

The Addendum

The Official Publication of the American Society of Professional Estimators Des Moines Area Chapter 73



From The President – Jon Wall, Central Iowa Mechanical

With all due respect to the current economic climate this has to be one of the busiest periods for me in the short time I've been an estimator. I don't know about you all, but what we are finding is despite the relatively low number of projects bidding the bid dates seem to be stacked on top of one another. Maybe that's by design or just dumb luck for a company like ours that makes the strategy of which projects to bid a little entertaining.

A quick note if you missed last month's dinner meeting you missed a good one talking about Submittal Exchange. For me personally it was a beneficial meeting as a project we were just awarded is utilizing this program. Thursday night if you haven't signed up already I'd encourage you to do so, as we will be talking ISQFT at Stetson Building Products in addition to good food catered from Woody's Smoke Shack.

Also, for those of you interested in becoming a Certified Professional Estimator (CPE) I would encourage you do so. I think you will find it will do a bit more than augment your resume. For those interested please contact Mark Kutchen with Story Construction to find out more information mkutchen@storycon.com

This time of year we are all starting the Holiday season or at least thinking about it. Shopping, attending parties, and being with family; needless to say there is a lot to be thankful for. Regardless of where I "think" I'm at in terms of professional success there are things that keep me humble. Last week I was reminded while observing Veterans Day of all the men and women who are still serving overseas who won't be home this holiday season. I'm also reminded of Staff Sgt. Salvatore Giunta., who today will become the first living Medal of Honor recipient since Vietnam. I don't know much bust what I do know is it's people like him who make me damn proud to be an American, and an Iowan.

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Our Mission

- The American Society of Professional Estimators serves construction estimators by providing education, fellowship, and opportunity for professional development.

Chapter Dinner Meeting

MARK YOUR CALENDERS!!!

Where: Stetson Building Products
2205 Bell Ave.
Des Moines, IA 50321

When: Thursday, November 18, 2010

Program: ISQFT

Cost: \$15.00



RSVP to: Nick Gehl—Neumann Bros.
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Customer Bankruptcy! What's a Subcontractor to Do?

By Jay Clark; Originally Published in "Contractor's Compass" 1st Quarter 2009

Bankruptcies are on the rise and the construction industry is feeling the effects just like other industries. This article discusses some key challenges that subcontractors will want to manage in case of a general contractor's (or other customer's) bankruptcy.

Chapter 7 and Chapter 11 —

What's the Difference?

Most general contractors are corporations, partnerships or limited liability companies, which are eligible to file only a Chapter 7 or a Chapter 11 proceeding under the U.S. Bankruptcy Code (the Code). In a Chapter 7 case, an appointed bankruptcy trustee will take control of the debtor's assets, liquidate them and divide the proceeds among the debtor's creditors. In a Chapter 11 case, however, the debtor will have an opportunity to reorganize and attempt to stay in business. The management of a Chapter 11 debtor will usually retain control of the decision-making of the company throughout the bankruptcy process. You may hear the term "debtor-in-possession" in such cases. It means exactly what it says: The debtor, not a trustee, remains in possession and control of the assets and management of the company.

'Automatic Stay' Stops

Collections Against Debtor

Upon filing of a bankruptcy petition, an "automatic stay" immediately protects the debtor. For example, a stay would prohibit a subcontractor from commencing or continuing any activity to collect on debts that a general contractor owed for work performed before the general contractor filed the bankruptcy case. The stay would suspend any lawsuit or collection action that was pending. It would also prevent enforcement of a prior judgment. The subcontractor would have to cease demands for payment in person, by phone, by letter, etc. An "automatic stay" is analogous to a referee blowing the whistle and stopping a play just when the tacklers are ready to pounce on the quarterback. If a bankruptcy court determined that a creditor willfully violated a stay, it could fine the creditor for that conduct. Subcontractors should take great care not to give a wounded debtor "ammunition" to strike back at them, by violating an automatic stay.

