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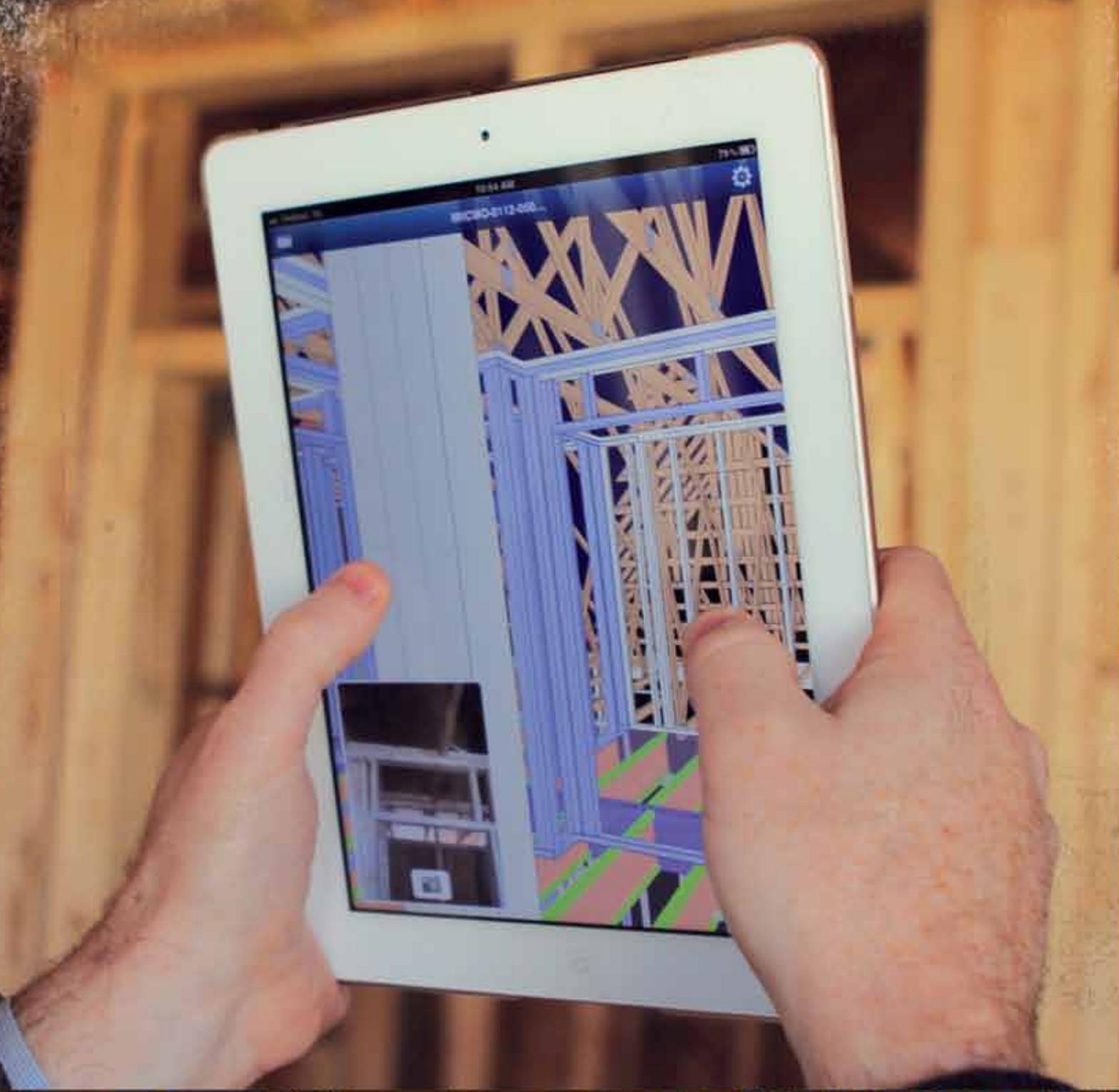
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editor's message

by Steve Stroder

The Sun Is Shining Again

Congratulations on making it through the last 6 years. Now let's get to work and have some fun!

One Saturday afternoon, I was sitting around trying to think of an inspiring topic for this issue's **Editor's Message**. I thought about focusing on a program like ORisk, Operation Safety or In-Plant Basic Training and how these tools can help make component manufacturers (CMs) more successful, but nothing really sounded right to me, for some reason. I had a bit of writer's block, I guess. Then I thought about the upcoming work week and how busy things are getting at the plant. Over the past few months, the pipeline of work seems to be mounting. Then it struck me like a bolt of lightning—what we all need more than anything is some good news. The fact that business seems to be getting considerably better every day is something we should all be discussing as much as possible.

For the last six years or so, we have heard nothing but bad news. The building industry has followed the downward trend in the economy for longer than I care to remember. At times, I'm sure we all wondered when or if the market was ever going to hit bottom and begin to recover. Well, I believe we are beginning to see that recovery and I don't see it stopping. Don't get me wrong; things aren't rocketing back, and I don't see 2 million housing starts on the horizon anytime soon. However, I do see some very good signs that the housing market is on the upswing, with our plants and members throughout the country reporting strong sales for the last five months, a sign of things getting better on a wide scale. I think it is important for us to look at where we have been, consider what we have come through, and begin to think about where we are going to take this industry going forward.

First, I want to point out that, if you are a component manufacturer still in operation today, you are clearly one of the best. You don't make it through something like what we have been through without being very good at what you do. I don't think we are completely out of the woods yet, as I expect the mild winter has played some part in the increase we have seen, but I believe we are improving slowly and on the way out of this downturn.

I encourage all owners and managers to do something I did with my employees just a few weeks ago. I got everyone together to thank them for their hard work and perseverance over the last few years. We have survived the worst economic downturn in over 80 years. You may want to recall (as I did) some of the trials and tribulations of the last few years. Tell everyone to look around the room and remind them that this team carried us through those challenging times. They should all be very proud of what they have done together, and—if only for a few minutes—we should all celebrate that accomplishment.

