



# BUILDING BLOCKS

JULY 2012

VOLUME 20, ISSUE 1

## *President's Message*

*When it rains it pours....*I pride myself on meeting deadlines, so I must apologize for the tardiness of our newsletter. Things have been really busy in our office due to a combination of some new projects (finally!) but also because last month our staff accountant went on maternity and, coincidentally, the SAME weekend our contracts administrator broke her foot and is out for the next few months. You may recall what a tiny back office we have, with just myself, one accountant, and two contracts administrators. So technically, "half" of the finance/admin staff is currently on extended medical leave.

I managed to find a good accounting intern from UH to cover the accounting & payroll side. I'm grateful that he's not

taking any summer classes so he can put in a lot of hours. On the contracts side, our injured administrator also happened to be our public notary, so I had to scramble to find a temporary staff person who also has a notary. But her background is working in legal offices, so issuing subcontracts, typing up change orders, and putting together bid documents was completely foreign to her. Luckily, we made it through the busy June 20 bid rush w/o incident.

As expected, the situation has forced me to roll up my sleeves & dig even deeper into the details of the daily work. I must say it does give you a sense of appreciation when you have to actually do the work of your staff. *-Continued on page 2*

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## **IMPORTANT DATES:**

*August 29, 2012 - CFMA Luncheon Presentation: Lunch with the Governor*

*August 31, 2012 - CFMA Golf Tournament*

## *President's Message*

From dealing with US Customs & Border Patrol to get security clearance for our airport project crew; to going through a certified payroll audit; to creating & submitting force account (T&M) type change orders (inevitably having to correct & re-submit several times), I've certainly learned a LOT in the past month.

One benefit of going through this exercise is that I've discovered some opportunity for increased efficiencies in our business processes. For example, using our standard change order proposal Excel template, I typed out the corresponding cover letter to owner on the same worksheet (traditionally done on a separate Word doc) & used cell formulas to reference much of the information directly from the proposal worksheet. Now, not only is the pro-

posal & letter on a single document, but future cover letters are automatically generated once the information from the proposal is entered in the worksheet. I know, this is way too detailed for a newsletter column, but I'm a huge fan of efficiency & there are always opportunities to do things faster & better, if you try.

In other news, a number of subcontractors & suppliers have filed chapter 11 bankruptcy protection, or closed its doors completely. This has been another "part-time job" and learning experience, dealing with bankruptcies & attorneys; however, perhaps I should save that topic for next time. Please enjoy this quarter's newsletter.

- Wes

## *CFMA Cash Management Workshop*

**STEVE LORDS,  
CFO OF CF JORDAN  
CONSTRUCTION IN  
EL PASO, TEXAS**



Steve Lords, CPA, CCIFP, presented CFMA's Cash Management and Advanced Cash Forecasting classes on May 4<sup>th</sup>. CFMA Honolulu teamed up with GCA of Hawaii, and 25 people took part in the workshop. Topics ranged from the basic definition of "cash" to optimizing cash management, and included following the

cash flow lifecycle to apply best practices and internal controls. The afternoon session focused on how to set up a cash flow forecasting, and Steve was generous to share his forecasting templates with the Chapter. These Excel worksheets are being distributed with the newsletter for your use. A big Mahalo to Steve Lords for making the trip over here and teaching the class. Steve is currently working on creating a new module in the cash management series dealing with Treasury, so we may have a chance to welcome him again to our chapter next year.

## *CFMA UH West Oahu Campus Tour*

On April 5th, 2012, Albert C. Kobayashi, Inc hosted a tour of the University of Hawaii West Oahu Campus. This event was attended by 16 participants. Thank you ACK!

The new Kapolei campus will be the new home of the University of Hawaii – West Oahu, which is currently located in portable buildings at Leeward Community College. The \$100+ million first phase of the campus includes a Maintenance building and four other buildings:

- The Campus Center/Student Services building will have a cafeteria and administration offices and will serve as the common area for students and faculty.
- The Classroom building will house the general classrooms, computer classrooms, and office and meeting areas.
- The Library/Resource Center will contain the campus's learning resources. It will have a 100 foot high tower that will serve as the campus's landmark.
- The Laboratory building will house special laboratory classrooms.

Completion is expected during the summer and the campus will welcome its first classes in August 2012.



