What are businesses required to do when personal information they have collected is breached? Most states have breach notification laws with varying degrees of security and notice requirements. With high profile data breaches continuing to top headlines, legislators are beginning to make these laws more strict.

Maryland’s legislature is no exception. On January 1, 2018, several amendments to the Maryland Personal Information Protection Act, (“MPIPA”) MD Code Ann., Com. Law §14-3501 et seq. will go into effect. Businesses collecting personal information should take note and be prepared.

Under the law as amended, the definition of “personal information” under §14-3501 has been greatly expanded. The current definition includes information such as first and last name, social security number, driver’s license numbers, and bank account numbers/passwords. However, in light of amendments to the law, the definition of “personal information” will be more expansive and will also include the following:

- passport numbers
- health insurance policy numbers
- fingerprints / retina scans or other biometric data
- any mental or physical health information (generally anything covered by HIPAA)
- usernames/passwords that give access to a person’s e-mail address

In addition, changes have been made to allow notification of a data breach to be made within
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How To Get 20+ Pages Of Data On The Maryland Construction Industry

If you work in the Maryland construction industry, you know better than anyone that finding industry data can be tough. Luckily, we teamed up with the Maryland Construction Network to create a ten-minute survey that polls Maryland construction contractors like you on hot button topics you actually care about, including:

- Best practices for recruiting and retaining key staff
- Top strategies and tactics for getting new business
- Top technology concerns for the construction industry
- Fundamental online marketing strategies for increasing company visibility

Where Can I Get a Copy of the Survey Data?

To get a copy of the survey results, which will be compiled into an easy-to-read, 20+ page report, you must participate in the survey. The survey only takes ten minutes to complete, and the good news is that there are plenty of perks of being a survey participant.

What Do I Get If I Participate?

1. You’ll get a complete copy of the results in an easy-to-understand written report

Everyone who takes the survey gets a complete copy of the survey results. As a survey participant, you’ll be one of the few to receive an exclusive copy of the survey result report (i.e., if another contractor doesn’t participate, they won’t get a copy). This report will feature all of the results of the survey in an easy-to-understand format, meaning:

- Lots of graphs and pictures
- Down to earth explanations of what the data actually means to you
- Practical advice on actions your company should take based on the survey’s findings

2. You’ll be entered to win a $500 Home Depot gift card

Everyone who completes the survey is automatically entered to win a $500 Home Depot gift card. So, why haven’t you started yet?

3. You’ll get an exclusive invitation to the survey result reveal seminar and Maryland Construction Network

Continued On Page 25
Education & Awareness In The Context Of Cybersecurity

As a business owner, you don’t have time to become an expert in IT, but it is your responsibility to protect your data and your company from cyber security breaches.

The risks of leaving your networks unprotected are dire. Most small businesses close within six months of experiencing a major hack due to financial losses that often come with them and the loss of brand integrity.

How should you educate your team in matters of cybersecurity?

Many basic computer issues can be avoided by implementing a few simple steps:

- **Maintain Updates:** Everything from your operating system to your web browsers need to be maintained with proper updates to ensure they work properly, and to make sure they are also secure. Developers are always working on ways to make their software safer to use and you should be taking advantage of their expertise.

- **Learn How To Spot Potential Red Flags:** For example, you will never be asked by Google or any other software provider to provide your password outside of using it to log in. If a prompt comes up for you to put that information in elsewhere, odds are that’s not actually Google.

- **Crack Down On Account Sharing:** Even within your company, account sharing should be kept to a minimum to minimize the potential for security breaches. Each employee should be given their own login credentials to your various services so you can track who is coming and going throughout your data.

This is only a preliminary set of measures that you can take to ensure security for your company. For a more in-depth review of your company’s network security, consult the expertise of cybersecurity professionals. You should also talk to your insurance professional about insurance to protect your assets from cybersecurity attacks.

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At Allan Hirsh Advisors we believe in making a difference in the lives of CEOs and Business owners. We help you discover why you do what you do, understand your personal and professional visions. We ask questions, listen to you, give you feedback so you can make better decisions that align with your why and your visions and hold you accountable for your decisions. All this so you can improve your life and improve the lives of the people around you. If you are interested in taking your business to the next level then contact Allan Hirsh Advisors to learn how we can Create AHA! Moments for you.

Tune into AHA! Business Radio Tuesdays from 6-7 pm EST on CBS Sports Radio, 1300 AM to listen to Allan Hirsh and his guests discuss all areas of business. And don’t forget to follow Allan Hirsh Advisors on Facebook and Twitter too!

“You cannot escape the responsibility of tomorrow by evading it today.”

~ Abraham Lincoln
In 1993, the country was in the midst of the Savings and Loan crisis. Some felt Jef Eyring, Ed Audy and Ed Brnich’s new endeavor overly risky. Yet, and as with most things, catching a trend at the absolute top or bottom of a cycle tends more to be luck than timing. Risk exists in everything worth doing. And; doing nothing is seldom the best option.

Waverly Construction & Management Company started with the goal of providing big company sophistication on mid-sized projects; while creating honest working relationships with clients, subcontractors and vendors.

During the early days, Waverly Construction was blessed with the support of customers like Gingery Development Group and Top Shelf Development, both of whom remain customers these many years later. Waverly is proud to have constructed arguably the finest privately-owned ice arena in Maryland, beautiful office buildings, retail centers, warehouses, renovations and interior fit outs for some of the most important businesses in the region. And while they pride themselves on their general contracting and construction management capabilities, they are pleased with their skill in self-performing carpentry, drywall and ceilings. In a time of increasing specialization, this expertise has been an important reminder of the foundation of what has become our industry; and that, is one of a builder.

On the European front, and within only a year of Waverly’s formation, a consulting role was accepted for an assignment in Warsaw, Poland with Menard Doswell & Co. Waverly Construction & Management Company instantly became an international construction business advisor on Doswell sites. In addition, Waverly exported and imported air conditioning equipment to further support their client. These efforts quickly morphed into the EastWave Building Company – a general contracting and construction management firm. EastWave recently celebrated its 20th anniversary and remains very active, having just broken ground on nearly a million square feet of industrial projects.

Today, Waverly is very proud of the unique evolution of their business; and, remarkably grateful to everyone who has played a part. Their gratitude ranges from our customers, subcontractors, vendors and advisors who have helped drive their mission. Waverly is also most grateful to their staff and their families who have sacrificed to enable this twenty-five-year run.

But, and as has been said... “Life can only be understood backwards; but it must be lived forwards.”

With the addition of four young new partners, Waverly Construction & Management Company is confident in “living forward”. Mary Van Divner, Pam Hundley, Rob Bates and Manny Rivera have proven traits of loyalty, trustworthiness, energy and enthusiasm. All are the backbone of the business as they move into the next quarter century. Waverly’s commitment to the main concept of their original goal; to create honest, close working relationships with clients, staff, subcontractors and vendors continues.

In the end, Jef, Ed, and Ed, along with Mary, Pam, Rob and Manny would like to thank you. The Waverly Construction & Management Company leadership team is extremely appreciative of your support and look forward to a bright future.
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New Year, New Data

As 2017 recedes into the review mirror, many organizations are looking towards the next 12 months and what initiatives, programs, and projects should take their attention and resources. For many firms, the new year will simply bring a continuation of the last; marching forward to the existing organizational goals.