The CM herd has certainly thinned over the last few years, and we all need to realize that the strong have survived. The companies and employees left standing should be proud of the fact that they were able to adjust, adapt and overcome the obstacles in their path. We're turning a corner and clearly headed toward the light of prosperous times again.

As I reflect on all of this, I find myself asking:

- What can these strong companies left standing do to make themselves and this industry better?

at a glance

- After years of bad news, the survivors in our industry should be proud of their hard work and accomplishments.
- SBCA members throughout the country are reporting stronger sales and backlogs.
- Now is the time for CMs to determine how to elevate their individual companies and the industry, create more market share for components, and handle increased volume.

Continued on page 8

Editor's Message

Continued from page 7

- How can we create more market share for components?
- How can we prepare ourselves to handle the increased volume we are starting to enjoy?

I believe the answers to these questions are right at our fingertips. We have outstanding tools developed by our members and SBCA staff that we should take a hard look at. These resources can streamline your operation and give your employees the training and metrics necessary to make your operations truly world-class. The SCORE program and all of its subprograms will help us elevate our game as individual companies, while collectively raising the bar for our industry as a whole. It is time for us all to "make hay"—THE SUN IS SHINING AGAIN! If we commit to implementing the tools designed to make us all better, we will position our industry for exceptional growth over the next several years. Gosh, I guess I did want to talk about programs like ORisk, Operation Safety or In-Plant Basic Training, after all.

Our economy is on the road to recovery with significantly fewer CMs in operation. We will all become very busy soon. Let's not miss out on the opportunity to boost our operations with industry best practices as we ramp up our manufacturing capacity to cover the ever-growing needs of our builders. The SCORE program will pay great dividends for your company as well as our entire industry.

Congratulations on making it through the last six years. Now let's get to work and have some fun! **SBC**

SBC Magazine encourages the participation of its readers in developing content for future issues. Do you have an article idea for a future issue or a topic that you would like to see covered? Email your thoughts and ideas to editor@sbcmag.info.



BCMC Build 2012: Help Reach Out to New Orleans

The BCMC Build 2012 project in New Orleans, LA is beginning to take shape! But we need YOU, and several other volunteers from the structural building components industry, as we make plans to fully frame a Habitat for Humanity home in a single day for one deserving family. BCMC Build gives our industry an opportunity to reach out to the host community and remind everyone that components are the backbone of our nation's homes.

"This is a very worthwhile event, one I am proud to participate in," said Scott Ward, Chairman of the BCMC Build Committee. "It gives us a chance to come together as an industry and accomplish something bigger than ourselves."

Cash and in-kind material donations are also being accepted for this year's build. Visit bcmcbuild.com/donate.php or contact Melanie Birkeland (608-310-6736 or mbirkeland@qaltim.com) if you have questions, or would like to discuss a donation. **SBC**



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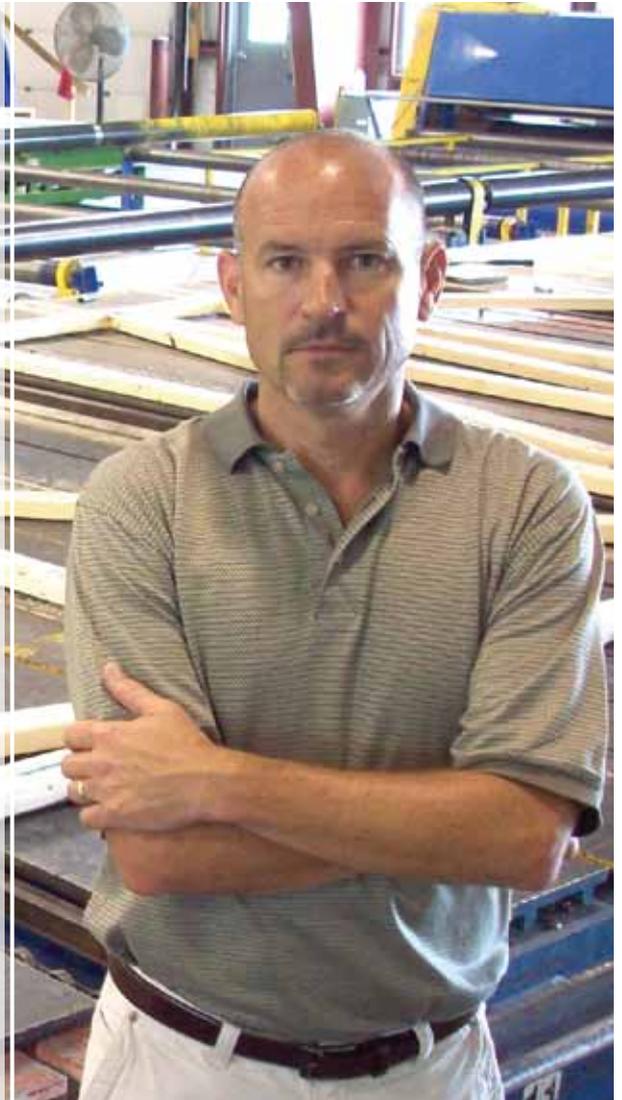
Because of the attention to detail by the Wizard Team prior to installation, the retrofit went in exceptionally well. And using the drop-in channel meant we could save money by using existing tables in lieu of purchasing an entirely new table layout.

The Wizard systems have lived up to their billing when it comes to reliability and accuracy. Ask our maintenance team and they’ll tell you they aren’t bothered with routine maintenance or calibration. An occasional lubrication and walk by sighting on chord planes tells them all they need to know; spot on pin placement every time.

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*Rich Pearce
Plant Manager
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Pick-Points for Hoisting Trusses

Follow these guidelines to avoid adding undue stress when hoisting trusses.