**CFMA HONOLULU GANG AT THE UH WEST OAHU CAMPUS.**



THE FIRST PHASE OF THE CAMPUS INCLUDES A MAINTENANCE BUILDING AND FOUR OTHER BUILDINGS.



## 2012 CFMA Annual Installation Banquet

CFMA Honolulu gathered at the Oahu Country Club on April 27, 2012 for the Annual Installation Banquet. Incoming president Wes Mikuni, who returns for his second term of office, discussed activities and initiatives for the upcoming year and introduced the Board of Directors.

Lisa Vandergriff, from CFMA Alaska, attended the event and spoke to the group about her experience in the CFMA and initiatives at the national level. Lisa was the 2012 recipient of the CFMA Joe Quigley Memorial Award, which recognizes outstanding chapter participation & achievement. Congratulations Lisa!

### CFMA Honolulu Board of Directors

President:	Wes Mikuni
Vice President:	Neill Char
Treasurer:	Michele Kaneshiro
Secretary:	Thalia Choy
Directors:	Brad Char Ray Nii Nick Tan Frank Wirt Craig Yamasaki

CFMA HONOLULU  
FROM LEFT TO RIGHT—  
WES MIKUNI, MICHELE  
KANESHIRO, THALIA  
CHOY, NEILL CHAR,  
FRANK WIRT, RAY NII,  
NICK TAN, BRAD CHAR.



WES MIKUNI AND  
LISA VANDERGRIFF.





## *2012 CFMA Annual Installation Banquet*



CFMA HONOLULU  
AT THE  
2012 ANNUAL INSTALLATION  
BANQUET

OAHU COUNTRY CLUB.



## *Fraud in the Workplace, Employer Beware!*

“THE 2012 CERTIFIED  
FRAUD EXAMINERS  
STUDY FOUND THAT  
43.3% OF  
OCCUPATIONAL FRAUD  
WAS DETECTED  
THROUGH TIPS.”

A Brown Bag presentation on “Fraud in the Workplace” was held on June 27, 2012. Duane Seabolt, Director of Forensic Services at Candon Todd & Seabolt LLC presented statistics reported by the Certified Fraud Examiners organization in its latest study. Duane specializes in forensic accounting, business valuations, fraud investigations, economic damage analysis, lost profit and earning calculations, litigation support and other consulting services.

Occupational Fraud is defined as “The use of one’s occupation for personal enrichment through the deliberate misuse or misapplica-

tion of the employing organization’s resources or assets.”

Types of Occupational Fraud include asset misappropriation, corruption and financial statement fraud, with asset misappropriation accounting for the highest frequency of occupational fraud at 86.7%.

Occupational Fraud can result in the loss of thousands of dollars. In the 2012 study performed by the Certified Fraud Examiners organization, 55.5% of Occupational Fraud resulted in losses from \$0 to \$200,000, while 20.6% of Occupational Fraud resulted in losses of over \$1 million.

The 2012 Certified Fraud Examiners study found that 43.3% of Occupational Fraud was detected through tips.

The study also found that in organizations with fraud hotlines, 51% of fraud was detected through tips. Organizations without fraud hotlines, only 35%.

Organizations with fraud hotlines suffered much smaller fraud losses than organizations without fraud hotlines. The study found that organizations with fraud hotlines suffered \$100,000 median losses as compared to \$250,000 median losses in organizations without fraud hotlines (2010 Report).

Organizations with fraud hotlines also tended to detect fraud seven (7) months earlier than those without (2010 Report).

A big Mahalo to Duane Seabolt for presenting the statistics reported by the Certified Fraud Examiners organization at our Brown Bag meeting!



**DUANE SEABOLT,  
(FRONT LEFT)  
LED A DISCUSSION  
ON FRAUD IN THE  
WORKPLACE.**

**ASSOCIATION OF  
CERTIFIED FRAUD  
EXAMINERS  
  
REPORT TO THE  
NATIONS -  
COMPARISON: 2010  
& 2012 GLOBAL  
FRAUD STUDIES  
  
METHODS OF FRAUD  
DETECTION.**

### METHODS OF DETECTION

	<u>2010</u>	<u>2012</u>
Tips	40.2%	43.3%
Management Review	15.4%	14.6%
Internal Audit	13.9%	14.4%
By Accident	8.3%	7.0%
Account Reconciliation	6.1%	4.8%
Document Examination	5.2%	4.1%
External Audit	4.6%	3.3%
Others	6.2%	8.6%

## Obama Care, Compliance Requirements

With the U.S. Supreme Court upholding the validity of the Affordable Care Act (Obama Care) on June 28<sup>th</sup>, this Act now appears to be the future of health care in the United States. Rod Tam of Aon Risk Solutions, who has over twenty years of experience in the employee benefits industry, enlightened our CFMA group on various compliance reporting requirements that we will all be subject to under the ACA in a Brown Bag session held on July 17<sup>th</sup>.

