth year a team of ICRI volunteers from the Baltimore Washington Chapter had volunteered their time to assist at the Garrett County Habitat for Humanity

The ICRI BW Chapter volunteers began work at the Garrett County Habitat for Humanity worksite on Thursday, July 26th with work completed on Friday, July 27th. Despite heavy rains that delayed the ICRI crew on Thursday morning, and intermittent showers on Friday, the crew was able to complete their assigned task. This year the ICRI members installed the roof trusses, additional supports, framing, and the roof sheathing on a home. Frank Ferry, site supervisor for the Habitat community, was impressed by the ICRI crew and pleased that the work was completed in spite of the conditions. Frank stated that it was important that this work was completed as scheduled as he is not always blessed with volunteers that can successfully perform this type of work.

Habitat for Humanity is a nonprofit, Christian ministry that seeks to eliminate poverty and homelessness. Habitat for Humanity operates entirely on donations. This is accomplished through the efforts of volunteers working alongside of the prospective Habitat homeowners to build the Habitat homes. In addition to volunteer labor, donations of money and materials are also accepted to help build

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ICRI Chapter Volunteers

Habitat

the Habitat homes.

continued from page 7 Steve Royer, an ICRI volunteer for all four years, pointed out that he was pleasantly surprised at the amount of work that has been completed on this site over the past four years. On average, two to three homes are completed each year.

After a grueling day of hanging trusses on Thursday, the members travelled to the Honi Honi to enjoy some refreshments and mingle with the locals.

This project is a very worthy cause and successful effort by the group of ICRI volunteers that participated. It provided our ICRI members with an opportunity to give back to our communities by helping those that are less fortunate. The Industry Outreach Committee of the ICRI BW Chapter is extremely thankful to all of the volunteers that have donated their time, their skills and their donations to the Garrett County Habitat for Humanity organization.

Great job!



Surveying the site prior to beginning work.



Starting to hang the trusses.



More truss work.



Finishing the trusses.



Inspecting the trusses



Ready for the interior work.





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SAFETY

continued from page 1

PPE – Personal Protective Equipment.

Examples include: Hard hats, work boots, safety glasses, face shields, gloves, reflective vests, Earplugs, Personal Fall Protection, Flame Resistant Clothing, Respirators, Tyvek suits, etc.)

Public safety/General Liability – your responsibility to non-employees (visitors or other third parties) to maintain a safe and secure worksite.

Often, when working with the various parties involved in a project, I find a common misconception – that the contractor is the only one responsible for safety on the jobsite. This could not be further from the truth. Here are some simple, but important, steps to take to have an active role in assuring the safest possible job.

Owners –

- Express your commitment to safety by requiring your Engineer/Architect to only allow contractors with a satisfactory safety history to bid or work on your facility. For example, you may want to consider limiting your contractors to only those who have an EMF at or below 1.07.
- If you plan on walking a job site, observe and follow the safety rules for that site. For example, wear the appropriate PPE. Doing so will serve two functions: 1) keep you safe and 2) set the expectations that appropriate PPE is a must for everybody – workers and visitors alike. I am always amused when I see a group of men on a job site and some have hardhats, safety glasses, and work boots on and the others do not. Makes me wonder – do the guys without protective equipment think they are invincible – that they have an invisible force-field around them, or maybe they think falling debris is smart enough to avoid them? Keep in mind, if you're the guy signing the checks, other people around you might be reluctant to correct you, so all the more reason to proactively follow the safety guidelines expected of your workers.

Consider this real life example. In Maryland, an owner was killed in a fall while touring the premises with the contractor because a wooden plank was not secured. Humble yourself and ask the site supervisor, "Do I need any special safety equipment or training before I enter the job site?"

Engineers/Architects-

- When selecting a contractor, as a part of the bid process, make sure you have them include an Employee Health and Safety Acknowledgement Form. Ask that the contractor provide their company's EMR/EMF (Experience Modification Ratio/Factor) for the past three years and a list going back three years of any OSHA Citations and the outcome of the violations.
- Request a copy of the contractor's EH&S Manual. If the company doesn't have one, you may want to consider that a red flag and choose not to do business with them.
- Incorporate a discussion regarding safety in your progress meetings. Some engineers encourage their contractors to self-police by requiring routine safety inspections on their projects.
- Whenever onsite, obey all safety requirements. For example, wear the appropriate Personal Protective Equipment. Your buy-in to the



THE BUILDING OWNER



Safety

continued from page 11

safety program shows unity and builds a stronger working relationship with the crewmembers.

Similar to the example covered under the owner section, Hopping on scaffold or throwing on a body harness requires proper training. Safety training often revolves around anticipation, recognition, evaluation, and control of hazards. If you do not know what to expect or to look for or how to deal with a hazard or an emergency situation you may succumb to an injury that could have been avoided.