Hoisting trusses with a crane is a common practice on jobsites, but it's also a likely time when trusses can be damaged. This is due to improper techniques that can overstress the truss and its connections. The following question from a truss designer deals with best practices for hoisting individual trusses and truss bundles.

Question

Building Component Safety Information: Guide to Good Practice for Handling, Installing, Restraining & Bracing of Metal Plate Connected Wood Trusses (BCSI) states that trusses should never be lifted from the peak. I've seen documents from other companies that say no truss over 20' can be lifted at the peak. I know this will add lots of stress to that joint on larger trusses. What are your thoughts on this? Should this be handled any differently when hoisting bundles of trusses?

Answer

As you noted, lifting trusses from a single pick up point at the peak can add a great deal of stress to the peak joint. This applies to all trusses, regardless of size, but this stress and any resulting bending or damage can be especially pronounced in longer span trusses. Both the wood and cold-formed steel versions of Chapter B1 of BCSI and the B1 Summary Sheet discuss handling and hoisting of trusses. The following is based on the industry best practices in BCSI and CFSBCSI.

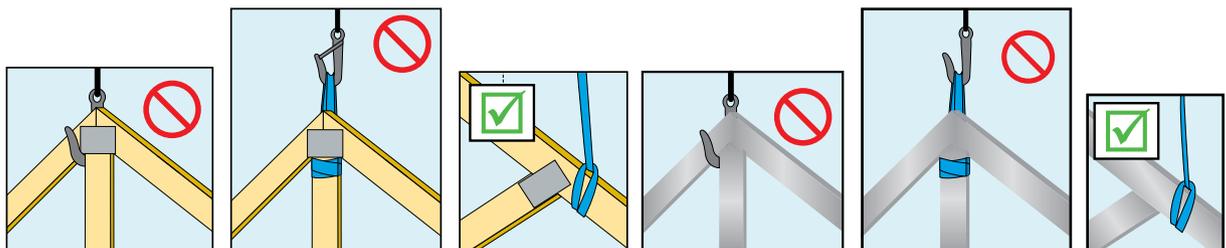


Figure 1. Examples of correct and incorrect attachments to metal plate connected wood and cold-formed steel trusses.

Hoisting Individual Trusses

Installers should not lift single trusses by the peak. Likewise, single trusses should not be lifted by the webs, which can cause lateral bending of the truss and damage to the truss plates and web member. Lifting devices should be attached to the truss top chord using only closed-loop attachments (see Figure 1).

Individual trusses up to 30' in length should have two pick-points near top chord joints spaced up to half the truss length apart. The line angle should be 60° or less. Spreader bars can help add rigidity to a truss while it's being hoisted, lessening the likelihood of lateral bending. For trusses between 30' and 60', attach the truss to a spreader bar with lines that slope inward or "toe-in." For trusses over 60', use a spreader bar two-thirds to three-quarters of the truss length positioned at or above mid-height of the truss. Attach the spreader bar to the top chords and webs at 10' intervals (see Figure 2 and Photo 1).

Hoisting Truss Bundles

The recommended industry best practices for hoisting truss bundles are a bit differ-

at a glance

- Hoisting trusses is a more dangerous practice than most people think; both individual trusses and bundles of trusses should not be lifted at the peak.
- The recommended industry best practices for hoisting truss bundles are a bit different than those for single trusses, but the same basic concepts apply.
- BCSI and CFSBCSI outline industry best practices for hoisting trusses.

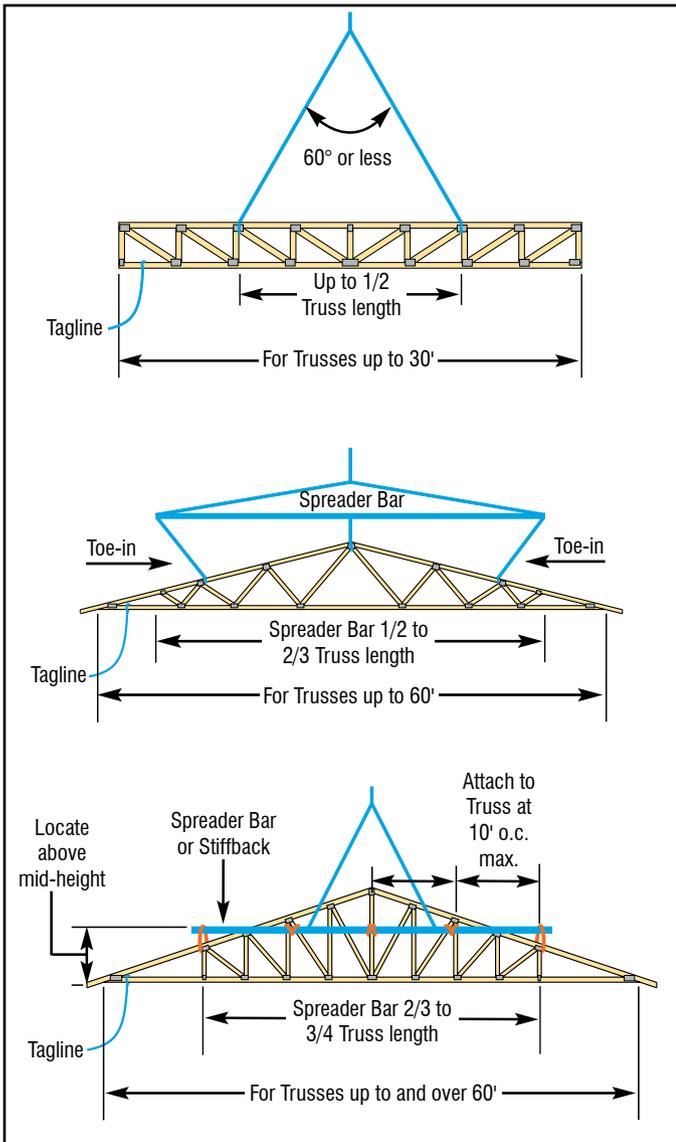


Figure 2. Examples showing locations of pick-points for trusses up to 30', up to 60' and over 60'. The same concepts apply for parallel chord trusses and cold-formed steel trusses.



