



The Need for Surety Advocacy Continues Even as the Crystal Ball Remains Foggy

Surety companies continue to announce their year-end reports for 2009. They reveal that despite gloom and doom predictions, we survived another year. As an Association, we must continue to be diligent in our efforts to educate both the public and private sector on the value of the surety product or risk losing it by the stroke of a pen. Today's news reveals that the 2010 market is full of numerous uncertainties and challenges.

These challenges are happening both on Capitol Hill and in our backyards. For example, various federal and state public officials, who oversee legislation and regulations requiring our product, continue to misunderstand its use and propose legislation and regulation based on this misunderstanding. Also, our clients are dealing with increased bidder lists, declining revenues, and declining margins. In addition, procurement methods are changing throughout the country and the surety product, in many instances, is being labeled as a barrier to entry rather than the risk mitigation tool for the owner/obligee. With all of this happening, we must remind ourselves of our resolve, just as the Korean War hero Walter E. Cole stated, "We must look for the opportunity in every difficulty instead of being paralyzed at the thought of the difficulty in every opportunity."

I applaud all of my NASBP colleagues who have been proactive in taking the opportunities that arise to meet these challenges and to proclaim the benefits of the surety product to surety and construction associations. To name a few of these dedicated people, Bill Maroney, Spence Miller, and John Rindt have made presentations at national industry events, such as the AGC Building Division Meeting, the Winter Meeting of the AGC Tax and Fiscal Affairs, and the AGC Surety Bonding and Risk Management Committees Annual Meeting. Larry McMahon and I have agreed to participate on an educational panel at the Construction Financial Management Association's (CFMA) Annual Conference in June. These and other NASBP colleagues, such as John Hughes continue to work and to volunteer in their communities to support small businesses and educational efforts to help business people obtain surety credit. Click [here](#) to read the article on this topic in this issue.

Your Association also has been working diligently to address these challenges too. NASBP staff continues to form new and to strengthen existing partnerships with federal agencies, such as the U.S. Department of Transportation, U.S. Department of Housing and Urban Development, and U.S. Small Business Administration, in its effort to educate and to provide support to small business owners. Did you know that the U.S. Department of Agriculture, Rural Development invited the NASBP to participate in an educational program for their field staff?

NASBP continues relationships with construction industry associations, which opens doors for NASBP to communicate and educate about the surety product to members of these groups. For example, NASBP is sponsoring two upcoming national meetings of AGC—the April AGC Fed Con Meeting and the June AGC Building Contractors Meeting. NASBP staff continues to participate in the drafting and promotion of the ConsensusDocs™ construction standard form contracts and in the revision of the bond forms of the American Institute of Architects (AIA).

NASBP has developed new grassroots tools for use in educating NASBP members, our legislators, clients, and others. For example, NASBP is providing online communications tools for NASBP Committee members to share pertinent information that may impact their state and to seek advice from others who may have experienced similar issues within their state. In addition, NASBP has published model letters and educational articles on surety topics, such as the article titled “The Importance of Surety Bond Verification.” Click [here](#) to access the article. Finally, NASBP has submitted letters to combat misuse of the product and attempts to waive bond thresholds i.e. warranty requirements in General Services Administration contracts involving photovoltaic systems, a proposal to amend the Federal Acquisition Regulations (FAR), etc.

NASBP programs already in place are also combating these challenges. For example, institution of the NASBP Every Day is Advocacy Day program, regular publication of the NASBP *Focal Point* e-bulletin summarizing legislation and regulations of concern, assessment of the pulse of the industry through interviews with surety company executives, and surveys of members and surety company executives about their perspective of the market and where it's headed. All of these provide information and resources to help us address the looming concerns and crises of our industry.

The most recent initiative is the NASBP Legislative Fly-In Day on June 23, in Washington DC. NASBP staff has done a tremendous job in locking in Senator Ben Cardin (D-MD) and Congressman Sam Graves (R-MO) as speakers for this NASBP event. The afternoon will be devoted toward everyone meeting with their respective Congressional Delegation. The day will conclude with a NASBP hosted reception on Capitol Hill to which NASBP will invite members of Congress, their staff as well as industry partners. Go to www.nasbp.org/legflyin to learn more and to register for the NASBP Fly-in Day. What can you do? I implore you to get involved in NASBP in any of the above. Your participation is vital in our effort to protect the surety product and to educate others about our industry.

As my term winds down, I want to thank you for giving me the opportunity to be your President. I hope that I have succeeded in increasing participation by all in the surety process. Trish and I also look forward to seeing all of you at the Westin La Cantera Resort in San Antonio, April 25 to 28, for the NASBP Annual Meeting.

Until then, God Bless.

Todd P. Loehnert
President

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No Time Like the Present to Educate Your Clients on the Importance of Surety Bond Verification

The recent arrest of an owner of a company selling allegedly worthless surety bonds for projects across the United States underscores the critical nature of surety bond verification in the current economic climate. The Department of Justice (DOJ), U.S. Attorney's Office Southern

District of Texas, reported in a press release dated March 26, 2010 the arrest of George Douglas Black Sr., a Texas resident, whose company, Infinity Surety, allegedly sold millions of dollars of worthless contract surety bonds that purportedly were backed by a single family residence with a 2008 tax appraisal value of \$130,700. The DOJ release states that Black, who was not licensed, sold bonds to "school districts, defense businesses who did work for the military and other companies across the country." The release further states that Black received "approximately \$2.8 million dollars in fees for these bonds from 150 different companies throughout the United States." The criminal complaint, as reported in the release, alleges that records obtained by the U.S. Postal Inspection Service show that Black "routinely pledged the same small piece of property to insure multi-million dollar construction projects." The full press release may be accessed on the DOJ web site by clicking [here](#).

Surety bond fraud certainly is not new, and there are many documented cases of such fraud occurring over the years. The down economy, however, makes for a more enticing environment for unscrupulous operators, perhaps hoping to capitalize on business desperation or relaxed vigilance, to deceive owners, contractors, and subcontractors with worthless bonds. Raising the awareness of this issue with clients and educating them on the telltale signs of suspicious bond forms should be on every producer's priority list.