For others, a new year brings opportunities to take stock of current organizational goals and redistribute resources elsewhere. Change is a constant in modern business, in the IT world specifically, and often times trends and an organization's focus changes with the same frequency. As organizations look to 2018, there is one area which may deserve more attention that the typical organization tends to give.

Enterprise Resource Planning (ERP) systems and Business Intelligence (BI) platforms generally take a large chunk of the IT budget at many organizations. What tends to get overlooked in these efforts, however, is the quality of the data being generated and consumed. Modern ERP systems generate a large volume of transactional data in addition to the primary business data such as customer and vendor information. While the primary benefit of these databases is near instant access to every piece of information the business generates, often times little or no effort is made to ensure the accuracy of this data.

Organizational data should be treated as an asset, just as equipment, property, or petty cash. One of the first tasks in any data quality management program is to identify who in the organization is responsible for the various data sets within the organization's IT systems. Generally, the Data Owner is responsible for defining valid data profiles, how the data can be used, and who has access to view, edit, or disseminate it within and outside the organization.

The two most critical tasks the Data Owner performs is access control and defining quality standards. Quality standards can include how data entry is performed, reviewing system processes to ensure data is calculated/generated as expected, and ensuring that data cannot be changed without proper change controls. Data profiles should be defined which describe what constitutes valid data, periodic data reviews to ensure the system contains only valid data, and how to resolve data integrity issues when they are discovered.

Access to data is just as the name implies; with the caveat that data access restrictions are not stifling to the business. Oftentimes, data access restrictions can go too far, restricting necessary data from the staff best equipped to use it to aid the organization's decision making. Data access also involves interfacing with the organization's IT security experts to ensure that outside access to the organization's data is restricted, and to put controls in place to track when data is access or distributed from the organization's IT systems.

As those in the IT industry are fond of saying: garbage in, garbage out. Every organization today is built on decisions informed by data. All too often, the ongoing quality of organizational data is overlooked, which does a great disservice to the organization's decision makers and devalues the IT systems that generate and maintain it.

Chris Loundsbury is the Director of Professional Services with Business Information Group. He has been working on technology solutions to business problems and opportunities for the last 15 years, helping clients solve complex enterprise data and software problems across multiple industries and business sizes. In addition to his work providing high quality consulting services to his clients, Chris is an avid writer, motorsport fan, and car enthusiast.
I find it interesting that so many people seem to be afraid of the word “no.” They think when they hear that word it means everything in the situation – be it a relationship, a business transaction or even just asking a question – is bad and nothing good can come of it. As I’ve written previously, people go to great lengths to avoid having to hear the word “no,” or having to say it to someone else. As a result, they hesitate to ask the tough questions or have the difficult conversations.

As time goes on people make excuses for why they won’t take the chance of hearing “no.” The salesman might say, “Oh, that customer would never buy this product anyway.” The consultant might think, “That company wouldn’t want to talk with me anyway…they wouldn’t want someone with my skill set.” The same thing happens in personal relationships, as people decide, “I know I’m unhappy, but why risk upsetting the other person and ending up alone?”

I’ve come to find “no” is a very useful and essential part of business. I actually reward myself whenever I get one. Why? Well, for one thing, “no’s” are hard to come by. If I’m at a point where I got a “no” from a client, it means that I have at least started the process of forming a relationship with this client. Also, I’ve learned from many years of experience that not all “no’s” are forever. When you work in a business with as long of a sales cycle as commercial real estate, it pays to realize that a “no” today might turn into a “yes” a few years down the road as long as you give it time and continue to develop the relationship.

At the very least, a “no” saves me additional time and effort. Frankly, I would rather hear “no” upfront if what I’m proposing isn’t going to work for the client, so that I can go in a different direction before I’ve put a ton of work into it. A quick “no” is second only to a quick “yes” in terms of usefulness. Every “no” I hear helps me to better qualify what my client is looking for, which better equips me to find the right prospect for them.

So this week, try rewarding yourself for the “no’s” that you get. You’ll be amazed at the difference. The famous sales guru Zig Zigler once said, “If you’re not getting 3 no’s per week, then you’re not trying hard enough.” Take the fear of rejection out of the equation and focus on the positive things that can come from a “no.”

Have a great week,

Ro

Ro Waldron is a commercial real estate broker and author with 28 years of experience in the Washington, D.C. area market. Through his vast experience in commercial real estate Ro adds value for his clients using his knowledge, connections and successful track record with many of the major players in this market.

Ro’s experiences in commercial real estate and as a player and coach on NCAA college football teams form the basis for his successful blog, “Ro’s Words of Encouragement.” To learn more about Ro, please visit www.rowaldron.com.
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² Actual float time will vary based on the date of the charge, the billing cycle, cut-off date and the payment date.
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It’s Never Too Late To Plan For A Successful Year For Your Business

O

K, so it’s past January 1, the holidays are over and you have already started a new year in your business. My hope is that you are very busy doing the work to satisfy your customers and maybe you are busier than ever. Whether that’s true or not, you still have time to take a brief step back and work out a plan to make 2018 the best year you have ever had.

The First Step. Think about what you want your business to look like by the end of the year—revenue, gross and net profit, products and services, number of employees. Write this vision down and share it with your employees. Let them ask questions, learn how the business works and hook into your vision of the company.

Gather intelligence. If you are a prime contractor, listen to what economic development entities are saying about economy of the region you serve. Talk with the people who hire you about what they think and what they are going to do about it. If you are a subcontractor talk with the primes with whom you do business. Talk with architects, engineers and developers. If your focus is residential, talk with your customers (you never know when they are going to need another job.) Look for the patterns in what you hear and reconcile those patterns with your vision. Make the tweaks to the vision that the intelligence you gathered tells you to make. You would not have survived in the construction industry without the ability to do this kind of problem solving.

Review your work processes. There is a fundamental phrase used in quality management: “If you want to improve the work, ask the people who do the work.” So identify the most important work processes in your business. Set up a team representing each area of the business that is involved in each process. Link the outcome of each process with a customer expectation and have each team deliberate on what is working well and what isn’t. Have them pay particular attention to the “handoffs”, the transitions from their work to the work of the next work step. The reason why this is so important is because the absence of the knowledge about how each step fits with the next creates silos. And the people in each silo can be thinking they are working hard and doing well with no idea of the negative impact they may be having on the next step.

Measure what needs to be done. Here’s another phrase you have probably heard: “What gets measured, gets done.” So if the measurements are based on the effort your people have made to improve the work, they will not be surprised at the measurements that are installed, recorded and reviewed. They will have learned the importance of the work and if you can at least partially relate the measurements to their compensation then you have built a sustainable and scalable culture.

Celebrate success. Celebrate big and small successes related to the vision you built for the year. Acknowledge the improvements that get suggested and adopted. Respect the suggestions that do not get adopted. Pay attention to the employees that thrive in the environment you have fostered. They are the models for new hires as the company grows.

Keep your ear to the ground. Keep asking questions of people. What do they see and hear in the region you serve that impacts your business positively or negatively. Your people know more about what is going on than they even think they know. Perhaps no one has ever asked them. One of the most powerful questions you can ask someone is “What do you think…?

‘Have a great year!

