



The Building Industry Association
of Tulare/Kings Counties, Inc.



"FALL" "FALL" GOLF TOURNAMENT

FRIDAY, SEPTEMBER 26, 2003

Tulare Golf Course – 5300 S. Laspina

COST: \$80.00 per player

Schedule

- 11:00 a.m. - Lunch
- 12:30 p.m. - Shotgun Start
- 5:00 p.m. - Prizes/Hors d' oeuvres

Cost Includes

- green fees - carts - lunch
- course beverages – hors d' oeuvres
- longest drive (male/female)
- Prizes for 1st, 2nd 3rd place teams

General Rules

- ✓ Form your own team or we can put you on a team. We recommend "Mix & Match"
- ✓ Committee has final discretion on team selections and individual assignments
- ✓ Total team handicap cannot be less than 45; highest individual handicap allowed is 25; only 1 person at 8 or under handicap/average score is allowed on a team

Other

Mulligans will be available at tournament for a donation of \$5 each (limit of 2 per player)

Registration Information

Deadline: September 22, 2003

Please mail registration and fees to BIA @ address below . . .

315 W. Oak, Visalia CA 93291 or contact us @

Phone: (559) 625-5447 - Fax: (559) 625-2690 - Email: build@biatk.com



Registration for # _____
Name(s)/Company

Amount Enclosed \$ _____
Address/Phone

Hand./Avg.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SAFETY News

Good Housekeeping Is Good for Business

If you want to learn about a company's attitude toward safety, just take a look at its housekeeping practices. How a work site looks makes an impression on workers and visitors alike. When a work site is clean and orderly, workers feel good and can work quicker and safer. A visitor's first impression is important because it may affect their judgment of how you operate your business. So, good housekeeping is not only good for workers it's good for business.

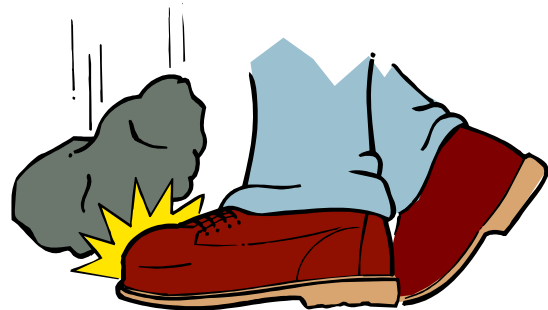
Whose responsibility is housekeeping? It's everyone's responsibility. You can spend money on equipment and materials for the job, but workers are only safe if everyone practices good housekeeping. You've seen job sites, and may have worked on some, where it wasn't safe to walk around. You had to look twice before taking a step to be sure you weren't going to trip, twist an ankle or run a nail through your foot. A job site like that is not only unsafe it's inefficient. If the work site is clean and orderly, workers think better, are more productive, and can save you time and money.

Good housekeeping practices include keeping tools and equipment clean and properly stored when not in use; keeping hoses or cables bundled; and removing or properly disposing broken glass, nails, wooden or metal scraps, bricks, tile, pipes, rods or lumber scatters around the site or piled on scaffolds or platforms. Cluttered, wet or greasy walkways can cause slips, trips, and falls and accumulated debris or

improperly disposed flammables can cause fires.

Although employers' are responsible for creating a safe work environment and establishing good housekeeping practices, workers are responsible for either, correcting an unsafe condition, if they're able and it's safe to do so, or notifying the person responsible for overall maintenance of the hazard. Putting things in their proper place doesn't waste time it saves time. Make it your business to clean up as you go along. If tools and trash are picked up and removed regularly it won't become a time-consuming job. If trash is allowed to accumulate for even a few days, the job site becomes a messy and unsafe place to work.

Good housekeeping practices are essential to your company's safety program, insuring worker safety and health and increasing production and morale. Good housekeeping is also good public relations projecting order, care, and pride in the way you run your business.





Court Expands Strict Liability in Mass-Produced Homes

The doctrine of strict liability means one can recover for defects regardless of whether they can prove that the defect was caused by negligent work. That is to say you do not have to show that there is a violation of the standard of care, only that the item is defective.

In a recent case, the court analyzed the historical evolution of the doctrine of strict liability in construction and determined that a window manufacturer could be held strictly liable for a defective window, without proving that the manufacturer actually designed or manufactured the window negligently. The Court held that the manufacturer of windows installed in mass-produced homes during its construction would be strictly liable for harm resulting from the defects in those windows and would also be strictly liable for resulting physical damage to other parts of the house in which the windows have been installed.