For 2012, some of the compliance reporting requirements are:

- (1) Employer Distribution of Summary of Benefits and Coverage (SBC) to Participants
  - The SBC will probably be provided to you by your Health Care Provider if your plans are fully insured. However, the Employer is jointly responsible to provide this information to their employees (at time of employment, renewal periods, change in status, on request, etc.).
  - Under Multiple Employer Plans (e.g., Union employees whose health coverage is through the Union), the Union will probably be responsible to provide the SBC information to their members. Further guidance on this subject to be forthcoming from Rod at a later date.
- (2) Employer Reporting of Health Coverage on Form W-2 (due 1/31/2013)
  - On Form W-2, the aggregate reportable cost of coverage under the employer-sponsored group health plan must be reported in box 12 using code DD.
  - Note that for employees covered by Multiple Employer Plans, e.g., union employees,

their W2s would not have to contain the reporting information.

- ◇ This requirement is only required for Employers who have issued more than 250 W2's in the previous calendar year (note that W2s for union employees **are** included in the count for purposes of the 250 threshold).

For plan years beginning in 2013, the limit of health care FSA (flexible spending account) contributions will be limited to \$2,500 maximum.

For more detailed information on how the ACA will affect your company, consult with your health care provider and your attorney. CFMA would like to thank Rod Tam for presenting at our Brown Bag session and also our members and their guests who took the time to come and learn about this topic. Our committee would like to recognize Lori Isara of Koga Engineering for her suggestion on this brown bag topic. If you have a topic that you would like to see presented at a future brown bag session, please contact one of the committee members (Frank Wirt, Raymond Nii, or Brad Char).



**WES MIKUNI AND  
ROD TAM.**



## *Update on Construction Defects General Liability Insurance*

GROUP BUILDERS  
VS.  
ADMIRAL INSURANCE  
CO.

BY MIKE KINOSHITA,  
ATLAS CONSTRUCTION  
SERVICES A DIVISION  
OF ATLAS INSURANCE  
AGENCY, INC.

This article is to provide an update on the current situation concerning the Intermediate Court of Appeals (ICA) ruling Group Builders vs. Admiral Insurance Co. with respect to its impact on Commercial General Liability insurance and to identify influences to the recent legislation HB 924 HD2 SD2 that was signed into law last June by Governor Neil Abercrombie.

### Background

The Group Builders vs. Admiral ruling of May 2010 by the ICA stated that "...construction defect claims do not constitute an "occurrence" under a CGL (Commercial General Liability insurance) policy." This ruling set the entire construction and insurance industry into a chaotic state with a lot of questions as to whether construction defects were covered by the Commercial General Liability insurance policy.

### Solution

The good news is since the ruling, insurers have implemented endorsements that re-define the definition of "occurrence" to address this issue going forward. However, there is no standard insurance industry endorsement and the endorsements vary significantly between carriers. Accordingly, it is important that each Contractor understand the coverage, or lack thereof, that is provided by these endorsements in order to make an informed decision. Certain insurers have elected not to endorse their existing CGL policy and these are the insurers that you as contractors and developers should not consider even if the premiums are inexpensive as it is not worth sacrificing questionable coverage for lower premium.

Other carriers have elected to endorse their Commercial General Liability policy with a "Most Favorable State Venue" endorsement. This type of endorsement seeks to resolve the issue by providing the insured with the benefit of the law of the state most favorable for

which the insured has a substantial relationship. However, many criticize this endorsement because it does not directly address the definition of occurrence under the policy.

Due to the varying levels of response from the insurance carriers, the current best practice is to seek qualified insurance and legal advice in order to carefully analyze the specific endorsement in order to assure the most advanced and comprehensive coverage.