I was fortunate to be able to collaborate with Edward Gallagher, General Counsel of the Surety & Fidelity Association of America, on an article addressing this important topic. The article, aptly titled, "The Importance of Surety Bond Verification," recently was published in the Winter Issue, Volume 39, Number 2, of the *Public Contract Law Journal* of the American Bar Association. It discusses the historical incidences of surety bond fraud, focusing on corporate and individual surety contexts, highlights certain "red flags" associated with these incidences, such as use of very similar, but not exact, corporate names to well-known, reputable surety companies or use of incorrect or insufficient assets backing issued bonds, and reviews the legal and regulatory requirements applying to corporate and individual sureties. Also posited in the article is a recommendation for how the federal government could reduce incidences of surety fraud on federal construction projects by having individual sureties convert their assets into federal government debt obligations specified by the US Department of the Treasury and then pledge those debt obligations to the federal government to support their issued bonds.

I hope that this *Public Contract Law Journal* article, which may be accessed by clicking [here](#), may serve you as a useful and valued resource for your own educational efforts with construction owners, contractors, and subcontractors on this subject.



Subdivision Bonds: What Are They and How Are the Claims Investigated?

Introduction

The current economic downturn and resulting credit crisis has created multiple effects, including a failed new home market, which has dramatically increased the number of incomplete housing subdivisions, which, in turn, means that claims against subdivision bonds has also dramatically increased. As a precondition to granting a construction permit to developers, a public agency requires the developer to post financial security—usually a surety bond or, less often, an irrevocable letter of credit or certificate of deposit—to guarantee the completion of designated improvements as set forth in the subdivision agreement between the developer and the public agency.

Subdivision bonds are variously referred to as site improvement, plat, completion, or just plain performance bonds. Subdivision bonds are creatures of statute, the purpose of which is to protect the local government from assuming the cost of constructing public improvements necessitated by the new development and to ensure that the new residents have safe access to

the lots in the subdivision. In short, the statute requires that the developer install the improvements prior to the transfer of the maintenance responsibility to the public agency. Many city and county code ordinances can be found online by clicking [here](#).

Characteristics of Subdivision Bonds

While subdivision bonds have some similar characteristics to public works performance bonds, they also have significant differences. The key distinction is that with subdivision bonds the developer/owner, the principal, is responsible for paying for the bonded work rather than the public agency, the obligee. Unlike the obligations incumbent on a public works performance bond obligee, the subdivision bond obligee, the public agency, owes no duties to the principal, the developer/owner. Accordingly, when the bonded principal defaults on a subdivision project, the surety has no unpaid contract balance to seek for completion of the outstanding work. And, while public works performance bonds secure performance of all of the principal's work on a project, a subdivision bond guarantees only the developer's completion of the subdivision improvements for the public, generally including streets, curbs and gutters, grading, storm drains, utilities, and sidewalks, which are a small percentage of the overall development. The subdivision bond does not secure the building of the homes in the development, and the public agency is the only obligee on the bond.

Because subdivision bonds are creatures of statute, it is critical to review the statute or ordinance in the relevant jurisdiction. Subdivision bonds can be indemnity bonds that require payment or performance up to the bond penalty or might be forfeiture bonds. The form is often set forth in the relevant statute or ordinance. The amount of the bond is determined by the public agency and is generally calculated as a percentage of the total cost of the improvements, often more than 100% of the total cost of the improvements. The amount over 100% is included to allow for escalation costs, which could well accrue during the time it takes to complete the improvements.

A subdivision agreement incorporates the plans and usually does not contain a detailed schedule of performance for completion of the improvements. It provides for completion of the improvements within six months to two years and permits extensions, which are usually granted by the public agency. Accordingly, the developer can proceed with its schedule for the work without fear of delay or consequential damages.

The statute of limitations on most subdivision bonds runs from the completion date in the subdivision agreement between the developer and the public agency. Because, as noted above, the initial date for the limitations period can be modified by an extension(s) granted by the public agency, the surety's exposure on subdivision bonds is frequently extended for several years. Therefore, a prudent surety should monitor the finances of the developer and the status of the bonded improvements. This would be particularly wise during this economic downturn when housing development has come to a nearly screeching halt. Under such circumstances, a surety on subdivision bonds should consider demanding collateral as permitted under the developer's indemnity agreement. In addition, when a public agency makes a claim on the bond, the surety must review the statute of limitations and the completion date in the subdivision agreement, and any extensions granted, to determine if the claim has been timely made.

Example of Subdivision Bond Claim and Investigation

After a claim is properly made on a subdivision bond, and after the surety's investigation, the surety's options are to complete the improvements with a completion contractor, pay the public agency obligee an amount for the installation of the improvements, or, as discussed below, successfully encourage the principal to complete the improvements (this is not an option often exercised by the principal). And, as noted above, there is no contract balance that a surety can recover. The following is an abbreviated outline of an investigation of a recent claim by a public agency on a subdivision bond.

The Agreement between the public agency ("County") and the Developer, dated in 2001, provided that the Developer agreed to "construct and install all of the physical improvements and facilities shown on the approved plans and profiles, and approved revisions thereof, within

6 months of the date hereof.” The County had granted a number of extensions to the Developer, but the Developer defaulted in 2008; and the County made a claim on the subdivision bond.

The County-Developer Agreement further provided as follows:

That any construction or improvement required hereunder shall be considered complete when it is accepted by the governmental unit which is to have ultimate responsibility for its maintenance. The Developer further agrees to be responsible for all maintenance and deterioration of the physical improvements and facilities until such acceptance.

This provision is not uncommon in subdivision agreements. It means that the developer and, possibly, its surety are obligated to maintain and repair any completed improvements until all the improvements have been completed and accepted by the public agency. Certainly, the relevant statute or ordinance, the subdivision agreement, the bond, and the relevant case law should be reviewed to determine if the surety is obligated to pay for maintenance. Experience bears out that the public agencies often expect this maintenance responsibility to be fulfilled, by the developer or, in its absence, the surety.

After notifying the Developer of its default, the County “Defaults Projects Technician” sent a letter to the Surety stating that the developer had failed to “complete installation of improvements in accordance with the approved plan and the referenced developer agreement” and seeking to know the Surety’s intention in assuming the Developer’s obligations.

