

THE BOTTOM LINE



EXCELLENCE IN
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CORPORATION DECISIONS IMPACTING THE SURETY INDUSTRIES

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Famous Quotes

There's no way you can have consistent success without players. No one can win without material. But not everyone can win with material.

— John Wooden (1910-)

You may have to fight a battle more than once to win it.

— Margaret Thatcher (1925-)

Ability is nothing without opportunity.

— Napoleon Bonaparte (1769-1821)

As April 2008 drew to a close the Surety industry was rocked with surprising news, Liberty Mutual Insurance Company announced its purchase of Safeco Insurance Company of America. The sale is expected to go through in the third quarter of 2008.

Coincidentally, it was about this time last year, Liberty announced its purchase of Ohio Casualty Group. In the past year, three bonding companies have become one.

It brings back memories of all the mergers and corporate reorganizations experienced within the Surety industry at the end of the 1990's and into the early part of this decade. Don't worry though; it appears "Safeco

Field" will keep its name - Whew! However, those of you not into baseball may want to consider how this may impact your surety program, directly or indirectly.

For starters, Liberty Mutual will eventually be absorbing the surety divisions of Safeco and Ohio Casualty. Where there were once three corporate designs for a successful surety program there will now be one. As a contractor with any one of these markets you will probably not be affected immediately and hopefully will never be affected at all. Time will tell if there are any contractors who may become casualties of these mergers. The corporate pendulum swings slow and Lib-

erty Mutual's new surety brain trust will take time to become a cohesive unit and it will need to digest what business it has absorbed. No one needs panic, but it would not hurt to stay abreast of the situation. In order to understand the big picture regarding how the Surety Industry has evolved in the past decade or so is worth a deeper look. To do this let's go back to the mid 90's just before the pandemonium of the late 90's/early part of this decade took hold.

In 1994 less than \$50MM in Premiums Written separated 8 of the top 10 U.S. surety writers. Only \$100MM in Premiums Written separated the No: 1 U.S. Surety Writer

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NEW YORK'S PREVAILING WAGE LAW AMENDMENT

* - *This article is reprinted from the Construction Management Association of America Metro News Newsletter, April 2008 edition.*

Prevailing wage compliance is now a hypertechnical concern. Effective February 24, 2008, the New York prevailing wage laws were significantly changed by expanding the types of projects on

which payment of prevailing wage is mandated and by significantly increasing the burden on contractors to notify workers of the wages that they must be paid. This article is merely an introduction to some of the changes to the pre-existing requirements that are now the law in New York.

The definition of public works as been changed to include a requirement that prevailing wages must be paid on jobs where the work is performed by a third party under a lease, permit or other agreement where prevailing wages and benefits would have been required if the

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from the 15th largest U.S. Surety Writer. For all intents and purposes there was no stand out or behemoth market that could dictate terms such as price, size of the bond and bond program, etc... It was a fairly level playing field. Relationship between contractor and its surety is paramount, but in 1994 a contractor did have the ability to test the marketplace with a number of choices if he felt unsatisfied with his current surety. Unfortunately a change swept through the marketplace and looking back at the Top 15 Surety Writers in 1994 10 of those writers have been sold, merged or left the Surety business altogether. 7 of those Writers were in the Top 8.

In 2007, the 15 Largest U.S. Surety Writers show a vastly different corporate landscape. One Writer dominated Premium writings with over \$1B in U.S. Surety writings in 2007. This amounted close to 25% of the total surety premium writings for 2007. The next three largest Surety Writers (rankings 2 thru 4) ranged between \$400MM to \$450MM. The following two Surety Writers (rankings 5 & 6) averaged between \$300MM and \$350MM. After that, almost \$800MM in premiums written separates the 7th ranked Surety writer with the number 1 writer. The remaining top 15 (ranks 8-15) are no longer close in market share with the Top 7 Surety

premium writers. **REMEMBER HOW JUST \$100MM in WRITTEN SURETY PREMIUMS SEPARATED ALL TOP 15 WRITERS** in 1994? In 2008, after the merger of Liberty and Safeco, there will be two behemoths in the industry and one less major Surety Writer in the Top 15 US Surety premium writers. Fewer companies are dominating the premium writings in the Surety Industry.

In 1994 about 13 of the top 15 writers could write nationally. In 2007 you can say 10 have the capability, realistically only 7 of the largest sureties are truly national writers. In 2008 was reduced further to 6 because Liberty and Safeco were both ranked in the top 5 in 2007. We can surmise that for the larger clients who need national surety coverage the stable of carriers has diminished from 13 to 6. A much more limited choice and some of those six might not be willing to take on the mega sized contracts that seem to be coming out, limiting the choice even more. Reduced competition for the Sureties allows them to dictate price and underwriting criteria to a certain degree. This will impact contractors at a certain level of growth (very large or national programs) when looking to compare potential sureties service and programs, because of the limited markets available. Because of the domination of the top 6 or 7 Surety writers, most of the remaining sureties are pri-

marily Regional carriers. These remaining companies have substantially less premium writings than their larger brethren. Some regional carriers seeking substantial growth and are aggressively pursuing those goals, but there will be limits to the size and scope they are willing to write. But, many of these sureties can also be fickle; being quick to pull back from aggressive programs should they feel any negativity within the marketplace. This is due in large part to their lack of Capitalization; they are not capable of sustaining very large or frequent surety losses. Their approach to Suretyship HAS to be different than the larger writers. Being regionally sensitive the underwriting parameters differentiating these markets can be significant, depending upon the size of the contractors being targeted and the geographic locations they cover.

