



THE BASESHEET

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NRCA



WSRCA

CONTACT ARCA

John Yoder
President
Phone: 602 944-3323
Email: jyoder@starroofingaz.com

Duane Yourko
Executive Director
Phone: 602 335-0133
Cell: 602 571-7240
Email: dyourko@azroofing.org

Jennifer George
Communications Specialist
Phone: 602 335-0133
Cell: 602 339-4595
Email: jgeorge@azroofing.org

Ashley Creighton
Editor
Phone: 602 335-0133
Email: acreighton@azroofing.org

ARCA OFFICE
5050 North 8th Place, #6
Phoenix, Arizona 85014

Phone: 602 335-0133
Toll Free: 877 335-2722
Fax: 602 335-0118

GREETINGS FELLOW ARCA MEMBERS:

I just blinked and found out that the first quarter of 2015 has passed me by. The business environment seems to be stable, upbeat and depending on who I talk to basically positive. At ARCA we are glad that the Legislature adjourned without doing anything negative to the contract community and we can certainly claim victory for improvements we were instrumental in making to the Transaction Privilege Tax (TPT) legislation. We now know our choices on retaining our TPT licenses, how to file reports, how to treat our existing inventory of material, and if we desire when to pay taxes at point of sale. If questions still exist please plan on attending one of the upcoming seminars in Tucson or Phoenix and have your questions answered by the presenters who are taxation experts.

I want to thank all of our members and sponsors that renewed for FY15. While most of us consider ARCA our association it is also a corporation and as such we have to budget for events, training and lobbying activities. Early renewals allow us to know what funds will be available and live within our budget.

The Arizona Roofing Industry Foundation just concluded a highly successful sporting clays event with a record 127 paid participants and over \$12,000 in net proceeds going into the scholarship fund. A special thanks to **KM Coatings Mfg., Inc.** for their Title Sponsorship of the event. Even for us non shooters this is a very fun day with friendly competition, more than a few laughs, great food and prizes for all. Event Chairman Ron Brown and his entire committee are to be commended for staging such a quality shooting experience.

The golf event scheduled for May 1st is totally sold out with 128 participants and all 18 hole signs sponsored. We will then be shifting gears to support the June charity bowling event for Phoenix based New Pathway for Youth and July event for Tucson based Youth on Their Own. Lanes and sponsorships are still available for both events and 100% of all the net proceeds are contributed to the organizations to aid the homeless youth in our communities.

Check out the rest of Basesheet for specific details on all upcoming seminars, training, events and articles of interest to the roofing trade. I thank all of you for your continued support.

Sincerely,

John Yoder

John Yoder, President
Arizona Roofing Contractors Association

Keep an Eye Trained on Your Vision Health

It is a wise workplace safety practice to wear safety glasses when working with heavy machinery or when using power hand tools, but how do you protect your eyesight when you work at a desk?

Working in front of a computer screen for eight hours or more may result in eye strain, irritation and blurry vision if employees don't take periodic breaks from their computer terminals, according to occupational safety experts. And health researchers say problems with equipment, lighting, work stations or a mix of these can result in eye fatigue.

Adding to the eye strain of computer work are normal activities such as watching television, reading your texts off your smart phone, playing video games and using laptops or e-readers. All these digital devices clamor for sustained eye focus, which may overtax eye muscles.

Among symptoms of eye strain are eye twitching, headache, fatigue, red eyes, decreased productivity and increased work errors. Contact lens wearers may also suffer from dryness of the eyes.

"Workplace safety and injury prevention covers all aspects of physical harm," said Kearin Kasper, Manager, Loss Control and Risk Management Services at [CopperPoint Mutual Insurance Company](#). "While we often think of protecting our limbs, hands and feet, it's also important to look after the health of our eyes."

The National Safety Council designated March as Workplace Eye Wellness Month. Here are some tips from a variety of eye safety sources to help keep your eyesight safe while at work:

- **Schedule an annual complete eye exam** – Tell your eye doctor you use a computer at work. Before going to your appointment, measure how far your eyes are from the computer screen so your doctor can test your eyes at that working distance. If you wear glasses, consider buying lenses with anti-reflective coating, which reduces glare by minimizing the amount of light reflected from the back and front of your eyeglasses. If you are a contact lens wearer, discuss your work routine with your eye doctor; silicone hydrogel contact lenses (also called soft lenses) may be more comfortable to wear while working, according to [The Vision Council](#), a global industry group that represents manufacturers and suppliers of optical products and services.
- **Use the right lighting** – Computer users might try using ambient lighting that's about half as bright as what typically is used in many offices. Excessively bright sunlight through an office window or harsh interior lighting may cause eye strain. Using fewer bulbs overhead or lowering the intensity may temper fluorescent lighting.
- **Minimize glare** – Inadvertent reflections on your computer screen or on adjacent desk surfaces may cause eye strain. Lower office window shades to cut glare from early morning or late afternoon sunlight.
- **Adjust your computer display settings** – The display's brightness should mirror the brightness of your surrounding workstation. Try this test: If a Web page looks like a light source, your display is too bright; if the page looks dull and gray, it may be too dark. Also, enlarge or reduce text size and contrast: Adjust text size and contrast in documents by using the slider on the lower left of the frame. Also, black text on a white background provides the optimum in contrast for reading.