Photo 1. Example using a spreader bar to lift cold-formed steel trusses greater than 30' in length.



Photos 2 & 3. Bundles of metal plate connected wood and cold-formed steel trusses being hoisted onto a structure.

ent than those for single trusses, but the same basic concepts apply (see Photos 2 & 3). When lifting truss bundles, lift points are permitted anywhere along the chords. "Anywhere" means anywhere other than the peak. Trusses that are banded together into a bundle are stiffer in comparison to a single truss, but lifting a bundle of trusses by the peak can still cause undue stress and damage.

For bundles of trusses greater than 45' and up to 60' in length, at least two lift points are required. For bundles of trusses greater than 60' in length, at least three lift points are required. Only one bundle should be lifted at a time. If a large bundle is comprised of smaller bundles, the large bundle should be taken apart and each bundle lifted individually.

For more information on the BCSI book and B1 Summary Sheet, visit sbcindustry.com/bcsi.php. Information on the cold-formed steel version of BCSI is available at cfsbcindustry.com/cfsbcsci.php. **SBC**

To pose a question for this column, call the SBCA technical department at 608-274-4849 or email technicalqa@sbcmag.info.

Be a **GOOD** Neighbor

Harnessing the Power of a Plant Tour

by Sean D. Shields

What do you talk about when you have an hour and half alone with your Congressman? It turns out: anything.



Do you know how a crayon is made? How about a Hostess Twinkie? If you or your kids have ever watched *Mr. Rogers*, chances are you probably do.

Mr. Rogers has a great approach. “Will you be my neighbor?” is a simple question. Kids around the world (possibly including you) accepted his invitation and learned a great deal about life through his half-hour shows. One of the most intriguing and memorable parts of his show are the brief glimpses he gives us of the various facilities, laboratories and studios where things are made.

The great thing is that child-like wonder at how things come to be never really goes away. One of the biggest assets this industry has is the fact that each component manufacturer and supplier to the industry has a manufacturing facility where products are produced. There are many individuals outside of the industry who have no idea what a metal connector plate really is; why a truss takes on the particular shape it does; or how a house can be built so efficiently using components.

That is why hosting a plant tour is such a powerful tool. As one example, there are 535 members of the United States Congress and 7,382 state legislators, and it’s probably safe to say that all of them know about and appreciate the importance of a house. What many of them don’t appear to know is how, in reality, they are built, and the extent to which each supplier to the residential construction industry plays a vital role.

With that in mind, let’s take a look at a recent plant tour a component manufacturer in Louisiana gave to his U.S. Representative, and explore the ways in which this powerful tool can be used to benefit your company and the entire structural components industry.

Tours Are Uncomplicated

Scott Ward (Southern Components) first met Representative John Flemming (R-LA) at his office in Washington, DC, during the 2008 SBC Legislative Conference. “He was newly elected, but you could tell he was a really sharp guy,” remembered Ward. “He’s a local business owner and it was immediately apparent he understood where I was coming from.” That first meeting was brief, little more than a handshake and the exchange of a few ideas.

In 2010, Ward met with Rep. Flemming in DC again. This time the meeting lasted a little longer, and Ward was even invited to accompany his Congressman to the U.S. House Chamber as they prepared to vote on a piece of legislation. “The meeting wasn’t much longer than the first, but it was a little bit more friendly, and slightly less formal,” said Ward.

In 2012, when Ward found out there wouldn’t be a legislative conference in DC, he turned the tables and invited Rep. Flemming to visit him instead at his manufacturing plant in Shreveport, LA. “When he showed up he said he remembered me, and how I had walked with him as he went to vote,” said Ward. “Then he spent the next two hours walking around my plant and talking about the issues we’re struggling with as we do business.”

"It was really casual," said Ward. "The tour of the plant took a little over half an hour as we showed him our design department and production lines. Then we spent the next hour and half just sitting in my office talking."

"He asked me what were the major things affecting our business," said Ward. "So we talked about our customers who wanted to start development projects but couldn't find a lender to provide the funding. We also talked about the rising cost of health care and how recent reforms are negatively impacting the insurance industry. We talked about a local air force base and how so many subcontracting jobs were going to out-of-state companies." They even talked about immigration and related concerns over finding enough good employees to fill the jobs that will become more readily available as the housing market continues to improve.

"He was really positive and asked a lot of questions," added Ward. "It wasn't difficult to know what to talk about. It was a great experience."

Tours Are Sought After

Time and time again, both state and federal lawmakers told component manufacturers who have met with them, "invite me to your plant." U.S. Representative Donald Manzullo (R-IL) said it best in an article he wrote for **SBC** in November 2006:

On Capitol Hill, education is one of the biggest challenges I see. There are so many things going on that it can be difficult for lawmakers to stay informed on every issue and perspective. I can also attest that you meet many new people every day, and keeping names, faces and their issues straight takes a lot of work.

You as a manufacturer have one huge way to differentiate yourself from the masses. You have a production facility, where people and complex machines interact to build unique products. Invite your Member of Congress to tour your facility. At your company, you are not limited to sharing your concerns with your lawmakers sitting behind a desk. You can instead walk around your plant and point out aspects of your operations that may be affected by laws they pass.

Ultimately, you can show them the process of turning raw materials into finished goods. As a lawmaker who has toured numerous plants across the country and around the world, that is the magic that sticks in my mind. To this day, I can vividly remember the plant tours I have taken, and how I marveled at the ingenuity behind how things are made. I remember too, the company owners who took me on each tour of their facility and the concerns they had.

