

Legal Edge

He Who Supplies the Jobsite Package “Makes the Rules” in Litigation

by Kent J. Pagel

**Why JOBSITE PACKAGES
are a “golden defense.”**

June 2009 does not mark a time that wood and steel structural component manufacturers are facing new risks or liabilities. Builders and contractors on the other hand, midway through 2009, are finding themselves embroiled in new-fangled litigation as they defend “Chinese Drywall” and illegal/manipulative loan and mortgage lawsuits. Builders and in particular, condominium contractors/developers, have also seen an increase in construction defect lawsuit filings asserted by homeowners who now find their homes valued far below their mortgage balances and are desperately looking for some means of relief. During times of an accelerated decline in used home prices, it’s common for homeowners to think “since I can’t sell my house for even what I owe, it must be due to poor design or construction.” Unfortunately, as blame shifting in the construction industry seems to be the norm, the increased numbers of construction defect lawsuits will inevitably involve lower tier suppliers, including component manufacturers.

While component manufacturers are not facing NEW risks or liabilities at this time, aside from defending an increased number of construction defect suits, the everyday risk of contractual liability and products and completed operations claims is still very much in play. What we mean by “contractual liability” are the risks assumed when structural components are sold to builders and contractors via a written contract or verbal order. In the June/July 2008 issue of **SBC**, I addressed contractual liability in “7 Contract Provisions to Never, Ever Overlook.” Take a minute to re-read that article, or better yet, enroll in **ORisk** and make sure you and other company employees study the more than 60 modules that deal with customer contracts. With the market slower and margins at historic lows, builders and contractors are using the fact that component manufacturers need business to shove very one-sided customer contracts down their throats.

at a glance

- ❑ Builders and condominium developers have seen an increase in construction defect lawsuit filings asserted by homeowners whose homes are valued far below their mortgage balances.
- ❑ The increased numbers of construction defect lawsuits will inevitably involve lower tier suppliers, including component manufacturers.
- ❑ Being able to document that a JOBSITE PACKAGE was received by the customer and the truss erector is a risk management measure that can protect component manufacturers from products and completed operations risks.
- ❑ The JOBSITE PACKAGE is a “golden” defense much of the time to product and completed operations claims asserted against component manufacturers and their plate connector suppliers.

With respect to “product risk,” we are referring to the risks component manufacturers face after products are delivered to the jobsite. Product risks include charge backs for under-designed or mis-manufactured materials, surface mold claims, non-conforming product claims that are asserted after installation, design responsibility risks, and fall-down or collapse claims. The category of “completed operations risks” includes construction defect claims asserted by an individual homeowner or group of homeowners (in the case of a condominium claim) that pertain for example to a sagging floor or ceiling, or a failing wall if provided by the component manufacturer.

While there are many best practices component manufacturers should follow to minimize product and completed operations risks, many of which we have outlined and will continue to outline in **ORisk**, providing a JOBSITE PACKAGE (Copyright © 2008, SBCA) and being able to document that it was duly received by your customer and the truss installer, is a risk management tool that in our opinion can VERY much protect component manufacturers from product and completed operations risks.

Each of the documents contained within a JOBSITE PACKAGE provides the requisite information for component manufacturer customers and erectors to properly and safely unload, handle, store, install and brace manufactured structural components. Typically manufacturers also add their truss design drawings and truss placement diagrams, and at times, some company-specific additional information to their JOBSITE PACKAGES and then make sure to include a JOBSITE PACKAGE with each delivery. For proof

Each standard JOBSITE PACKAGE contains:

- Information for Framers insert
- A Cover Sheet in English/Spanish
- BCSI B1 - Guide for Handling, Installing, Restraint & Bracing of Trusses
- BCSI B2 - Truss Installation & Temporary Restraint/Bracing
- BCSI B3 - Web Member Permanent Bracing/Web Reinforcement
- BCSI B4 - Construction Loading
- TTB Checklist for Handling and Installing Trusses

SBCA has additional versions of the package for English/French, long span trusses, cold-formed steel trusses and wall panels.

