

MCA News

Winter 2002

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From The President



Rebounding Economy, New Threats

By David Allen, McKinstry Co.

I bet when you read that headline you thought about terrorists. Or maybe you expected another article about layoffs, vacancy rates and consumer confidence. Although I do have quite a few opinions on those subjects and how they are impacting our industry, I want to devote this column to more specific threats to our industry. Threats we need to come together on and deal with, if we are to control our own destiny and preserve the field of mechanical construction and service.

Let's face it, some really weird stuff has happened lately. Terrorism, recession, war and other nice events have pretty much captured the attention of everyone. And though these are serious times, our industry is in solid shape as we enter what will clearly be an economic rebound in the coming months. Instead of debating when the turnaround will hit high gear, or how strong the rebound will actually be, it is time for us to take a close look at some very disturbing "threats" to our industry.

Construction Managers or "CM"
Originally created for use primarily on public mega-projects, this form of project procurement/execution has bled into smaller and, in some cases, private work. Although the use of the CM model has merit in certain arenas, it poses great problems for the subcontractor community. Because CM's are not at risk, they are basically administrators who view their jobs as managing an assemblage of subs, as opposed to managing projects. You know the drill.

Multiple Bid Packages
Though CM's are known for this process of separating bid packages inside Division 15, don't believe it isn't gaining popularity with others. For years we have fought to preserve the integrity of a complete delivery of mechanical work. And though we've allowed ourselves to accept the separation of wet and dry systems in many cases, the complete rapping of our industry is underway, as general contractors frantically seek cost cutting in lieu of providing innovation.

Clearly, a project with a plumbing contractor, piping contractor, sheet metal contractor, fire protection contractor and control contractor, each working directly for the general contractor, is not only more inefficient but in the long run more costly and risky.

The Emergence of "MEP's"
Wow, everybody's doing it! It must be good, right? Wrong. The hiring of mechanical, electrical and plumbing (MEP) managers inside general contracting firms hasn't been all that good for us. General contractors tell us MEP's help them win clients and provide valuable budget and system information early, and that is good.

However, they often solicit or require mechanicals to provide system analysis and budgets, which they then use to devise competitive rounds that drive prices down and fragment Division 15 unreasonably. When every general contractor has MEP capability, what service will they add to differentiate themselves? Scary!

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Executive Briefing

That was the year that *WAS*



By Brian D. Garvey
Executive Vice President

It's a good thing that 2001 finally ended, although its legacy continues to linger:

Last year began with riots in Pioneer Square which resulted in property damage and death. An earthquake the very next day caused hundreds of millions of dollars more damage. The high tech sector continued its swoon. We heard economists' whispers of a mild recession. Health care costs soared.

Then we experienced a dramatic drop off of the commercial new construction market. Boeing announced major job layoffs. The stock market tanked. Finally, the tragedy of September 11th and the resulting war on terrorism. All in all – not a great year.

As we start the New Year, the high tech/dot com cutbacks and effects of the national recession continue to depress the local construction industry. But all is not bad. We are very lucky to have many public works projects to provide the employment that has sustained our backlogs, and the membership appears to be optimistic about future work.

Charlotte Roussin Retires

After more than sixteen years of exemplary service to our members, Administrator Charlotte Roussin is retiring effective the end of January. Charlotte's cheerful disposition, lengthy experience and professional manner will be sorely missed. Quite frankly, she's been trying to escape for the past two years so she can spend more time with her family, but I just wouldn't let her go until she found a suitable replacement.

Charlotte has spent the last two months training Teri Verdé, who came on board November 1 and is doing a great job. It's

typical of Charlotte's dedication to MCAWW to not leave us without finding the right person to follow in her footsteps. We all wish her the best of luck in her well-deserved retirement.

Building Strong Leadership

I'm sure everyone familiar with MCAWW would agree that we have always provided the necessary leadership to maintain a strong labor relations program. Approximately 12 years ago we improved your legislative representation, and brought on a lobbyist. Following that success, we hired Sally Eck to oversee the development of our Project Manager Certification Program and guide other important membership services such as our student chapters.

New Director of Safety

Now I am very proud to announce another giant step: the addition of Mark Gauger as our new Director of Safety. Mark came aboard the first of this year to oversee a progressive safety program for our members, and he has hit the ground running. With his previous employment at the AGC and McKinstry, his experience is an invaluable benefit to the membership.

Mark's first project is helping our contractors meet the challenge of the new ergonomics rule, which will require all companies with 50 or more employees to have an industry specific ergonomic safety plan in place by this July. Under the guidance of our Safety Committee and its chair, Dave Thoday, we are planning to provide a complete "canned" software program that can meet your compliance needs. Mark's other immediate goal is to contact each member to determine their specific safety needs.

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Kudos To MCA Members

Plumbing & Mechanical magazine recently named **J.H. Kelly, McKinstry** and **Encompass Services** to its list of Top 100 Pipe Trades Companies.

Steve Lovely of **Encompass** was named President of SMACNA - Western Washington.

Jeff White of **Holmberg** was featured in a recent issue of *Contractor* magazine for his work on an environmentally innovative building at Bellevue Community College featuring waterless urinals and a geothermal heating and cooling system.