I encourage you to take a proactive step and invite your lawmaker to take a tour of your facility. It will give you an opportunity to build an important connection and relationship, as well as a chance to share your concerns in a unique environment that will stick in the lawmaker's mind. Impart on them the important role you play in the local economy, not only as an employer, but as a manufacturer that helps build the community with its hands.

Shortly after writing this, Rep. Manzullo took his advice and accepted an invitation from Mike Karceski to take a tour of Atlas Components, a component manufacturing facility in his Congressional District (see December 2006 article).

Lawmakers aren't the only ones actively seeking plant tours; fire service officials are also interested in learning more about light-weight construction and structural component applications. For example, the U.S. Fire Administration's National Fire Academy is located in Emmitsburg, MD, and it holds an annual Fire and Emergency Services Higher Education (FESHE) conference. Although SBCA's Capital Area Chapter has been hosting a booth at the FESHE conference for the last few years, FESHE's organizers were looking for an opportunity to focus on light-frame construction in more depth. As a consequence, Shelter Systems Limited in Westminster, MD, agreed to host a plant tour and wood truss workshop for the FESHE conference, and in June, over 150 fire service officials will visit Shelter Systems Limited to learn more about structural components and their performance under fire conditions.

Tours Are Effective

Several other lawmakers have taken tours of component manufacturing facilities across the country. Continued on page 14



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Be a Good Neighbor

Continued from page 13

From Las Vegas, NV, to Ocelo, IA, to Tampa, FL, and many places in between, the plant tour has been used as an effective tool. In the case of lawmakers, plant tours give component manufacturers the opportunity to bring these individuals out from behind their desks and into a dynamic learning environment. You probably haven't thought of your production facility in those terms, but that is exactly what it is.

Keep in mind, there are several key groups of individuals who would benefit greatly from visiting a component facility besides lawmakers and fire fighters: building inspectors, contractors, homebuilders, the list is practically endless. As another example, Lloyd Truss Systems invited local contractors and building officials into its plant and hosted a truss design and installation clinic.

"We invited them in for breakfast and then went through the truss design process," said David Raasch, Lloyd Truss System's General Manager. "We went over the do's and don'ts of truss installation and alignment." Then staff walked them through the plant, showing them the various steps in the production process and showcasing the company's quality control.

"We received a lot of positive feedback from those who attended," said Raasch. "Having the building officials there not

only allowed us to answer their questions, but allowed them to directly answer the contractor's installation questions, killing two birds with one stone." It also provided additional benefits to the company. "Our claim to fame is not that we are the biggest, just that we are the best. Plant tours provide an educational customer service element they don't get elsewhere," said Raasch.

Tours Are Your Way to Be a Good Neighbor

Now that you're convinced plant tours are an easy and effective tool at your disposal, you're probably wondering how to go about hosting one. It's even easier than you think; check out the sidebar for a quick checklist for lawmaker tours (which is similar to the templates we have for different groups), and then contact SBCA for more help. We'll be happy to walk through it with you and answer any questions you might have. We'll even help you start the ball rolling with an invitation to your lawmaker. SBCA has also created an online plant tour guide at sbcindustry.com/planttour.

This summer, every member of the U.S. House of Representatives, one third of the U.S. Senators, and a majority of state lawmakers (e.g., Governors and state Representatives and Senators) are bringing their election campaigns into full gear. They are all looking for opportunities to meet constituents, make a good impression and build relationships with people like you. Seize this opportunity to be a good neighbor, and invite them in to see how something cool is made. **SBC**

Planning a Plant Tour

sbcindustry.com/planttour

Choose a Date

Review your calendar and choose a range of dates when you could best host a plant tour. Keep in mind that members of Congress are very busy, and spend over half the year working in Washington, DC. However, many of them attempt to come home for extended weekends, or will be traveling back home quite a bit over the summer. The key here is to be as flexible as possible.

Invite your Lawmaker

Contact your lawmaker's office, first through their local district office, and then through their DC office, if the local office encourages you to do so. Make the initial request over the phone, but know that many offices may request a follow-up email or more formal request letter. All lawmakers have a "scheduler" who is responsible for filling their boss' day with meetings and events. When making your request, you will need to provide them with your range of possible dates. Again, please try to remain flexible to their schedules as much as possible.

Prepare

Once you have secured a date, begin preparations. Review your jobs leading up to the plant tour and choose a couple that could be used to showcase the capabilities of your design department. Similarly, as best as possible, arrange to run jobs through your production facility that use all of your equipment and/or production employees. In addition, choose who you want available during the tour to answer the lawmaker's questions and whether you want to allow time for the lawmaker to interact with your employees after the tour is over.

Ask For Help

SBCA has put together a wealth of materials you can use to enhance your plant tour, including production station signs, brochures and additional informational handouts and policy issue talking points. You can check it out online at sbcindustry.com/planttour.

Give the Tour

Consider having tour stops at any and/or all of the following aspects of your company:

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3. Incoming Raw Material
4. Sawing
5. Transport from Saws to Tables
6. Truss Plate Handling
7. Truss Manufacturing Process
8. Finished Goods Handling
9. Finished Goods Storage
10. Shipping



Follow Up

Always send a thank you letter or card to the lawmaker and anyone else in their office who helped make the tour happen. This is also a good opportunity to reiterate any important policy concerns you discussed during the tour. SBCA can help you draft a letter and is creating various template letters you can use as a foundation.