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SPFA Finishes Environmental Product Declaration for SPF

By Mary Coultrap

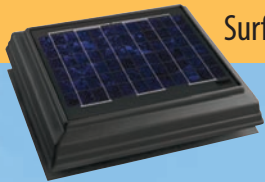
As a continuing step toward effective product and environmental stewardship, SPFA and Underwriters Laboratory Environment (ULe) conducted the necessary steps to complete an SPF Environmental Product Declaration (EPD), which further validates the 2012 release of the SPF Life Cycle Assessment (LCA). This Declaration, along with the LCA, are recognized by sustainability experts as additional verification of a product's environmental performance. The EPD is maintained on the UL website, available at www.sprayfoam.org/technical. The LCA is available there, as well. Visit the following link for the UL listing: <http://productguide.ulenvironment.com/ProductDetail.aspx?productID=43576&BrandID=1807> 

Immigration Hearing

NRCA submitted a statement to the Senate Committee on Homeland Security and Government Affairs for a hearing titled "Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows." NRCA's statement urged the Senate to move forward with immigration reform legislation that meets the needs of the roofing industry. The statement outlined NRCA's support for immigration reform that is governed by market forces, protects U.S. workers, and provides a legal avenue that enables employers to obtain the workers needed to meet demand, grow their businesses and create jobs. The hearing provided a forum for a constructive dialogue among senators from both parties, as well as business representatives and immigration policy experts, which has been lacking during recent years as the immigration issue has become increasingly politicized. Sen. Ron Johnson (R-Wis.), chairman of the committee, is holding a series of hearings on immigration policy in an effort to build a bipartisan consensus for addressing the issue with future legislation. NRCA applauds Johnson for his efforts to hold this hearing and provide leadership in moving forward with immigration reform legislation that addresses the roofing industry's needs. 

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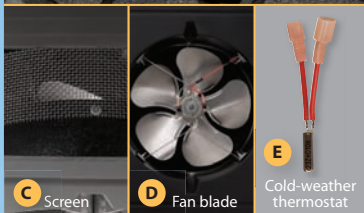
B High-performance housing molded with UV-stabilized ABS color-dyed plastic to prevent damage from sunlight and provide stability. May be painted to match roof color.

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Surface	Brown	31001287
Surface	Weathered Wood	31001288
Curb	Black	31001281
Curb	Brown	31001282
Remote	Black	31001284
Remote	Brown	31001285
Gable	Black	31001283
Thermostat	N/A	31001280

All housing material is UV-enhanced ABS plastic and may be painted to match roof color. All models available with optional cold-weather thermostat.

*1,600 sq. ft. based on 3/12 roof slope with open attic space. For larger areas, multiple ventilators will be necessary. The number of ventilators required will vary depending on roof slope, attic configuration and sq. ft. of open air inlets. For the ventilation requirements of your building, please contact an architect or building professional.

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Legislative Update



State of Arizona

The Arizona Legislature conducted business expeditiously this year and nearly set a record for early adjournment. Going into the 2015 session, ARCA and our contractor coalition partners had one legislative priority---clarifying the numerous ambiguities in the Transaction Privilege Tax (TPT) legislation that became effective January 1 of this year. While we didn't prevail in getting everything changed to our satisfaction the final version signed by Governor Ducey and made retroactive to January 1st is easier to understand and makes compliance doable. The Contractors Coalition will be conducting seminars in both Tucson (4/27) and Phoenix (5/8) which will allow in house tax personnel the opportunity to ask experts in tax and this legislation questions regarding their tax compliance obligations.

Federal

OSHA Silica Regulation

The Construction Industry Safety Coalition (CISC), of which NRCA is a member, released a new report estimating the costs to the construction industry and related job losses under the Occupational Safety and Health Administration's (OSHA's) Proposed Regulation for occupational exposure crystalline silica, which NRCA opposes. In this report, CISC estimates OSHA's proposed silica standard now will cost the industry more than \$4.9 billion per year, increasing a previous estimate by about 20 percent. This new analysis shows an additional \$1.05 billion per year of indirect costs will be placed on the construction industry in the form of increased prices paid for construction materials and building products when manufacturers pass on compliance costs under the "General Industry" portion of OSHA's proposed silica standard. These costs are in addition to the \$3.9 billion per year in direct compliance expenditures by the construction industry for additional equipment, labor, monitoring, medical surveillance, record-keeping, etc. Additionally, the report estimates that the proposed regulation would reduce the number of jobs in the U.S. economy by more than 52,700 annually. OSHA officials have indicated they plan to move forward with a final silica regulation sometime before the end of President Obama's term, which ends in January 2017.

National Labor Relations Board

President Obama vetoed Senate Joint Resolution 8, a Resolution of Disapproval of a regulation issued by the

National Labor Relations Board (NLRB) that will accelerate the time frame for union-organizing elections and implement other changes in union election rules. S.J. Res. 8 was approved by the House and Senate in March under the seldom-used Congressional Review Act, which allows Congress to disapprove any major regulation by a simple majority vote in both chambers. Construction interests supported S.J. Res. 8 because of concerns the NLRB regulation will expedite union-organizing elections in a manner that will preclude the opportunity for informed dialogue between employers and employees regarding collectively bargained issues during a union-organizing campaign. There is concern that the regulation infringes on the due process rights of employers and will require employers to disclose employees' personal information. President Obama's pocket veto of the resolution clears the way for implementation of the regulation April 14. NRCA also supports a lawsuit filed by a coalition of business groups challenging the regulation, but it is unclear when and how the court will rule on this litigation.