MCA Supports National Crisis

In October, MCAWW donated \$10,000 on behalf of the membership to the American Red Cross Disaster Relief Fund supporting September 11th victims.

President David Allen said, "Our members feel strongly that our industry has been blessed, by benefiting from America's strength, and they wanted to participate in the rebuilding process."



MCAWW President David Allen (left) and Executive VP Brian Garvey (right) give donation to Cassie Short of American Red Cross.

Cassie Short, Administrator of Corporate and Major Gifts for the Seattle chapter, expressed gratitude for the gift: "It's great to get a phone call out of the blue from an organization that has come together to make a difference." MCAWW also donated \$5,000 to the UA's relief fund (see related story on right.)

A long-time leader in supporting our industry and community, MCAWW annually donates ten percent of our net income to local charitable institutions, including: Boys and Girls Clubs of King County, Boy Scouts of America, American Cancer Society, Shriners Hospital, The Forgotten Children's Fund, American Heart Association, and Make-A-Wish Foundation.



(Left to right): Jim McLain, retired UA International Representative; Brian Garvey of MCAWW; Jim Moss, Local 32 Business Manager; and Al Sexton, retired Local 32 Business Manager, at the 2001 JATC apprenticeship banquet.

Local 82 Dedicates Training Center



Dedicating Local 82's Training Center (left to right): Brian Garvey, MCAWW Executive VP, Larry Overly, Local 82 Business Manager, Sean Sullivan, MCAWW Vice President, Chuck England, UA International Rep (accepting MCA donation.)

In honor of Local 82's new S.W. Washington Pipe Trades Training Center in Lacey, MCAWW donated \$5,000 to the Emergency World Trade Center/Pentagon Assistance Program. The relief fund is sponsored by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry.

"Around The Sound" highlights industry news of all kinds. If you have information, such as new projects, awards, staff hires and promotions, or relocations, that can be included in future issues, please send it to Sally Eck, MCA NEWS editor.

MCA Begins Safety Program

By **Mark Gauger**
MCA Director of Safety



Within my first few days on the job, the Safety Committee and I have met and begun to set priorities and wrestle with some hot issues (which I'll be discussing in future *MCA News* columns.) We have also had several discussions with member firms on some specific safety related items.

My immediate goal is to introduce myself to member firms, as well as to learn about each of your operations. In the coming months, I will be contacting every member to set an appoint-

ment, and to meet for a face to face discussion about the ways in which MCA may help you and your company.

As the newest member of the team at MCA, I would like to thank everyone whom I've had the opportunity to meet so far, and for all of your enthusiasm and support for the program. We've got a big job ahead of us – and an important one – which I'm looking forward to tackling. It's going to be an exciting year!



Legal Line

Traps For The Unwary: Progress Payment Lien Waivers and Releases

By Arne Hedeem, Hedeem & Caditz

In these economic times, subcontractors who pay attention read their subcontracts closely and negotiate workable terms and conditions. During performance, these subcontractors monitor the work and take steps to comply with the contract changes articles and then follow the contract dispute resolution procedures so not to be “Abshered” — and lose otherwise valid change order rights because of a technicality.

However, when it comes to the payment application process, even disciplined subcontractors frequently execute any lien waiver and release document placed in front of them without reading or understanding the intent of the document.

When this happens, the consequences are serious. Subcontractors risk losing important lien rights and the change order payment rights they worked so hard to protect.

This article discusses common payment application waiver and release language, and suggests alternative language that allows for preservation of unpaid change order and lien rights and, at the same time, allows the prime contractor to accomplish its legitimate progress payment objectives.

The prime contractor's legitimate and illegitimate objects when drafting a progress payment waiver and release form

Prime contractors use lien waiver and release forms to address legitimate risks when making subcontractor progress payments. Understanding these risks is useful when reviewing an offered payment application waiver and release. Prime contractors generally have an obligation to keep the job lien free. If a prime contractor makes payment without a corresponding lien release, it risks

making the progress payment and having subcontractors lien the job for the work it was paid for anyway.

In order to mitigate this risk, prime contractors generally require subcontractors to execute a lien waiver that is intended to do two things. First, the form requires the subcontractor to acknowledge that the payment satisfies the general

Most progress payment waiver and release forms are drafted with the intent to cause subcontractors to waive change order claim rights without regard to whether the subcontractor was actually paid for these rights.

contractor's progress payment obligation, i.e., that the subcontractor was paid in full. Second, to address the potential lien, the waiver and release form generally contains a waiver or release of lien rights, *pro tanto*, or dollar for dollar, to the extent of payment received in the progress payment.

Unfortunately, most progress payment waiver and release forms offered these days go much farther and have become the prime contractor's latest tool to cause subcontractors to unwittingly release change order claim rights. While prime contractors have the legitimate objective of taking steps to avoid being surprised by claims at the end of the job, and sometimes address this risk by requiring subcontractors to identify outstanding payment issues in the progress payment release form, most progress payment waiver and release forms are drafted with the intent to cause subcontractors to waive change order claim rights without regard to whether the subcontractor was actually paid for these rights.