Paul Riecks is a Principal at INSIGHT. At INSIGHT, we believe that every business has the opportunity and the potential to be as successful as its owners want it to be and deserves the chance to reach that potential. One of the best resources available to business owners and CEOs for help in reaching their company’s potential is the deep pool of knowledge shared with other business owners and CEOs. So what we do is form INSIGHT Groups—each with 10-15 owners and CEOs— and facilitate their monthly meetings where they advise each other, share ideas and experiences and gain the clarity they need to achieve the success they seek. www.gaininsight.net

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Getting On Board With Off-Site Construction

For decades, manufacturers made stuff in a factory while contractors worked on the jobsite. But the line between these two industries is blurring. More and more, certain projects are making use of the “off-site” construction model (sometimes also referred to as “prefabrication” or “modular”). And it’s leaving many contractors wondering how and when to get on board.

Proponents & Skeptics

Under the off-site model, building components or even completed structures are manufactured in a factory and then transported to the jobsite for installation. The process uses all of the bells and whistles of manufacturing — ultraprecise design software, robotics and logistics-based delivery — to create uniform pieces that can be built quickly and transported efficiently.

Proponents of the practice (often simply called “off-site”) say it reduces construction costs and improves quality. The factory environment ensures complete control of the building process, with no deviations in quality because of more or less skilled workers and certainly no disruptions because of bad weather or accidents caused by human error. In turn, schedules can run more seamlessly and few, if any, unexpected expenses should be incurred.

Naturally, not everyone loves off-site. Many contractors and others in the industry frown on the cookie-cutter nature of prefabricated assets and structures. The distinctive touches and high quality of true craftsmanship cannot be readily duplicated by computers and robots.

Labor & Technology

Whether off-site is good or bad — or, more likely, somewhere in-between — is a matter of opinion. But every contractor should know it’s not going away. A 2014 report by the National Institute of Building Sciences found that 93% of companies in the architecture, engineering and construction industries had used off-site methods in the preceding year. Now, about four years later, the model’s popularity is still surging for a couple of reasons.

First, the continuing skilled labor shortage is making off-site look awfully attractive to many construction companies. In a 2017 survey by the Associated General Contractors of America, 73% of construction company owners who responded said they’re having difficulty finding qualified workers. Off-site doesn’t eliminate the need for skilled workers; you still need someone to install and inspect prefabricated pieces or structures. But it does mitigate some of the labor required for initial construction.

Second, technology is driving the trend. Businesses and consumers are becoming accustomed to whipping out their smartphones and ordering whatever they want on demand and instantly. Off-site builders are making this a reality.

For example, software giant Autodesk recently partnered with San Francisco-based Project Frog to create a cloud-based connected system that links architectural designs to industrial fabrication facilities. In other words, the platform will enable an entity to order up a building as easily as you can buy something on Amazon or eBay. This sort of high-tech approach is already being used by big names such as Starbucks and Marriott International.

Growing Popularity

Will off-site someday eliminate the need for traditional “boots on the jobsite” construction companies? Probably not. The model tends to suit certain types of projects — such as health care facilities and, obviously, modular housing developments — where uniformity and repetition of design is standard. Still, its popularity is growing and may soon affect your market, if it hasn’t already.

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As a construction manager, your top two priorities on any job are the safety of your people and the safety of your site. Whether you’re a seasoned vet or a rookie in the field of construction management, two things are always true: You need people to do the work, and you need the right equipment and materials to complete the job.

Safety is a common topic on construction sites. But what happens if you don’t follow through on your goal of keeping your materials and equipment safe? When this occurs, you run the risk of losing money on the job. According to the National Equipment Register (NER), heavy equipment theft has been on the rise with 11,625 thefts being reported to law enforcement in 2014. Whether it’s stipulated that you cover the cost out of your budget or your company covers it out of theirs, someone loses money when construction site theft occurs.

The National Equipment Register (NER) estimates the value of construction equipment stolen each year is somewhere between $300 million to $1 billion. Fortunately, you have the power to create an atmosphere where theft isn’t an option.

Below are three strategies you can implement today to keep your job site free from criminal activity.

Get friendly with your local police department.

Whether you’re new to the area or you’ve contributed to building half the town, it’s important to keep a good relationship with the folks who can help you. If you’re using any type of human surveillance, having a relationship with those whose job it is to protect your job site can go a long way.

Less than 25% of stolen construction equipment is recovered each year. As you know, part of the recovery process is follow-up and trying out theories of where the equipment could be — an act that can be tiresome and easy to put off for those in charge of it. Having a rapport with those who can help you could be the answer to getting help when times are tough.

Know the hot commodities of your market.

Think about this: if you had five minutes to identify five prized possessions a burglar would want to take from your home, you could probably come up with a list. It’s safe to assume that those things should either be in a safe-deposit box or tucked away somewhere that isn’t easy to spot. In the construction world, these “prized possessions” would likely be pieces of heavy equipment or expensive materials.

Thieves usually look for anything they can sell or flip in the stolen goods market. Therefore, you should take...
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Delivering Fun, Creating Memories

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What QuickBooks Can Do (and not do) For The Contractor?

Keeping track of the myriad of details necessary to run a successful contracting or construction business can seem like a daunting task. This article lays out the functionality in QuickBooks that can be used to manage the financial side of a contracting company and maximize profitability. QuickBooks has numerous features and reports, and can be customized to fit each contractor’s unique situation. Knowing what these features are and getting the most out of QuickBooks can make a significant difference in the financial health and overall success of your business. Of course, QuickBooks lacks the features of more robust and expensive packages, the functionality missing in QuickBooks and how to deal with that will also be discussed.

QuickBooks Functionality For Contractors:

- Generate Profit and Loss (P&L) Statements and Balance Sheets tailored for your business and put you in the best light for banks and sureties by giving you the ability to track the financial health of your company.

- Extensive reporting on profitability:
  - P & L by job
  - Summary job profitability reports
  - Detailed job profitability reports including estimate to actual

- Allow you to prepare detailed estimates for presentation to customers.

- Job costing of all expense elements – payroll, fringes/burden, subcontractors, materials, equipment, insurances, and overhead.

- Compare actual job costs against estimated costs with variances as jobs progress.

- Complete payroll processing:
  - Track/charge employee time to jobs

- Import time from third party time clock systems

- Generate paychecks and direct deposits

- Charge jobs for payroll taxes, fringes, and overheads

- Tracking of workers’ compensation by state and class code

- Prepare weekly certified payroll reports

- Online tax filings and payments

- Emailing or online availability of deposit advices for employees, eliminating the need to hand out paychecks

- Bill customers and track collections – deposits, progress billings, retention.

- Process purchase orders and pay invoices for subcontractors and vendors.

- Track equipment costs by piece of equipment and allocation of costs to jobs.

- For government contractors, create cost “pools” of indirect costs for allocation to jobs.

- Track the general liability and workers’ compensation insurance expiration dates of subcontractors.

- Inventory of commonly used materials and costing to jobs.

- Generate reports from which percentage completion accounting can be calculated.

Functionality Not Available In QuickBooks (and how to deal with it)

The areas listed below are either not supported by QuickBooks or lack the level of flexibility needed by most contractors. For some contractors work arounds and/or QuickBooks “Add In” products can fill the gap, for other contractors more robust software is a better...
Three Reasons Why The Cloud Can Help Your Construction Business

Today, it’s common to hear someone say that their movies, music, file storage and everything else is “in the cloud.” But what really is “the cloud”? Your data is not floating in midair like it may sound, but rather it is readily available with minimal management required.

The concept of “the cloud” goes back to the 1960s. The phrase originates from a cloud symbol used in flow charts and diagrams to symbolize the internet. In reality, though, your data isn’t floating in space or in the airways; it’s actually being stored in a physical data center.