Regulatory Reform Legislation

The House Judiciary Committee passed the Responsibly and Professionally Invigorating Development (RAPID) Act (H.R. 348) March 24. The RAPID Act seeks to improve economic growth by expediting federal infrastructure projects and private construction projects that must receive environmental permits before proceeding. It would do this by streamlining the regulatory process under which public and private construction projects obtain required environmental permits so they can proceed in a timely and efficient manner. Reforms in the legislation include coordinating responsibilities among multiple agencies, providing for concurrent reviews by agencies and setting deadlines on permitting decisions and legal challenges. Given that delayed environmental permits can stall work for contractors on new construction projects, NRCA is supporting this effort. A companion bill, the Federal Permitting Improvement Act of 2015 (S. 280), has been introduced with substantial bipartisan support in the Senate and is expected to pass the Homeland Security and Government Affairs Committee later this spring. Supporters of regulatory reform believe this legislation has a good chance to be approved by the House and Senate and be sent to the president to be signed into law. 🏠

The Rare “Cardinal Change”

A “cardinal change” has nothing to do with the football team, the baseball team or, for that matter, the bird. Rather, it is a legal concept that is important for contractors to understand.

By Kevin Estevez

Where applicable, the “cardinal change doctrine” puts limits on the amount of changed work or extra work that can be ordered under the changes clause of a construction contract. I recently dealt with the doctrine in connection with a client matter; here are the basics.

Cardinal Changes Defined

To begin with, the terms “cardinal change” and “cardinal change doctrine” arise out of federal contracting law. Federal courts have defined cardinal changes as “alteration[s] in the work so drastic that they effectively require ... contractor[s] to perform duties materially different from those originally bargained for.” *Centex Constr. v. Acstar Ins. Co.*, 448 F. Supp. 2d 697 (E.D. Va. 2006). More simply put, they are “substantial deviation[s] that change the nature of the bargain.” *ThermoCor, Inc. v. U.S.*, 35 Fed. Cl. 480, 40 Cont. Cas. Fed. (CCH) ¶ 76955 (1996). These deviations may consist of a single significant change outside the general scope of the contract or the cumulative effect of multiple changes, none of which alone would be “cardinal.”

The Effect of Cardinal Changes

Under the cardinal change doctrine, changes deemed “cardinal” on federal projects constitute material breaches of the contract. Generally speaking, the consequences of these breaches are, among other things, that:

- the contractor may pursue common-law termination and damage remedies;
- the contractor is protected against abandonment of the contract; and
- the procedural and damage limitations of the contract are inapplicable. (Philip L. Bruner & Patrick J. O’Connor, Jr., *Bruner & O’Connor on Construction Law* § 4:13)

The cardinal change doctrine is a byproduct of the unilateral changes clause found in federal construction contracts. The clause (which is conceptually similar to typical changes clauses) requires contractors to perform all directed changes “within the general scope of the contract,” whether an “equitable adjustment” to the contract price is agreed upon or must be administratively determined. The cardinal change doctrine provides protection to contractors insofar as it limits the amount of changed work that can be ordered under the changes clause.

Arizona Construction Contracts

Arizona courts have not directly addressed the cardinal change doctrine. There are, however, indications that Arizona courts may enforce the doctrine with respect to public construction contracts.

First, like other state courts, the Arizona Supreme Court has used a separate legal theory to address this issue. Specifically, the Court relied on the concept of quantum meruit in *Greenlee County v. Webster*, 25 Ariz. 183, 215 P. 161 (1932). Quantum meruit is “the measure of damages imposed when a party prevails on the equitable claim of unjust enrichment” – i.e., the party renders goods and services in the absence of an unenforceable contract that unjustly enrich the recipient. *W. Corr. Grp., Inc. v. Tierney*, 208 Ariz. 583, 590, 96 P.3d 1070 (App. 2004). Recovery under quantum meruit (which literally means “as much as he deserves”) is based on the value of goods and services rendered. *Landi v. Arkules*, 172 Ariz. 126, 135, 835 P.2d 458, 467 (App. 1992).

In *Greenlee County v. Webster*, the Arizona Supreme Court was tasked with determining whether “material and substantial changes” to a highway construction project fell within the changes clause of the subject contract. In doing so, the Court noted that:

Changes that radically extend the amount of work, or that eliminate large portions of the work, or that greatly increase the cost thereof, are usually not included within the provision allowing alterations or modifications of the plans or specifications. Generally speaking, only such alterations as are incident to and in aid of the main contract are thought to be covered by these provisions. (*Greenlee County*, 25 Ariz. at 191-92)

The Court ultimately held that the changes at issue in *Greenlee County* were outside the scope of the subject contract, and that the contractor “might have refused to [perform the changes] without violating any obligation of [its] contract.” *Id.* at 194. But, given that the changed work was already performed, the Court found that the contractor’s proper cause of action was quantum meruit (not breach of contract as the contractor had pled). *Id.* at 199.

Second, and in addition to the holding in *Greenlee County*, the Arizona Supreme Court has noted that, in the absence of controlling state authority, it will look to federal contracting law for guidance in connection with public construction contracts. *New Pueblo Constructors, Inc. v. State*, 144 Ariz. 95, 101, 696 P.2d 185, 191 (1985). Thus, if an Arizona court directly addresses the cardinal change doctrine in the context of a public contract, the federal authority establishing the doctrine will likely be considered in the court’s decision.