The JOBSITE PACKAGE in English/French contains:

- A Cover Sheet
- BCSI B1 - Guide for Handling, Installing, Restraint & Bracing of Trusses
- BCSI B2 - Truss Installation & Temporary Restraint/Bracing
- BCSI B3 - Web Member Permanent Bracing/Web Reinforcement
- BCSI B4 - Construction Loading
- TTB Checklist for Handling and Installing Trusses

The Long Span JOBSITE PACKAGE contains:

- Information for Framers insert
- A Cover Sheet containing English/Spanish warnings on the front and standard language regarding design responsibilities on the back
- TTB Long Span Truss Installation
- BCSI B1 - Guide for Handling, Installing, Restraint & Bracing of Trusses
- BCSI B2 - Truss Installation & Temporary Restraint/Bracing
- BCSI B3 - Web Member Permanent Bracing/Web Reinforcement
- BCSI B4 - Construction Loading
- BCSI B10 - Post Frame Truss Installation & Temporary Restraint/Bracing
- TTB Checklist for Handling and Installing Trusses

The Steel JOBSITE PACKAGE contains:

- Cover Sheet in English/Spanish
- CFSBCSI-B1 - Guide for Handling, Installing, Restraining & Bracing of Trusses
- CFSBCSI-B2 - Truss Installation & Temporary Restraint/Bracing
- CFSBCSI-B3 - Permanent Restraint/Bracing of Chords & Web Members
- CFSBCSI-B4 - Construction Loading
- SCC Checklist for Handling and Installing Trusses

The Wall Panel JOBSITE PACKAGE contains:

- Cover Sheet in English/Spanish
- Guide for Handling, Installing & Temporary Bracing of Wall Panels (11"x17" size)
- TTB - Building with Wall Panels

that the JOBSITE PACKAGE has in fact been received by the customer and the truss installer, an increasing number of component manufacturers are charging their customers for the JOBSITE PACKAGES. They mark up the cost of the JOBSITE PACKAGES modestly, but more importantly when a customer has paid for the package, during a dispute the argument that the component manufacturer never provided jobsite and product handling, installation and bracing documentation, is all but eliminated. In other words, "Why did you pay for the JOBSITE PACKAGE if you did not receive it?"

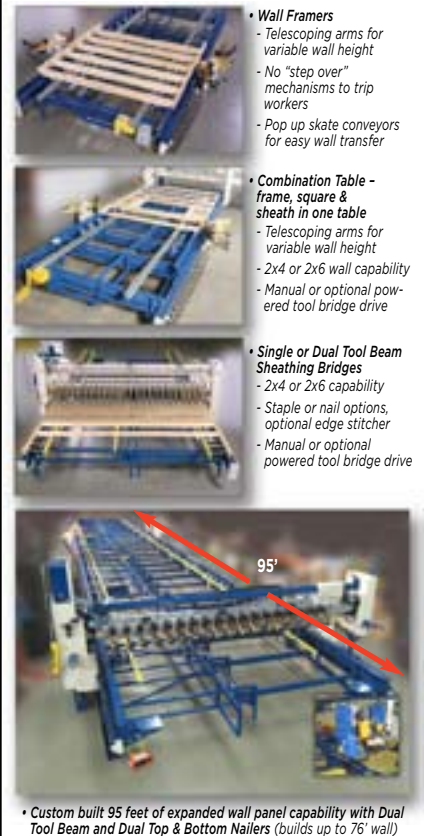
It is amazing to us that many manufacturers still do not provide JOBSITE PACKAGES (or at least something equivalent that includes the B1, B2, B3 and/or B4 sheets) with their deliveries. Statistics from SBCA reflect that as many as 2000 U.S. and Canadian wood and steel component manufacturing companies do not provide JOBSITE PACKAGES. We believe there is a great deal of truth to the title of this article: "He Who Supplies the JOBSITE PACKAGE Makes the Rules in Litigation." We have taken this title from the adage, "He who has the gold, makes the rules." While the JOBSITE

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		Customer: Big Green Builder, Inc.			
Contact: Dave		1280			
Job No.:		5/1/2009			
Date:					
QUANTITY	DESCRIPTION	PITCH	OVH	UNIT PRICE*	TOTAL Regular Truss Package*
39	30' Common Truss	6	12/12	xx	\$xxxx.xx
2	30' Hip sets	6/8/6	12/12/12	xxxx	\$xxxx.xx
2	20' Scissor Gable	8/4	12/12	xx	\$xxxx.xx
8	20' Scissor Truss	8/4	12/12	xx	\$xxx.xx
2	20' Girder truss	8	0/0	xxx	\$xxx.xx
2	20' Valley Sets	8	0/0	xxx	\$xxx.xx
1	Jobsite Package			\$x	\$x.xx
				TOTAL:	\$XXXXX.XX
				FSC-Certified Package**:	\$xxxx.xx
				[Add other value-added package options]:	\$xxxx.xx

Figure 1. Sample Invoice.

