

STRUCTURAL BUILDING COMPONENTS MAGAZINE (FORMERLY WOODWORDS)

August 1999

Our Legal Environment



"Unexpected & Unwanted Marketing" by Kent Pagel, WTCA Legal Counsel

This issue's NAHB Research Center article reminds component manufacturers of the marketing importance of providing installation information to builders to prepare them for what to expect and to enable them to share such information with their subcontractors. The importance of this advice is reflected in the following letter WTCA recently received. The author of the letter is ostensibly working for a plaintiff's lawyer who is about to embark on a suit against a component manufacturer. As you read the letter, remember that marketing does not end when your product leaves your plant.

Dear Sir or Madam:

I am a contract paralegal working for attorney XXXXX Y. ZZZZZ of Anytown, USA. We are involved in a case wherein our client's husband was killed when a bundle of trusses fell on him. I am in search of an expert witness and thought you might be able to refer me to someone in my area. Here is our story:

The accident occurred in Othertown, USA—a small town on the river near the border. A local bar owner was putting an addition onto the bar and hired a local contractor to build it. However, because of many delays and unplanned-for expenditures required by the building department, the bar owner soon ran out of funds. The bar owner terminated the general contractor. However, the bar owner did not stop building. Instead, local patrons (many of whom were out-of-work construction workers) worked on the addition either for free, cash or bar tab credit. The general contractor had ordered the trusses before he was terminated.

On the day the truss manufacturer was to deliver the trusses to the jobsite, the manufacturer called the contractor and the contractor met him at the jobsite. The truss manufacturer was asked to put the bundle of trusses on top of the framed room (three walls attached to the existing building) so the workers would not have to lift them on top of the framed walls one by one. The truss manufacturer noted and commented to the owner and the general contractor that there was no bracing and the framed walls did not look sturdy enough to set the bundle of trusses up there. The truss manufacturer knew the general contractor was no longer working the job and knew or should have known that the owner knew nothing about construction, particularly nothing about setting trusses. Even so, the

truss manufacturer put the bundle of trusses on top of the framed walls without any bracing and left the jobsite. The following day, our client's husband (an out of work construction worker with little or no experience setting trusses) cut the bands on the trusses and as he cut the last band, the bundle of trusses burst apart, fell on him and killed him.

The truss manufacturer did not provide the owner/acting-as-contractor with a copy of HIB-91 nor did he offer any warning about cutting the bands. It is our contention that the truss manufacturer began the series of events that led to the death of our client's husband by loading the trusses on top of the framed walls when he recognized this to be a dangerous act because there was no bracing and failed to adequately warn that improper handling of the trusses could result in death or serious injury.

There is little insurance to cover this accident (workers compensation was denied because the decedent had a verbal agreement to work for the bar owner for \$10/hour cash and had not done any work before the morning of the accident) and therefore, we would like to hire someone who lives in the vicinity and thus save travel expenses. We do have an architect acting as an expert witness in this matter and he has opined that the truss manufacturer was negligent. We would like to also have expert testimony from someone who is an expert regarding trusses and how a truss manufacturer should have acted in the above described situation.

If you have anyone in mind, I would appreciate hearing from you. Thank you for your anticipated cooperation.

xxxx xxxxx, paralegal

Kent J. Pagel is a shareholder of the Houston law firm of Pagel, Davis & Hill, a professional corporation. He serves as national counsel for WTCA.

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