Despite the holdings in *Greenlee County* and *New Pueblo*, Arizona courts have not adopted the cardinal change doctrine. Accordingly, Arizona contractors presented with what they believe to be a cardinal change should consult with their attorney to fully understand their rights and obligations. 🏠

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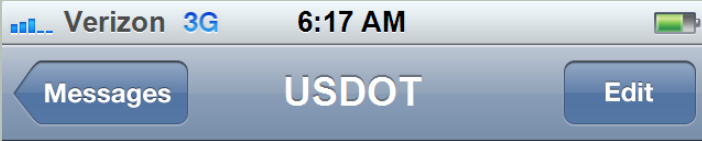
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US Department of Transportation: *No Texting Rule Fact Sheet*

If your company displays a DOT # this regulation applies to you and your drivers, for those unregulated by USDOT it just makes for a good safety practice

The Federal Motor Carrier Safety Administration has published rules that restrict texting and the use of hand-held mobile phones by truck and bus drivers while operating a commercial motor vehicle (CMV).

Research commissioned by FMCSA shows the odds of being involved in a safety-critical event (e.g., crash, near-crash, unintentional lane deviation) are 23.2 times greater for CMV drivers who text while driving than for those who do not. Texting drivers took their eyes off the forward roadway for an average of 4.6 seconds. At 55 mph, this equates to a driver travel-

ing 371 feet, or the approximate length of a football field (including the end zones)—without looking at the roadway!

What exactly is “Texting”?

Texting means manually entering text into, or reading text from, an electronic device.

Texting includes (but is not limited to), short message services, e-mailing, instant messaging, a command or request to access a Web page, pressing more than a single button to initiate or terminate a call using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

What does this rule mean to you?

Fines and Penalties - Texting while driving can result in driver disqualification. Penalties can be up to \$2,750 for drivers and up to \$11,000 for employers who allow or require drivers to use a hand-held communications device for texting while driving.

Disqualification - Multiple convictions for texting while driving a CMV can result in a driver disqualification by FMCSA. Multiple violations of State law prohibiting texting while driving a CMV that requires a CDL is a serious traffic violation that could result in a CDL driver being disqualified for up to 120 days.

What are the risks?

Texting is risky because it causes the driver to take his/her eyes off the roadway. Dispatching devices that are part of a fleet management system can be used for other purposes, but texting on a dispatching device is indistinguishable from texting on another text-capable device, and is therefore prohibited.

Impact on Safety Measurement System (SMS) Results - Violations negatively impact SMS results, and they carry the maximum severity weight.

Compliance

Simply do not type or read a text message while driving a CMV!

No Call, No Text, No Ticket!

DOL Extends FMLA Protection to Same-Sex Spouses




By Ballard Spahr

The U.S. Department of Labor (DOL) recently issued a final rule amending its definition of “spouse” under the Family and Medical Leave Act (FMLA) to extend FMLA protection to legally married employees with same-sex spouses, regardless of where they live. The DOL’s final rule codifies its view—announced in its June 27, 2014, Notice of Proposed Rulemaking—that all legally married couples, whether opposite sex or same-sex, should have consistent federal family leave rights, even if state family leave rights are inconsistent.

The new rule’s definition of “spouse” expressly includes marriages that are lawful in the state where they were performed (the “place of celebration” rule), expanding FMLA protections to legally married same-sex couples regardless of where they live. Like any other legally married couple, they now may take job-protected leave for the serious health condition of a covered spouse, or in connection with the covered spouse’s military service. In its press release announcing the final rule, the DOL explained that “[t]he basic promise of the FMLA is that no one should have to choose between the job and income they need, and caring for a loved one.”

In light of the final rule, employers should review their employee handbooks, practices, procedures, and training programs to ensure that employees in same-sex marriages can take advantage of FMLA leave to the same extent as their co-workers in opposite-sex marriages, free from interference or retaliation. Employers also should stay abreast of same-sex partner developments affecting state leave laws in the states where they have employees, since the legal landscape is changing quickly in the wake of Windsor.

Attorneys in Ballard Spahr’s Labor and Employment Group can assist clients in FMLA compliance and other workplace issues. If you have questions, please contact Elisabeth R. Blattner-Thompson at 801.517.6844 or blattnerthompstone@ballardspahr.com, Kelly T. Kindig at 215.864.8652 or kindigk@ballardspahr.com, or the member of the Group with whom you work. 

Keep Employees SAFE FROM FALLS



Falls are the leading cause of death for workers in residential construction. In 2013, 294 of the 796 construction deaths recorded in the nation – 37% – were the result of a fall.

During the 2014 fiscal year, failure to use proper workplace fall protection led all other Occupational Safety and Health Administration (OSHA) violations. OSHA's established fall protection standard is 29 CFR 1926.501(b)(13). It provides guidance to help prevent fall deaths and injuries.

In February, OSHA rejected Arizona's residential fall protection standard, which was established in 2012 by state statute. Arizona now is required to follow the federal standard. Regardless of whether it is for new construction or for renovations and repair, an employer is responsible for compliance with the OSHA standard and for ensuring the safety of each employee.

Under the OSHA standard, workers engaged in residential construction six feet or more above lower levels must be protected by conventional fall protection. These could include guardrail systems, safety net systems, personal fall arrest systems or other fall protection measures specified in 1926.501(b).

Although the standard does not mention personal fall restraint systems, OSHA will accept a properly used fall restraint system in lieu of a personal fall arrest system when the restraint system is rigged to keep the worker from the fall hazard.