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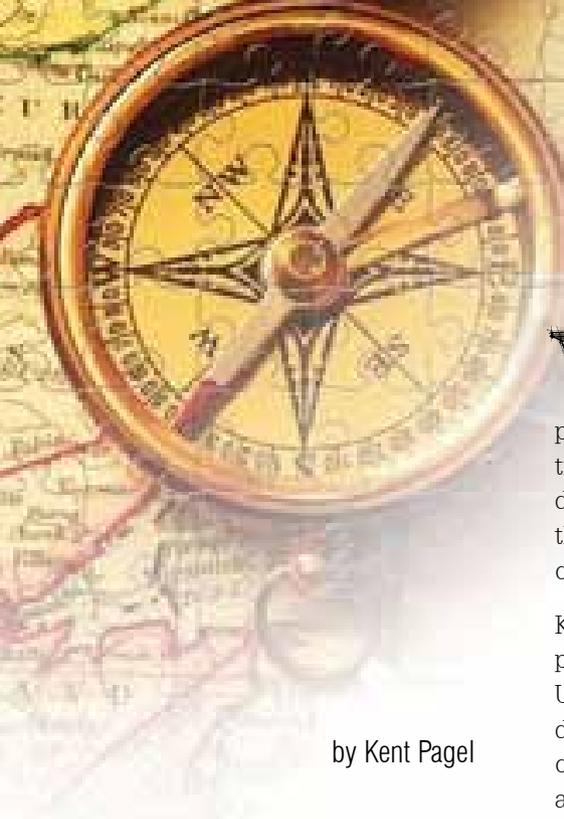
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Construction Defect Lawsuits

With many property owners still owing more than their properties are worth, combined with the run-up in construction in the mid-2000s and resulting poor quality in many instances, I am led to conclude that thousands of construction defect suits will likely be filed in the next two or three years. Anti-construction defect litigation statutes adopted in many states will have little effect in stemming the tide. Component manufacturers will be among the many in the construction chain having to figure out how to defend and extricate themselves from such suits.

Knowing what your Commercial General Liability (CGL) insurance policy can provide in terms of a construction defect lawsuit defense and payment is crucial. Understanding the degree to which many insurance companies will go to neither defend nor pay on construction defect claims is even more important. Far too many construction subcontractors and suppliers, including component manufacturers, are, in my opinion, naive when it comes to knowing what to expect from, and how to effectively manage, their insurance companies over a construction defect lawsuit.

by Kent Pagel

A Roadmap to Successful Resolution through Insurance

What is a construction defect lawsuit?

The short answer is a lawsuit filed by a home or project owner complaining of defects in design and/or construction. Construction defect cases can be filed over a single-family home (or multiple homes, a subdivision, or multiple subdivisions), a commercial building, an apartment building(s) or a condominium project. Cases filed over condominiums (or townhouses, wherever there is a common ownership of the property by a homeowners association), are particularly problematic. The damages sought in these types of cases are generally an over-estimated amount to repair the alleged defects and possibly a claim for diminished value after the repairs are undertaken. Damages can easily reach mid-seven to low-eight figures for a condominium project, for example. For component manufacturers, the types of “alleged” defects that are typical include one, or several of the following: inadequate truss design, the failure to utilize correct design loads, making unapproved changes to the construction design documents, or failing to instruct and warn about construction overloading. With regard to bracing allegations can include: not following all the project specifications and plan notes, inadequate disclosure of the manufacturer’s scope of work, not obtaining truss shop drawing approval, inadequacies with respect to the truss placement plan, and defective manufacturing.

What type of construction defect insurance coverage is available and can be expected by the component manufacturer under its CGL policy?

What follows is a longer answer with respect to the challenges and costs that are present in defending a construction defect lawsuit. The cost to defend and the potential liability to third parties for property damage caused by an occurrence arising out of the products sold by a component manufacturer can be enormous in a construction defect case. This seems straightforward, but it’s not. A CGL policy is replete with definitions such as property damage and occurrence, contains hard to understand provisions, as well as numerous exclusions, conditions and endorsements. In fact, there is so much uncertainty and ongoing change in terms of how courts interpret CGL policies, you should assume that significant insurance coverage questions **will arise in virtually every construction defect suit**, and the insurance company’s natural tendency will be to try very hard not to pay.

The following insurance questions for a component manufacturer are likely in most construction defect cases, adding further to the confusion:

- What is the date of the occurrence, which implicates the relevant insurance policy period, and in some instances, which of your CGL carriers will have an obligation to participate?
 - For example, in some states a construction defect occurrence is deemed to have occurred when damage was actually sustained by the owner.
 - Other states may hold an occurrence exists when property damage first manifested itself (whether known or unknown to the owner).
 - Some states even allow for an occurrence to fall within one or more insurance policy periods, meaning the component manufacturer may need to involve several of its CGL carriers with regard to one construction defect suit.
- Has property damage actually occurred? From the insurance company's perspective, this means physical injury caused by the defect, but not the defect itself.
- Is repair of the defect covered?
- Do any one of the many policy exclusions, endorsements or conditions excuse the carrier from either a duty to defend the suit or to pay for damages?
- Does a professional services exclusion exist in the policy that may eliminate any duty on the part of the carrier to cover design criticisms on the part of the manufacturer?
- If the insurance carrier hires counsel and experts to defend the manufacturer, is that carrier obligated to settle or pay the damages from an adverse outcome?

Generally, I find component manufacturers love the free defense in a construction defect lawsuit when offered by their insurance companies, but they are clueless beyond that fact (tough, but true, unfortunately). They assume that if the insurance company agrees to defend, it of course will pay what is needed to settle or pay all the damages if the case goes to trial and the

manufacturer loses. They ignore that many insurance companies are in the business to collect premiums and not pay claims (harsh, but oftentimes true). I can promise you that your insurance company will spend a great deal of time, and even money, to evaluate whether a particular exclusion or endorsement can be asserted to disclaim coverage, either at the time case settlement is explored or after the case is lost.

I find it the exception where things go 100 percent right for the component manufacturer, where: (1) notice is acknowledged promptly by the insurance company; (2) competent and experienced defense counsel and experts are immediately retained; (3) a thorough investigation is undertaken; (4) the carrier engages in nothing but positive contact with the policyholder; and (5) the suit is successfully resolved, all at the expense of the carrier.