Large, iconic corporations such as Amazon, Apple, Google and Microsoft, thrive off of the benefits of the cloud.

Here are a few reasons why the cloud can be a key to your construction company’s success, too:

1. You Always Have Access To Your Information

There are serious on-demand capabilities that you can take advantage of with the cloud. If you store your data in the cloud, it is readily available from just about anywhere, anytime. For a business, this data can include a dashboard of recent expense reports or productivity reports for your employees. Having access to this information at all times will aid you in making smarter, faster decisions on the go.

2. You Don’t Have To Buy And Maintain Expensive Infrastructure

You don’t have to buy, and inevitably repair, the equipment. Purchasing the infrastructure needed to keep your data and software can be costly and the equipment needs to be constantly updated. With the cloud, you can avoid purchasing expensive equipment to house your own hosting infrastructure. You can also avoid the cost of a high speed internet line for data and the expensive electric bill that comes with keeping your servers online. If your company is just starting out, the price tag on an on-premise set up will likely be too big.

3. Your Data Is Backed Up And Prepared For Catastrophe

Since your company information is in a data center somewhere in the world, you can trust that it will be safe from catastrophe. Data centers are equipped to have multiple components, like hard drives, power supplies and Ethernet cards, to ensure that the servers are always running at high performance. Then to top that off they usually have immediate standby power generators and redundant internet service providers, switching and routing, and more (terms and conditions do apply, check the providers Service Level Agreement for what they guarantee).

It’s unlikely that your data will be hacked in the cloud. If your data is compromised, it’s most likely due to weak passwords or malicious applications on your device that collect your information and report it to someone else (a.k.a. malware). You can combat this by training your employees on what they should and shouldn’t be doing when using company technology.

How Do You Start Using The Cloud For Your Business?

We have helped many businesses move their data to the cloud by taking on-premise email servers and bringing them onto Microsoft Office 365, a premier cloud email provider. Additionally, we can help you use a cloud computing platform such as Microsoft Azure, which enables all your data to be easily accessible through the cloud.

Need Help?

The cloud is powerful and affordable with a variety of options for every client. To find out more, or to see if moving your business to the cloud is right for you, contact us here or call Josh Beitler at 443.604.3617.
The Timing Of Bond Claim Notices

Payment bonds are a contractual obligation, wherein a bonding company is promising to cover and pay for any labor or materials supplied to a project. The bond is triggered when said laborers/suppliers fail to receive payment for their work.

Not all projects have a payment bond, but they have become more popular for various reasons. On essentially all public projects (either state or federal), payment bonds are required under the Miller Act.

Private projects have seen an increase in payment bonds being required for both general contractors and subcontractors. This is because either the owner insists upon the bond, or bonds are issued as part of a system of waiving mechanics’ liens—some states require payment bonds to be issued for an enforceable advance lien waiver.

Payment bonds are complex contractual obligations that exist at the intersection of suretyship law, contract law, and the law of guarantors and guarantees. This article focuses on a specific topic: Timing of notices that must be sent in order to preserve bond claims.

On federal projects the Miller Act requires all bond claimants to wait 90 days from the last date of furnishing labor and materials, before filing suit. Also, for any party that is not directly in contract with a prime contractor, the claimant must first send a notice to the general contractor within 90 days of the last date of furnishing labor or materials. The filed suit on the bond must be brought within one year of the last date that labor or materials were furnished.

Most states have statutes similar to the Miller Act. These are called “Little Miller Acts.” In Pennsylvania, the bond law (8 P.S. 191 et seq.) closely parallels the Miller Act. It requires a 90 day wait period prior to filing suit. It also mandates that all claimants who did not contract with a prime contractor must first give notice to the prime contractor within 90 days of last furnishing labor or materials.

Maryland’s bond law (MD Code, State Finance and Procurement, 17-101 et seq.) follows the same process. It dictates a 90 day waiting period prior to filing suit, and all claimants who did not contract with the prime contractor must first give notice within 90 days of last furnishing labor or materials.

Not all laborers and suppliers to a project have the right to file suit on the bond. Certain bonds only cover certain laborers and suppliers. Additionally, the specific terms of the bond may affect the coverage, claimant’s rights, and the obligations of the parties.

When a payment dispute arises on a project covered by a payment bond, the legal issues are often complex. It is wise to seek legal counsel early in the process to ensure that the claim is timely preserved and pursued.

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Those attending the most recent MCN gathering at the Radisson Cross Keys saw Don Hoffman’s presentation on the Power of Story Telling. Using Story Telling to communicate with your customers and prospects is not as easy or self-evident as it would appear, but photography with a purpose can jump start your process!

The story of you and what you do needs to be personal, professional and persuasive, all in the short time you have to make a good first impression. We are all not wordsmiths, but we are all visual creatures and respond to the power of a compelling image.

In the construction industry, it is common to snap cell phone images of an ongoing project. That can serve a purpose, but does it tell your story? A professional photographer, dedicated to your best interest, brings all the elements of good story telling into reality. Third party photo documentation takes the obligation off your field personal who may spend valuable time distracted from their primary responsibility. The photographer assumes the task of legacy builder, bringing to life the artistic and practical, along with the human element to personalize the project.

Documenting a building from ground breaking to post-construction is an event! Featuring your people, and their talents, gives your project life far beyond its time of creation.

A professional photographer is the eyes of that next great customer. From concept to photography, your photo story tells your customers not just what you do, but what they mean to you. Your reputation clock resets with each new customer, every new interaction. Your photo story reaffirms your reputation, tells your story of satisfied customers, jobs well done or charitable partnerships that support your community.

Cell phones are good, and getting better, but they are not telling your story. Bring the professional on site who will bring your story to life. Your legacy will be preserved and the strength of Story Telling images will save dozens of emails and texts when you are lining up that next home run in your portfolio.

Robin Sommer
Bill Rettberg

MidAtlantic Photographic LLC is a woman owned, commercial photography company featuring Robin Sommer and Bill Rettberg. MAP creates the commercial photography company’s rely on for marketing, head shots, construction, industrial and manufacturing images, as well as, product photography and Aerial/Drone Photography. We are certified commercial drone/UAS pilots and are MBE certified in the state of Maryland. Check us out at www.MidAtlanticPhotographic.com or email us at info@RobinSommer.com.

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When MCN Goes To Frederick County, You Can Count On An Outstanding Event!* Direct Connect Networking & Pre Direct Connect Seminar “What Works? What Doesn’t” Developers & General Contractor Case Studies Tuesday, March 27th Dutch’s Daughter - Frederick 3:30 – 7:00 p.m.

*We’ve averaged well in excess of 200 attendees the past three years!
In my practice, I regularly encounter clients – both newcomers to the construction industry as well as veteran, second or third-generation players – who have a firmly-held belief which is not always soundly based in the law. The reasons for this abound; but often, it is because a similar situation happened to a colleague, friend, or even competitor and that outcome has entrenched itself as “The Law” in my clients’ mind. However, there can be a myriad of factors that contribute to any specific outcome, and a one-size-fits-all approach simply does not work in the construction industry.

Often, a legal ruling will turn on nuanced subcontract language, the placement of a comma versus a period in the spec book, or the contents of a one line email sent sometime during the project. There are, however, certain common misconceptions which I believe hold subcontractors back from fully asserting and protecting their legal rights during and after a project. Worse, some of these missteps can significantly prejudice their case by the time they come to me for help. I would like to take this opportunity to explore – and debunk! - the most common legal myths I have encountered in ten years of representing subcontractors.

