



### Quality Control—A Risk Management Tool by Kent J. Pagel

A September 5, 2001 headline reads: "Largest Construction Defect Suit Filed in Arizona History...Residents of an 'award winning master-planned community' filed a \$50 million lawsuit [against the developer and builders who constructed homes within this community...]." Same song, except this time it appears that the verse is much longer.

Plaintiff lawyers specializing in construction defect litigation, either based on facts or cases of wishful thinking, continue to clamor that, "As housing units are popping up like wildflowers on what seems like every piece of open space available, construction defect problems are growing at an equally fast pace." The lawyers who file construction defect lawsuits are also quick to offer their services providing free case evaluation; licensed general contractors or architects on staff who can assist with claim review and investigation; funds with which to finance expert witnesses; and staying power—the ability to handle a case on a contingency basis. Many also advertise any experience they may have had working for insurance companies and/or the fact they have insurance coverage experts on staff, which adds to the concern of those insurance companies for builders, sub-contractors and suppliers that are called on to defend and cover these types of claims.

When it comes to pressuring the many defendants named in a lawsuit, either to settle or to urge a jury to award a large sum of money, the most common argument given by construction defect lawyers is that builders are out to increase their speed and profit—they slap housing together with little attention to detail or precision. A corollary to this argument is that components produced off-site add to the problems, "...gone are the skilled carpenter and experienced masons...new space-aged materials are being used...components of all kinds are being used...many produced in factories miles away with INSUFFICIENT QUALITY CONTROL and DESIGN TOLERANCES."

The argument of speed and profit, or quantity at the sacrifice of quality, may be accurate in some cases. Two of the four top reasons builders are sued, as reported by the plaintiff lawyers themselves, are jobsite related—lack of proper supervision and use of lowest bid/unqualified subcontract laborers. However, the arguments raised with respect to the growing use of components seem to be flawed or at least subject to rigid debate for those components manufactured by WTCA member companies. The structural components industry ought to be able to confidently state that, through the use of components, builders will be sued less often. This argument begins to break down, however, if the structural components industry and its constituents cannot assure builders as to the quality of the products being manufactured.

Generally speaking, the structural components industry produces finely manufactured and designed products. If problems occur, they are usually the result of improper handling,

installation or bracing. Poor jobsite construction is almost always the cause of any problem. As such, if a truss manufacturer is blamed for some kind of construction defect, a well qualified and experienced expert can usually demonstrate the real reason(s) for the problem. On the other hand, truss manufacturers will open themselves up to criticism if they do not have an adequate quality control process in place.

While *WTCA QC Version 3.0* is a process that can and will deflect unwarranted criticism, it is also a program that provides an opportunity that component manufacturers are perhaps overlooking. Remember, a wise person will make more opportunities than he or she finds. Furthermore, don't forget the unnamed businessperson who took an average laundromat, crossed it with a beer bar and advertised, "Enjoy our suds while you wash your duds." The business became a runaway success.

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"When I filled out a questionnaire this year for my company's product liability insurance renewal, my broker told me that he was able to negotiate better terms for our company because we are WTCA QC certified." —Kendall Hoyd, Idaho Truss

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Quality control in manufacturing works in several ways to promote the success of a business. It signifies to the customer and industry professionals that component manufacturers care about them as well as the products they produce. As previously indicated, should a lawsuit be filed, quality control also assists component manufacturers by providing them with a process and records in response to any criticisms that may be asserted. It also reduces the risk that there will be lawsuits in the same way that properly defining a component manufacturer's scope of work in the customer contract and providing an adequate jobsite delivery package that truly warns and instructs the installers of structural components will decrease the number of lawsuits. Quality control may even go a step further, as increased quality, by definition, means that there will be a reduced likelihood of defects.

Let's take the opportunity concept one step further. From an insurance company's point of view, the existence of a systematic, continuous program or policy demonstrates that component manufacturers are trying to better control their businesses and this may make them a better risk. The implementation of *WTCA QC Version 3.0* conveys this fact. This provides a tool that component manufacturers can use to negotiate more favorable rates from their liability insurance carriers.

Kendall Hoyd of Idaho Truss told WTCA that in the process of filling out a questionnaire to submit to his insurer for product liability insurance renewal, the agent asked if the company had a quality control program in place. Hoyd's company responded advising of its standard quarterly third party inspection process and its *WTCA QC Version 3.0* certification. After explaining to the agent that *WTCA QC* certification means that they systematically inspect, collect and analyze data, a simple verification that the company's quality control program was in good standing went a long way in convincing the carrier to sell the insurance to them at more favorable rates.

While the cost of insurance is determined in large part by the industry, there are effective ways to wage premium negotiations. We have talked of many ways manufacturers can make themselves more attractive to a particular insurance company from a risk standpoint. I think implementing a quality control program such as *WTCA QC Version 3.0* and communicating this to

your insurance agent and carrier can help in a meaningful way.

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