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PACKAGE is far from gold in terms of its cost, it can be a “golden” defense much of the time to product and completed operations claims/litigation asserted against component manufacturers and their plate connector suppliers.

Let’s take a look at a few sample claims and lawsuit scenarios and then discuss how the JOBSITE PACKAGE may provide the ideal defense to such a claim and/or lawsuit:

CLAIM: Multiple people are injured as a result of roof trusses falling to the ground immediately after installation. In a lawsuit filed by those injured, the manufacturer and connector plate company are sued. Engineering experts concluded the collapse was attributable to inadequate bracing. The lawsuit asserts millions in damages and negligence for failing to advise of the proper manner of handling, erecting and bracing trusses, failing to advise of the hazards associated with trusses, and not providing industry custom guidelines readily available.

JOBSITE PACKAGE Defense: This lawsuit is MUCH more easily defended if a JOBSITE PACKAGE was provided and proof of receipt is available.

CLAIM: A jobsite laborer sustains severe cuts from exposed truss plates and files suit against the component manufacturer and plate supplier for \$750,000 for permanent disability, medical expenses, lost wages, and pain and suffering.

JOBSITE PACKAGE Defense: B1 provides in a conspicuous manner (with a diagram): “Banding and truss plates have sharp edges. Wear gloves when handling and safety glasses when cutting banding.” The claim is almost certainly mitigated as a result of the JOBSITE PACKAGE.

CLAIM: A multi-family contractor complains of an “outbreak” of surface mold on floor, wall, and roof components and asserts a mold remediation and project delay claim for an amount exceeding \$500,000.

JOBSITE PACKAGE Defense: First, hopefully the manufacturer’s contract provides the customer is responsible for receiving, unloading and storing trusses and notifying the manufacturer within days of any claim of visual product defects, including surface mold. Second, hopefully the manufacturer can demonstrate the components were free of surface mold at the time of delivery. Last, the JOBSITE PACKAGE provides a solid defense as to how trusses stored horizontally require blocking underneath the stack of trusses when stored for more than one week and that it is necessary to cover the bundles to prevent moisture gain and allow ventilation.

CLAIM: Roof trusses in a large structure collapse; fortunately no injuries are sustained. Property damages in excess of \$700,000 are claimed. The allegation against the component manufacturer and plate connector supplier relate to the fact that the structural drawings contained no permanent bracing requirements, yet the truss manufacturer failed to point out permanent bracing required on the piggyback trusses which they knew to be required.

JOB SITE PACKAGE Defense: The B3 sheet provides a defense as it addresses permanent bracing for the various planes of a truss (including piggyback trusses).

CLAIM: Floor trusses are seriously overloaded during construction with stacks of drywall. After the building is occupied, complaints are received concerning floors that are uneven. The occupants are moved out, repairs are undertaken, and a lawsuit is filed seeking damages for more than \$1 million.

JOB SITE PACKAGE Defense: B4 provides an excellent defense as it clearly provides that stacking of excessive amounts of construction materials on floor and roof trusses is an unsafe practice. B4 also provides a chart that sets forth the maximum stack height for gypsum, plywood/OSB, shingles, concrete block and tile on trusses.

Remember, the manufacturer who supplies the JOB SITE PACKAGE may very well make the rules in litigation. **SBC**

Kent J. Pagel is the President and Senior Shareholder of Pagel, Davis & Hill, a professional corporation. He also serves as the outside counsel for SBCA.

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6300 Enterprise Lane • Suite 200 • Madison, WI 53719
608/310-6706 phone • 608/271-7006 fax
www.sbcmag.info • admgr@sbcmag.info