



SHEAR BULL



Palm Beach County Roofing & Sheet Metal Contractors Association

Affiliate of FRSA and NRCA

JUNE 2009

Vol. 21 • 6

JUNE

COAL TAR PITCH ROOFING SYSTEMS

By Bill Henry
with Commercial Innovations
No CEU Credits
Review of GL Program offered by FRSA;
Speaker Phillip Lane of J.W. Edens

WHERE:

Crowne Plaza
Belvedere Rd., & Australian Ave.

DATE & TIME:

June 24, 2009
6:00 PM - 7:00 PM Cocktails/Networking
7:00 PM - 9:00 PM Dinner & Meeting

COSTS:

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you are still financially responsible.**

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Construction Arbitration

By Trent Cotney

Glenn Rasmussen Fogarty & Hooker, P.A.

The majority of construction contracts require that the parties resolve disputes through arbitration. For example, the AIA form contracts prior to 2007 required that disputes be resolved by arbitration rather than litigating in the court system. Unlike litigation, arbitration involves the parties submitting their claims to one or several arbitrators that act as judges to determine the outcome of the disputes on a project. The arbitrator's decision is binding and difficult to appeal. Although many advocate the use of arbitration, there are benefits and drawbacks that each contractor should consider prior to placing an arbitration provision in their contract.

Normally, arbitration may be cheaper than litigation. The arbitration fees may be expensive but arbitrations generally conclude quicker than court cases. The parties are free to choose arbitrators through an association such as the American Arbitration Association (AAA) or may select a mutually agreed upon private arbitrator.

Generally, there is also less discovery that is performed in arbitration than in a court case. Discovery in-

cludes things like depositions and requests for documents. This is a benefit in that it decreases attorney's fees and costs. At the same time, it could potentially be a drawback if your counsel is unable to obtain all the discovery needed to properly prosecute or defend your case.

A benefit of arbitration is that once the parties have finished the arbitration and confirmed the arbitration award, the case is usually closed. Unlike court cases, it is extremely difficult to appeal an arbitration award. Another benefit of arbitration is that the parties may select an arbitrator that has construction experience and is more knowledgeable than your average judge or jury regarding construction issues. Having a knowledgeable arbitrator allows the parties to communicate at a higher level and spend less time educating the arbitrator on construction and more time discussing the dispute itself.

Arbitration is a useful tool for the avoidance of the jury trial situation. Every roofing contractor faces claims for water intrusion for work that it has performed. Sometimes this water intrusion may damage

Continued on page 3

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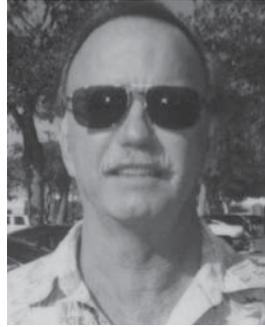
Legal Counsel: Bob Marell

of Glickman/Witters/Marell 561-478-1111

If you have a problem in relation to this industry, please contact the appropriate committee chairman for assistance. Non-members are accorded the same privilege.

Opinions expressed in any of the articles submitted to the Shear Bull, are not necessarily the opinions of the Palm Beach County Roofing and Sheet Metal Association

President's Message



Drew Duncan

I want to thank everyone for their work and participation in our shortened golf tournament. We were successful in the Charity end of the tournament. I would like to see more of members attend our monthly meetings. They are educational and enjoyable where you can mingle with fellow roofers and discuss current issues. The FRSA convention is approaching but due to financial considerations, I will miss another one. Maybe this rain will bring some substantial work.

Sincerely,

Drew Duncan, President

Drew Duncan Roofing, Inc

INDUSTRY RELATED WEBSITES

- ASTM - www.guidance-inc.com/~roofroof/
- American Consulting Engineers Council - acec.org
- American Institute of Architects - aia.org
- American Society of Civil Engineers - asce.org
- Cedar Shake & Shingle Bureau - www.CEDARBUREAU.org
- Construction Industry Management Council (CIMC) - www.cimcpbc.com
- Construction Specifications Institute - <http://www.csinet.org>
- Copper Development Association - <http://www.copper.org>
- Division of Workers' Compensation - <http://www.wc.les.state.fl.us./DWC/>
- Florida Roofing, Sheet Metal & Air Conditioning Contractors Association - www.Floridarooft.com
- Galvalume Sheet Producers - www.steelroofing.com
- National Roofing Contractors Association (NRCA) - <http://www.nrca.net>
- National Society of Professional Engineers - nspe.org
- Roofing Contractors Association of South Florida (RCASF) - www.rcasf.org
- Roofing Industry Education Institute - <http://members.aol.com/RIEIROOF/classes.htm>
- Roof Tile Institute - www.rooftile.org
- Sheet Membrane and Component Suppliers to the
- Commercial Roofing Industry (SPRI) - www.SPRI.org
- Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) - <http://www.smacna.org>
- The Council of American Building Officials (CABO) - <http://www.cabo.org>

