

EIGHT-PENNY NEWS

VOLUME 11 • NUMBER 11

AUGUST 1993

Builders Unite to Reform Workers Comp

In several states, builders have joined forces with other business leaders to reduce premiums and risk

by Rich Binsacca

Builders and remodelers know that workers compensation premiums are on the rise. In fact, total comp premiums for all businesses have doubled to more than \$70 billion since 1982, weighing heavily on the contractor's bottom line.

Builders have played a large part in efforts to reform the system and reduce costs, in part because construction is a high-risk industry and subject to high premiums. In New Mexico and North Carolina, for example, builders have successfully developed group self-insurance funds to pool the workers compensation burden. "Builders have to get politically active if they want to see any change," says Frank Thompson, a Pennsylvania builder and the chairman of a new NAHB task force on workers comp.

Self insurance. A primary goal of the NAHB task force is to educate builders about group self-insurance for workers comp — that is, how to create an independent disability fund. By sharing risks and responsibilities, existing

group self-insurance funds have reduced costs and stemmed fraud and abuse. "The key is that the insurance is in *our* hands," says Ken Mitchell of the North Carolina HBA.

Every state except North Dakota and Wyoming allow comp self-insurance to larger private employers (requiring a hefty minimum payroll and start-up fees), but only 28 states allow group funds and typically limit that right to school districts, public agencies and governments, and hospitals or medical groups. Group funds are limited, in part, to protect workers benefits. Critics charge that long-term benefit payouts by self-insured employers are risky.

Since it was implemented five years ago, however, New Mexico's Builder's Trust program has not only met its claims but now has more than \$4 million in reserve funds. "We exist to keep rates low and build up cash reserves for the long term," says builder George Rawson, who headed the effort. And since starting

their program in 1984, eligible members of the North Carolina group have saved more than \$6 million in premiums, says Mitchell, and receive dividends when premiums exceed claim costs.

As with most group self-insurance funds, Builder's Trust contracts private agencies to track claims, collect premiums, and set up safety guidelines and inspections rather than relying on government agencies; the result has been a 12% decrease in administrative costs.

In other states, reform legislation has included similar options to cut costs. In Texas, the law now has provisions for small business owners to share risk, and awards premium discounts to employers with no lost-time claims during a one-year period. And Washington state has started a rebate program called Retrospective Rating, in which builders who pay out more in premiums than they incur in claims can recoup some of their money.

Claim management. Most builders rely on their insur-

ance carrier to manage workers comp claims, including investigations of fraud and abuse. Liberalization of state comp laws hasn't helped. For example, in California, the number of comp claims rose from 10,000 to over 15,000 when reforms added stress "injury" to the list of conditions covered.

States have begun to crack down, however. In Connecticut, the Attorney General's office now has a workers comp fraud unit; in Missouri, the state prohibits stress-induced mental injury rehabilitation under comp insurance unless the case is deemed "unusual." Oregon reforms in 1990 more clearly defined eligible injuries, resulting in more benefits for deserving workers, but also saving employers an estimated \$62 million.

Others states have begun to make employees more accountable, especially regarding safety and injury prevention. In Washington,

workers pay a portion of the

STATE BY STATE

Maryland: The state's new wetlands law HB 1018 allows builders and developers to improve nontidal wetlands areas or create new ones as "banks" for wetlands mitigation. In situations where impacts on wetlands cannot be avoided, the builder will be able to make "deposits" of labor or materials to such banks or can pay mitigation credits.

New York: Energy-efficient builders in New York State may be eligible for \$4,000 awards from the New York State Energy Research & Development Authority (NYSERDA). The cash "incentives" are offered on homes that meet certain energy-efficiency standards, including high insulation and air-tightness levels and central ventilation systems. For more information, contact Bob Kelly at the NYSE Star Program in Albany, 518/465-3115.

New Jersey: If passed by the state legislature, the Uniform Construction Code Act will help avoid further confusion between builders and code officials over just what is in the current code. The bill would limit New Jersey's Dept. of Community Affairs to adoption of "edition year" code changes made every third year by the model codes. Currently code changes are made so frequently that builders and subs claim they can't possibly keep up with every new wrinkle.