In the end, we have a marketplace that is still discovering its new identity. We are in a time of change. It seems inevitable there will be more mergers, sales, and reorganizations. It will be up to the contractors and their agents to stay in tune with the marketplace. Today's public contractor needs to be aware of the corporate landscape as well as his primary contracting business. Now, more than ever, he will need to rely on outside advisors, such as CPAs, experienced Surety Agents and other industry professionals to maintain a competitive advantage in the public contracting forum.

“Reduced competition for the Sureties allows them to dictate price and underwriting criteria to a certain degree.”

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public agency, department or jurisdiction benefited by the project had entered into a direct contract or where the public entity is the end user of the improvement. This change potentially creates prevailing wage responsibility for construction managers on projects for private developers where the end user is a public entity such as a school district or a governmental entity renting space in a private building. This change negates a New York Appellate Division decision in a 1996 case, *Pyramid Company v. New York State Department of Labor* that had held prevailing wage requirements inapplicable where the public agency was not a party to the contract even though the contract concerned a public works project. Now, the public agency need not be a party to the contract. Prevailing wage requirements now apply to such projects as work for private developers who are building schools or offices where a public agency might be the tenant.

The notification changes are even more significant. On every public works project a notice must be posted in a conspicuous place informing the workers

that any worker, laborer or mechanic employed on this project is entitled to receive the prevailing wage and supplements rate for the classification of labor that the worker is performing. A legible statement "of all wage rates and supplements" for the classifications of labor specified in the contract must be posted in "a prominent and accessible place on the site where the work is performed." The schedule - which is often thick - must be "constructed of materials capable of withstanding adverse weather conditions" and be titled **PREVAILING RATE OF WAGES** "in letters no smaller than two inches by two inches."

Every subcontractor should receive a copy of the schedule of wages and supplements specified in the contract along with any updates that might be issued during the course of performance of the contract. The pay stub that each worker entitled to payment of prevailing wages must include a statement of what the prevailing wage is for the job classification of the work performed by that worker.

Many companies have taken to using stickers or some other form of notice that is affixed to the pay stub setting forth the wage. In some situations this includes multiple stickers where the worker is entitled to different wages because the work performed is entitled to different rates of

THE CHALKBOARD

PREVAILING WAGES

A Federal requirement that all laborers and workmen receive wages and benefits equivalent to workmen performing the same types of work on private projects.

These wages are determined the labor union rates paid for comparable job classifications and are adjusted to reflect current union rates.

wage, e.g., operating engineers who operate different pieces of equipment.

The failure to post the notice, or set forth the prevailing wage on the pay stub, or the willfully posting of the incorrect wage or willfully setting forth the incorrect wage on the pay stub subjects the violator to a fine. The first violation is up to a \$50

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COMPANY NEWS FLASH

NEW HIRE

Atlynx is pleased to announce the hiring of Marnie Gins-

burg. Marnie joined the Atlynx family in April 2008. She will be working in our Garden City office with the Contract and Commercial customers.

NEW OFFICE

Atlynx has officially closed the doors on the Smithtown, NY office, all clients and associates are

asked to forward all correspondence to our Garden City or Nanuet offices.

Our Nanuet office, located at 55 Old Turnpike Road, Suite 310, Nanuet, New York 10954-2451 is now open to all clients. The contact numbers are as follows:

Phone: (845) 624-4016
 Fax: (845) 624-4026

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fine, the second violation is up to \$250 and each subsequent violation is up to \$500. Factors such as the size of the business, good faith of the employer and gravity of the violation may be evaluated in determining the amount of the fine.

At the beginning of the project and with the first paycheck after July 1st of each year, "the contractor and every subcontractor must notify all laborers, workers and mechanics in their employ in writing." on a form that has been approved by the appropriate department of labor and the telephone number and address for that department and of his/her right to contact that department if he or she does not receive the proper prevailing wage or supplement for the classification of work being performed.

The governing department of labor varies. In the areas of New York where most of CMAA's members are located, it is usually either New York State Department of Labor or the Comptroller of the City of New York. Subject to some exceptions, the Comptroller has

jurisdiction over all public work in the City of New York whether under contract with the City or a City agency or public authority when the work is done in the city - e.g. NYC School Construction Authority and the MTA subway and bus projects. The State DOL has jurisdiction over virtually everything else.

Construction manager protection from liability for non-payment by subcontractors is a key concern. A few suggestions that might reduce the size of fines for non-compliance include:

(1) Having someone on staff responsible for policing the subcontractors, reviewing job sign-in sheets and matching them against certified payrolls;

(2) Requiring the subcontractors to inform you of the job classification of each worker on the job;

(3) Requiring subcontractors to sign receipts of prevailing wage schedules; and

(4) Including clauses in the subcontracts that give the construction manager the right to terminate a subcontractor for non-compliance.

Clearly, this is an evolving area of the law. The pendulum has swung to stricter enforcement. Consultation with your company's risk-management, compliance department or legal professional as to the methods of compliance that are most cost-effective for your company is strongly recommended.

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Letter from the Editorial Staff

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If you know anyone who you feel would like a copy of our newsletter, please let us know so that we can include them in our mailing list. Please let us know if you would like to receive this newsletter via email. Check our website at www.atlynx.com for past editions of our newsletter.

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