In this case, the developer completed a large housing development in San Diego. A supplier manufactured the windows in that development. The plaintiffs sued the developer and window manufacturer. As to the manufacturer, the allegation was that it had "designed, developed, manufactured, produced, supplied, and placed into the stream of commerce" defective windows. The quote above are words of art used to describe mass-manufactured homes and defective construction. The plaintiffs also alleged that the defendants were strictly liable for damages caused by those component parts, including damage to other parts of the house in which they were installed, such as stucco, insulation, framing, drywall, paint, wall coverings, floor coverings, baseboards, and other part of the home.

The window manufacturer filed a motion for summary judgment, (a motion to terminate at least one issue). In essence, for the purposes of the motion, the mover of the motion must show there are no factual issues in dispute and that he/she should be successful as a matter of law. In this case, the window manufacturer stated that IT could not be held strictly liable because strict liability never extended to subcontractors or suppliers in mass-produced

homes unless the subcontractor has ownership or control over the housing development. The trial court granted the motion for summary judgment, which would have let the window manufacturer out of the strict liability cause of action. The Court of Appeal then directed the trial court to vacate its order. The appeal went to the Supreme Court, which issued the most recent decision.

The Supreme Court went through the history of strict liability. Sixty years ago, the Supreme Court held that a manufacturer should be liable for placing a defective product that causes personal injury on the market. The reasoning was because a consumer would be unable to prove that a defect was there that was caused by a flaw in the manufacturing process. Further, the manufacturer could have spread the risk of the loss by increasing the price on all things that the manufacturer produced.

In another case, twenty years later, the court expanded that holding and California became the first state to allow recovery for strict products liability. There the court held that a manufacturer is strictly liable when an article that he/she places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being. Again, the court reasoned that the consumer was powerless to protect him/her self against such injuries.

Thereafter, it was held that retailers are like manufacturers and are engaged in the business of distributing goods to the public. The court reasoned in terms that the retailer may have some liability but the retailer may have some liability but the retailer could spread the risk.

In 1969, this strict liability doctrine was expanded to mass-produced homes. The court pointed out that a developer of a defective mass-produced homes, like a manufacturer, retailer, or supplier of another product is responsible for dangerous conditions in its own product and it is in a better economic position to bear the resulting loss than the consumer.

The present case expanded the strict liability to a component manufacturer, reasoning that this serves the purpose of protecting the public because in the course of completing the product, the manufacturer could better spread the risk.

Is it any wonder that our insurance rates, especially in construction, are going sky high?

BIA
of Tulare/Kings Counties

MEMBER BENEFITS

Available to member companies and their employees.



**Dilfer Chrysler - Vehicles:
New/Service/Repairs**

Phone: (661)725-3346

offers the Dodge "Business Link" program to BIA members. Some benefits of the program include:

- Priority next-day vehicle service that puts your company's vehicles first.
- Extended service hours for your convenience.
- Loaner vehicles to minimize vehicle downtime.
- Discounts on selected vehicles purchased for commercial use.
- Available local shuttle service to take you where you need to be.
- 24-hour towing assistance for your peace of mind.
- Discounts on select Mopar replacement parts to save you money.
- Wright Express® Fuel Card to control fuel costs.
- Attractive commercial financing and leasing options.
- Alternative credit line.
- Full line of Dodge commercial vehicles in stock.
- Discounts on fleet purchases through DaimlerChrysler Fleet.
- Brochure available at BIA-TK office



Pacific Employers - Labor and Safety Consultant

Phone: (559)733-4256

is offering to members . . .

- Allow members of the BIA an opportunity to have their initial

- Labor Relations or Safety Questions answered for no charge. This includes questions on prevailing-wage issues.
- Will waive the initiation fee for members of BIA who wish to become members of Pacific Employers.



The Glass Shop - Doors, Shower, Glass, Mirrors, Screens, Skylights & Windows

Phone: (559)732-5986

offers a 10% discount off any order placed by BIA members or family members.



Cuesta Title Company

Phone: (559)732-2000

is offering the following discounts to BIA members:

- First Time Buyers - 25% off ALTA Concurrent Rate
- Seniors 55 or over - 25% off Owner's Policy
- Will waive Loan Tie in Fee for Buyers
- Will waive ½ of Deed Drawing Fee for Seller



State Compensation Insurance Fund

Phone: (800)423-0303

2300 River Plaza Drive, Suite #150, Sacramento CA 95833

offers a 6% discount for BIA member contractors who qualify. Member contractors are also eligible for an additional 4% discount if health insurance is provided to their employees. To find out if your classification is eligible, contact the BIA office. State Fund does not guarantee coverage for everyone - you must fit their criteria.