Myth #1 – Email Communications Are Not Legally Binding.

Today, email has virtually replaced the old-fashioned letter, or even fax, for all but the most important of communications. It is instantaneous, effective, efficient, and easily accessed from anywhere in the world. Yet, many still believe that email cannot suffice to provide notice, make or accept change orders, or otherwise have much legal effect. This cannot be further from the truth.

In my practice, I advise my clients to make use of email specifically to memorialize oral conversations or agreements they have reached with the project manager or superintendent, to provide notice of any condition delaying or impacting their work, and to follow-up on unmet commitments or missed deadlines. When a critical email is ignored, I urge my clients to resend it in its identical format, but with a bold “SECOND REQUEST” header, and to continue day after day until answered. I don’t think anyone reached a “FOURTH REQUEST” without having received a reply.

I also caution my clients not to ever write anything they would not want read aloud in a courtroom, because that is a virtual certainty to occur if the email is relevant – and damaging – to their trial position. Be aware that published cases have held an electronic signature – which can be as simple as your name appearing at the end of your message – meets a contractual requirement for a signed change order. Note, I do not advise email as a complete replacement to the traditional signed change order, notice of delay, etc. Rather, email should be used routinely to follow-up and confirm your understanding of the situation, and in this way it can serve as a stop-gap measure in the event of any future disputes.

Definitely do not delete emails once litigation becomes a reasonable possibility, which is essentially any dispute-related item, as that can be deemed by the court as destruction of evidence and sanctionable. In fact, when I collect the relevant documents I will need to review and pursue a case, one of the first things I ask for are all the emails on the job, both to develop the case strategy and/or defense, and to ensure their preservation throughout the length of the case.

In short, email has become perhaps the most widely utilized tool in construction litigation cases and can single-handedly win, or lose, cases. Use it wisely.

Myth #2 - As Long As The Owner Has Not Paid There Is Nothing I Can Do.

Thanks in large part to the advocacy of subcontractors and their various representative groups on both a national level and grassroots, state-by-state lobbying efforts (Associated Subcontractors of America is on the forefront of this!), more and more is being done about draconian “pay-if-paid” and “pay-when-paid” provisions. California, Delaware, Nevada, New York, North Carolina and South Carolina ban the provision outright.

Other jurisdictions, including Maryland and now the District of Columbia, have passed a law that while a
Specific Requirements Concerning Rope Descent Systems (RDS) In The New Walking-Working Surfaces Section Of The General Industry Standard

As a background falls from heights and on the same level are among the leading causes of serious work-related injuries and deaths. OSHA's final rule on Walking-Working Surfaces and Personal Fall Protection Systems will better protect workers in general industry from those hazards. This will be accomplished by updating and clarifying standards and adding training and inspection requirements. The rule affects a wide range of workers, from window washers to chimney sweeps. The rule does NOT change construction or agricultural standards. I guess this is great news for the construction industry. But is it really?

So, what happens to the construction company that is contracted to perform work on the exterior of an existing building? Your work will require you to attached to the building’s installed anchor points on the roof. What must you look for or request from either the general contractor or the building owner?

According to 29 CFR 1910.27(b)(1)(i) those permanent anchorages must have:

- An annual inspection by a qualified person; and
- Certification by a qualified person as necessary and at least every 10 years.

Employers are to ensure that no employee uses RDS anchorages before they have obtained written information from the building owner that each anchorage meets the requirements of the standard. The employer must also keep that information for the duration of the current job.

The final rule gave building owners and employers until November 20, 2017, to comply with the RDS anchorage requirements (§1910.27(b)(1)(iii)). OSHA is aware that many building owners have not been able to contract with a qualified person to perform the required tasks and come into compliance by the standard's compliance deadline. In addition, some building owners already may have inspected, tested, and certified RDS anchorages as required by the standard, but the anchorage is now out of compliance due to damage or shock loading, and the building owner is unable to secure services to replace or recertify the anchorage before an RDS is scheduled to be used again.

OSHA has set up the following guidance citation criteria to prevent being issued citations.

**Building Owners**

If a building owner, exercising due diligence, is having trouble acquiring the services of a qualified person to conduct the necessary inspection, testing, and certification due to the limited availability of those services, compliance officers will evaluate progress towards complying with the standard.

At a minimum, OSHA expects that building owners:

- Provide evidence that they have contacted a qualified person to inspect, test, and certify RDS anchorages;
- Provide written evidence of an agreement with a qualified person to provide these services, such as an executed contract or letter of confirmation from the qualified person;
- Provide evidence that a diligent effort was made to complete RDS anchorage inspection, testing, and certification before work is to begin (for example, by contacting multiple services to determine their availability); and
- Inform employers who may use RDS that the anchorages have not been inspected, tested, and certified.

**Continued On Page 28**
Cyber Liability / Data Compromise

We have seen the headlines involving large organizations (Home Depot and American Express) that have experienced a data breach. While these examples make headlines, small to mid-sized businesses are the most vulnerable. Their defenses are not nearly as strong and it is easier for criminals to attack and compromise these systems.

Efficiency and ease of doing business is one key to business success, however this also increases vulnerability. Increased efficiency = Increased risk. Storage of credit card and customer information is offered to make repeat purchases easier and quicker. Your email address and password is all that is needed to make future purchases as the repeat customer option increases data storage exposures. Credit card data is stored for you so that it does not have to be re-entered.

Traditional best practice fraud prevention methods (separation of reconciliation / disbursements/multiple signatures) are no longer adequate. Firewalls, anti-virus and malware protection is now standard operating procedure. Included with these defenses is the responsibility to update to the latest versions.

Aside from the above, my laptop has the USB jacks disabled and requires an RSA code which updates every 60 seconds for remote log in. Policies are in place for storage of laptops and mobile devices, and passwords are updated at required periodically. Data deposited into unsecure locations such as DROPBOX are first scanned by the IT Department and are then downloaded to my drive.

Who Has An Exposure?

Organizations That:

- Send / receive electronic communications with customers.
- Send / receive documents electronically.
- Use electronic media to advertise (website or social media).
- Store data such as tax records, trade secrets, employee information.
- Retain customer names, addresses, DOB, SS#, credit card, health records.
- Utilize cloud storage or outsource these functions which are out of your control.

Exposure Defined

- Third party liability and lawsuits that arise from customer data compromise.
- Fines and penalties levied by governments.
- Data restoration costs.
- Cyber extortion (ransom ware).
- Crisis management.
- Business interruption and extra expense.

The Average Cost of a Data Breach is $204 / Record

Examples

Unauthorized Access

A computer hacking group gains access to 5,000 customer records from a restaurant chain and starts a wave of fraudulent purchases.

Theft of Digital Assets

Regional retailer contracted with a service provider. A burglar stole 2 laptops from the service provider containing 800,000 customer files. Laws required the retailer, not the service provider, to notify affected customers. Total expenses and crisis management costs were $5MM.

A home health care center had backup data stolen that contained 365K patient records. The state attorney general required to provide free credit monitoring, credit restoration, and reimburse patients for direct losses.

The organization was also required to revamp

Continued On Page 29
As an owner of a company or the general to a sub, what is your level of assurance that the corrective action plan for the following incident is sufficient enough to prevent a reoccurrence?

Accident Description: Trailer normally used to transport large reels of wire cable was overloaded and tipped over while making a turn.