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Our New *Members Only* Area on our Website:

PBCROOFERS.COM

other property and plaintiff's attorneys may seek to have a jury trial on the issues in an attempt to get a larger award. If you have an arbitration provision in place, it would prevent the jury trial scenario and force the parties to go to arbitration outside the court system.

At the same time, if a roofing contractor is pursuing money, it may also be bound by the arbitration provision. When a party is pursuing money, it may be more useful to proceed in court, depending on the dollar amount of what is owed and the facts surrounding the case. In any dispute resolution contained in a contract, a condition precedent to proceeding with arbitration should be that both parties engage in non-binding mediation to allow the parties to resolve their disputes prior to moving forward with arbitration. It also gives the parties an opportunity to obtain free discovery and understand the opposing parties' position.

Once in arbitration, it may be difficult to settle the claim. Litigation offers a variety of tools for attorneys to use that may put pressure on the other parties and increase the opportunity for settlement. Many of those tools are not present in arbitration, and a contractor is more likely to proceed to the end of arbitration, rather than settle the case prior to its conclusion.

By understanding the benefits and drawbacks to arbitration, a contractor can determine whether or not it wants to place an arbitration provision in its standard contract. At a minimum, if a contractor chooses not to place an arbitration provision in the contract, it should include a waiver of jury trial provision to avoid any jury trial situation.

Author's note: The information contained in this article is for general educational information only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation.

Trenton Cotney, a shareholder attorney at Glenn Rasmussen Fogarty & Hooker, P.A., in Tampa, Fla., prepared this article. Cotney is Florida Bar Certified in Construction Law, the General Counsel and a director of the Florida Roofing Sheet Metal and Air-Conditioning Contractors Association (FRSA), a director of the West Coast Roofing Contractor's Association (WCRCA) and a member of Associated Builders and Contractors (ABC). For more information, contact the author at 813-229-3333 or tcotney@glennrasmussen.com.

JULY PROGRAM

Florida Laws & Rules

By Bill Unger

Continuing Education Academy
1 CEU Credit-Satisfies Florida Laws & Rules

Requirement

WHERE:

Crowne Plaza
Belvedere Rd., & Australian Ave.

DATE & TIME:

July 22, 2009

6:00 PM - 7:00 PM Cocktails/Networking

7:00 PM - 9:00 PM Dinner & Meeting

COSTS:

\$40.00 for Members • \$65.00 Non-Members

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In spite of a late afternoon shower, close to 70 players enjoyed a great day of golf, food, drinks and laughs. Spirits were high and smiles were evident throughout the day. Our members, through their generous sponsorships, contributed over \$6,500 toward the Leann White Foundation. Leann, who is the daughter of Ken White, is recuperating from a lung transplant and is holding her own in her recovery. Her dad shared the day with fellow members of the roofing industry and indicated his appreciation for the support given by our members. This is a close knit industry and when needed, members always come through. Some pictures were taken and are included in this Shear Bull.







JULY 2009



Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 CIMC 7:45 PM	2	3	4
5	6	7	8 Board of Directors Meeting 12:30 PM	9	10	11 CBAA 2:00 PM
12	13	14	15 BCAB 12:30 PM	16	17	18
19	20	21	22 General Member Meeting 6:00 PM	23	24	25
26	27 CILB 2:00 PM	28	29	30		



Palm Beach County Roofing & Sheet Metal Contractors' Association

21st Annual Fun 'N' Sun BBQ

Ocean Cay Park

Just North of Loggerhead Park

Saturday, August 22, 2009

12 PM until 6 PM

Food Served from 1 PM to 5 PM

Tickets \$6

Beer and Soda available for a nominal donation

**Raffles, Kids Games,
Volleyball Competition,
Horse Shoes, Great
Prizes, Great Food,
Music**

Directions
Take I-95 North to Donald
Ross Road; East To US1; Left, (North)
past Loggerhead Park at the Corner
of Marcinski Rd & US #1



For Tickets or more information contact:

Bill Kirkland @842-0075 or Ron Frano 561-655-5393 • Fax 561-688-8807

Mail to: 2101 Vista Parkway, Suite 4001, West Palm Beach, FL 33411