Instead, I find that one or more of the following things go wrong for the component manufacturer: (1) the insurance company is slow to acknowledge notice; (2) counsel and experts regularly used by the insurance company are hired (with fierce loyalty to the carrier); (3) the carrier issues a Reservation of Rights letter (which I discuss below in more detail); (4) the company investigates and handles the defense with an eye more toward the degree to which they are responsible for coverage rather than mitigating, on behalf of the CM, the liability or damages in the case; and (5) resolution becomes quite difficult without the insured (CM) offering to put up some or all of its own money.

The CGL Policy's Duty to Pay & Duty to Defend.

A CGL policy contains two very important promises on the part of the insurance company. The first promise is the Duty to Pay claims (up to the stated limits of the policy), which are otherwise covered by the policy. Because of the confusing definitions that exist in the policy for terms such as property damage and occurrence and the various exclusions and endorsements

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that are present, trying to understand exactly what construction defect claims are covered by a manufacturer's CGL policy is a daunting task.

The second primary promise that exists in the CGL policy is the Duty to Defend on the part of the insurance company, even if the insured is ultimately found to have no legal obligation to pay damages. This Duty to Defend is triggered much easier than the Duty to Pay. Your insurance company will have a duty to hire counsel on your behalf simply if the suit alleges claims that, if true, are covered under the policy.

With most construction defect lawsuits filed against a component manufacturer, the insurance carrier will likely be slow to investigate and assign defense counsel. The carrier will usually send a letter advising acknowledgement of the claim and that an investigation is being undertaken. The carrier will further advise that the manufacturer should take whatever steps are necessary to

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Construction Defect Lawsuits

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protect itself, which may mean hiring counsel to answer and respond to the suit filed in a timely manner. This letter will furthermore set out that the insurance company is not waiving any of its rights to either not defend or not pay the claim.

As most construction defect lawsuits will allege some wrongful act or defective product on the part of the component manufacturer (either in terms of design or manufacturing or both) and resulting damage, generally the CGL carrier can be expected to agree to at least defend the case with counsel selected by the carrier. Almost 100 percent of the time, when the carrier does agree to assign defense counsel, they will issue what is referred to as a Reservation of Rights letter (and when this does not occur, it is usually an oversight on the part of the insurance company).

A Reservation of Rights letter (also termed an ROR letter) is a communication from the insurance company to its insured that states essentially that no action the insurance company takes, including its investigation, or defense or settlement, shall be construed by the policyholder as a waiver of the insurance company's right to deny coverage. These are written to avoid a waiver of policy defenses so that they can more easily deny payment on behalf of the insured at a later date.

A typical Reservation of Rights letter will contain varying

self-serving language on the part of the insurance carrier. The letter will also repeat certain allegations of the construction defect complaint, set out provisions from the actual insurance policy that may give rise to the carrier ultimately denying coverage, and retain the right on the part of the carrier to supplement the letter at a future date.

Here are the questions and concerns that every component manufacturer ought to have when receiving a Reservation of Rights letter. My recommendations are also included.

- Carefully review each Reservation of Rights letter. Have your insurance broker and hired counsel review the letter as well. Do not routinely sign the ROR letter and return it to the carrier as they will request. Promptly address any noted errors or misstatements in the letter. You will also need to provide the necessary documentation the letter will likely request, in terms of your involvement with the project. Your counsel can help you with how these letters ought to read.
- Consider a face-to-face meeting with the adjuster assigned to the case (usually with your counsel present) to understand the underlying reasons for the Reservation of Rights letter.
- Consider a face-to-face meeting with the assigned counsel as well and inquire as to his or her experience in the type of suit that has been filed and how often they work for this particular carrier (and the percentage of revenue they derive from that carrier). Confirm that assigned counsel will not take

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Construction Defect Lawsuits

Continued from page 18

any type of insurance coverage position and will keep you and your counsel fully apprised of all developments in the case and provide copies of all reports provided by counsel to the insurance company. Also, inquire as to the assigned counsel's willingness to hire an expert to defend you who is familiar with the structural building components industry.

- Be aware that as the insured you cannot settle the case and then seek reimbursement from the carrier, unless of course the carrier denies coverage and refuses to provide a defense. You also cannot prevent the insurer from settling if they choose to undertake the defense. In fact, it is quite common that the carrier will settle without even conferring with you.
- As the case progresses, the component manufacturer should continually ask itself the question, whose side is my assigned defense lawyer on—remembering that such counsel is being paid by the carrier and is likely dependent on that carrier for future case referrals.

-The manufacturer should also consider whether there are facts that will be discovered through the course of discovery with respect to the claim that can be used later to exclude coverage, and whether this creates a sufficient conflict of interest that would allow the manufacturer to request (and perhaps pressure) the insurance company to allow the manufacturer to truly hire counsel that is inde-

pendent of the insurance company and serving your best interests, while being paid by the insurance company.

- When evaluating the right to request your CGL carrier to hire independent counsel, the questions you need to ask yourself are: (1) Do I trust the assigned counsel to represent my company; (2) What would independent counsel do that the assigned counsel would not do; (3) Will independent counsel more likely undertake a case strategy designed to find insurance coverage as opposed to not finding insurance coverage; and (4) Will independent counsel more likely undertake a case strategy designed to protect your or the insurance company's best interests.
- You need to discuss this option and how to effectuate it with your counsel as the factors are: (1) whether or not an actual conflict of interest exists; (2) whether your counsel, for example, is willing to work at the rates and guidelines imposed by the carrier; or (3) whether it is worth it to your company to pay your counsel's regular rates and have them seek full reimbursement from the carrier, which is generally allowed in most states.
- In fact, carriers are sometimes so motivated to not pay a fair and market rate to independent counsel in situations of an actual conflict of interest that they may waive the Reservation of Rights letter entirely, meaning they are obligated to either settle or pay the losses if the claim goes to trial and the case is lost. An insurance company will do this just so they retain