If an employer can demonstrate the fall protection required under 1926.501(b)(13) is not feasible or presents a greater hazard, it must implement a written fall protection plan that meets the 1926.502(k) requirements.

Factors that often cause falls include unstable work surfaces, misuse or failure to use fall protection systems and human error.

Studies show that using guardrails, fall-arrest systems, safety nets, covers and restraint systems can prevent deaths and injuries from falls.

Here are some general tips on fall protection:

- Be observant – look for fall hazards and eliminate them before and during work.
- Inspect fall protection equipment for defects before use.
- Select, wear and use fall protection equipment that is appropriate for the task; this may include safety net systems or personal fall-arrest systems such as a body harness.
- Secure and stabilize ladders before climbing them.
- Use ladders properly and never stand on the top rung.
- Use handrails for stability when going up or down stairs.
- Use aerial lifts or approved stable platforms when working on elevated surfaces.

You can order Fall Protection safety cards by visiting CopperPoint.com and ordering from our Safety Materials Order Form on the Safety & Resources tab.

Who to Contact:

Association Coordinator

Tod Dennis
602.631.2212
tdennis@copperpoint.com

Sponsorships/Event Support Requests

Bruce Trethewey
602.631.2810
btrethewey@copperpoint.com

Phyllis Senseman
602.631.2016
psenseman@copperpoint.com



A Layer of Protection for Subcontractors

Court Reaffirms Contract Requirement in Breach of Implied Warranty Claims

By Mike Thal

In *Yanni v. Tucker Plumbing*, a claim by homeowners against plumbing subcontractors failed for lack of a contract between the plaintiffs and the defendants.

Louis Yanni was one of several people who bought homes in the same subdivision. When Mr. Yanni and his neighbors determined that the plumbing in their homes was defective, they sued the two plumbing contractors that, pursuant to subcontracts with the general contractor, performed the plumbing work on the homes as part of the original construction. The homeowners' suit alleged that the subcontractors had breached the implied warranty of workmanship and habitability by using defective plumbing components.

In seeking to dismiss the suit, the subcontractors argued that:

- the homeowners' contracts were with the general contractor and not the subcontractors;
- only parties to contracts can bring claims for breach of the implied warranty; and, thus,
- the homeowners did not have standing to sue them.

The trial court agreed with the subcontractors and dismissed the homeowners' suit. The homeowners appealed, and the Arizona Court of Appeals affirmed the trial court's dismissal of their lawsuit and the victory by the subcontractors.

Contract Requirement

This case offers an opportunity to review the doctrine of implied warranty of workmanship and habitability, which was first applied to Arizona residential construction in a 1979 case, *Columbia Western Corp. v. Vela*. In that case, the court held that, in new home construction, the "builder-vendor impliedly warrants that the construction was done in a workmanlike manner and that the structure is habitable." Because an implied warranty claim "sounds in contract," the Columbia court held that only the parties to the contract can enforce it.

Five years later, the Arizona Supreme Court created a narrow exception, in *Richards v. Powercraft*, that allows subsequent homebuyers (not just the first buyer) to sue a homebuilder for breach of implied warranty.

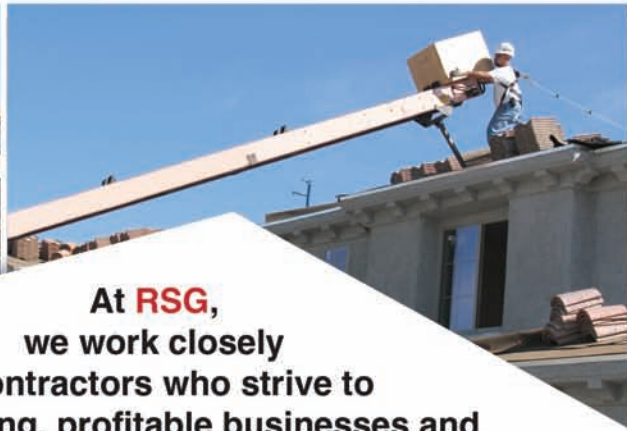
A similar exception came out of a 2008 case, *The Lofts at Fillmore v. Reliance Commercial Construction*, in which the Arizona Supreme Court ruled that a general contractor was responsible for defects in a condo project in which the buyers contracted with the developer, not the general contractor.

In *Yanni*, the homeowners raised both exceptions to support their claim against the plumbing subcontractors but were unsuccessful. The Court of Appeals noted that "nothing in *Richards* or *Lofts* [allows] a homebuyer to assert a breach of the implied warranty against any subcontractor ... in the absence of a contract between the homebuyer and the subcontractor."

Subcontractors at Risk

It is worth mentioning that neither the trial court's dismissal of the homeowners' suit nor the appellate court's ruling let the subcontractors entirely off the hook.

- The trial court noted that there were other "defendants in line," such as the general contractor or developer, with which the homeowners did have a contract and against which the homeowners' could have filed suit.
- Similarly, the appellate court included in its opinion that the homeowners could sue the developer or general contractor, which could then seek indemnity against the subs or assign its claim to the homeowners. 🏠



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Sporting Clays Tournament

Some people count on a groundhog to determine the very moment that Spring has sprung. Here at ARCA, we know the season is fully upon us when our Spring sporting events begin approaching (and let's be honest, we can feel the end of winter long before that).