To accomplish these objectives, prime contractors draft progress payment ap-

plication waivers and releases with language that require the subcontractor to:

- (1) acknowledge that the progress payment is payment in full for all work and services through a particular date (usually the last day of the progress payment period or a defined end date) instead of payment in full for the particular billing and the work actually billed for,
- (2) waive the right to further payment of any kind for work or services performed prior to the date, and
- (3) release all lien rights for work or services performed prior to the date.

When you stop and think about it, the forms are patently unfair be-

cause they require the release of rights for which the subcontractor was not actually paid.

Examples of overreaching progress payment application waiver, and release forms and corrective language

When faced with one-sided and unfair progress payment application waiver and release language, a subcontractor should either interlineate on the document itself or prepare a rider, so that contract work and change order work payment and lien rights are reserved and only valid prime contractor objectives are accomplished.

Before the subcontract is signed, prudent subcontractors should take time to see if overreaching progress payment application waiver and release forms are incorporated into the subcontract and their execution made a condition precedent to payment and, if so, revise them before the subcontract is executed. Subcontractor accounting personnel need to

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The Olympia File



Deadlock In Olympia Broken?

By Larry Stevens

The special legislative elections in November may have broken a logjam in the State House of Representatives caused by the split of power between 49 Democrats and 49 Republicans.

The Democrats won both elections, so they now have a 50 to 48 advantage in the House. Couple that with a 25 to 24 Democrat majority in the Senate, and a Democrat in the Governor's office, and we have complete Democrat control - a perfect formula for smooth sailing, right? Probably not!

The 2002 Regular Legislative Session, which started Monday, January 14th, is under the total numerical control of the Democrats, but with such slim margins they might not "enjoy" their control for long. It will take only one renegade Democrat in the Senate or two renegades in the House to upset the control. And believe me, the Republicans will be looking for all such opportunities!

Moreover, the issues the legislature are facing would be tough even with a more

substantial majority. No one likes to pay taxes, and few legislators like to vote for tax increases, but the Washington state budget is seriously out of balance and requires some tough votes for tax increases or for budget reductions.

The most recent revenue forecast from November 20, 2001 projects about a one billion dollar difference between income and budgeted outgo. This could make for a very difficult time in Olympia. Funding transportation infrastructure may result in gas tax increases as well as other tax increases. The impact on local government of the passage of the Property Tax Limitation (Initiative 747) will also put pressure on legislators to help them out.

Governor Gary Locke tried to put a positive spin on the problem by announcing the state would un-freeze public works construction projects, to jump-start the local economic recovery. Unfortunately, he "opened the bidding" on taxes by proposing a nine cent

gas tax increase, phased-in over the next few years.

The chairwoman of the House Transportation Committee, Ruth Fisher, a fellow Democrat from the Tacoma area, immediately announced that the governor's gas tax plan was "dead on arrival" in the legislature.

The governor countered that legislators who did not vote for gas tax increases would not see any transportation projects in their districts! Which gave the former Co-Speaker of the House, Republican Clyde Ballard (Wenatchee), the opening he needed to blast the governor's plan.

Smooth sailing? I don't think so! "Let the games begin!" Stay tuned. Larry in Olympia. 🌟

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If A Plug Blows

Editors note: The author of this article requested that he remain anonymous due to potential litigation over the situation described. We appreciate his sharing this experience, because this could happen to you!

I was freezing an 1 1/4" vertical copper line on the upper floor of a medical facility when two cups of water from the cut line above splashed on the freeze clamp, causing thermal shock, and the ice plug let go. This was the third freeze of the morning and one of a hundred in the same facility. The static pressure was 65 pounds, which increased to 90 pounds once the system sensed the drop in pressures and the pumps turned on. Maintenance was called within one minute of the flood, but elected to assess the problem due to the sensitive nature of the facility. The water was turned off in about 20 minutes. With a foot of water still mushrooming from the verti-

cal line, a valve was installed using a Ridgid ProPress coupling. Needless to say, there was considerable physical damage as well as disruption to the services. The medical facilities claim also included loss of income for the period when rooms weren't available.

For anyone using the Ridgid 2500 freeze machine or the freeze bags, it is extremely important to protect the ice plug from any source of rapid temperature change. In hindsight, it seems quite logical to protect the freeze point. However, this joint was one of a hundred, and we considered ourselves quite experienced at the procedure. I pur-



chased a Reed Copper Shut Off Tool, which now goes with the freeze machine any time we are using it on copper pipe. We have had to use it once already when the general contractor failed to mention that the line we were freezing wasn't a dead ended line.

I set up a test across the street on a city fire hydrant adapting to a piece of 1 1/2" copper pipe. After turning the hydrant on, I attempted to introduce a piece of 1 1/2" pipe with an open valve into the flow, but the pipe was immediately pushed aside. During this test we used the Reed Shut Off Tool to close off the line. It took 30 seconds to shut the line off 100%. We tried several other ideas in the hope that during an emergency the water could be temporarily diverted into a receptacle and pumped into a nearby fixture, but we weren't successful.