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faces of the industry

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NAME: HB Simpson

COMPANY: Allied Systems (VA)

POSITION: Safety Coordinator

YEARS IN THE INDUSTRY: 17

- | • **How did you get into the industry?** I retired in 1994, after working over 35 years for the Bureau of Indian Affairs. However, shortly after I retired, my son-in-law's father passed away leaving him and his family to run the company. At first, they just needed help getting odds and ends done, but eventually I found myself overseeing a lot of the plant maintenance. Eventually, my role expanded to taking over managing their safety program.
- | • **What would you say is the primary focus of your job responsibilities?** I would say it's to create and maintain an environment of safety and to keep our guys healthy. It also includes doing a good job of training, both for our new employees, so they work in a safe manner and avoid hurting themselves or others, and for our veterans so they are aware of changes in rules and regulations in case they may have to alter how they do things. I have found that quality and safety go together like hand in glove, so I've also been helping the company implement SBCA's QC and Operation Safety programs. They have really helped us improve the quality of our product.
- | • **What do you mean by an 'environment of safety'?** Just that everyone is aware of the hazards that may exist in doing their job, and they are trained and focused on avoiding actions or behavior that increases their risk of getting hurt.
- | • **What is the biggest challenge you face in doing your job well?** I would say it's keeping up to date on all the federal, state and local regulations, and simultaneously keeping our training programs up to speed as they change.
- | • **Have you found a method that helps?** At least once a year we bring in someone from the state OSHA office to inspect our plant and help us identify areas for improvement. They have a different perspective sometimes, and are good at getting us to see things from an inspector's point of view. We are also focused on implementing lean manufacturing in the plant, which not only makes us more efficient, it also reduces many opportunities for injuries.

- | • **How have some recent OSHA rule changes affected what you do at your plant?** One of the most significant things has been OSHA's focus on combustible dust. We've gone ahead and installed dust collectors to gather the sawdust coming from the saws we have running inside the plant. Another big change has been the residential fall protection rules. We have framers in the field, so we had to go out to the jobsites, both single-family and multi-family, to ensure they are following OSHA's new standards. We had to buy some new lanyards and harnesses. The cost wasn't too bad, but training them to do what OSHA wanted them to do was a challenge.
- | • **What is your favorite part about working in this industry?** Keeping up with the OSHA mandates and making sure everyone is safe. It feels good to know I am helping others avoid injuries and unnecessary risks. I enjoy documenting everything we are doing, and following through on all our checklists to keep up with everything we're supposed to be doing. **SBC**

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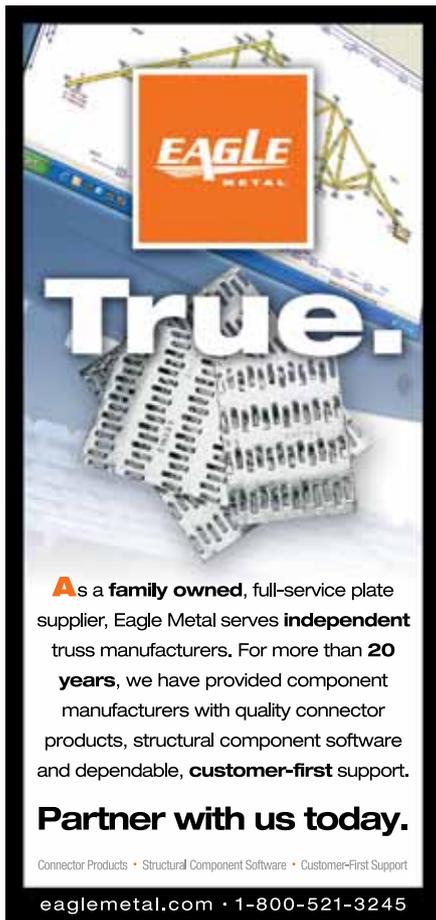
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This project first featured in **SBC** Industry News piqued many readers' interest. Now back by popular demand, this amazing 80'-wide Ponderosa Pine log truss built by Deadwood Log Homes shows that trusses come in all sizes—including enormous. So enormous, in fact, that Deadwood's owner, Rick Johnson, has applied to have the truss considered by the Guinness Book of World Records as the largest log truss in the U.S.

Built over a 10-week period by Johnson and follow employees, this truss will be the centerpiece to the entrance of a new Farmers Union Oil in Velva, ND. Weighing 8 tons, it took 145 1"-diameter 16" through bolts and two 3.5" x 0.25" steel metal gussets on each side to hold the truss together. To see view a design of the full building, see the online version of Parting Shots at sbcmag.info. **SBC**

If you know of more impressive component projects our readers would enjoy learning about, drop us a line at info@sbcmag.info.

Construction Defect Lawsuits

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control of the use of their counsel, or they may even immediately try to settle the claim to avoid any further expenditure of legal fees.

- Generally, the key is an actual conflict of interest based on the rulings within a particular state, as from the insured's perspective a conflict of interest is assumed as the policyholder wants more coverage and the insurer wants less coverage. Most insureds immediately seem to appreciate the concept that "no man can serve two masters" when it comes to evaluating the independence of assigned counsel hired directly by their insurance company.

How a component manufacturer deals with a Reservation of Rights letter, the involvement of the manufacturer in the advocacy of their best interests, and the use of personal counsel and personal expert(s) with the insurance company and at times, managing the relationship between the manufacturer and certain parties to the lawsuit, is essential to a successful resolution of a construction defect lawsuit. **SBC**

Kent Pagel is a Senior Shareholder for Pagel, Davis & Hill, a Professional Corporation. He and his firm have served as national counsel for SBCA since 1994. He can be reached via email at kpagel@pdhlaw.com.

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