The Surety promptly began its investigation, including hiring local counsel (Whiteford, Taylor & Preston LLP), hiring a consultant familiar with subdivision work, requesting relevant documents from the County, requesting responses and documents from the developer and indemnitors, and staying in close contact with the Defaults Project Technician. A prudent surety will hire a contractor or engineer to walk the site, preferably with a representative of the public agency, to perform an assessment of the status of completion of the improvements. This assessment will help the surety determine if the public agency’s list of uncompleted items falls properly within the scope of the subdivision agreement and the bond. This is what occurred in the instant matter; the Surety’s engineering consultant walked the site with a representative of the public agency. The analysis in this case determined that the County’s list of uncompleted items properly fell within the scope of the subdivision agreement and the bond.

During the investigation the Surety’s claims analyst emailed a fellow claims analyst, requesting information on the indemnitors and observing that the underwriting file was unsubstantial and the agent was not responsive. In this case, unfortunately, neither the underwriter nor the agent reflected the professionalism of the majority of their peers.

After much pursuit, the Surety finally succeeded in getting one of the principals of the Developer to respond to letters, emails, and voice-mails; the Surety urged him to complete the installations as required and obtain the final inspections and approval from the County. The Surety did use the Indemnity Agreement with the Developer to “encourage” the Developer to perform its obligations and mitigate its losses and expenses. Among other provisions in the Indemnity Agreement, the Surety emphasized the following:

The Contractor and Indemnitors [one corporate and three individuals] shall exonerate, indemnify, and keep indemnified the Surety for and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interest, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur [by, among other things, reason of having executed any bonds].

The Surety notified all the indemnitors of their indemnity obligations, including, but not limited to, the attorneys’ fees and consultant’s fees that would continue to accrue and for which they were fully liable. Reluctantly, but eventually, the principal performed the required work and obtained approvals from the County; and the Surety was then released from any further liability under that subdivision bond.

The bottom line on this particular subdivision bond claim is that the Surety hired local counsel, hired an engineering consultant, contacted the principals and indemnitors, investigated efficiently, and worked closely and quickly with the County. Satisfactory resolution was achieved when, understanding the enforceable obligations under the indemnity agreement, the principal finally fully performed its obligations and indemnified the Surety for all attorneys' and consultant's fees and expenses.

The results are not always so felicitous. In another state, a surety was debarred from issuing any further subdivision bonds in a county because the county deemed the surety in violation of its bond obligations on a specific project, even though a court of law in that county had determined the surety had no further obligations under the bond. It was a messy, protracted dispute that took years of surrealistic negotiations to resolve.

Conclusion

Subdivision bonds provide assurance to the public agency that the developer will complete the improvements for the new development and that the local government will not be burdened with the cost of constructing those public improvements. Not all sureties write subdivision bonds, and during this economic downturn it is increasingly difficult to obtain such bonds. Many developers have failed in the past few years, developments are left fallow, home sales have decreased, and banks are highly reluctant to lend credit for such projects. The economy, however, will turn around; and the housing market will eventually improve. Those bond producers who have complete underwriting information and substantiation of the developer's financing will be much more likely to obtain the subdivision bonds for qualified applicants.

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These materials are provided to NASBP members, affiliates, and associates solely for educational and informational purposes. They are not to be considered the rendering of legal advice in specific cases or to create a lawyer-client relationship. Readers are responsible for obtaining legal advice from their own counsels, and should not act upon any information contained in these materials without such advice.

Save the Date: NASBP's 2010 Legislative Fly-in Day is Wednesday, June 23

The 2010 NASBP Legislative Fly-in will take place on Wednesday, June 23 at the Hyatt Regency on Capitol Hill, a short walk to the U.S. Capitol as well as to the Senate and House Office Buildings. This year's Fly-in promises to be just as exciting and informative. Confirmed speakers who will present at the policy briefing and orientation session that morning are Senator Ben Cardin (D-MD) and Representative Sam Graves (R-MO 6th).

These policymakers are well-known and respected for their strong commitment to the concerns of small business. Senator Ben Cardin was instrumental in crafting an amendment to the American Recovery and Reinvestment Act, which included enhancements to the SBA Surety Bond Guarantee Program. As a member of the Senate Small Business and Entrepreneurship Committee, Senator Cardin's top priority is to ensure that small businesses receive the support and capital they need to succeed. Congressman Sam Graves is a champion of small business and is the Ranking Member on the House Small Business Committee. Recently, Representative Graves introduced, H.R. 4496, the "Helping Small Business Compete Act of 2010," which amends the definition of contract bundling to specifically include federal procurements for new construction services, a stated government relations goal of NASBP in 2010.

The morning will be devoted to a policy briefing session. In the afternoon NASBP members, affiliates and associates will meet with their respective Congressional Delegation. The day will conclude with a NASBP-hosted reception on Capitol Hill. NASBP will invite members of Congress, their staff, as well as representatives of NASBP industry partners.

If you did not participate last [year](#), register now and seize this opportunity to experience the NASBP Legislative Fly-in and make a difference for your industry in Washington. Those who participated last year are encouraged to join us again and to lead NASBP's efforts to remind members of Congress of the importance of the surety product.

Click [here](#) to access the registration form. NASBP has posted a complete package of information for anyone interested in attending the Fly-in at <http://www.nasbp.org/legflyin>. The page includes everything from tips on securing a meeting with your members of Congress to a sample meeting request letter.

For more information, contact Larry LeClair, Director, Government Relations at 202-464-1217 or lleclair@nasbp.org.



DC Government At it Again?

First, the District of Columbia (DC) government passes the District of Columbia Green Building Act of 2006, which includes a performance bond requirement that is unworkable as written and that goes into effect on January 1, 2012. Now, DC has new proposed legislation, Bill 18-635, that increases the current threshold for bid, performance, and payment bonds on public work from \$100,000 to \$500,000, giving DC the highest bond threshold of any jurisdiction in the nation.

At a hearing last month of the Committee on Government Operations and the Environment, Chairperson Mary Cheh, focused on two procurement bills, B18-635, the "Procurement Reform Act of 2010" and B18-610, the "Omnibus Procurement Reform Act of 2010." Testifying before the Committee on B18-635 and representing the surety industry was Sam Carradine, who is with the Surety & Fidelity Association of America (SFAA). Chairperson Cheh did not take a formal position on the bonding provision. However, NASBP will continue to educate the DC government on the importance of surety bonds and the protection it provides to subcontractors, suppliers and the taxpayers of the District of Columbia.