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Leadership In A Small Business



By John Martinka
Business Resource Group

The November 20 "In the Lead" column in the *Wall Street Journal* discusses how a manager at Corning used the encouragement of an early supervisor to mold her management style. Her goals are to make sure she assigns employees jobs they feel passionate about and to bosses who will encourage them to think unconventionally and take risks.

In my seminars on how to buy a business, I always ask students why they want to own a business. I hear the usual answers: control of destiny, money, freedom, independence, being in charge, etc.

Only twice have I heard what I think is the most important answer: to have fun. To wake up in the morning with a smile on your face because you're going to work at your company and you love what you do. Your employees need to feel the same, as the Corning manager realizes.

In my book, I ask owners:

- * If they are willing to let employees try new ideas, make mistakes and disagree with them?
- * Are they able to keep good people by offering a challenging environment?

- * Can the employees do what it takes to make an unhappy customer happy?
- * Do they trust their key employees enough to show them the books, place orders or write checks?

Leadership in a small business is no different than in that division at Corning. You first need to create an atmosphere where employees can flourish. Give them the authority to handle situations. Give them the space to grow. Sure, there will be mistakes, but we all make mistakes. As a friend of mine says, "It's about success, not perfection." We have to learn from our experiences.

Now that doesn't mean every employee needs to make the same mistakes others did. That's where a business plan comes in. Your plan documents what went wrong and what went right - how you corrected the problem, and the result.

At the same time, your employees look to you as the person where the buck stops. They expect and want that to be the case. If they wanted to run the show, they'd own their own company. This means you have to take charge and provide authority. You're the one who needs to make the tough decisions.

It's a true balancing act, especially in a small business where the owner often wears more than one hat and manages a diverse group of people. Managing all salespeople or all engineers is different from managing sales, financial and technical people, plus laborers. All of these people have different personality types and motivations.

Too many business owners are on the extremes. If they don't like managing people, they dive into the work, and the unmanaged employees aren't efficient. If they're control freaks, they micromanage their people, stifling all creativity, and drawing time and attention away from the big picture. The result is the same: the company does okay, but never breaks loose.

Take the time to analyze your leadership style to see if it benefits you, your employees and your business. And don't forget to keep that smile on your face. ☺

John Martinka of Business Resource Group in Bellevue, WA is a business consultant and speaker. He is the author of "How to easily increase the value of your business" and helps people buy, sell, grow and value businesses. You can reach John at 425.823.8789, via e-mail at john@johnmartinka.com or at www.johnmartinka.com.

Academic Relations News

MCA Establishes CWU Student Chapter & Scholarship
Students at Central Washington University are enthusiastic about joining MCA's newest chapter. It was established in November at the request of students, who attended the October luncheon and toured jobsites with member companies.

Also for the first time, MCA has awarded a scholarship at CWU. The recipient is Michael Thibeau, a junior in the Construction Management program who has been interning with Shinn Mechanical. He will receive \$1,000 toward a trip to the MCAA national convention plus a cash award.

Chapter activities being planned are: field trips with local contractors, attendance at member luncheon meetings, sponsorship of student events, and coordination of internships.



Faculty advisor Dave Carns and CM students from Central Washington University tour Encompass jobsite.

UW Mechanical Team Finalists in National Competition

UW student chapter president Heather Helgen and five classmates were honored to be chosen as finalists in the first annual MCAA student competition. Their entry was a videotaped presentation on

proposed plans for retrofitting an Internet service provider's data center.

The team will be competing against other finalists from Purdue, University of Nebraska at Lincoln, and Texas A&M. Winners will be announced during the national convention in February.

The Academic Relations Committee, which coordinates programs with local universities, is chaired by Jerilee Thurston of Encompass. Heather Helgen serves on the committee, as well as Mari Anderson of McKinstry and Brian Acton of BMW Pilchuck. Vice chair Troy Aichele, W.A. Botting, also serves as UW adjunct faculty, teaching the only mechanical class in the program.

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Intermediate Level Project Manager Program Kicks Off

Anne Kilcup Retires from Board

One of the program's leaders since its inception in 1997, Anne Kilcup, VP of



Human Resources for McKinstry, is retiring from the Board of Education in January. The Board wishes to thank Anne for her five years of dedicated service, her enthusiasm for project manager education, and her tireless efforts in course development.

"I have found the class to be extremely informative, and it is making me analyze everything I do. I am finding better ways to do my job and also help make the company more profitable."
Frank Granston, Student
University Mechanical

MCA thanks sponsor McKinstry Co. for hosting the program's welcome reception and first set of classes.

Last September, the second stage in MCA's three-level Project Manager Training Certification Program was launched. Titled "Enhanced Skills for Experienced Project Managers," the nine-month-long series of weekly classes has 20 students enrolled.

Developed by the MCA Board of Education, course modules have been offered in:

- Leadership Skills
Instructors: Gary Polain, Ozmosis Leadership; trainer/consultant Bob Wall
- Communications Skills
Instructor: Trainer/consultant Stephany Bruell
- Improving Job Profits
Instructors: FMI trainers Scott Kimpland, Steve Davis
- Improving Field Productivity
Instructors: Consultant Sam Grubb; Maria Boyer, Encompass

Topics to be offered in upcoming months will include:

- Scheduling, Resource Management, Quality Assurance
- Contract Terms, Business Law, Risk Management
- Negotiating & Conflict Resolution
- Customer Relations
- Marketing & Sales

For information on future training programs, please contact Sally Eck at MCA.