2004 International Builders' Show – Register Now

Online Registration and Housing for the 2004 International Builders' Show is now open at www.BuildersShow.com/register. Save up to \$50 off the full-price registration package if you register by October 17, 2003. Use our convenient one-stop shopping to book your hotel room in one of Las Vegas' finest hotels.

The International Builders' Show 60th Annual Convention & Exposition will be held in Las Vegas, Nevada at the Las Vegas Convention Center, Monday, January 19, 2004 through Thursday, January 22, 2004.

LOTS is happening at the 2004 International Builders' Show, so be sure to visit www.BuildersShow.com often, for up-to-the-minute updates on the largest annual construction industry show in the world!

Forward this e-mail to a friend...[click here](#) to tell your friends about The 2004 International Builders' Show!

We'll see you in Las Vegas!

Thank you,
NAHB Show Management
National Association of Home Builders
1201 15th Street, N.W.
Washington, DC 20005



BUILDERS' TALK

Summer - 2003

Thank you for renewing...

All About Plumbing
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 Differ Chrysler – Delano
 Ennis Langdon Homes
 First American Title – Visalia
 Gang Nail Truss Company
 James & Company Lighting
 JW Holt Lumber Company
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 Pickett Construction Corporation
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 Tulare County Acoustical
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 Walter Clark & Associates
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 Wells Fargo Home Mortgage
 Western Shower Door Inc.
 Zumwalt, Hansen & Associates

Welcome New Members...

Dianne Guzman Consulting Services
 Dianne Guzman
 2316 E. Tulare, Visalia CA 93292
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 Sponsor: Don Sharp, Sharp Insurance & Bonding

DuPont Tyvek Weatherization Systems
 Scott Moore
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 Phone: 559-285-6074 Fax: 559-692-2198
 Email: scottsmoor@aol.com
 Type of Business: Bldg Matrl/Wholesale Distr: Tyvek
 Sponsor: Don Sharp (P), Sharp Insurance & Bonding



Spikes	Credit	Spike Candidates	Credit
Coppola, Gary	130	De Ochoa, Carlos	1
Daley, Paul	116	Griesbach, Tom	1
Langdon, Rick	114	Harrald, David	1
Smee, Gary	110	Nelson, Carl	2
Mangano, Andy	109	Nelson, Rusty	1
Wind, David	80	Sharp, Don	3
Knopf, Michael	78	Turnier, Jack	2
Ennis, Brian	71		
Willis, Jayne	39		
Pickett, Dan	28		
Banks, Jan	15		
Woodard, Greg	15		
Rhodes, Kathy	12		
Hatch, David	10		



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Builders are not the only group within the California homebuilding

SB 800 For Subs

industry who should be concerned about Senate Bill 800 ("SB 800" or "the Bill"), which grants builders the absolute right to repair defects claimed by homebuyers or subsequent purchasers before the homebuyers may sue the builders.

The Bill, which applies to all residential construction originally sold after January 1, 2003, explicitly includes within its scope subcontractors who cause a violation of one of 45 functionality standards that articulate how a home and its components should function. The standards are divided into 7 categories, namely water intrusion, structural, soils, fire protection, plumbing and sewer, electrical, and other areas of construction. In the event that a homebuyer believes that his home contains a defect, he must fit the defect into one of the standards. If the defect does not fit into one of the standards, but still "causes damage," the homebuyer may make a claim regarding the defect.

Builders are expected to add to their subcontracts language requiring subcontractors to familiarize themselves with the Bill's functionality standards, and to perform their work in keeping with those standards. In failing to familiarize himself with and follow the standards, a subcontractor risks breaching his contract with the builder, and being held responsible for violating a standard that he did not even know applied to his work.

Upon completion and sale of a home, the builder must provide the homebuyer with written confirmation of the builder's decision to accept or reject certain pre-litigation procedures contained within the Bill. Those procedures include initiating any claim against the builder with a written notice to the builder's agent, and acknowledging receipt of the claim within 14 days after acknowledging receipt of the claim, the builder must complete an initial inspection of the alleged defect. It is then that a subcontractor will learn that his work has been implicated in a claim by a homebuyer, because the builder must provide notice of at least the initial inspection to any person or entity that the builder contends is responsible for causing or contributing to the alleged defect. Such notice must be provided to

the other person or entity sufficiently in advance of the inspection to allow attendance and/or or participation in the repair process.

Within 30 days of either the initial or second inspection, the builder may make a written offer to repair the alleged defect. S stated above, subcontractors must be allowed the opportunity to participate in the repair process.

The homebuyer has 30 days from receipt of the offer to repair to authorize the builder to proceed with the repair. During this period, the homebuyer may decide to have a different contractor perform the repair. Within 35 days of the homebuyer's decision to have a different contractor perform the repair, the builder must present the homebuyer with a choice of contractors. The homebuyer then has 20 days within which to authorize either the builder, or an alternative contractor, to perform the repair.