Subsequent to the hearing, NASBP sent a letter of concern to Councilmember Cheh's office. Click [here](#) to access the letter. NASBP also sent that letter to NASBP members in the District of Columbia, Maryland, and Virginia as well as the DC chapters of contractor and subcontractor associations to make them aware of the adverse impact this bill would have on their members and their businesses. Thus far, several NASBP members and the contractor chapters in the DC area have contacted Councilmember Cheh's Office to voice their opposition to the threshold increase. Moreover, upon receiving the NASBP letter, Councilmember Cheh's staff contacted NASBP to discuss our concerns with the legislation. NASBP will report on any new developments on these procurement bills as well as on the DC Green Building Act of 2006 in Pipeline.



NASBP Virtual Seminar Recordings Now Available!



Have you missed a NASBP Virtual Seminar? Now you can listen to these on your own time. Below are titles of some of the most popular NASBP Virtual Seminars that are now available as audio recordings. Test them out by downloading the two complimentary seminars, "Legislative and Industry Update: 2010 and Beyond" (December 2009) and "New Enhancements to the SBA Surety Bond Guarantee Program" (May 2009).

Aside from these two complimentary audio recordings, the cost per audio recording of a seminar is \$65 and includes the audio recording and handouts, if available. To order and download these audio recordings, click [here](#).

NASBP Virtual Seminars Now Offered as Audio Recordings

- 2009 Tax Law Changes Affecting Businesses
- Agency Profitability: MarshBerry Benchmarking Results
- Legislative and Industry Update: 2010 and Beyond (Complimentary)
- Strategic Planning in a Volatile Business Environment
- The Risks Unique to Green Building: What Bond Producers and Sureties Need to Know
- Financial Reporting: Helping Your Clients Get it Right
- Marketing Strategies for Commercial Surety That Produce Results
- Ten Steps to a More Profitable Construction Company
- Surety Claims: What are Companies Seeing Today and What's on the Horizon?
- New Enhancements to the SBA Surety Bond Guarantee Program (Complimentary)

NASBP plans to provide recordings of future seminars two months after the live presentation has been aired.

Sign-up for the May 4 NASBP Virtual Seminar on Succession Planning

NASBP has scheduled a May 4, Virtual Seminar, titled "Succession Planning: A Priority for Your Agency and For Your Clients." The topic is one of keen interest to many surety professionals and their clients, because succession planning is the key component of any strategic business plan and a vital piece of information in submission for a surety bond. Without a succession plan, a business can be vulnerable to loss of business continuity, professional expertise, leadership, and client confidence. To register for this Virtual Seminar, click [here](#).



"Succession Planning: A Priority for Your Agency and For Your Clients" will be presented by Keith Hughey, a veteran teacher and consultant on strategic management, planning, and leadership.

NASBP Virtual Seminars are telephone briefings providing a quick, economical, and effective way to help members, associates, and affiliates obtain current information on issues critical to business success. The typical format includes a fifty-minute presentation followed by five to ten minutes of questions and answers, at \$65 per call-in line. An entire office can listen with a speakerphone in the same room.

For questions or suggestions about NASBP Virtual Seminars, contact Cathrine Nelson at cnelson@nasbp.org or (202) 686-3700.

Register for the 2010 NASBP Summer Surety School Today!

The summer session of the William J. Angell Surety School will be held at the Westin Gaslamp Quarter Hotel in San Diego beginning on August 1, 2010. Level I will take place August 1-4 and Level II will be held August 1-6. NASBP members, affiliates, and associates have exclusive, priority registration until April 21. General registration opens on April 22. Click [here](#) to register for the 2010 NASBP Summer Surety School.



BIM Presents New Opportunities and Risks for the Entire Construction Industry

New technological tools like building information modeling (BIM) can produce significant benefits for the construction industry. Contractors and other construction-related professionals can better visualize and understand the details of designs and determine the sequences of construction. With BIM providing better coordination and detection of conflicts in structures and systems, contractors now can develop a sophisticated method of improving budget and schedule options. Even on a traditional design-bid-build project, increased communication and collaboration, more efficient fabrication and delivery time, and improved documentation can reduce the overall liability exposures of all project participants and increase the likelihood that the project will be completed successfully.

Currently, while design firms are pushing ahead on restructuring to take advantage of BIM, its use by contractors is somewhat limited. Often, a designer might use BIM to assist with design exploration, visualization, and design document coordination before delivering to the contractor completed two-dimensional plans created from the model. With input from subcontractors and suppliers, the contractor might then create another model for the purpose of its means and methods. Even this relatively non-integrated use of BIM can create significant value. Because contractors can build the project virtually before they build it on site, constructability issues that otherwise might go unrecognized until the project is in the construction phase can be identified. Addressing these issues early is far more efficient and inexpensive and should lessen the possibility of a default or a performance failure.

Preserving Understood Legal Status

The movement toward using a collaborative system enabled by BIM challenges traditional legal concepts and responsibilities and may create exposures not clearly covered by present insurance products or surety bonds. When BIM is used as a project development system rather than as a design tool, it alters the traditional allocation of responsibility and liability exposure. Effective use of BIM only occurs when each user's role is defined. In a BIM-based collaborative process, there is no consolidated model containing all of the digital information provided by designers and other contributors, but instead many models generated for specific purposes by each design discipline, contractor, and fabricator. Each party can maintain complete control over its own model and, with that control, the lines of responsibility are easier to allocate. The model sharing process is structured to preserve this separate control, responsibility, and protection.

But even with distinct models and authorized uses of model data, BIM is seen as blurring the distinction between design and construction decisions regarding means and methods. This lack of a "bright line" between design and construction responsibilities may challenge coverage decisions made by CGL and professional liability insurers as well as the underwriting decisions made by surety bond producers.

Assuming Risks as a Model Manager

There may be increased liability exposure for the party managing the modeling process, and any lack of interoperability among the various BIM software platforms and applications could result in delays and rework. As collaboration increases, so does the role and risk of this information manager. The model manager's duties could range from the limited maintenance of the file transfer site, with oversight of user access rights, to the compilation of information provided by other project members and its dissemination in a useful form to the project team. Although past model managers have generally been design firms, general contractors could step into this coordination and "gatekeeper" role. If a contractor takes on this role, any inability to carry it out precisely, or any difficulties with data preservation and transfer, could cause a project failure.