Instructor Stephany Bruell teaches class in Written Communications.

MCA Board of Education

During the past year, the Board of Education has been hard at work developing intermediate level courses for the new program. Their efforts have been spearheaded by Chairperson Ed Kommers of University Mechanical, along with these Board members:

Anne Kilcup (*vice chair*)
McKinstry

Maria Boyer
Encompass

Michael Burrus
W.A. Botting

Jerry Day
McKinstry

Sam Grubb
Pinnell ♦ Busch

Stacy Johnson
Auburn Mechanical

Brad Magruder
Johnson Controls



Board Chairperson Ed Kommers of University Mechanical (standing right), briefs students during the kickoff welcome reception.

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Academic Relations

The three Washington schools with Construction Management degree programs are encouraging contractors to set up informal displays at their upcoming career fairs, to recruit both interns and full time employees. 🌐

Feb. 14: Central Washington University
Registration: (509) 963-1921

Feb. 29: University of Washington
Registration: kdeyoung@u.washington.edu

Mar. 2: Washington State University
Registration: (509) 335-6189

Contractor Insurance Premiums Increasing Substantially



By Jim Sammon
Hall-Conway-Jackson

A small 14-year-old Seattle area steel fabrication firm recently received its annual Premium Renewal Comparison Report. The firm, insured by the same insurance carrier for 13 of its 14-year history, employs 20, generates receipts of \$3million annually and has never experienced or submitted a single insurance claim. How was this firm's insurance premium affected by the current undercapitalized insurance market?

Its premium went from \$19,000 to \$42,000!

A small, 44-year-old Puget Sound area contracting firm recently received its annual Premium Renewal Comparison Report. The firm, insured by the same insurance carrier for the past ten years, employs 30 and has experienced only a couple of minor automobile claims over the same period of time. How was the firm's insurance premium affected by the current undercapitalized insurance market?

Its premium went from \$35,000 to \$80,000!

Across Puget Sound, Washington State, the Northwest, and the entire country, similar premium increase shock waves are being experienced by businesses in general, and by contractors in particular. These increases have ranged from 30% to 300%.

The Market Changed Drastically

What has caused the contractors' insurance market to change so drastically?

- The insurance market is, by its nature, cyclical. When the stock market rises in value, premiums tend to go down. The reverse is true as well.
- Insurance companies, like many individuals, did quite well in the stock market from 1987 through 1999. The stock market was so lucrative, in fact, that most insurance carriers competed vigorously for more investment dollars (by selling insurance at a loss), thus driving down the cost of insurance.

- Many insurance carriers, though making money in the stock market, were actually selling their insurance products at a loss of 10 to 25% and sometimes higher! For many carriers, substantially more claim dollars were being paid out than there was premium coming in.

What can you do to control your premium in this market?

- ◆ Start your annual insurance shopping process four months prior to your policy renewal date.
- ◆ Choose one broker, in addition to your current broker, to shop on your behalf. Do not shop with more than two brokers (your current broker plus one other). To shop with more than two brokers will cause confusion to underwriters and cause your account to be less desirable.
- ◆ Of the two brokers you work with, be sure to let each know which carriers they are authorized to shop with on your behalf. *But under no circumstances should both brokers be allowed to contact the same carrier.* About 20 insurance carriers write 90% of all business in the Northwest.
- ◆ Be patient and cordial with all insurance company personnel who may contact you or visit you in order to learn more about your business. Even the slightest resistance by a prospective client will cause many underwriters to say, "Sorry, we are not interested."

- In early 2001, in order to combat the selling of their insurance products at a loss, most insurance carriers started to increase the cost of their insurance products by 15% to 30%.
- As a result of underwriting losses (selling insurance at a price well below the claim dollars to be paid out), many carriers were either forced, or decided, to consolidate and combine forces with competitors. A few examples:

- Commercial General Union sold North Pacific, which became One Beacon, which in turn was purchased by a Liberty Mutual Company, Liberty Northwest
- Safeco purchased American States
- Maryland Casualty and Zurich joined forces
- Ohio Casualty and Great American became one carrier
- Reliance went into receivership.

The Problem Got Worse

During and shortly after carrier consolidation the stock market went into a steep decline, causing insurance company balance sheets to go further south. Just as many individuals saw their 401K plans substantially deteriorate, so too did insurance carriers see their investment capital depleted.

Finally, with less money available to back-up their insurance obligations to policyholders, most carriers were unable to continue writing as many new policies in the present time as in the past. And insurance is like all other products: when the supply is low, the prices increase.

Massive Blow to Insurance Industry - And All Businesses

The 9/11 attack against our nation created estimated insurance losses of \$70 billion! The financial magnitude of the loss, and the uncertainty which the attack injected into the insurance equation, has served to make an already weakened insurance industry even weaker.