This year's spring Sporting Clays Tournament drew in a record number of players, resulting in a record \$12,000 raised for the Arizona Roofing Industry Foundation's scholarship fund. On top of that, the perennial winners - **Zach** and **Alan Lundberg** of **Alan Bradley Roofing** - graciously donated their combined \$500 prize money back to ARIF for the scholarship fund.

A big thank-you to all who participated and were involved in another hugely successful event.

Tournament Results

Flight #1

Zach Lundberg 90
Gene Warner 84
Alan Lundberg 80

Flight #2

Mark Yarish 44
Loric Harding 43
Jerry Brown 41

Flight #3

Manuel Rea 33
Chris Thorton 33
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Stand DOWN

OSHA's annual Stand Down Day is scheduled for May 14-15. This annual event is to raise awareness of preventing fall hazards. Last year's event reached more than 1 million workers. This year, OSHA wants more than 20,000 Stand Down events to occur nationwide, which would mean it would touch nearly 40% of all construction workers in the United States.

Participation includes anyone who wants to prevent falls in the workplace, including commercial construction companies of all sizes, residential construction contractors, sub- and independent contractors, highway construction companies, general industry employers, the U.S. Military, other government participants, unions, employer's trade associations, institutes, worker interest organizations, and safety equipment manufacturers.

Partnering with OSHA for Stand Down are the National Institute for Occupational Safety and Health (NIOSH), the National Occupational Research Agenda (NORA), OSHA approved state plans, State consultation programs, the Center for Construction Research and Training (CPWR), the American Society of Safety Engineers (ASSE), the National Safety Council, the National Construction Safety Executives (NCSE), the U.S. Air Force, and the OSHA Training Institute (OTI) Education Centers.

Companies can conduct a Safety Stand Down by taking a break to have a toolbox talk or another safety activity such as conducting safety equipment inspections, developing rescue plans, or discussing job specific hazards. Managers are encouraged to plan a stand-down that works best for their workplace anytime during the May 4-15, 2015.

Helpful hints:

- [Suggestions to Prepare for a Successful "Stand-Down"](#)
- [Highlights from the 2014 Stand-Down](#)
- [FAQ's](#)

If you want to share information with OSHA on your Safety Stand Down, Fall Prevention Programs or suggestions on how to improve future initiatives like this, send an email to oshastanddown@dol.gov. If you plan to conduct a free event that is open to the public, see OSHA's [Events](#) page for more information and to contact your Regional Stand-Down Coordinator.



Who to Contact:

Association Coordinator

Tod Dennis
602.631.2212
tdennis@copperpoint.com

Sponsorships/Event Support Requests

Bruce Trethewy
602.631.2810
btrethewy@copperpoint.com

Phyllis Senseman
602.631.2016
psenseman@copperpoint.com



Four Employer Fall Protection Requirements

Despite legislation, industry education and safety awareness campaigns, lack of proper fall protection continues to rank No. 1 on OSHA's Top 10 Most Frequently Cited Violations. It is also the No. 1 killer of construction workers.

In 2013, 37% of the 796 workers killed in construction accidents -- 294 people -- died in falls.


Complacency is too often at fault in fatal falls. A worker may believe the job is at a low enough height to make fall protection equipment unnecessary, or the job will be "real quick" or fall protection will be "too restrictive." In some circumstances, it's a case of negligence, in which an employer or site manager fails to provide the right equipment, or workers have not been made aware of or fail to understand potential hazards at the site.

No matter what the scenario, it is the employer's obligation to:

- provide proper fall protection equipment based on a hazard assessment of the work site;
- train staff on when and how to properly use the equipment;
- maintain the equipment to ensure proper operation when needed;
- enforce required use of the fall-protection equipment per OSHA guidelines in the company's written safety policy.


Failure to meet any of these obligations can make your company liable should a fall-related injury or death occur. Fines, lawsuits and higher insurance premiums are likely financial repercussions. A tarnished reputation and potential loss of future business can also result, as can a loss of productivity on projects

due to the emotional toll on other workers. Of course, the real incentives for maintaining an effective fall prevention program aren't measurable in dollars and cents.

With construction activity on the upswing, the importance of fall prevention is growing with it. Consequently, OSHA is expanding its Fall Safety Stand-Down event to two weeks in 2015, from May 4 to 15. During this period, employers are encouraged to pause during the work day for topic talks, demonstrations and training on how to use safety harnesses, guard rails and other means to protect workers from falls. Learn how your business can participate in, and benefit from, this event by visiting www.osha.gov/stop-falls/. 



Energy-efficiency Legislation

Sens. Rob Portman (R-Ohio) and Jeanne Shaheen (D-N.H.) reintroduced the Energy Savings and Industrial Competitiveness Act (S. 720) in the Senate, legislation that NRCA has supported for many years. This overwhelmingly bipartisan legislation was brought up for debate twice during the last Congress, only to die on the Senate floor because of political bickering and senators adding non-germane and highly controversial amendments. The bill uses a variety of low-cost tools to help energy users become more efficient and would make the federal government—the U.S.' largest consumer of energy—more energy-efficient without mandates on businesses. Also, the revised bill includes a provision supported by NRCA to expand options for green building standards in federal buildings beyond only LEED.® Timing for Senate floor action regarding this legislation still is unknown at this time, but given that Portman is up for re-election next year, this legislation could move later this year or early in 2016. 

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2015 ARIF/ARCA Scholarship Applications

Now Available

Submittal Deadline: May 1, 2015



The Arizona Roofing Industry Foundation (ARIF), the non-profit affiliate of ARCA that carries out charitable and education related activities, has announced that academic scholarship applications for 2015-16 are now available.