Although the party responsible for administering the model is charged with providing and controlling the technical resources needed to enable connectivity, host the files, manage access, and ensure security, the increased use of information through electronic means creates exposures for all participants. For instance, although BIM will likely increase the quality of construction documents, the possibility of software errors cannot be eliminated. In addition, all firms could be harmed through security breaches that introduce viruses or worms into separate computer systems or that divulge confidential or proprietary information not meant for release.

With reasonable process controls in place, the preparation and sharing of models are far more likely to create benefits for all parties. Processes must be built into the system for recording and displaying the various versions of the models residing in the sharing site at any particular time, and incorporating into the database change orders, responses to requests for information, and supplemental instructions. These processes create additional exposures for the model manager and should be spelled out accordingly in a contract. Sureties certainly should be aware of the impact of model management on the possibility of that a general contractor might be unable to attain full performance of all of the general contractor's obligations assigned by the construction contract.

Assessing the Surety Industry Perspective

While from a professional liability insurance perspective the utilization of BIM technology as a delivery mechanism for design documents does not create additional exposures or coverage dilemmas, the use of BIM by others in the construction industry will result in an evolving legal status. The underwriting process for contractor insurance coverages and bonding by the surety industry will also evolve. There are no true industry standards in existence concerning the proper utilization and application of BIM technology on construction projects. When BIM technology is used internally to assist contractors in carrying out their normal responsibilities, such use probably does not change the exposure of the surety. It is clear, however, that BIM is transforming the construction process. Where contractors utilize BIM technology as part of their contractual performance requirements for a project, certain surety issues may arise, particularly in the absence of a clear contractual delineation among the project parties for design, coordination, and communication responsibilities.

Increasingly BIM will result in shared liability for design. Obviously performance bonds are improperly suited for guaranteeing the completeness and accuracy of plans and specifications, or their compliance with codes and standards. When professional liability exposures exist in bonded contracts, the surety and the contractor essentially become "insurers" of design liabilities arising out of the performance of the contract. As BIM blurs the demarcation of responsibilities for design and construction, sureties and contractors have to be increasingly sensitive to professional liability exposures creating performance failures.

Before bonding a project where BIM is being used to both communicate and share the responsibility for design decisions, sureties need to understand the extent of the contractor's potential liability for the project's design and the contractor's role, experience, capabilities, and risk management plan in serving as the controlling party over shared use of BIM data. Sureties should expect contractors to be aware of their professional liability exposures and manage them. It is prudent for the surety industry to strongly advise or require contractors to properly manage this exposure by procuring the appropriate contractor's professional liability coverage.

BIM offers the real prospect of greater efficiency and profitability as well as reduced litigation and liability exposure for all project participants. However, the concerns for preserving recognized legal status and matching insurance coverage to BIM process and technology risks must be addressed to prevent unforeseen risks in the surety industry.

This is the eighth in a series of articles on Risk Management and Insurance coordinated by the NASBP Risk Management and Insurance Committee. The author of this article is Gene Todaro, a construction design liability underwriter for Victor O. Schinnerer & Company, Inc. in Chevy Chase, Maryland. Contact Gene Todaro at 301-961-9828 or at gene.a.todaro@schinnerer.com.

To visit the NASBP Risk Management & Insurance Committees resource web page, click [here](#).

NASBP President and Board Member to Address Surety Market on CFMA Panel, June 29



NASBP President Todd Loehnert and NASBP Board Member Larry McMahon have accepted an invitation from the Construction Financial Management Association (CFMA) to participate on a panel that will address trends and concerns about the surety industry and surety bonds. The panel will be held in conjunction with the CFMA Annual Conference that will take place June 26-30, in Kona, Hawaii.

Loehnert, who is Senior Vice President of Wells Fargo Insurance Services, and McMahon, who is Senior Vice President Alliant Insurance Services, Inc., will be joined by two other panelists, Tim Miklojewski, who is President of Liberty Surety and Mark Vonnahme, who is Executive Vice President of Arch Surety/Arch Insurance Group. Kent Goetjen, Partner of Price Waterhouse Coopers, will moderate the panel and ask all of the panelists to provide their perspective of the market conditions and its affect on contractors. The panel, titled the "Surety

Industry Leaders Panel (GS2),” is scheduled for June 29 from 10:45 am – 12:00 pm during the General Session II. The panel qualifies as 1.5 CPEs of continuing education credit.

The CFMA Conference includes additional sessions that address risk management, accounting and finance, benefits and human resources, cash management, heavy and highway, leadership and management, technology, and other specialty areas.

For more information about the CFMA meeting click [here](#). To access the CFMA brochure and registration information, click [here](#).

In conjunction with the conference, CFMA is offering industry professionals the opportunity to sit for the Certified Construction Industry Financial Professional ([CCIFP](#)) exam, presented by The Institute of Certified Construction Industry Financial Professionals ([ICCFP](#)), also known as the Institute.

NASBP Members Participating in a Big Way in Small Business Assistance Programs in their Communities—Part I

Many NASBP members who regularly participate in small business assistance programs in their surrounding communities receive both business and personal rewards. Below is a spotlight on two NASBP members.

City Underwriting Agency Inc. of Lake Success, New York



NASBP Immediate Past President William F. Maroney, Senior Vice President of City Underwriting Agency, Inc. of Lake Success, New York has been volunteering and working with several organizations within an 18-mile radius of his business for 20 years. Maroney said, the estimated 20-30 hours he is at a podium speaking and helping at these small business workshops each year is worth the outcome. “I’m very happy with the work and what we’ve accomplished; it is a source of business for our agency, he said, adding that it’s not that difficult, because you are providing basic information, in essence ‘Surety 101.’”

William Maroney

Occasionally an attendee at these workshops will have unrealistic expectations and will be asking “for the moon.” At the outset, Maroney said he is clear on what help he can provide. “I tell them ‘I’m willing to work with you. If you do this and this and this, I can help you get a bond. But if you want instant gratification, don’t waste your and my time,’” he said. “We put a lot of work and follow-up into helping these people prepare their business portfolio. Also, we often refer these people to service providers they need, such as, accountants and banks.” Maroney estimates the average time frame from when an entrepreneur attends their first workshop to being able to submit paperwork that qualifies for a bond for their business is about six months to a year. That could be more or less depending on the individual’s commitment to the process.