Most insurance professionals agree that the current difficult insurance market will continue for 12 to 18 months. The first signs of insurer recovery will appear soon after the stock market and the economy have started a recovery. 🌐

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Executive Briefing

Potential U.A. Mergers

On the topic of the voluntary merger of U.A. Locals 82, 265 and 631, MCA contractors have met with their business managers to express our concerns. We also discussed the situation with U.A. International Representative Chuck England.

As of our publication date, Local 265 Business Manager Phil Wells is still awaiting word from the U.A. as to the disposition of their request to dissolve their

locals and create a completely new local union.

Uniform Plumbing Code

Lastly, the State Building Code Council finally resolved the problem of the 2000 UPC adoption. The 2000 UPC is headed to the Governor's office for official adoption, with implementation effective July 1, 2002. It's not because they finally awakened and saw the error of their ways; it took help from the Governor's office, which replaced half the sitting

council members. Then they were finally able to accomplish what they should have done four years ago.

We still have a ways to go though: we are still struggling to delete those sections of the International Residential Code that conflict with the UPC, as well as fight for future adoption of the Uniform Mechanical Code.

One thing is for sure, though: 2002 has got to be a better year than the last one! 🌍

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Legal Line

be educated so that unfair forms don't get inadvertently signed without modification.

The following is an example of progress payment waiver and release language that requires acknowledgment of payment in full and waiver of lien rights through a particular date as opposed to a sum billed and to the extent of payment. The underlined language has been added to make the agreement accomplish its only legitimate purpose of waiving rights for work actually paid for.

Sample Progress Payment Waiver and Release 1

The undersigned Subcontractor acknowledges having received payment of the sum of \$ _____ paid to date from Prime Contractor ~~in payment in full for all~~ for labor and related payroll taxes, skill, services, equipment, materials or other items delivered, furnished or performed by or through the undersigned in the performance of work or the furnishing of labor, skill, services, equipment, materials, or other items by the undersigned, described as contract work ~~through the effective date of this lien waiver~~ to the extent of payment received.

This document is intended to be a partial lien waiver. The undersigned does hereby waive all rights which may have been acquired by the undersigned to file a mechanic's lien against the aforesaid premises for labor, skill, services, equipment, materials or other items delivered, furnished, or performed by or through the undersigned ~~through the effective date of this lien waiver~~ to the extent of payment received. The undersigned does further state and represent that it has fully paid for all labor and related payroll taxes, skill, services, equipment, materials and other items furnished to said premises billed in the attached Progress Payment Application No. dated _____ and there are no amounts unpaid with respect thereto.

The undersigned waives all claims for extra labor, skill, services, materials and equipment performed, furnished or commenced prior to the effective date of this lien waiver ~~which has not been authorized and a contract price agreed upon by Opus Northwest, L.L.C. in writing~~ except for the following: _____ [here list retainage and all extra work outstanding].

The second example (see page 15) is addressed with a corrective "Rider." The reader should note that the Rider does not limit the release to the amount of payment and instead is a compromise that places a heavy burden on the subcontractor to carefully identify outstanding payment issues each progress payment period.

Sample Progress Payment Waiver and Release 2

1. The undersigned hereby acknowledges receipt of the Total Payments Received to Date as payment in full, less the Retainage, for all labor employed and all materials furnished or stored in connection with the construction of the Project through the last day of the previous payment period and hereby now and forever waives, releases and quitclaims all claims and rights to claim against the Contractor, Owner, the Lender or the land upon which the Project is situated with respect to the Project. The undersigned hereby affirms that there are no outstanding claims against the Subcontractor and/or its sureties in connection with the Project through said date.

2. Upon receipt of the sum of the Net Amount Due, as set forth in the attached Progress Payment Application, the undersigned acknowledges and agrees that it will have received payment in full, less the Retainage, for all labor employed and all materials furnished or stored in connection with the construction of the Project through the Period Ending Date, and hereby now and forever waives, releases and quitclaims all claims and rights to claim against the Contractor, Owner, the Lender or the land upon which the Project is situated with respect to the Project, except for the Retainage. Except for receipt of said payment, and as an inducement to Contractor, Owner and Lender to make the same, the undersigned hereby affirms that there are no outstanding claims against the Subcontractor and/or its sureties in connection with the Project through said date.

3. Contingent upon the receipt of the sum of the Net Amount Due, and except for any unpaid Retainage, the undersigned does hereby forever waive, release and quitclaim in favor of Contractor, Owner, Lender, each and every party acquiring title to and/or making a loan on the Project, and the title company of companies examining and/or insuring title to the Project and any and all of their successors and assignees, all rights that presently exist to any and all types and forms of contractor's, mechanic's and/or materialmen's lien and other liens (including without limitation, any liens or preliminary notice of lien which might otherwise have been filed pursuant to this state's mechanics lien law). The undersigned further warrants that all applicable taxes, fees and benefits relating directly or indirectly to the undersigned's work have been paid in full.

Continued on page 15

MCA 2001 Annual



FIRST PLACE TEAM: (left to right) Mark Franklin of Mechanical Systems, James Postma of Encompass, Travis Macy of Mechanical Systems, Scott Nelson of Encompass.