Pursue Lien or Bond Claims

Although a stay would alter a subcontractor's normal collection routine, it would not stop it from pursuing collection efforts against a third party that was not in bankruptcy, such as a lien claim against a project owner or a bond claim against a surety. The Code specifically allows efforts to perfect a lien to continue. If time allows, filing a motion with the bankruptcy court requesting permission, or relief from the stay, to proceed is advisable nonetheless. The steps to perfect a lien vary from state to state, but in states requiring a lawsuit to perfect the lien, a subcontractor would need to file a motion with the bankruptcy court before filing any lawsuit against the debtor. Bond claims, like lien claims, have mandatory deadlines, so subcontractors should focus on meeting bond claim requirements in case of a customer bankruptcy. Knowing the deadline to file a notice of claim and the deadline for filing a lawsuit is key. The bond's terms — or, for state or federal public projects, the terms in the applicable statutes — describe the rules for filing a bond claim. For example, the federal Miller Act governs bond claims on federal and federally funded jobs, requiring a subcontractor to provide a notice of a claim within 90 days of completing its work. Subcontractors handling a bankruptcy on this type of project should consult with their attorneys to ensure that they will meet, despite the automatic stay's restrictions, the Miller Act's requirement for filing a lawsuit within one year of performing work or supplying materials.

(Continued on page 9)

CHECK US OUT ON THE WEB!!

Please stop by our website at www.iowaaspe73.org let us know what you think. We are open to any ideas or suggestions that will help us communicate to our current members and potential new members.

ASPE Member Companies

The following companies all have at least one member in ASPE Chapter 73:

- .Academy Roofing & Sheet Metal
 - .Air-Con Mechanical
 - .Architectural Arts
 - .Automatic Door Group
 - .AZCON Corp
 - .Baker Electric
 - .Baker Group
 - .Bratney Companies
 - .Breiholz Construction
 - .Central Iowa Mechanical
 - .Commonwealth Electric
 - .Concrete Technologies, Inc.
 - .CPMI
 - .Crose & Lemke Construction
 - .CTI Ready Mix
 - .Doors, Inc.
 - .Engineered Thermal Insulation
 - .Excel Mechanical
 - .Graham Construction Co.
 - .Hallett Materials
 - .The Hansen Company
 - .Heartland Finishes, Inc.
 - .Hubbell Construction Services
 - .Ideal Floors, Inc.
 - .Interstates Construction Services, Inc.
 - .Leachman Lumber Company
 - .Masonry Products, Inc.
 - .Neumann Brothers
 - .Northwest Steel Erection
 - .Proctor Mechanical
 - .Redstone Painting Co.
 - .Septagon Construction
 - .Skold Companies
 - .Stetson Building Products
 - .Story Construction Co.
 - .Thiele Geotech, Inc.
 - .Turner Building & Consulting
 - .US Erectors, Inc.
 - .Waldinger Corporation
 - .Walsh Door & Hardware
 - .Weitz Company
 - .Wolin & Associates
- Your company's name could be included in this list next month. All you have to do is join. Contact Chapter 73 Membership Committee Chairman, Steve Watrous, (515) 264-0782 for a membership packet.**

Next Event

November Chapter Meeting

Where: Stetson Building Products
2205 Bell Ave.
Des Moines, IA

Supper: Woody's Smoke Shack

When: Thursday November 18, 2010

Program: Submittal Exchange

Cost: \$15.00 (Members).....CHEEEEEEP!!!

RSVP: Nick Gehl—Neumann Brothers

E-Mail:
gehl@neumannbros.com

Phone: (515) 243-0156

Fax: (515) 243-0165



Mark Your Calendars

Dinner Meeting Date	Venue	Program	Speaker	Organization / Firm
September 16, 2010	Latin King	OSHA	Tom Suckow	MBI
October 21, 2010	AJ's Steakhouse	Submittal Exchange Programs		Submittal Exchange
November 18, 2010	Stetson Building Products	ISqFt	Mona Dvorak	MBI
December TBD, 2010	Smokey D's	Christmas Social	N/A	ASPE Chapter #73
January 20, 2011	Sam & Gabes	Code Review	Terry Berk	City of Des Moines
February 17, 2011	Christopher's	Indemnity Clauses	Brent Soderstrum	Brown Winick Graves Gross Baskerville and Schoenebaum
March 24, 2011	Greenbriar	Insurance Requirements		Lamair Mullock Condon
April 21, 2011	Bravo's	Lien Waivers		