Corrective Action: Terminated the employee when he admitted his error and trained others to make sure the trailer is not overloaded.

The supervisor who wrote the incident report and fired the employee walked away feeling good about his actions and that this would not happen again, after all, it's common sense to not overload a trailer, right? I've seen too many corrective action plans that simply state retraining and it provides a very low level of assurance to prevent a future accident after the training fades from memory.

Let's not fall into the human error trap and presume all of the blame on the employee. Instead take a human performance approach to looking at the context of that final decision. No one wants to be involved in an accident that causes delays, property damage, and injuries. Focus on why it made sense to overload the trailer and tow it to the job site. While some reels are heavier than others, this was a normal, routine activity, and all had been safely delivered in the past.

Closer investigation revealed that the weight of the reel was 5,000 pounds and the GVWR of the trailer was 3 tons. In a rush to get the reel to the jobsite, the employee did the quick math 3 tons is 6,000 pounds and thought it was fine. However, the GVWR is the maximum weight of the trailer itself plus the load. The actual maximum load capacity of the trailer was closer to 2 tons.

Perhaps a well trained, highly experienced employee with no time pressure would have taken the time to fully read the manual for the trailer and its load capacity, would have done the math and realized that the trailer was not safe to use. Then perhaps that employee would have found a larger trailer and then began the same process.

Is this likely in today’s fast pace, just in time materials management and maximization of equipment utilization? No, so how do we make this safer? Check out this corrective action plan:

1. All trailers clearly marked with the maximum load capacity.
2. Upon arrival at the warehouse, all reels are weighed and clearly marked with their actual weight that can be read from a few feet away.
3. Employees are trained to verify that the load capacity of the trailer is higher than the weight of the reel.

Eliminate the guess work, make the math as easy and clear as possible, set the safety expectation by doing some prep work. The point is that any time you come across a corrective action plan from your own company or a subcontractor that simply states retraining of employees, you need to dig deeper and determine why it made sense for the employee to take that course of action which ultimately led to the accident.

About the author: Joseph Xavier is a senior consultant at Summit Sustainability Solutions who helps companies strive for zero harm to their workforce. His specialty is safety culture and enjoys working with people to understand how to think like a risk manager. jxavier@hpx-factor.com

“Communication - the human connection - is the key to personal and career success.”

~ Paul J. Meyer
Fact Or Fiction?

Commercial Insurance - 2018

Healthcare rates are going up, so workers’ compensation rates do the same

Fiction

Workers’ Compensation rates in many classifications and states are actually going down. The rates are not trending with healthcare costs. Insurance carriers and employers have done a good job in loss prevention and reducing the severity of claims that do occur.

Cost containment, including pharmacy costs, have aided in workers’ compensation experience being positive enough to warrant rate decreases. Carriers have put more resources in managing complex claims and are working closely with employers to limit lost-time claims by using return-to-work programs.

OSHA regulations are being rolled-back or eliminated by the Trump Administration

Fiction

While other regulations implemented by prior Administrations have been rolled back or eliminated, many of the key OSHA implementations have continued. For instance, the Silica OSHA changes were not stopped or gutted. That being said, there has been a decrease in OSHA enforcement staff (about 4% of inspectors in 2017).

My personal auto insurance rates went up, so my commercial auto premium will go up too

Fact

Commercial auto experience has been poor for the insurance industry. Even for great risks, insurance carriers are looking for at least 5-10% increases at renewal. For companies that have had poor loss experience, the increases will be greater. Distracted driving has clearly had a negative impact on results. In addition, the reliance on technology on newer autos means it costs more to repair them.

I keep hearing about Cyber Insurance. That doesn’t apply to the construction industry

Fiction

Contractors are just as vulnerable to claims from cyber/security/social engineering incidents as other companies. Several years ago, the large breach at Target Corporation was as via a subcontractor using a portal for billing. There is no company too small to be targeted and the cost can be just as devastating. You should talk to your broker if you don’t have coverage.

Subcontractors I hire should carry the same insurance limits my company is required to purchase

Fact

Any insurance requirements your firm is contractually obligated to adhere should, in turn, be required of any subcontractors you engage for the same job. Why would you allow a subcontractor to work under you where their insurance limits are less than yours? If they are negligent, you want to be protected as much as you are protecting the company you are contracting with. If insurance is not in-place or not adequate, the claim flows up. Owners and General Contractors are, in many cases, requiring higher limits and you must do the same with your subs.

Richard Shaw is a Senior Client Executive with RCM&D with over 25 years of experience working with clients to help them manage their risk. You can contact Richard at rshaw@rcmd.com.

“The fact that an opinion has been widely held is no evidence whatever that it is not utterly absurd.”

~ Bertrand Russell
a set period of time. Section 14-3504(b) of MPIPA currently requires that a business conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information of the party has been or will be misused as a result of that breach. Should the business determine it is reasonably likely the information has been or will be misused, the law currently requires the business to notify the party “as soon as reasonably practicable.” The law, as amended, will require a business to notify the party owning the data no later than forty-five (45) days after the conclusion of any investigation conducted by the business in which it determined the breach has created a likelihood that the personal information has been or will be misused. Although not required in MPIPA, businesses should also be sure to provide prompt notice of any data breach to their insurance carrier.

Also, in light of the addition of usernames/passwords giving access to a person’s e-mail address to what is considered personal information under MPIPA, changes have been made under MPIPA to allow businesses to provide alternative notice in certain circumstances. As the law currently stands, §14-3504(e) generally requires that notice of a data breach be given by written notice sent to the most recent address on record, by telephone, or by e-mail if the business has expressly consented or primarily conducts business through the internet. However, under §14-3504(i) as amended, in the event of a data breach involving only personal information regarding a person’s e-mail address/password, a business may comply with MPIPA by providing notification in electronic or other form that directs the party whose personal information has been breached to promptly change their usernames, passwords, or security questions or take other appropriate steps to protect the e-mail account. It should be noted that, generally, such notification cannot be given to the party by sending notification by e-mail to the e-mail account affected by the breach. That said, however, such notification “may be given by a clear and conspicuous notice delivered to the party online while the party is connected to the affected e-mail account from an internet protocol address or online location from which the business knows the individual customarily accesses the account.”

Lastly, changes will occur to §14-3502 of MPIPA. This section currently governs the destruction of records and currently requires that when a business destroys a customer’s records that contain covered personal information, it must take reasonable steps to protect against unauthorized access or use of that information by others. The entity must take into account: (1) the sensitivity of the records, (2) the nature and size of the business and operations, (3) the costs and benefits of different destruction methods, and (4) available technology. Under the law, as amended, businesses will be required to also take reasonable care to protect an employee’s or former employee’s personal information. Importantly, this amendment expands the scope of this section outside the realm of consumer protection alone to include protection of employees.

Data breach security and notification laws in Maryland and throughout the country are evolving and will continue to do so. It should be noted that the National Association of Insurance Commissioners’ (NAIC) recent passage of the Insurance Data Security Model Law will provide many states with guidance on specific security measure requirements. Accordingly, it is of paramount importance that businesses keep abreast of compliance and notification requirements in this area.

James R. Benjamin Jr. has substantial experience representing and advising insurers and business entities in a wide range of matters including lead paint compliance, abatement and notice requirements and minority-owned and women-owned businesses (MBEs and WBEs) certification, procurement, structuring and joint venturing and teaming arrangements. Mr. Benjamin can be reached at (410) 339-5787 or jbenjamin@pklaw.com.