Massachusetts: In accordance with the state's 1991 workers compensation law, the Dept. of Industrial Accidents has developed guidelines for injured workers in 12 problem areas, including carpal tunnel syndrome, occupational asthma, and herniated disks. The department's guidelines are set for use by all health care providers treating injured workers, as well as workers comp insurance carriers and self-insurers. □

Groups Debate OSB Subfloor Report

Earlier this year, the National Wood Flooring Association (NWFA) announced it could not recommend to its members the use of oriented-standboard (OSB) as subflooring under hardwood floors — prompting an outcry from the manufacturers of OSB.

NWFA based its recommendations on a study it co-sponsored with the National Oak Flooring Manufacturers Association (NOFMA) last year. The study tested several types of subfloor material for wood flooring installations, including 1x6 pine boards and 1/2-, 5/8-, and 3/4-inch plywood and OSB. The study indicated that moisture cycles in the OSB panels loosened nails and resulted in permanent gaps in the finished flooring. Further-

more, NWFA concluded, it's hard to tell if OSB has been subjected to excessive moisture or has lost structural integrity, because these conditions are not obvious the way they are with plywood, which delaminates, or with pine boards, which warp.

NWFA also claimed that OSB could not be consistently relied upon as a subfloor because its manufacturing process and raw materials vary too greatly among manufacturers. According to NWFA, OSB is not a generic product, while pine and plywood are generic at specified and rated grades. "[OSB] is made so many different ways, with different particles and densities," says NWFA's Ursula Downey.

continued



The debate over the suitability of OSB as a subfloor under hardwood strip flooring continues to yield mixed results.

PORTNALLER

Codes Get Tough on Guardrail Design



ELLIOTT O. STEPHENSON

Approximately one half of all children 13 to 18 months old can pass completely through a 5-inch-wide opening.

As the building code administrator for the City of Tucson, Ariz., Jim Singleton played an active role in tightening the standards for guardrail designs, reducing the space between balusters from 6 inches to a maximum of 4 inches. "About 97% of children cannot get their head through that," says Singleton, now a private consultant. "And the remainder are too young to negotiate it."

As the local code committee passed the new regulation, however, Singleton questioned the safety of horizontal and other ornamental railing patterns, specifically the climbability of such ladderlike designs that render the barriers not only ineffective, but dangerous. Singleton proposed new wording to the local code and to ICBO. Adopted in 1991, the Tucson code now prohibits horizontal

rails for any guardrail design or barrier, including around swimming pools. The code is enforced at plan check and site inspections.

A year earlier, the BOCA code regulated any ornamental pattern that would provide a ladder effect. "We took a performance approach, rather than an all-out prohibition on horizontal rails," says Tom Frost, BOCA's manager of technical services. By regulating anything that is ladderlike, he says, the code actually goes beyond just horizontal rail designs. No matter how your code reads, however, experts and researchers agree that the safest guardrail design is either a solid mass or vertical rails (balusters) spaced 4 inches or less apart, thus reducing accidents such as falls and drownings in swimming pools. □

Builders, continued
comp premium, and the payroll deduction increases if the company has a bad safety record. In New Mexico, employees pay \$2 per quarter into the state comp fund, a figure matched by their employers. In Minnesota, employers are rewarded with reduced rates if they follow state safety recommendations.

Medical reform. Historically, workers compensation has been the least regulated health benefit, requiring no co-payment by workers and no limits on medical fees and treatment. Reform efforts, however, include utilization review (regulating the type and frequency of treatment), fee schedules for various injuries, and managed-care networks, such as HMOs.

In Minnesota, for instance, the law limits the amount a doctor or hospital can charge to 15% of the total claim costs, about half the norm. In Florida, patients can no longer be referred to rehab clinics and test labs owned by the doctor. Oregon reforms allow HMOs to take on workers comp

claims, and limit covered treatment to medical doctors only, excluding chiropractors and other alternatives.

Legal reform. Originally a no-fault insurance system, workers comp is now a huge legal industry because of liberal and subjective definitions of work-related injury and illness. Reform efforts seek to improve the appeals process and allow alternative dispute resolution, such as binding arbitration or pretrial conferences; such reforms have passed in Maine and Oregon, and are part of New Mexico's Builders Trust fund, which also limits attorney's fees to \$12,500 per case.

Insurance reform. Most insurers receive a flat fee (up to about 20%) from every comp claim, resulting in charges that they don't earnestly combat fraud and abuse and that they allow unlimited medical fees. Insurers, on the other hand, claim that they are losing money on comp because of high administrative costs.