Board of Directors' Monthly Report

AMERICAN SOCIETY OF PROFESSIONAL ESTIMATORS

CHAPTER 73

Board of Directors Meeting MINUTES

DATE: September 7, 2010

LOCATION: Smokey D's BBQ 5055 N.W. 2nd Ave. Des Moines ,Iowa

START TIME: 5:40 P.M. END TIME: 6:30 P.M.

IN ATTENDANCE: Steve Watrous, Jack Leachman, Nick Gehl, Ray Conway, Ken Kness, Jon Wall, John Taylor, Tim Neumann, and Mike Webber.

CALL TO ORDER: Jon Wall

MINUTES OF PREVIOUS MEETING: Approved as distributed.

REPORTS:

Membership 52, no new ones.



Secretary Report (Jon Wall) Minutes of previous meeting approved as presented.

Treasurer & Budget Reports (Ray Conway) Current bills and monthly report approved as presented. We will be establishing a new budget for 2010-2011. Last year's budget came out very well and we expect the same for current year.. Treasurer's report approved as submitted.

Activities/Fundraising (John Taylor & Ken Kness) . Golf outing in June 2010 generated net proceeds of approx. \$5,452.00 which was almost \$2,000.00 more than budgeted. Congratulations to all who participated in this event either as a player or helped plan and work at it. It was a smashing success and given the "down" economy, we can be proud of all who were a part of this event and especially so the sponsors. Be sure to thank them all.

Newsletter (John Wall) We need to find another person to take over as editor / publisher. Tim Neumann has a person in mind (Vicky) at Stetson Building Products who may be interested. Tim will check this out..

Programs: Planning for all dates for 2010-2011 has been done and persons have either volunteered or have been selected to put each month's program together. A yearly program planner will be available soon. Dennis Baber has the September meeting program: "OSHA" presented by Tom Suckow with MBI. This program will be presented at the Latin King restaurant. Ray Conway is planning the October program.

Certification: (Mark Kutchen) We have one candidate who needs to take the test. Next application deadline is 1-1-11..

Scholarships: (John Taylor) Much discussion about what to do in getting the application forms, contacts, and selection process back into the committee's hands. John Taylor is new committee chair and will work on doing this. Volunteers will be requested to get involved and participate. This committee is very important to Chapter 73 and we must do a better job of controlling the scholarship process and do so in a timely manner.

Advertising: (Tim Neumann) Mailings going out to advertisers..

By Laws: No report

Awards: No report. Ray Conway will be handling this.

PR/Historical: (Ray Conway) No report

Estimating Academy: (Ray Conway) No academy planned at this time.

Website: (Mike Webber) Will be using Todd Woolums for website maintenance again. Approval was given for changes as suggested by National ASPE, per Nadean L. O'Hara. Anyone have suggestions?

Unfinished Business:

fill secretary position and one more Board of Directors seat. Board voted unanimously to move Board of Directors meetings to first Monday of each month.

New Business: Joint meeting with DBIA or NAWIC ? Nick Gehl will investigate.