SECOND PLACE TEAM: (left to right) Steve Kralicek of Hawk Mechanical, Mike Byron of Encompass, Dave Carlson of Hermanson, Don Heino of Hawk Mechanical.



GRANDPRIZE DRAWING: Winner Kathy Hougham of Metcalf-Grimm will be enjoying a golf weekend to Sunriver, Oregon.

A “full house” of 116 players gathered at the Nile Temple Course last August for a day of good fun, food, camaraderie and prizes.

Thanks to the dedicated work of the Member Services Committee, there were more festivities than ever. Jon Varriano of Holmberg Company led the effort of overseeing logistical arrangements and choosing skill prizes. He was joined by committee chair Troy Aichele of W.A. Botting, as well as members Bill Quackenbush of Familian Northwest, Travis Macy of Mechanical Systems, and Jack Cheetham of Encompass.

Sponsorship by associate members and vendors raised record amounts, and included: a raffle for a golf weekend for two to Sunriver, Oregon, sponsored by North by Northwest and Crane Plumbing Fixtures; plus a hole-in-one auto donated by Everett Chevrolet and sponsored by York International (which was not won.)

New this year was a donation made to MCA's University of Washington Student Chapter, made possible by designating a portion of each player's fee for use by the school. In addition, enterprising students raffled off Husky tickets (won by Dan Massart of C.M. Hoskins), and sold mulligans at the tournament. Revenues have helped defray the costs of their participation in MCAA's first national student competition.



THIRD PLACE TEAM: (left to right) Brian Garvey of MCA; Dave Magruder, Ed Clifford and Buck Anderson of Anderson-Magruder.

Tournament Sponsors Make A Perfect Score

MCA thanks our generous sponsors, whose donations allowed the committee to offer unique prizes, and players to test their skills on designated holes:

ATS Automation
C.M. Hoskins
Commercial Application Sales
Crane Plumbing Fixtures
E.J. Bartells/Thermal Pipe Shields
Familian Northwest
Hedeem & Caditz
Hudson Bay Insulation
Johnson Barrow
K.J. Barnett
Keller Supply
Mechanical Agents

Mechanical Sales
Nolan Northwest
North By Northwest
Performance Contracting
Proctor Sales
Reid Pacific
Roberts Trane
Rosen Supply
Specification Sales
United Rentals
Victaulic Company
York International

Golf Tournament



MEMBER SERVICES COMMITTEE:
Golf Tournament Chairs (clockwise from upper left) Jon Varriano of Holmberg, Troy Aichele of W.A. Botting, Travis Macy of Mechanical Systems, Jack Cheetham of Encompass, and Bill Quackenbush of Familian NW.



LONGEST DRIVE Winners: *Mike Byron of Holaday-Parks (men's competition); Karen Langeberg of W.A. Botting (women's competition); Lynn Sullivan of W.A. Botting (open competition).*



CLOSEST TO THE PIN Winners: *(top left to right) Anita Perkins of SSA Airgas (women's competition); James Postma of Encompass (men's competition); Scott Nelson of Encompass and (bottom left to right) George Palaoian of Primm Mechanical, Keith Flowers of W.A. Botting, Ron Eliason of Abacus (open competitions.)*

MCA of Western Washington

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Continued on page 14

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The Danger Of Pre-judging

One day a skinny little man applied for a lumberjack job with a large company. The boss took one look and told him to leave.

"Just give me a chance," he pressed, "I'll prove myself."

"Fine, see that giant redwood? Take your axe and cut it down," the boss replied.

Five minutes later the applicant returned. "I'm done."

The boss couldn't believe his eyes. "Where did you get that kind of skill?"

"Sahara Forest," he responded.

"You mean the Sahara Desert," corrected the boss.

"Well, yeah," the little man shrugged, "non."

Remembering Warm Weather



On The MCA Annual Boat Cruise

Legal Line

Subcontractor-Prepared Rider to Waiver and Release

The attached Subcontractor's Waiver and Release of Lien is hereby amended and supplemented to provide as follows:

Paragraph 1:

After the word "period" and before the word "and" in the fourth line *insert* the words "except for the unpaid extra work and claims described on the attached 'Unpaid Extra Work and Claims,'"

After the word "Project" and before the word "through" in the eighth line *insert* the words "except for the unpaid extra work and claims described on the attached 'Unpaid Extra Work and Claims,'"

Paragraph 2:

After the word "that" and before the word "it" in the second line *insert* the words "except for the unpaid extra work and claims described on the attached 'Unpaid Extra Work and Claims'"

After the word "Retainage" and before the word "Except" in the seventh line *delete* the period and *insert* the words "except for the unpaid extra work and claims described on the attached 'Unpaid Extra Work and Claims.'" "

After the word "date" in the tenth line *insert* the words ", except for the unpaid extra work and claims described on the attached 'Unpaid Extra Work and Claims.'" "

Paragraph 3:

After the word "for" in the first line *insert* the words "the right to lien for"

After the word "Retainage" and before the word "the" in the second line *insert* the words "and the unpaid extra work and claims described on the attached 'Unpaid Extra Work and Claims,'" "

Many subcontractors request their attorney review proposed progress payment release forms along with their subcontract at the beginning of a large job. This task works best when it is a joint subcontractor/attorney effort.