Once the repair has been authorized, it must begin within 14 days of acceptance or selection of an alternative contractor. If a mediation has taken place in accordance with the Bill's procedures, the repair must begin within 7 days of the mediation; if a permit is necessary, the repair must begin within 5 days after the permit is obtained. Every effort must be made to complete the repair within 120 days of the homebuyer's authorization, and the Bill allows for tolling of the statute of limitations while the pre-litigation procedures are in progress.

Subcontractors should discuss with their builders whether the builders plan to accept or reject the foregoing procedures, so the subcontractors have a better idea of what to expect in the event that a claim is filed.

A subcontractor whose work is implicated in a claim by a homebuyer may assert the same defenses as the builder, which include the following: 1) the alleged defect was caused by an unforeseen act of nature; 2) the homebuyer failed to minimize damages; 3) the homebuyer failed to follow maintenance requirements; 4) the alleged defect was caused by the homebuyer or the homebuyer's agent; 5) the claim is time-barred; 6) the builder (or subcontractor) has obtained a valid release; 7) the repair was

Continued on next page . . .

SB 800 For Subs continued . . .

successful; and 8) any and all affirmative defenses that might apply to causes of the action to which SB 800 does not apply. Like a general contractor, a subcontractor may assert any other applicable defenses. The Bill does not, however, apply to subcontractors to whom strict liability would apply.

Another obligation imposed on the builder that affects the subcontractors is the builder's obligation to provide the homebuyer with a 1-year fit and finish warranty that relates to cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim. A subcontractor who worked on any of those components may be called to remedy and problems covered by the warranty.

The builder may opt to provide the homebuyer with a more comprehensive warranty, called an "enhanced protection agreement," but the ramifications, if any, of providing such an agreement have not yet been tested. Just as they should discuss with their builders whether the builders are going to accept or reject the pre-litigation procedures, subcontractors should also find out whether the builders are going to stick with the fit and finish warranty or provide an enhanced protection agreement. In the event that the builder is going to provide an enhanced protection agreement, the subcontractors should familiarize themselves with its terms and provisions.

The Bill also imposed obligations on the homebuyer, who must comply with all maintenance and preventative maintenance requirements communicated in writing by the builder at the time of the sale. A subcontractor who has information regarding maintenance of particular component of his work, which may be unfamiliar to the builder, should ensure that the information is included in the maintenance requirements provided to the homebuyer.

In the event that the builder fails to comply with the pre-litigation procedures, the homebuyer may file suit against the builder and any other potentially responsible parties, so long as the parties have complied with any applicable arbitration clauses or other contractual dispute resolution procedures.

Although the Bill prohibits the builder from obtaining a release solely for performing repair work, the builder may obtain a release of itself and all potentially responsible parties in exchange for a cash offer to which sub-contractors may contribute. If a cash offer is made and rejected, the homebuyer may proceed with the filing of an action, so long as the parties have complied with any applicable arbitration clauses or other contractual dispute resolution procedures.

Just as the homebuyer may proceed with the filing of an action if the builder does not comply with the pre-litigation procedures, the builder may bring a motion to stay any action filed by the homebuyer if the homebuyer has not complied with those procedures.

As stated in a previous article prepared by this author on this topic, the Legislature and proponents of SB 800 should be commended for drafting and passing a bill that seeks to standardize construction defect disputes. Because the Bill raises a number of unaddressed and undefined issues that will likely be worked out through challenges and amendments, builder, subcontractors and other interested parties should become familiar with the Bill and any amendments thereto, and they should consider seeking legal advice to ensure that they are complying with its requirements.

This article was reprinted with permission of the author, Lisa Toke, Andre Morris & Buttery

Lisa L. Toke is an attorney with the Law firm of Andre, Morris and Buttery, which has offices in both San Luis Obispo and Santa Maria, California.

This article is provided for informational purposes only and does not serve to offer any legal business advice.





California Building Industry Association

Statewide Membership Drive

“Masters of Membership”

Dates: June 1, 2003 – October 1, 2003

Criteria: For every three (3) new members that a member, Spike or Candidate, recruits between June 1, 2003 and October 1, 2003, will have their name submitted for a drawing for the Grand Prize.

Grand Prize: Trip to Hawaii

Details:

- 1) The Grand Prize Winner to be announced at the Annual Meeting of CBIA, Monterey, California.
- 2) Grand Prize value not to exceed \$2,000.

To begin participating, contact the BIA-TK office for membership recruiting materials. We can also email the membership application for downloading to your hard drive and forwarding from your computer to prospective members.