Adjournment: Mike Webber

Next Board Meeting: **October 4, 2010**

Location: **TBA**

ASPE Code of Ethics Basic Canons

- ☑ **Canon #1** Professional estimators shall perform services in areas of their discipline and competence.
- ☑ **Canon #2** Professional Estimators shall continue to expand their professional capabilities through continuing education programs to better enable them to serve clients, employers and the industry.
- ☑ **Canon #3** Professional Estimators shall conduct themselves in a manner which will promote cooperation and good relations among members of our profession and those directly related to our profession.
- ☑ **Canon #4** Professional Estimators shall safeguard and keep in confidence all knowledge of the business affairs and technical procedures of an employer or client.
- ☑ **Canon #5** Professional Estimators shall conduct themselves with integrity at all times and not knowingly or willingly enter into agreements that violate the laws of the United States of America or of the states in which they practice. They shall establish guidelines for setting forth prices and receiving quotations that are fair and equitable to all parties.
- ☑ **Canon #6** Professional Estimators shall utilize their education, years of experience and acquired skills in the preparation of each estimate or assignment with full commitment to make each estimate or assignment as detailed and accurate as their talents and abilities allow.
- ☑ **Canon #7** Professional Estimators shall not engage in the practice of "Bid Peddling" as defined by this code. This is a breach of moral and ethical standards, and this practice shall not be entered into by a member of this Society.
- ☑ **Canon #8** Professional Estimators and those in training to be estimators shall not enter into any agreement that may be considered acts of collusion or conspiracy (bid rigging) with the implied or express purpose of defrauding clients. Acts of this type are in direct violation of the Code of Ethics of the American Society of Professional Estimators.
- ☑ **Canon #9** Professional Estimators and those in training to be estimators shall not participate in acts, such as the giving or receiving of gifts, that are intended to be or may be construed as being unlawful acts of bribery.

Gotta-Be-There-To-Win-It!

It pays to be at ASPE!

We are **always** in need of raffle prize donations. If you or your company would like to donate raffle prizes please contact the Program Committee headed by Ken Kness via email at:

kkness@excelmechanical.net

October



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ASPE Certification

The American Society of Professional Estimators began certifying estimators in 1976. ASPE certification is the highest form of professional recognition an estimator can receive. Certification recognizes the estimating proficiency and ethical awareness of the Certified Professional Estimator.

In order to be eligible for certification, an estimator must have at least five years of estimating experience. To become certified an estimator has to attend a workshop, file an application, write a "How to estimate the cost of" 2,500 word technical paper, pass the General Estimating Knowledge (GEK) 4 hour exam and pass an 8 hour discipline specific test.

The discipline specific exams are a test of the candidate's knowledge of their area of expertise. Each discipline specific exam contains true/false questions, multiple choice questions and estimating problems that are preparing mini-estimates.



The highlights of the program are listed below:

- Candidate submits \$125.00 with their online Workshop Application and \$275.00 with their Professional Evaluation Application.
- Candidate completes the online workshop.
- The Professional Evaluation will be reviewed by the Certification Board and if accepted, the paper topic will be assigned.
- Candidate completes Tech Paper to be reviewed by the Certification Board or another CPE.
- Candidate will be notified of paper results as soon as it passes and they will then be eligible to sit for the exams.
- Candidate will take the GEK and DST exams. Exams are electronically graded by a professional grading service off site.
- Candidate is notified of results of exam and if passing grade is obtained will be presented with CPE status.

Estimating News

◆ Please submit your news to Jon Wall jwall@cimech.com; if you now of the comings and goings of people in our construction community.

If you are interested in learning more about certification contact ASPE Chapter 73 Certification Chairman, **Mark Kutchen** at **515-817-2617** or mkutchen@storrycon.com.



JOIN A.S.P.E. TODAY!!!!!!



ASPE has 7 different classifications of members: *Certified Professional Estimator, Estimator, Associate Estimator, Constructor, Associate Constructor, Student and Affiliate*. These membership classifications allow anyone in central Iowa involved in construction or a related industry to become a member of ASPE Chapter 73.

There are many benefits to joining. Some of the benefits include: a subscription to the national newsletter, a copy of the national ASPE roster book, eligibility to hold an officer position in the chapter, voting rights in chapter business, reduced meal fees at the monthly dinner meetings and belonging to an organization dedicated to helping the estimating profession. For a complete listing of membership benefits see the national website www.aspenational.com.

If you are interested in joining, you can obtain a membership application by contacting Chapter 73 Membership Committee Chairman, **Steve Watrous**, 264-0782. There is a \$190 national membership fee, a \$35 national administrative fee, a \$35 chapter membership fee and a \$15 initiation fee.