“...I would uphold the law if for no other reason but to protect myself.”
~ Thomas More
extra-special care to secure and monitor these things while on the job. According to the LoJack Corporation’s “2016 Construction Equipment Theft Recovery Report, the type of construction equipment most commonly stolen is wheeled and tracked loaders. Knowing what equipment and materials are most popular among thieves can help you keep an eye on these important pieces.

Create your own background checks.

If you’ve managed a few construction sites before in the same area, it’s likely you’ll start to see some familiar faces when coming to work every day, even if the job and locale changes. After some time, it’s possible that the people that work for you on the job or with you at the same company, will begin to feel like friends. This is the perfect scenario for theft. Anywhere from 30% – 85% of job site theft results from someone that you authorize to be on your job site, perhaps even someone you know well.

Along with a standard background check, it’s important to come up with your own system of “checks” when allowing people to enter your job site. These checks might include calling references, checking them out on social media before they’re hired, or a combination of both and other tactics. No matter what, making sure the job site is safe from anyone who has committed theft in the past is one way to avoid theft in the future.

As a construction manager, preventing theft is an essential part of your job. Not only can theft cost you a tangible loss, it can also take away your confidence or reputation. Creating a good relationship with local law enforcement, knowing the market for stolen construction equipment, and staying vigilant in the comings and goings of your team will go a long way towards reducing theft.

Want to find out other ways to prevent theft at your job site? Click here to learn more about remote monitoring services.

Shawn Scarlata
CEO, SMART Security Pros

Providing professional Video Surveillance Services & Armed Security throughout Baltimore and the

Washington, D.C. Metropolitan Area, SMART Security Pros utilizes only off duty, retired, and prior police officers for our armed security assignments. SMART’s founder, Shawn Scarlata, was an active duty law enforcement officer for 22 years in the Washington, D.C. Metropolitan Area. SMART specializes in utilizing our Mobile Video Guard to protect construction sites and other outdoor venues at over 65% less than hiring traditional security guards. Call 301.955.9782 or submit a detailed quote online to get the right security solution.
solution.

- **AIA Billing** – This must be done outside of QuickBooks. For contractors that don’t want to spend the money for an accounting system that handles AIA billing, third party software that integrates into QuickBooks is available.

- **Estimating** – while “estimates” can be created in QuickBooks, the program lacks the ability to use formulas or to budget items as a percentage of other items. Most contractors are better served using Excel or specially designed software for estimating. For those who want to use the estimate versus actual reporting in QuickBooks the estimates would need to be input into QuickBooks.

- **Percentage Completion Accounting** – while QuickBooks can generate the reports needed to prepare “WIP” schedules, it does not do this calculation nor does it make an entry to record it. Most contractors transfer summary level data to Excel spreadsheets to do the calculation and make entries into QuickBooks to get their accounting correct.

- **Equipment Maintenance and Usage** – while the cost to repair equipment can be tracked in QuickBooks, management tools for tracking types of repairs and preventive maintenance information are not available. Third party software is the recommended solution.

About the author - Craig Kershaw, CPA, MBA is the managing partner of The CFO Source, a Baltimore based consulting firm that provides senior level financial expertise to small and medium size businesses. Craig is experienced with all levels of financial and accounting software, from QuickBooks to custom systems used in multi-billion dollar operations. A Certified QuickBooks Pro Advisor since 2007, Mr. Kershaw has helped numerous clients set up, trouble shoot, and fine tune their accounting. He is the author of “QuickBooks for Contractors” and “QuickBooks for Accounting Professionals”. He teaches continuing professional education courses to members of the Maryland Association of CPAs.

pay-if-paid provision can be enforced by a general contractor, it cannot be used by an owner or surety in defending a mechanic’s lien or payment bond claim. Illinois and Indiana have similar statutes, as does Ohio (as to a mechanic’s lien only) (Maryland has long held that “pay-when-paid” does completely tie a subcontractor to payment from the Owner, but sets the timeframe for payment to a reasonable time. Even in those cases, however, pay-when-paid cannot be used as a payment defense by third parties).

In all jurisdictions, however, timely preservation of mechanic’s lien and payment bond rights is critical to ensuring a successful outcome and ultimately, payment of your claim regardless of whether the Owner has paid the GC. Many owners – and even more so their lenders - become loathe at the idea of a mechanic’s lien against the property, and a lien notice can often speed up the Owner’s payment.

Options exist even in those jurisdictions which have not (yet!) legislated against the pay-if-paid clause. One avenue used successfully around the pay-if-paid clause is the prevention doctrine, which provides that if a party to a contract is itself preventing the fulfillment of the contract, that party becomes liable for that which it “prevented.” Applied in a pay-if-paid situation, depending on the particular facts, a subcontractor may successfully argue that it is the general contractor itself who is preventing payment from the Owner and as such, cannot shelter behind the pay-if-paid clause to avoid paying its subcontractors.

Stopping work may be another option, if permitted by your subcontract and/or other applicable law. Of course, negotiating a pay contingency out of your contract – or at the very least, inserting a stop work provision in the event payment is not effected within 30 to 45 days of your invoice – is the best way to avoid payment failures, which leads to myth #3…..

**Myth #3 – I Must Sign The GC’s Boiler Plate Contract If I Want The Work.**

It is often difficult to successfully negotiate or redline a subcontract yourself, and indeed, my clients are often told, initially, that no changes will be accepted. However,
I am usually able to obtain the most critical changes, or at the very least, insert enough “workaround” clauses to significantly even the playing field. For example, broadening an attorney fee provision to apply to the prevailing party, and not just the GC, dramatically shifts the home-court advantage previously in favor of the GC. Coupled with a few other modifications and other insertions, specifically concerning payment, the ability to stop work if invoices are not paid by a date certain and that a subcontractor’s tort liability is limited to the extent of its negligence only, a somewhat fair balance is ordinarily achievable.

If you cannot obtain these crucial changes yourself, consider hiring an experienced construction lawyer in your area for the limited purpose of negotiating more favorable terms. As the old medical proverb goes, “an ounce of prevention is worth more than a pound of cure.”

**Myth #4 – A Partial Or Conditional Lien Release Only Releases The Funds Previously Invoiced.**

I have seen subcontractors get burned on this one over and over again. Something about the words “partial” and “conditional” seem to send a message to the brain to ignore the rest of the words on the page because, after all, it says partial right up top, doesn’t it? Wrong. Here more than ever, the devil is in the details. Most payment releases being used by GC’s today – while being labeled a “partial lien release” – contain language that is much broader than a simple lien release for invoiced work only.

Often they will release the GC and Owner from payment for all work performed on the project through the date of the applicable payment application, or even worse, through the date the lien release is signed. And, yes, this can readily become a legal obstacle to receipt of future payment for unpaid change work that has already been performed but not yet billed, and/or accepted. Many “partial lien releases” don’t even contain an exception for retainage, and by executing the “partial release” you have just signed away your legal entitlement to your retention. Of course, if you have asserted a claim in writing, be it for extra work, a changed condition or any other matter on which you are claiming a right to payment and do not specifically reserve that claim within every “partial lien release” thereafter, you have waived and released that claim as well.