As a way to do a quick self-check, all contractors should be asking the following questions in order to evaluate the quality of the endorsement:

- ✓ Is coverage provided for both on-going and completed operations?
- ✓ Is coverage provided for the work performed on your behalf by a subcontractor including your work that the subcontractor is working on and resulting property damages arising out of that work?
- ✓ Are there any other conditions, restrictions or limitations? i.e. subject to a written contract or agreement, etc.

Unfortunately, no insurer is willing to go back prior to the adoption of the effective date of their re-definition of occurrence endorsement and endorse past policies. Therefore, it is still questionable as to how past insurance policies will respond to construction defect claims until this issue is resolved in the ICA or Supreme Court level.

### Is the Recent Legislation (HB 924 HD2 SD2) a Solution?

The recent legislation (HB 924 HB2 SD2) signed into law in June of 2010 was an attempt to address the issue with past CGL policies. In summary this law states,

"For purposes of a liability insurance policy that covers occurrences of damage or injury during the policy period and that insurers a construction profes-



## Update on Construction Defects General Liability Insurance

sional for liability arising from construction-related work, the meaning of the term “occurrence” shall be construed in accordance with the law as it existed at the time that the insurance policy was issued.”

This law was created with the intent to maintain construction defects coverage for CGL insurance policies prior to the Group Builders ruling. However, since the enactment of this law there have been court decisions that have gone along the lines of the Group Builders ruling. In the U.S. District Court, Civil No. 10-00172 dated July 6, 2011, *State Farm Fire and Casualty Co. v. Doug Vogelgesang, Ellarene Vogelgesang, and Harvest General Incorporated fka Doug Vogelgesang*, Chief Judge Susan Oki Mollway stated,

”...re: Act 924...The court has reviewed the new law and agrees with the parties that the law does not affect the outcome of this case. As explained above, although the *Group Builders* case was issued by the ICA in 2010, it relied heavily on previously decided state and federal cases. *See Group Builders*, 123 Haw. at 146–48, 231 P.3d at 71–73 (examining the holdings of *Burlington Ins. Co. v. Oceanic Design & Constr. Inc.*, 383 F.3d 940 (9<sup>th</sup> Cir.2004), *Burlington Ins. Co. v. United Coatings Mfg. Co.*, 518 F.Supp.2d 1241 (D.Haw.2007), *WDC Venture v. Hartford Accident & Indem. Co.*, 938 F.Supp. 671 (D.Haw.1996), and *Hawaiian Holiday Macadamia Nut Co. v. Indus. Indem. Co.*, 76 Haw. 166, 872 P.2d 230 (1994), among other cases).”

Another case that the industry has been focused on is the *National Union Fire Insurance Co. of Pittsburg, PA and Chartis Specialty Insurance Co. vs. Sunset Heights Hawaii LLC; Crescent Heights Acquisitions, Inc. Crescent Heights of*

*America, Inc. and others*, Civil No. 10-1-2184-10. This case is of great interest as it involves construction defects alleged by the association of apartment owners and the fact that the claims do not constitute “Property Damage” caused by an “Occurrence” under the terms of the National Union insurance policy. Although this case concerns the CGL and construction defects, until it is ruled upon at the ICA or Supreme Court level this topic will still be an issue.

### Conclusion

Fortunately going forward insurers are addressing the construction defects issue by endorsing the CGL policy by issuing “re-definition of occurrence” endorsements. As with any major purchase you should understand the issues, be an informed buyer and have an understanding of the coverage that is provided and the shortcomings as coverage varies significantly.

The statute of repose in Hawaii for construction defects is 10 years which is an important consideration. The longer you are with an insurer that does not provide or provides ambiguous construction defect coverage the greater your potential exposure to a possible uncovered loss.

The insurance market place is starting to turn to a seller’s or “hard” market which will lead to more restrictive coverage by insurers therefore your understanding of this is even more time-critical.

Review and evaluate the construction defect coverage your CGL provides with a qualified construction agent and legal counsel as this is a complex topic that involves technical insurance coverage concerns with legal ramifications. Your understanding of the issues and subsequent exposure to your company is essential.

GROUP BUILDERS  
VS.  
ADMIRAL INSURANCE  
CO.

BY MIKE KINOSHITA,  
ATLAS CONSTRUCTION  
SERVICES A DIVISION  
OF ATLAS INSURANCE  
AGENCY, INC.

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