Contractors/Sub-Contractors-

- Have a written Safety Program that includes disciplinary action for violations of the company safety policy.
- Only allow properly trained employees to perform operations.
- Conduct routine safety inspections.
- Always have a Competent Person as defined by OSHA on site during operations.
- Know your EMF and work with your insurance company to maintain or improve your rating.

The EMF/EMR affects your bottom line when it comes to staying competitive on the cost to provide services, pricing future projects and your ability to even be invited to bid certain work.

Sub-contractors should also be aware that when they are working for a General Contractor on a Job site they are not automatically released from their responsibilities regarding safety. You may still receive an OSHA Citation for being the contractor exposing employees to a hazard even if you are not the contractor that has control over the hazard. Consider this scenario: An open elevator shaft on a new construction site. The General Contractor puts up a removable guardrail at the entrance to an elevator shaft to protect employees from the fall hazard.

A - You, the sub-contractor, come to work one day and the Guardrail is missing. You notice the hazard but don't report it because you figure the General Contractor will fix it. **WRONG** - you will receive an OSHA citation. You are the contractor exposed to the hazard. You did nothing to identify or take prompt corrective action.

B - The same scenario but you did report the hazard to the General Contractor. They acknowledge the hazard and agree they will send somebody to fix it. You continue to work in that area even though the hazard has not been fixed yet. **WRONG** - You may still receive an OSHA Citation. You identified the hazard but still exposed your employees to a recognized hazard. The same scenario but in this case you report the hazard to the General Contractor. They acknowledge the hazard and agree they will send someone to fix the problem. You inform them you must hold up operations in that area until the hazard has been abated. The General Contractor tells you to get back to work or you are off the job. You tell the General Contractor that is fine as long as you put it in writing. You speak with your employees and instruct them to put up some caution tape and stay at least 15 feet away from the opening at all times until the guardrail is re-installed. You document this meeting as a safety meeting. **CORRECT** - You may not be given an OSHA citation. You identified the hazard and reported it.



You refused to expose your employees to the hazard. You were instructed by the GC to break protocol. You took corrective action by having a (Documented) safety meeting with your employees to review the hazard and how to work safely around the hazard until it is abated. The General Contractor neglected to follow proper protocol. You may not have a friend at the GC anymore but you will not be on the line for their mistake.

When all interested parties know their duties and share in the responsibility of maintaining a safe worksite, chances are the project will be safely completed on time and within budget.

LEGAL COLUMN

MARYLAND STATE LEGISLATURE AMENDS THE WORKPLACE FRAUD ACT OF 2009

By Jennifer Mahar, Esq.

Maryland's Workplace Fraud Act of 2009, which took effect on October 1, 2009, implemented new standards for employers in the construction and landscaping industries for classifying employees as independent contractors and imposed fines on employers who misclassified employees. The thrust of the act was to crack down on construction and landscaping contractors who improperly classify employees as independent contractors to avoid payroll taxes and payments to state unemployment and worker's compensation insurance funds. The act created a statutory presumption that workers in the construction and landscaping industries are employees.

On July 1, 2012, important amendments to the Workplace Fraud Act of 2009 went into effect. These amendments create an exception to the statutory presumption of an employer/employee relationship. The presumption will not apply to an employer contracting with a business entity if the employer can produce for inspection the following documents:

1. A written contract signed by the employer and the business entity which (a) describes the nature of the work to be performed by the business entity; (b) describes the payments to be made to the business entity for the work performed; and (c) contains an acknowledgement by the business entity of the business entity's obligations to (i) withhold, report and remit payroll taxes on behalf of all employees working for the business entity, (ii) pay unemployment insurance taxes for all employees working for the business entity, and (iii) maintain workers' compensation insurance.
2. An affidavit signed by the business entity indicating that the business entity is an independent contractor who is available to work for other businesses.
3. A current certificate of good standing for the business entity, issued by the Maryland State Department of Assessments and Taxation.
4. Proof that the business entity holds all occupational licenses required by state and local authorities for the work performed.
5. Proof that the employer provided to each individual classified as independent contractor or exempt person a written notice under § 3-914 of the Act.

In light of these amendment to Maryland's Workplace Fraud Act now is a good time to revisit the independent contractor agreements that you may have in place to determine whether they meet the requirements for this new exception. If your independent contractor agreements do not you may want to consider revising them.

Do you have a legal issue you would like addressed in a future newsletter? Send me an email with your question to jmahar@smithpachter.com or contact me at 703-847-630. Jennifer, a member of Smith Pachter McWhorter, PLC, focuses her law practice on advising construction industry clients in all phases of project development and construction including contract formation, project management and dispute resolution.



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