Which is true is unclear. In California, for example, the

state insurance commissioner ordered a 7% to 10% reduction in comp premiums next year, citing record profits to insurers — while the state's Worker's Compensation Rating Bureau wants a similar percentage increase in rates, claiming unusually high insurance losses.

Michigan and Texas have attacked the problem by deregulating rates (circumventing recommendations from the National Council on Compensation Insurance). This has resulted in fair market competition and lower rates.

Reformers also want to control costs by allowing employers to pay deductibles on comp claims. In several states, including Missouri, Colorado, Kentucky, and Minnesota, comp insurance carriers must allow deductibles on either total claim costs or medical-only bills. In Kentucky, for instance, insurers must offer deductibles ranging from \$100 to \$10,000. □

Rich Binsacca is a freelance writer in Walnut Creek, Calif., specializing in construction topics.

New Solid-Surface Counter Material Applies Like Laminate

Seamless and tough, it looks like solid-surface counter material, but it applies more like laminate — and costs somewhere in between. Nuvel, a high-density polymer engineered by GE Plastics and marketed by Formica, is being touted as a whole new category of countertop material. The new material is available in five solid, matte-finish colors, and can be combined with

Formica's existing laminate products as well as popular solid-surface sink basins. A two-part seaming system, says the manufacturer, eliminates the joint between the two materials.

Like laminate, Nuvel is fabricated over particleboard or medium-density fiberboard substrates with standard laminate adhesives and tools. It bends easily under heat, and

can be edge-routed. Like solid surface material, however, it resists impact and heat; cuts, scratches, and stains can be rubbed out with a mild abrasive because the color is applied throughout the material. Nuvel is currently priced at about \$50 per linear foot — about \$15 more per foot than standard laminate, but only a third the price of solid surfacing. □

TAX TALK

Valuing Gifts of Stock

by Milton Zall

The powers of a corporation's minority shareholders are limited. They cannot influence management decisions, for example, and cannot cause the corporation to liquidate its assets so they can be converted at full value. In the past, this has led the IRS to permit minority shareholders in closely-held, family-owned corporations to value their interest at a discount.

One exception, based on a Revenue Ruling issued in 1981, is for a minority shareholder who is also a part of the controlling family. Until recently, the IRS has said that such an individual could not discount the value of his or her shares unless there was evidence that family members did not see eye to eye and would not act as a unit in controlling the corporation. But in Revenue Ruling 93-12, the IRS has reversed itself. The IRS now says that a minority shareholder's interest will not be aggregated with the shares of other family members and can be valued at a discount. When applied to estate and gift tax determinations, the new ruling means

that there might be a tax advantage when shares of a family-owned business are gifted to children prior to the death of the shareholder.

To see why, consider the example of Jim, the owner of a \$1 million corporation. If Jim dies with 100% ownership of the corporation, his stock will be included in his estate at full market value. But if Jim gifts 25% of his shares before he dies to each of his four children, each child's share will be valued at something less than 25% of \$1 million to reflect the minority discount. This means the gift tax will be less than the estate tax.

The downside to this strategy has to do with capital gains tax, which is paid when the children dispose of the stock. If the stock was passed on to Jim's children as part of his estate, each child's basis in the stock — the value placed on the stock for tax purposes — would be \$250,000, which was its value at the time of Jim's death. If a child then sells the stock for \$300,000, for example, the capital gains tax liability would be on the

appreciation in value — \$50,000 in this case. On the other hand, if the stock is gifted during Jim's lifetime, the "basis" in the stock would be less than \$250,000 per child because of the minority interest discount. If a child subsequently sells the stock for the same \$300,000, the appreciation — and the capital gains tax — would be higher.

The IRS ruling also permits individuals to file an amended return for those taxable years still open to revision if they previously valued a minority interest in a stock — for capital gains, estate, or gift tax purposes — in accordance with the 1981 Revenue Ruling. For most taxpayers, that means 1990, 1991, and 1992, although some taxpayers may still be permitted to amend their 1989 tax returns if their filing date for these returns was extended. To determine which tax returns are still open to amendment, consult your tax attorney. □

Milton Zall writes on tax and business matters from Silver Spring, Md.

OSB Subfloor, continued

"Some OSB is better than others."

That point is strongly contested by spokesmen for the Structural Board Association (SBA), an OSB manufacturers group, and the American Plywood Association (APA), which sets the same rating standards for both OSB and plywood. "There may be stuff out there that isn't rated," says Ken Andreason, senior engineer at APA. "But a panel with a legitimate grade trademark is no different than any other OSB or plywood panel with the same label."