Lucille Wesnofske, Regional Director of the New York State Small Business Development Center (SBDC) at Farmington State College, a 4-year college on Long Island, said that her Center’s attendees are eager to learn the practical viewpoint that volunteer businesspeople, like Maroney, provide and that the Center relies heavily on the help of these volunteers. “Their first-hand experience is invaluable. What these volunteers say confirms what we have been teaching. We can teach it, but the volunteers help apply it to the real world,” Wesnofske said. A volunteer’s time commitment can range from a few hours for one workshop to many more if the volunteer participates in multiple workshops throughout the year. The Center’s audiences range from 20 up to 250 people.

This past fall, Maroney presented at a workshop organized by the SBDC for its first Annual Small Business Procurement Matchmaker Expo where Maroney was one of several producers of

Nassau and Suffolk counties of New York. The Center organized the workshop to assist entrepreneurs, businesses, and industry become more productive and profitable. About 100 small business owners and future entrepreneurs attended the conference. The Center received such a positive response from the attendees at this workshop that another is slated for 2010, said Wesnofske, who has over 21 years experience in small business consulting and who specializes in assisting women-owned enterprises. The Center views its assistance of new and existing small businesses ultimately contributes to the economic stability and growth of Long Island and New York State.

The volunteers who participate in the Center's workshops find their commitment rewarding for various reasons, Wesnofske said. Some see the opportunity in marketing their company and services to a keenly interested audience. Presenters are not permitted to solicit workshop attendees, but attendees can speak to the presenters and ask for advice and for a business card. Attendees that are impressed with their presenters approach the volunteers for more information. Other volunteers participate seeking recognition as an authority by the public on a topic they know well. Still others simply want to give back and seek to "grow rich in the rewards of what they've done and how they've helped people," said Wesnofske. Maroney said there is considerable personal satisfaction in helping these entrepreneurs. He related how a minority contractor who approached him at a workshop years ago eventually became an account with City Underwriting and now regularly bids on million-dollar work. "There's a lot of satisfaction in helping someone grow their business to a sizeable account when they started with nothing."

Another example of Maroney's participation is instructing at a November 2009 workshop titled, the New Jersey State Bonding and Financing Institute. Maroney helped provide a 2-hour presentation on bonding to 25 DBE/MBE/WBE New Jersey firms that were Port Authority certified. In addition to providing training in all aspects of the bonding process, the four-session workshop provided specific bonding and financing solutions for participants upon the completion of the Institute. The program was supported by a multi-partnership of organizations that included the Jamaica Business Resource Center, the Port Authority of New York and the New Jersey, New Jersey Transit Queens, Nassau, Suffolk Minority Business Enterprise Center, the Empire State Development Corporation, U.S. Department of Commerce, Minority Business Development Agency, the Surety & Fidelity Association of America, and the New York State Insurance Department.

Just recently, on February 4, Maroney participated in a 2-hour workshop panel, titled "Bonding and Loan Programs," for the Downstate Construction Industry Conference. The Conference, which was organized by the State of New York Department of Transportation, Port Authority of New York and the New Jersey, and the Empire State Development Corporation, had over 700 in attendance.

Throughout the year, Maroney continues to be contacted by those who attended the workshops and by the administrators of the small business groups that organize the workshops. "It's a continual work in progress, and I'm glad to do it," Maroney said.

Construction Bonds, Inc. of Fairfax, Virginia

Another NASBP member active with small business assistance entities is Construction Bonds, Inc. of Fairfax, Virginia. Construction Bonds, Inc. bases its entire book of business on referrals from their work with small business assistance groups primarily from the Metropolitan DC area.

John Hughes, President of Construction Bonds Inc. said, since March 1, 2003 when they started the agency, they established a business model that was committed to the emerging contractor and based on referrals. "As a result, we receive a ton of referrals, and we appreciate every one that we get. The small business assistance groups know that we'll try to help these people and that we won't embarrass them," Hughes said.

Construction Bonds Inc. aims to help these entrepreneurs understand that some of the barriers to obtaining bonds and surety credit are myth. "As long as they have integrity, a reasonable credit score, and can handle themselves responsibly, it's very probable that we can help them receive a \$100,000 bond. As an agency, our bonds average less than \$400,000."



Construction Bonds, Inc.: (from left) President John Hughes, Corp. Sec./Treasurer Alice Thomas, and Producer Josh Etemadi. Not pictured is Chris Klear.

Construction Bonds Inc. works with many local groups including the Mid-Atlantic Hispanic Chamber of Commerce. Hughes said, "We are working hard to develop a presence in the Hispanic/Latino market as we feel this is a wholly underserved market, but developing the relationship takes time."

Jorge Ribas, President and Chief Executive Officer of the Mid-Atlantic Hispanic Chamber of Commerce, has been working with Construction Bonds Inc. for two years. Construction Bonds, Inc. has helped many entrepreneurs who have attended the Chamber's workshops. "John is wonderful and has impeccable credentials," Ribas said, adding, "What he says he will do for you, he does."

The Chamber's efforts and programs are often jointly partnered with minority, women, and veteran organizations that also need small business assistance. Recently the Chamber worked with Construction Bonds, Inc. at the Hispanic "Women Mean Business" seminar, where 150 women attended. Though 200 had registered, 50 had to be turned away due to the limited hotel meeting space. The overwhelming attendance reflects the U.S. SBA's statistic that women-owned small businesses are one of the fastest growing segments of the U.S. economy.

Ribas said that many of the attendees have adequate financial assets to start a business, but seek guidance and information on how to organize their financial portfolio for loans and bonding, as well as, information on how to launch and to manage their businesses. Ribas said one of the initiatives of the Chamber is to help the loan and banking institutions become more familiar with the Hispanic and black communities, which Ribas believes will go a long way in helping the banking industry assess risk of Hispanic-owned and minority-owned businesses.

Another group Construction Bonds, Inc. is working with is SCORE, which is a nonprofit association of working and retired executives and business owners who donate time and expertise as business counselors. (Score is a partner with the U.S. Small Business Administration (SBA)). Joshua Etemadi, Producer for Construction Bonds, Inc., has developed a good relationship with area representatives of SCORE who represent construction attorneys, CPAs, and bankers dedicated to helping contractors start, grow, and succeed. As a result, Construction Bonds Inc. and these SCORE members are jointly developing a 2010 Contractor Roundtable pilot program to provide contractors with business training and bonding assistance.