This year, four scholarships will be awarded in the amount of \$2,500 for continuing education.

Eligible applicants include full-time employees of an ARCA contractor or associate member company or their dependent children or spouses. In addition, applicants must be high school seniors or graduates who plan to enroll or students who are already enrolled in a full-time undergraduate course of study at an accredited two or four year college, university or vocational-technical school. Recipients may use the money to support their studies at any accredited postsecondary institution. Students may reapply to the program each year they meet the eligibility requirements.

Scholarship recipients will be selected based on academic record, potential to succeed, leadership and participation in school and community activities, honors, work experience, financial need, a statement of educational and career goals, and an outside appraisal. Applications must be received by May 1, 2015.

Who is eligible?

Any ARCA Member's

- full-time employee,
- full-time employee's spouse, **OR**
- full-time employee's child

+

who is

- a high school senior or graduate planning to enroll in a full-time undergraduate course
- OR**
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For more information, visit the ARIF website at www.azroofingfoundation.org or contact Duane Yourko, ARCA's executive director, at 602 335-0133, (877) 335-2722, or dyourko@azroofing.org.



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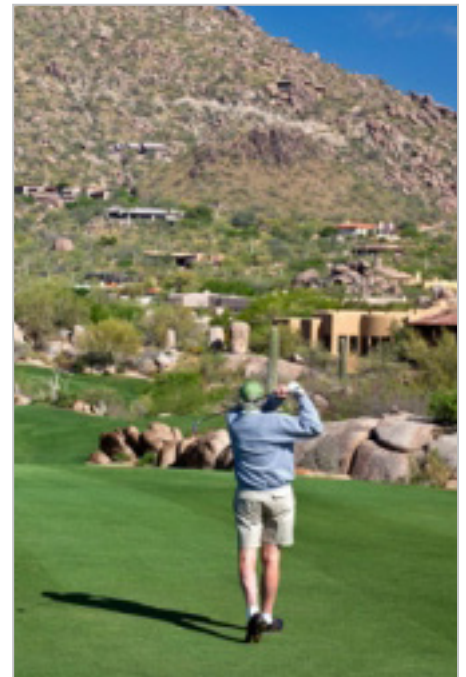


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ARCA CONVENTION AND TRADE SHOW
OCTOBER 1-3, 2015

A RETURN TO PRESCOTT

Mark your calendars and plan on joining us this Fall for more thrills in the hills.



Legislature Reduces Threat of Construction Defect Lawsuits

New law removes homeowners' automatic entitlement to attorney fees, gives contractors opportunity to resolve defects in advance of a lawsuit.

By Kent Lang

Homebuilder-friendly amendments to Arizona's construction defect statute were signed into law by Governor Ducey on March 23.

The main focus of HB 2578 is the repeal of A.R.S. § 12-1364, which requires home sellers and contractors to pay attorney fees and expert witness fees to successful plaintiffs in a construction defect lawsuit (or "contested dwelling action"). Under the new law, the awarding of such costs will be left to the courts on a case-by-case basis and will depend on the language of the dwelling purchase contract.

The new law does not deprive homeowners of the right to sue to force sellers or builders to correct defective construction. However, by making the awarding of attorney fees less certain, the law seeks to curb excessive lawsuits promoted by law firms that represent homeowners in construction defect litigation.

The new law also establishes a seller's/builder's right to repair construction defects before a homeowner can file a lawsuit. The process begins with the homeowner sending a certified letter to the seller/builder, which has 60 days to respond. In its response, the seller/builder can either dispute the need for corrective action or, in a "notice of intent to repair or replace," can agree to make any needed repairs or replacements. The new law provides that, in the latter case:

The homeowner and the seller/builder will coordinate repairs or replacements within 30 days after the seller/builder's notice of intent to repair or replace was sent.

The repair/replacement will be performed by the seller/builder or, at the request of the homeowner, by another construction professional selected by the seller/builder.

The seller/builder is required to make reasonable efforts to begin repairs/replacements within 35 days after the seller's notice of intent to repair or replace was sent.

All repairs/replacements are to be completed using "reasonable care under the circumstances" and

"within a commercially reasonable time frame considering the nature of the repair or replacement, any access issues or unforeseen events" that are not caused by the seller/builder.

At the conclusion of any repairs or replacements, the homeowner may sue the seller/builder, as under the current law. However, as noted above, if the homeowner's lawsuit is successful, the seller/builder will be liable for attorney fees and expert witness fees only if the court decides to award those fees to the homeowner.

If the homeowner files a suit against the seller/builder before the seller/builder can fulfill its obligations under its notice of intent to repair or replace (per the steps outlined above), the suit may be dismissed.

The new law will go into effect 91 days after the end of the legislative session. 🏠



Congratulations

James Hanson

Chief Legal Counsel, Arizona Registrar of Contractors

As our colleague at Lang & Klain, James Hanson served clients with skill and commitment, and we wish him much success in his new position.

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Welcome New ARCA Members

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★ Minard Ames Insurance Services

Andrew Atkinson, 602-273-1625

★ Royal Adhesives and Sealants

Paul Bato, 909-253-2924

Special thanks to our friends at GAF Materials for their generous \$5,000 contribution to the ARIF scholarship fund.