With a little practice, a subcontractor can recognize overreaching progress waiver and release language, and draft alternative language which allows the prime contractor to protect its legitimate interests but does not cause the subcontractor to release rights for which it has not been paid.

When this happens, a subcontractor's hard work recognizing and preserving the right to additional compensation and time for changes will not be wasted because it failed to recognize the effect of a progress payment release.

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From The President

Pre-Purchased Equipment

Without a doubt, this is a big threat. I am not naïve enough to claim there aren't times when projects can benefit from doing this, myriad reasons: schedule, design issues and specialty equipment, blah, blah, blah. What I am claiming is that there is a disturbing trend for general contractors, owner's reps and CM's to regularly pre-purchase as much equipment, mechanical and electrical as possible, under the guise of cost savings.

In most cases this is hogwash. Any perceived cost savings are far outweighed by the risk associated with this practice. There isn't a mechanical contractor alive that can't give you a horror story about a screwed up job due to "assigned" equipment. Worse, removing equipment integral to our overall installations elevates our risk and disrupts our ability to provide quality.

National Equipment Manufacturers

Unlike golf, we'd better keep our heads *up* on this one. HVAC manufacturers are deep into our business already. They sell us equipment, then try to displace us, via service and warranty, with "our" owners. Now they sell direct to our clients under the guise of a "national play." Be sure that the end-game they desire is owning the client. Believe it!

National Control Contractors

Notwithstanding performance contracting and facility management outsourcing, national control contractors are becoming a big worry. We need to follow more closely their move to take control of all building systems into a Division 17 package. This also creates great risk for the mechanical contractor. If we sit back on this one, we won't like the result.

Any of these alone may not be worth heavy drinking, but taken all together, a 12-step program may be in order. Each of us must stay vigilant in our vocal displeasure of these issues to anyone who will listen. Be assured that over the next several months MCAWW will be stepping up and making its position known on your behalf.

To all of our members and your employees, let's work together to make it a great New Year! 🍷

Continued from page 5

If A Plug Blows

The most important procedure is to discuss the freeze plan with the owner and have a contingency plan if there is a problem. Good communication between the crew freezing the line and someone at the nearest shut off valve is essential. Water line freezing is an excellent tool but each freeze needs to be carefully planned.

There are a lot of ways water lines can rupture in a building, and building owners as well as contractors should know where the shut off valves are and have a plan for dealing with the water. 🍷

If you have any incident you would like to report that may be of interest to other members, please contact Sally Eck, MCA News Editor.

2002 CALENDAR OF EVENTS



- March 6:** **Membership Meeting & Luncheon**
Location: Rock Salt Steak House
Speaker: John Martinka, *Business Resource Group*
Topic: Surviving In a Cooling Economy
- March 7:** **Seminar**
Speaker: John Koontz, *MCAA*
Topic: Project Planning for Foremen & Mgrs.
Location: JATC
- April 3:** **Membership Meeting & Luncheon**
Location: Rock Salt Steak House
Speaker: Rob Crick, *Winston & Cashatt*
Topic: Preparing For Arbitration & Litigation
- May 1:** **Membership Meeting & Luncheon**
Location: Rock Salt Steak House
Speaker: Gary Polain, *Ozmosis Leadership*
Topic: Leadership In Today's Business Climate
- June 5:** **Membership Meeting & Luncheon**
Location: Rock Salt Steak House
- August 3:** **Boat Cruise**
Location: Dock at Rock Salt Steak House



- August 30:** **Golf Tournament**
Location: Nile Shrine Golf Course
- September 5:** **Membership Meeting & Luncheon**
Location: Rock Salt Steak House
- October 3:** **Membership Meeting & Dinner**
Location: Harbor Club Bellevue
- October:** **Seminar**
Topic: Safety
- November 6:** **Membership Meeting & Luncheon**
Location: Rock Salt Steak House
Speaker: Robert FitzGerald,
MCAA President
- December 6:** **Holiday Dinner**
Location: Salty's on Alki



MEET NEW MCA STAFF

Director of Safety

Mark Gauger joined the staff in January to spearhead the development of MCA's long awaited safety program (read more about it on page 3.)

Mark has 15+ years of construction experience (11 in the area of safety), most recently as AGC's Director of Safety. He was also a Project Manager and Safety Director for McKinstry, and has a degree in speech communications from Western Washington University.



Mark Gauger
 Director of Safety

Administrator

Upon the retirement of Charlotte Roussin, Teri Verde has assumed the responsibilities of Administrator. She is handling all accounting functions, plus general office leadership and membership functions.



Teri Verde
 Administrator

Teri has ten years of bookkeeping experience, most recently in the interior design industry, and has studied at the University of Washington and Highline

Community College. She is looking forward to meeting and working together with the MCA membership.

Editor's note: MCA thanks Charlotte Roussin for her sixteen years of dedication to our organization, as she prepares to retire at the end of January; with her expert assistance, MCA has continued to grow and prosper over the years.



Charlotte Roussin
 Administrator Emeritus