And while both APA and SBA admit that oriented-strandboard is affected by moisture, the damage is no more or less than with plywood, says David Rogoway, president of APA. And with regards to NWFAs contention that excessive moisture is more visible with plywood than with OSB, he says, "delamination [of plywood] is evidence of mis-manufacture, not moisture damage."

OSB's performance is not

affected by moisture on the building site, says SBA's president John Lowood, unless it is exposed to standing water or a flooded crawlspace or basement below. When he's seen problems with hardwood flooring, says Lowood, "the underlying cause was not directly related to the subfloor material."

A NOFMA summary of the same study stated that polyurethane finishes helped retard moisture migration, and that manual nailing helped keep fasteners in place. In addition, says the NOFMA report, the subfloor must be protected from moisture during construction. Unlike NWFAs, however, NOFMA does give the nod to OSB as a subfloor, recommending 3/4-inch material.

"We've been successful working with NOFMA on how to use OSB," says Andreason, pointing out an APA document entitled *APA Structural Use Panels as Subflooring Under Oak Floors*. "There seems to be a reluctance [by NWFAs] to use these products," says Andreason. □

From What We Gather

After a record six-month rise, lumber prices have retreated

almost as quickly at the wholesale level, according to a report in industry newsletter *Random Lengths*. The newsletter's price index for framing lumber rose \$257 in 23 weeks, peaking at just over \$500 per 1,000 board feet in early March. As of May 14, however, the price had dropped \$188 in just eight weeks. The reasons cited are housing starts running below projections as well as the market's "emotional component." That is, just as fear of shortages spurred panic buying that drove the market up, anticipation of lower prices has slowed replacement buying, driving it down. Still, the long-term prospect is for lumber demand to outstrip supply for the rest of this century — resulting in sustained high prices and the greater use of alternative materials.

Lead leaching problems in plumbing could be eliminated

by a new family of brass alloys, patented by AT&T, that use bismuth rather than lead to add malleability to the alloy. A similar nonlead alloy is already being marketed in plumbing fixtures by Northern Indiana Brass Co. (NIBCO), based in Elkhart, Ind.

Metric measurement is coming soon, really... As of

January 1994, all construction funded by the feds is supposed to be designed in metric. That adds up to \$35 billion worth of work annually, including aid to states. The switch is in compliance with a 1990 executive order requiring all federal agencies to set specific timetables for going metric.

Don't throw away that

avocado refrigerator. Green is in this year for K&B laminates, fixtures, and accessories, according to the National Kitchen & Bath Assoc. "Not harsh kelly greens...but classic hunters, muted mints, and elegant teals," says NKBA. Happily, off-whites such as alabaster and egg shell are also reportedly in style for 1993, reports the association.

Bath remodels last year averaged \$8,973 each, according to a survey conducted by the National Kitchen & Bath Assoc. Of the total, 29% went to cabinets, 19% for fixtures, 11% for countertops, and 25% for labor.

Location, location, location is still the number one priority for home buyers in the shopping process, followed by floor plan and design, ease of financing, and a good warranty, according to a survey conducted recently on behalf of the 2-10 Home Buyers Warranty program. □

The Cost to Build

Region:	1987:	1989:	1991:
Northeast			
Avg. price	\$170,900	\$188,600	\$188,800
Avg. size	1,920	1,990	2,110
Per-foot cost	\$89	\$95	\$89
Midwest			
Avg. price	\$115,500	\$130,800	\$134,500
Avg. size	1,880	1,960	1,960
Per-foot cost	\$61	\$67	\$69
South			
Avg. price	\$108,600	\$123,100	\$123,000
Avg. size	1,930	2,010	2,060
Per-foot cost	\$56	\$61	\$60
West			
Avg. price	\$134,600	\$173,900	\$176,400
Avg. size	1,850	2,020	2,080
Per-foot cost	\$73	\$86	\$85
U.S. Overall			
Avg. price	\$127,200	\$148,800	\$147,200
Avg. size	1,900	2,000	2,050
Per-foot cost	\$67	\$74	\$72

Source: NAHB

While the average size of a single-family home continues to increase, the nation's sluggish economy has helped lower the cost per square foot to build in most regions. Here's a breakdown of the price, size, and per-foot costs for the average house in 1987, 1989, and 1991. □