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Sales/Estimation Manager

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Waterloo, IA
Cedar Rapids, IA
Dubuque, IA
Omaha, NE
Grand Island, NE
Rock Island, IL
Rockford, IL
Madison, WI



If you would like to become a bigger part of your ASPE Chapter, drop what you are doing and contact one of your board members or officers **NOW !!!**



ASPE Certification Renewal

An important part of the ASPE Certification requirements, is that once an estimator successfully achieves CPE status they must renew their certification every three years. ASPE has this requirement in place in order to insure that individuals carrying the Certified Professional Estimator title maintain involvement with the organization, maintain involvement with the industry, maintain involvement with the profession and continue to seek new knowledge and understanding through educational opportunities.

The recertification requires that the CPE be in good standing with the ASPE organization. They must have maintained their membership with ASPE for the previous three years and have all dues and fees paid. The main component of recertification requires the CPE to document and submit evidence of participation in the organization at the National, Society Committee, Regional or Chapter level, participation in the other construction industry organizations, participation in construction industry classes, practicing the profession of estimating, publishing books or articles about estimating and maintaining other professional certifications. The CPE does not have to do all of those things but they do have to do some of



them in order to gain recertification.

If the certification process sounds interesting to you, please contact chapter certification chairman, Mark Kutchen, CPE at mkutchen@storycon.com for more information. The deadline to enroll in the next certification cycle is January 1st.

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**Help us add value to our chapter
and the estimating profession by
joining ASPE today!**

(Continued from page 3)

File Your Claim with Bankruptcy Court

Separately from any lien or bond claim, a subcontractor should file an official notice of its claim (or “proof of claim”) in a bankruptcy case. A subcontractor’s “proof of claim” tells the bankruptcy court how much the debtor owed the subcontractor on the day the bankruptcy case was filed. In every Chapter 11 case, the court will establish a deadline to file such proofs. For a subcontractor to be included in any forthcoming distribution of payments, it must (with limited exceptions) file its proof of claim form before the deadline with the appropriate clerk of the bankruptcy court in which the case was filed. Filing the claim does not ensure the subcontractor will be paid in full, or at all; but failing to file by the deadline usually will remove any chance of receiving payment. The debtor’s plan in a Chapter 11 case will outline how much it intends to repay its creditors. In many Chapter 7 cases, the debtor has no assets to liquidate — there may not even be a claim deadline! If there are assets and a subcontractor files a claim, payments under a Chapter 7 case will depend upon the amount available to distribute and the size of the subcontractor’s claim relative to other creditors’ claims. If a subcontractor still has work to perform under its contract with a debtor, it may want to file a motion in the bankruptcy court to ask the trustee, or the debtor-in-possession, to either “assume” or “reject” the contract. If the work that remains is critical for project completion, the trustee or debtor-in-possession may decide to assume, or continue with, the subcontractor’s contract. To do so, it must cure all past defaults and agree to perform under the contract in a timely manner. If the trustee or debtor-in-possession rejects the contract, the subcontractor is no longer obligated to perform the balance of work and is entitled to file a claim for damages resulting from the rejected contract. The subcontractor’s claim for such damages would be separate from the proof of claim for amounts owed to it at the time of bankruptcy filing.

Protect Against Customer

Bankruptcy Before It Happens

One way for a subcontractor to address questions it has about a customer’s financial stability is to ask the project owner to make payments with joint payee checks. Using joint payee checks may help the subcontractor keep payments it received just before a customer’s bankruptcy filing from being recovered by other creditors as a “preference.” In general, the amounts that a debtor pays within 90 days before filing for bankruptcy are subject to forfeiture if the payments show a “preference” for, or favor, one creditor over the others. A joint payee check provides some defense against such a “preference” claim. Another safeguard for subcontractors is simply to use judgment and weigh their risk at the bidding stage. A subcontractor should weigh anticipated profits versus customers’ potential failure to pay. Other factors, such as the existence of a payment bond, may change a subcontractor’s decision on whether to bid a project. Even when there’s a bond, it’s always a good idea to confirm its purchase instead of simply relying on a customer’s representation. Plus, obtaining a copy of the bond before starting work will provide information that a subcontractor will need to file a claim, should the need arise.