Etemadi said Construction Bonds, Inc. is looking forward to the expertise and advice that the SCORE members will bring to the pilot program, because many of these small emerging

contractors are more comfortable with one-on-one guidance from consultants like the SCORE members who will help them, for instance to complete their paperwork for a loan.

All four personnel on staff at Construction Bonds Inc. dedicate a lot of time to educating and to preparing the emerging contractor to succeed. "We work hard to help these emerging contractors, so it's a huge emotional payback when we are able to help them obtain a bond," Hughes said.

Etemadi described how helping the more difficult accounts obtain bonding sometimes is more satisfying than the easier accounts. "When these emerging contractors receive their first bond, they often continue to thank us," Etemadi said. This was the case with regard to a small contractor, who was ecstatic when he obtained a bond and was awarded the "mothership" construction job, one that would extend over several years. In this instance, Etemadi said, "It gives me chills to read that e-mail. Contractors who are working to receive their first bond are so humble and grateful."

Many of these organizations for which Construction Bonds, Inc. exhibits and participates in workshops continue to refer contractors to Construction Bonds, Inc. Some of these veteran, minority, and women-owned contractor assistance programs in the Virginia, Maryland and District of Columbia include:

Small Business Administration of Richmond, Virginia District Office,
Fairfax, Procurement Technical Assistance Program,
Small Business Development Dulles Transit Partners (building new metro line to Washington Dulles Airport),
District of Columbia - Local Small Disadvantaged Business Enterprises (LSDBE),
Office of Small and Disadvantaged Business Utilization of the U.S. DOT,
DOT Small Business Development of Virginia and of the District of Columbia,
SBA Surety Bond Guarantee Program,
MBE Compliance State of Maryland,
South Fairfax Small Business Development Center, and
Veterans in Business Conference.

If you are a NASBP member who participates in small business programs in your community or you know of a NASBP member who does, share your story or theirs by contacting Kathy Hoffman at khoffman@nasbp.org.

This is a two-part article. Part 2 will be published in the next issue of Pipeline.

Employers Can Save 25% on Job Postings to the NASBP Career Center Until July 31



NASBP is offering a special from now until July 31 where members and affiliates can receive 25% off the price of all job postings made to the NASBP Career Center, <http://www.nasbp.org/careers>, before July 31, 2010.

Employers that use the **SAVE25** promo code can save more than \$175 to post their jobs.

The NASBP Career Center offers access to a focused, qualified talent pool and enables users to browse resumes at their convenience and set-up e-mail alerts when new resumes are posted.

The savings per package is as follows:

Single 30-day Online Job Posting Package

Includes resume database search access.

With SAVE25 Special Discount you save \$25

Members/Affiliates: ~~\$100.00~~ **Now \$75** Non Mbrs/Non Affiliates: \$200.00

Three 30-day Online Job Posting Packages

Includes resume database search access. Each job runs online for 30 days.

All jobs must be posted within one year of package purchase.

With SAVE25 Special Discount you save \$68.75

Members/Affiliates: ~~\$275.00~~ **Now \$206.25** Non Mbrs/Non Affiliates: \$550.00

Five 30-day Online Job Posting Packages

Includes resume database search access. Each job runs online for 30 days.

All jobs must be posted within one year of package purchase.

With SAVE25 Special Discount you save \$100.00

Members/Affiliates: ~~\$400.00~~ **Now \$300** Non Mbrs/Non Affiliates: \$800.00

Ten 30-day Online Job Posting Packages

Includes resume database search access.

Each job runs online for 30 days.

All jobs must be posted within one year of package purchase.

With SAVE25 Special Discount you save \$187.50

Members/Affiliates: ~~\$750.00~~ **Now \$562.50** Non Mbrs/Non Affiliates: \$1,500.00

Job Posting Add-On Package

The below package is available to purchase with each of your job postings. During the job payment process you may be given the opportunity to select it.

Featured Job Add On

Give your job more exposure!

A "Featured Job" will appear on the job seekers page of the Career Center for 30 days. A

"Featured Job" will be flagged on the results page giving you a better opportunity to get your job seen.

With SAVE25 Special Discount you save \$12.50

Members/Affiliates: ~~\$50.00~~ **Now \$37.50** Non Mbrs/Non Affiliates: \$100.00

The NASBP Career Center accepts: VISA, Mastercard, American Express and can be reached at **1-888-491-8833 Ext. 1670** or <http://www.nasbp.org/careers>.

The NASBP Career Center is a highly targeted resource that matches bond producers, insurance agencies, brokerage firms, and surety companies with the most qualified candidates.



Celebrate Earth Day by Registering for the ConsensusDOCS Green Building: Contract Essentials Web Seminar, April 22

Celebrate Earth Day and take the opportunity to ask questions of green building experts during the ConsensusDOCS web seminar on April 22, 2010, from 3 to 4:30 p.m. Eastern Time. During the web seminar, Edward B. Gentilcore, Esq., Partner of Duane Morris LLP, and Steven M. Charney, Esq., Partner of Peckar & Abramson PC, will discuss the unique risks and responsibilities associated with building green projects. Using the ConsensusDOCS 310 *Green Building Addendum* as a base, they will help identify project participants and their respective roles and responsibilities, as well as provide contractual best practices for building green projects.

The ConsensusDOCS 310 *Green Building Addendum* is the industry's first comprehensive standard contract document addressing building green projects. Key elements of the document include:

- Uses contractual best practices to identify participants' roles and responsibilities.

- Identifies critical implementation efforts required to successfully achieve green building recognition, especially LEED or other third-party certification.
- Defines "green" terminology and desired green goals, and allocates risks to achieve such goals.
- Can be used in conjunction with any standard contract document, including the entire family of ConsensusDOCS contracts.

Participate and learn how to identify and contract for the unique risks associated with building green projects.

The Moderator will be Carrie L. Ciliberto, Esq., ConsensusDOCS Director of Contracts & Construction Law.

To register, click [here](#) for registration form to fax: (703)837-5406 or e-mail to mmcgarvey@ConsensusDOCS.org. If you have registration questions, contact Megan McGarvey at phone: (703) 837- 5369 or e-mail: mmcgarvey@ConsensusDOCS.org.