Upcoming Events

april

ASCC Presentation (Tucson): Arizona's Transaction Privilege Tax

Lovitt & Touche, 7202 E. Rosewood St., Learning Academy, Tucson, AZ 85710

April 27

3:00pm

may

Spring Golf Tournament

Whirlwind Golf Club 5692 W North Loop Road, Chandler, 85226

May 1

6:00am

Dinner Meeting (Tucson)

Old Pueblo, 60 N. Alvernon Way, Tucson, AZ 85711

May 5

4:00pm

Dinner Meeting (Phoenix)

Doubletree Suites, 320 N. 44th St., Phoenix, AZ 85008

May 6

4:00pm

ASCC Presentation (Phoenix): Arizona's Transaction Privilege Tax

Lovitt & Touche, 1050 W. Washington St., Learning Academy Ste. 203, Phoenix, AZ 85281

May 8

3:00pm

june

Phoenix Charity Bowling Tournament

AMF Christown Lanes, 1919 W Bethany Home Road, Phoenix 85015

June 6

11:00am

OSHA 10-Hour Training in Spanish

ARCA office, 5050 N. 8th Pl, Ste. 6, Phoenix, AZ 85014

June 18-19

7:00am - 12:00pm

OSHA 10-Hour Training in English

ARCA office, 5050 N. 8th Pl, Ste. 6, Phoenix, AZ 85014

June 25-26

7:00am - 12:00pm

july

Tucson Charity Bowling Tournament

Golden Pin Lanes, 1010 W Miracle Mile Tucson 85705

July 1

11:00am

Are You Claiming Your Share?

ARCA Association Safety Plan participants received over **\$360,000 in dividends** this year from CopperPoint Mutual Insurance Company. If you are not a participant in ARCA's worker compensation plan contact the ARCA office at 602-335-0133 for more details.

Don't forget to tie off ladders.

No se olvide atar las escaleras de mano.



What will it take to change your mind?
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Phone 602 375-0433 Fax 602 439-4724
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5050 North 8th Place, Building 6
Phoenix, Arizona 85014
Phone 602 335-0133 Fax 602 335-0118
Email dyourko@azroofing.org

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2014 / 2015 COMMITTEE CONTACTS

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John Yoder - Star Roofing
Office: 602 944-3323 Fax: 602 944-4749
Email: jyoder@starroof.com

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Chuck Chapman - Tecta America Arizona
Office: 602 246-8661 Fax: 623 931-3061
Email: cchapman@tectaamerica.com

Convention Committee

Kim Scholten - Western Colloid
Office: 480 883-2866 Fax: 480 452-0249
Email: kim.westerncolloid@gmail.com

Dave Metz - Elastek Roof Coatings/ERSys-
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Office: 520 405-3222 Fax: 520 624-9696
Email: davidm@itwsealants.com

Education & Safety Committee

Jerry Brown - WRECORP
Office: 623 878-7117 Fax: 800 861-0907
Email: jerry@wrecorp.com

Executive Committee

John Yoder - Star Roofing
Office: 602 944-3323 Fax: 602 944-4749
Email: jyoder@starroof.com

Golf Committee

Greg Marrs - Roofing Supply Group
Office: 623 931-0054 Fax: 623 931-3925
Email: gmarrs@rsgroof.com

Green Buildings/LEED Committee

Dave Coultrap - Division Seven Systems
Office: 480 917-8383 Fax: 480 726-3744
Email: daveofdiv7@aol.com

Mary Coultrap - Division Seven Systems
Office: 480 917-8383 Fax: 480 726-3744
Email: mecoultrap@aol.com

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John Yoder - Star Roofing
Office: 602 944-3323 Fax: 602 944-4749
Email: jyoder@starroof.com

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Valorie Miller - Jim Brown & Sons Roofing
Office: 623 247-9252 Fax: 623 435-8577
Email: vm@jimbrownsroofing.com

Larry Miller - Gorman Roofing Services
Phone 602-262-2423 Fax 602-262-2405
Email larrym@gormanroofingservices.com

Nominations & Elections Committee

Sal Flores - Inca Roofing
Office: 602 544-0998 Fax: 602 589-0411
Email: salflores@incaroofting.com

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Office: 480 502-2119 Fax: 480 452-0900
Email: tducar@azlawyers.com

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Chuck Chapman - Tecta America Arizona
Office: 602 246-8661 Fax: 623 931-3061
Email: cchapman@tectaamerica.com

John Plescia - Star Roofing
Office: 602 944-3323 Fax: 602 944-4749
Email: jplescia@starroof.com

Technical Committee

Pete Schmautz - Star Roofing
Office: 602 944-3323 Fax: 602 944-4749
Email: pschmautz@starroof.com

Dave Coultrap - Division Seven Systems
Office: 480 917-8383 Fax: 480 726-3744
Email: daveofdiv7@aol.com

Ron Gibbons - Pioneer Roofing
Office: 602 944-2696 Fax: 602 997-0623
Email: rgibbons@pioneer-az.com

Training & Career Promotion Committee

Rhonda LaNue - Lyons Roofing
Office: 602 276-5515 Fax: 602 276-7089
Email: rhonda@lyonsroofing.com

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Charity Bowling Phoenix Committee

Bryan Hill - WRECORP
Office: 623 878-7117 Fax: 800 861-0907
Email: bryan@wrecorp.com

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Donna Maynard - Allied Building Products
Office: 520 795-7663 Fax: 520 795-1846
Email: donna.maynard@alliedbuilding.com

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Ron Brown - Jim Brown & Sons Roofing
Office: 623 247-9252 Fax: 623 435-8577
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