Your Attorney Should Be

Knowledgeable About Bankruptcy

Before the need presents itself — typically on the eve of a critical deadline — find an attorney who is knowledgeable about bankruptcy. Ask your own attorney or your ASA chapter attorney for a referral. Notify the bankruptcy attorney right away when you learn of a bankruptcy filing connected to one of your projects. No matter how much or little you are owed, you’ll need assistance with possible preference claims and filing a proof of claim. The bottom line is that a knowledgeable attorney will help you identify and gather the information you’ll need to minimize loss and increase recovery.

Conclusion

The bankruptcy of a general contractor or other customer is never welcome news. Working through the requirements of the bankruptcy may be challenging, but that’s because the process is intended to protect both debtors and creditors. As soon as you learn of a bankruptcy filing, you should suspend further collection efforts and move swiftly to protect your payment rights, as provided by the Code and other statutes. The odds of receiving everything you want from a bankruptcy case may be low, but if you do nothing, the odds plummet to zero every time.

The Official Publication of the American Society of Professional Estimators Des Moines Area Chapter 73

Officers

President: Jon Wall, Central Iowa Mechanical
(515) 243-8126, jwall@cimech.com

1st V.P.: Tim Neumann, Stetson Building Products
(515) 243-6286, tim.neumann@stetsons.com

2nd V.P.: Nick Gehl, Neumann Brothers, Inc.
(515) 243-0156, gehln@neumannbros.com

3rd V.P.: John Taylor, Hubbell Construction Services
(515) 280-2054, john.taylor@hubbellrealty.com

Secretary: TBD

Treasurer: Ray Conway, rconway@proctor-mech.com

Mailing Address:
ASPE Des Moines Area Chapter #73
P.O. Box 4400
Des Moines, IA 50333

Web-Site: www.iowaaspe73.org



Board Members

2009-2011: Jack Leachman, Leachman Lumber
(515) 265-1621, jack@leachmanlumber.com

2009-2011: Denny Baber, Doors Inc.
(515) 288-8951, dbaber@doorsinciowa.com

2009-2011: Vacant

2010-2012: Ken Horner, Waldinger Corporation.
(515) 284-1911, ken.horner@waldinger.com

2010-2012: Steve Watrous, Automatic Door Group
(515) 264-0782, stevew@autodoorgroup.com

2010-2012: Mike Webber, Ideal Floors
(515) 283-0665, mikewebber@idealfloorsinc.net

ASPE Chapter #73 – Committees & Committee Members

Activities/Fundraising: John Taylor, Hubbell Construction Services, 515-280-2054, john.taylor@hubbellrealty.com

Awards: Ray Conway, Proctor Mechanical Corp., 515-288-2251, rconway@proctor-mech.com

Bylaws: Paul Henkels, henks4@hotmail.com

Certification: Mark Kutchen, Story Construction Co., 515-232-4358, mkutchen@storycon.com

Education: Mark Kutchen, Story Construction Co., 515-232-4358, mkutchen@storycon.com

Finance: Ray Conway, Proctor Mechanical Corp., 515-288-2251, rconway@proctor-mech.com
Paul Henkels, henks4@hotmail.com

Historical & Public Relations: Brad Churchill, US Erectors, Inc., 515-243-8450, bchurchill@us-erectors.com
Ray Conway, Proctor Mechanical Corp., 515-288-2251, rconway@proctor-mech.com

Newsletter: Jon Wall, Central Iowa Mechanical, 515-243-8126, jwall@cimech.com

Meetings/Programs: ASPE Chapter #73 Board of Directors

Membership: Steve Watrous, Automatic Door Group, Inc., 515-264-0782, stevew@autodoorgroup.com

Have your company featured in our newsletter!!

Contribute to the ASPE Newsletter

- Are you working on an interesting project?
- Why the only bowl the Clones see is during breakfast.
- Have you run into an unusual circumstance in the industry?
- How have you been effected by the new LEED requirements?
- Estimating practices that you find unique



Contact: Jon Wall—jwall@cimech.com or (515) 243-8126