NASBP Members, Affiliates, and Associates receive a special discounted price of just \$20. Non-members' registration fee is \$49.

May 27 ConsensusDOCS Web Seminar on Integrated Project Delivery

ConsensusDOCS has scheduled a web seminar for May 27 from 11 a.m. to 12:30 p.m. ET that will address integrated project delivery using ConsensusDOCS and AIA standard form contract documents. NASBP will provide more details about the seminar as the date approaches.

To Purchase ConsensusDOCS Documents at NASBP Discount

NASBP members, affiliates, and associates can receive up to 20% off their purchases of ConsensusDOCS forms if they insert the Partner Code, **NASBP**, and the Promotion Code, **400**, when prompted during the purchase process from the ConsensusDOCS site, <http://www.ConsensusDOCS.org>.

For more information about ConsensusDOCS and NASBP's participation as an endorsing member, click [here](#).

NASBP is an endorsing organization of the ConsensusDOCS coalition, an unprecedented effort by more than 20 other industry organizations to identify industry best practices and to incorporate such practices in a new generation of consensus industry standard form documents.

In Remembrance

Rob Cranford

NASBP was saddened to learn that NASBP activist Rob Cranford, 60, president of Morrow Insurance Agency, Inc. of Hendersonville, North Carolina, passed away unexpectedly at his home February 25.

After graduating from Belmont Abbey College of Belmont, North Carolina, he began his insurance career in 1972 with USF&G in Charlotte, North Carolina. In 1984, he moved to Hendersonville and served as president and CEO of Morrow Insurance Agency, Inc.

He is survived by his wife, Ginger, his sons Justin, 27, of Raleigh, and Charlie, 23, of Asheville; his mother, Helen Cranford, and a sister, Priscilla Roberts, both of Jacksonville.

A funeral service and a reception were held March 2 at St. James Episcopal Church of Hendersonville. Friends and family may send condolences by signing the online guestbook by

clicking [here](#).

To access a picture and an article about Rob, click [here](#). This article was published February 26 by BlueRidgeNow.com, also known as the Times-News that serves Henderson, Polk and Transylvania Counties of North Carolina.

Clarence "Doc" A. Heuer

NASBP was recently informed that Clarence "Doc" A. Heuer, 90, a long-time surety professional, who was active in NASBP before his retirement in 1983, passed away April 10. Doc, the father of Robert Heuer, who is with NASBP member, Guy, Hurley, Blaser & Heuer, LLC of Troy, Michigan, worked for the Aetna Casualty & Surety before joining the agency ranks of the Puritan Agency, that was later acquired by Corroon & Black, now Willis.

A visitation was held on April 12 and a funeral service on April 13 at the McCabe Funeral Home in Farmington Hills, Michigan.

A detailed obituary with pictures of Doc as well as a guestbook for friends and family to sign are posted on the McCabe Funeral Home's web site by clicking [here](#).

NASBP would like to convey its sincere condolences to the family and friends of Rob Cranford and Doc Heuer.

Treasury Announces Changes to the T-List

The [Department of the Treasury's](#) Listing of Approved Sureties (Department Circular 570) as of July 1, 2009 has been updated to reflect:

- Manufacturers Alliance Insurance Company (NAIC #36897), has been certified and added to the Treasury's Listing of Approved Sureties effective 02/25/10.
- Pennsylvania Manufacturers' Association Insurance Company (NAIC #12262), has been certified and added to the Treasury's Listing of Approved Sureties effective 02/25/10.
- Pennsylvania Manufacturers Indemnity Company (NAIC #41424), has been certified and added to the Treasury's Listing of Approved Sureties effective 02/25/10.

For a complete listing of all states where these companies are licensed to transact surety business, please refer to the Circular 570 and its supplements at:

<http://fms.treas.gov/c570/c570.html>

<http://fms.treas.gov/c570/supplements.html>

Welcome New NASBP Members, New Affiliates and New Associate

NASBP welcomes the following new members, new affiliates, and a new associate that have joined the Association since the last issue of *Pipeline*.

New Members

M.E Wilson Co., Inc.

<http://www.mewilson.com>

Tampa, FL

Key Contact: Rob Nation

Surety One

<http://www.suretyone.org>

Raleigh, NC
Key Contact: Carlyle Poindexter

Surety Support Services, Inc.
<http://www.suretyss.com>
Overland Park, KS
Key Contact: Gary Bradley

Willis of New York
Rosalie.moresco@willis.com
New York, NY
Key Contact: Rosalie Moresca

New Affiliates

Auto-Owners Insurance Company
<http://www.auto-owners.com>
Lansing, MI
Key Contact: Andrew Blackburn

Bluestone Surety
<http://www.bluestonesurety.com>
Charleston, SC
Key Contact: Michael Jankowski

New Associate

Lautebach, Borschow & Co.
<http://www.lb-cpa.com>
El Paso, TX
Key Contact: Stephen Rash

Take this Opportunity to Participate in SIO's Surety Supplement in **ENR**

 The Surety Information Office (SIO) is gearing up to develop the special Surety Supplement in *Engineering News-Record (ENR)*, one of the magazine's longest running and most successful annual advertising sections. SIO works with surety industry executives to gather the latest trends and information to deliver the most widely distributed coverage of surety bonding of the year.

The Surety Supplement is slated to be published in the June 28, 2010, edition of *ENR*. Written by SIO and surety industry professionals, the Surety Supplement will feature an overview of today's surety marketplace and will address a number of key industry topics and issues.

Full-page NASBP- and Surety & Fidelity Association of America (SFAA)-member advertisers are entitled to participate in the "Executive Viewpoints" column. **The early advertising deadline to be included in this benefit is May 28, 2010.** NASBP and SFAA members enjoy discounted advertising rates. If your agency or company would like to be a full- or partial-page advertiser, please contact your ENR account manager or Al D'Alessandro, Director of Special Publications, at e-mail: al_dalessandro@mcgraw-hill.com or phone: (212) 219-5070.

SIO has collaborated with *ENR* to develop the Surety Supplement since 1995. ENR distributes the issue to its entire 70,000-plus weekly paid subscribers as well as at the International Risk Management Institute (IRMI) Construction Risk Conference. Additionally, reprints will be made available through the SIO website after publication.

Reprints from the June 2009 Surety Supplement still can be ordered via the [SIO website](#) or click [here](#) to download it in pdf format.