For this reason, it is best to modify the language of any payment release – be it for lien claims or any claims – to indicate the release is being provided “only to the extent of payment received” for the work performed. Better yet, the ASA has a great sticker entitled “lien waiver reservation of rights” which you can easily slap on to every “partial” lien release. The sticker specifically carves out retention, unbilled changes and claims which are either unknown or not yet asserted in writing. It also makes clear that the release is effective only through the date of the subcontractor’s last pay application.

Make it a habit to know, preserve and most importantly to assert your rights, and you will reap the success that savvy subcontractors are accustomed to.

**Joseph L. Katz, Esq.**

Joe is a senior associate at the construction litigation firm **Huddles Jones Sorteberg & Dachille, P.C.** in Columbia, Maryland. Joe regularly represents subcontractors and suppliers on federal, state and municipal construction projects and has specialized expertise in guiding his clients through the various regulatory requirements unique to government contracting. He also frequently represents clients involved in private sector construction, including housing, commercial, retail and industrial projects. He is experienced in all facets of construction litigation, including mechanic’s liens, Miller Act payment bond claims, arbitration, and civil actions in both state and federal court. He can be reached at katz@constructionlaw.com, or (410) 720-0072.

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**Thursday, April 26th**

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**Sign Up Now!**
In cases where there is an agreement to provide the inspection services, but the services have not yet been initiated or completed, CSHOs will review the agreement to determine whether the following key elements are present:

- A visual inspection of each anchorage;
- Testing of each anchorage to determine whether it is capable of supporting at least 5,000 pounds, in any direction, for each employee attached;
- Recommendations for and implementation of corrections or replacement of each defective or damaged RDS anchorage;
- Certification that each anchorage meets the requirements in §1910.27(b)(1)(i); and
- A date the contract work will be completed.

**Employers**

Additionally, employers performing work on buildings may be impacted where building owners experience difficulties in contracting for and completing inspection, testing, and certification of RDS anchorages. In such cases, CSHOs will evaluate the extent of an employer’s efforts to comply, including use of other measures to perform work during the delay.

In cases where RDS anchorages have not been inspected, tested, and certified, employers must still obtain information from building owners indicating those tasks have not been performed. Based on the information provided, the employer may choose to use alternative measures or decide not to proceed with work. If employers proceed with scheduled work, they may use alternative means for working at heights, such as, but not limited to, powered platforms, bucket trucks, cranes, and mobile/portable scaffolds. In these cases, Compliance Officers will evaluate compliance with requirements applicable to operations/equipment used.

Where an employer demonstrates that all other means for safely performing the specific job tasks either are not feasible or would create a greater hazard, they may choose to perform the work using supplemental protective measures (e.g., energy absorbers to limit forces on the anchorages, or nets to provide additional fall protection) with limited use of RDS. For example, if an employer establishes that all other means of accessing heights are not feasible, and decides to use RDS with untested anchorages, the employer may provide nets as a supplemental means of fall protection. In addition, in these cases where the employer chooses limited use of RDS, it must ensure that a qualified person determines that the anchorage, in its current condition, is capable of safely supporting workers, using the following factors:

- A visual inspection of the anchorage, its environment, and supporting structure;
- Any known history of use of the anchorage, including whether the anchorage has previously been exposed to shock loads without retesting the anchorage;
- An evaluation of the strength of the anchorage, or a structure’s substantial mass;
- Condition of the anchorage or structure and surrounding and supporting surfaces;
- Angle from the descent line to the anchorage or structure;
- Whether the descent line will be exposed to outside hazards such as moving machinery, sharp edges, and heat; and
- Permanence of the anchorage or structure, and surrounding and supporting surfaces.

Employers also must ensure that the RDS is used under the supervision of a qualified person.

Where the employers or building owners have demonstrated/documented these efforts to comply, OSHA will, on a case-by-case basis, exercise enforcement discretion in issuing citations under §1910.27(b)(1).
security policies and safeguards and undergo random security audits

Privacy Breach

Employee of a rehabilitation center improperly disposed of 4000 client records which contained names, SS#’s, credit / debit card information, addresses and phone #’s. Fines, penalties, and customer redress costs totaled $890K.

Cyber Extortion

A US based software company hired an overseas vendor who left universal administrator defaults on server. A hack for hire was paid $20K to exploit the vulnerability. The expenses from the extortion and threat to post information publicly exceeded $2MM.

Human Error

An employee printed two 1099’s on each piece of paper in an attempt to save paper. The records were supposed to be separated but were not and each recipient received both their own and another person’s records.

Rogue Employee

Downloads names, address, customer data which can be used for hacking of your customers, extortion, trade secrets and proprietary information.

How Is The Insurance Market Responding To These Threats?

Cyber liability / data breach coverage is available and competitive. Insurers will offer coverage commensurate with the risk. Some provide loss control services to assist customers with improving policies and practices to lower risks. Some companies offer basic coverage as an add on to other insurance for under $1,000.

General liability insurance covers bodily injury, property damage, advertising and personal liability and excludes internet and cyber liability.

This is a competitive market with rapidly changing product offerings. Now is a good time to assess your exposures and see what insurance products are available that meet your needs.

Bruce Talbot
AGI/Sandy Spring Insurance Corp (SSIC)
www.advantagegroupinsurance.com
www.sandyspringbank.com
btalbot@sandyspringbank.com

AGI specializes in construction bonding and insurance and is part of Sandy Spring Insurance Corp (SSIC), a Maryland corporation owned by Sandy Spring Bank (SASR). Sandy Spring Bank is listed by Forbes as one of America’s 50 most trustworthy financial companies.

Let’s Meet To Share Some Wisdom & Wine!

“Secure Your Email Environment In Today’s Ever-Changing Threat Landscape”

Thursday, April 12th, 2018

Embassy Suites Hunt Valley
213 International Circle
Hunt Valley, MD 21030

Sponsored By:
Business Information Group
Help Wanted

Job Title: Construction Marketing Manager

Job Description: Plano-Coudon is looking for a skilled and ambitious construction marketing manager to boost brand recognition, craft standout proposals and influence growth strategies at a dynamic, best-in-class construction firm.

Qualifications/Certifications Needed for this Position: B.S. in Marketing preferred. 5 Years demonstrated Marketing Experience in the Construction Industry.

Pay Rate/Range: To be determined.

Please contact: Kyle Polasko @ kpolasko@plano-coudon.com about this position.

Coming Soon

Thursday, February 22nd – “Wisdom & Wine” Educational Seminar & Networking
“Wading Through: Are You Prepared?”
Union Jack’s Columbia
4:00 – 6:30 p.m.

Tuesday, March 27th – Direct Connect Networking & Pre Direct Connect Seminar
“What Works? What Doesn’t” – Developers & General Contractor Case Studies
Dutch’s Daughter - Frederick
3:30 – 7:00 p.m.

Thursday, April 12th – “Wisdom & Wine” Educational Seminar & Networking
“Secure Your Email Environment In Today’s Ever-Changing Threat Landscape”
Embassy Suites – Hunt Valley
4:00 – 6:30 p.m.

Thursday, April 26th – The Blue Book Showcase
FedEx Field – Landover
12:00 – 6:00 p.m.

Wednesday, May 2nd – Direct Connect Networking & Pre Direct Connect Seminar
“2018 Construction Industry Survey Results”
Location And Times To Be Determined

MCN Is Proud To Be A Member Of The Construction Industry Alliance For Suicide Prevention

Construction Is The Number One Industry For Number Of Suicides And The Number Two Industry In Suicide Rates.

Learn How You And Your Company Can Do Something To Prevent Suicide & Save A Life!

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