

The Contractors Critic

Reporting on Safety, Productivity and Honesty in the Construction Industry

DEL CARD ASSOCIATES, INC., AN ABC MEMBER

Faulty work & litigation continues

Delcard-installed gauge fails, school evacuated

A Delaware elementary school was evacuated and closed after a safety gauge installed and allegedly “checked” by Delcard Associates, Inc. broke, spilling some 100 gallons of oil into the basement only days after school opened in early September 2007.



A Delaware elementary school was closed after a Delcard-installed safety gauge broke, spilling some 100 gallons of oil into the school’s basement.

Richard A. Shields Elementary School part of the Henlopen School District in Lewes, Delaware was closed Sept. 6, after oil smells led school custodians to find the school’s

basement sopped with oil the night before, the *Cape Gazette* newspaper reported.

The custodial staff found the

Castle, the mechanical contractor hired to install a new boiler at Shields, worked on the regulators” the morning of the same day,” according to the

“boiler’s broken pressure gauge and oil leak at approximately 6:45 p.m.,” the paper reported.

“Delcard Associates, Inc. of New

newspaper report.

The regulators controlled how much oil was sent from one part of the *School closed, cont’d on page 9*

Nuns not fooled by Delcard corporate dodge

The Sisters of St. Francis were not fooled by Delcard Associates’ attempt to dodge responsibility for faulty work at their convent in Philadelphia convent.

Neither was a federal judge, who ruled July 2, 2007 that no

matter how many times Delcard changed corporate hats, it had to face a lawsuit brought by the nuns after Delcard-installed pipework collapsed in 2004, flooding the Motherhouse and causing extensive damage.

Basically, back in March 1995,

Delcard (later dubbed “Delcard I”) entered into a contract to install piping in the basement of the Motherhouse.

On June 4, 2004, the heat loop piping on the basement collapsed, *Corporate dodge, cont’d on page 2*

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Delcard update: Recent filings show hospital case not over

Recent filings in the lawsuit brought by Larry B. Beck against the Chester River Hospital Center and others including Delcard Associates Inc. indicate that a complex and long-running dispute involving the installation of an HVAC system is not over.

The case of *Larry B. Beck v. Chester River Hospital and Hospital Designer's, Inc. v. Delcard Associates, Inc., et al* filed in Kent County (Maryland) Circuit Court, continues with the answers and to the complaints and designation of expert witnesses.

For instance, Delcard Associates filed papers dated July 5, 2007 naming Dr. Donald Saltzman M.D., a cer-

tified orthopedic surgeon as an expert witness on the company's behalf.

In his original lawsuit filed July 3, 2006 *Beck v. Chester River Hospital Center and Hospital Designer's, Inc.* Beck alleged that he slipped and fell due to lack of proper warning lights or hazard signs and thereby injured his left leg at the hospital site.

Hospital Designer's Inc. (HDI) as a result filed a "third party complaint" naming Delcard Associates, Bilbrough's Electric, Inc. and Drywall Associates Ltd. Inc. as additional parties.

The third party complaint states that HDI denies any responsibility for Beck's injury.

However in the event that the court should find it at any fault, HDI argued

that it should be indemnified "from Delcard for Delcard's negligence and/or failure to exercise due care in the performance of its work at the Hospital and/or failure to post proper warnings of dangerous condition."

Beck seeks \$200,000 in compensation (*Case #14-C-06-006801*).

Delcard's negligent work sickens hospital staff

In July 2004, Chester River Health Systems (CRHS) lodged a lawsuit against Delcard Associates in Kent County Circuit Court over damages to property and injuries emergency room staff allegedly suffered as a result of Delcard's faulty installation of an HVAC
Hospital case, cont'd on page 3

Corporate dodge

cont'd from front page

"causing hundreds of gallons of water to flow into the building."

"As a result of the collapse, a civil engineer for the Aston Department of Safety ordered the building be evacuated and remain unoccupied until made safe and determined to be safe by an independent engineer."

The following investigation determined that "as a direct and proximate result of the failure of the piping supports, pipe hangers and fasteners installed by Delcard I, the heat supply and return loop collapsed causing damage to Plaintiff's building and contents."

The lawsuit then took several

turns and wound up in the U.S. District Court for the Eastern District of Pennsylvania where it is now known as *The Sisters of St. Francis of Philadelphia, Inc. v. Delcard Associates*.

The tale of how it got there reveals much about Delcard's corporate conniving to escape legal responsibilities.

In earlier legal filings, Delcard Associates asserted that the Delcard Associates, Inc. that existed in Delaware in 1984—and the one which entered into the contract with the nuns in March 1995—was not the same Delcard Associates, Inc. that had existed in Delaware since 2000, because the former had been "merged out of existence" in October 1996.

More specifically, the nun's federal lawsuit alleges that on or around Oct.

15, 1996 Delcard I merged with Service Confidence, Inc. which was a wholly owned subsidiary of Conectiv or Conectiv Services, Inc.

Delcard I became the mechanical contracting division for Conectiv, continued to operate out of its former 19 Gemay Drive Wilmington, Del., headquarters and continued to be managed and supervised by its original owner, Richard Trembl.

Then on or about June 23, 2000, Conectiv sold its mechanical division (Delcard I) to — Ready? — a Delaware corporation named Delcard Associates, Inc. The president and CEO of Delcard Associates was — you
Corporate dodge, cont'd on page 3

Hospital case

cont'd from page 2

system.

Chester River Health Systems, Inc. v. HBE, Inc. and Delcard Associates, Inc., claims improper installation of “humidification equipment/control devices” caused emergency department employees to become sick.

Worse, the suit further alleges that HBE and Delcard knew the air system Delcard installed posed “a serious health danger.”

Chester River Health Systems (CRHS) demanded that Delcard pay \$107,362.93 in damages and a jury trial to decide the issue.

According to the complaint, on or about July 24, 2000, Chester River

Hospital, (formerly known as Kent and Queen Anne’s Hospital) hired HBE & Delcard to perform additions and alterations to the hospital emergency department. HBE subsequently let a subcontract to Delcard to install the HVAC system.

The parties allegedly met on Nov.

cluding overall system balancing and the installation of the humidification equipment/control devices.”

“Delcard was not able to balance the air-flow system prior to the December 2001 move noting that outlets had not been installed on the system, and that ducts had been left open



Hospital employees were “reporting varying degrees of illness, varying from irritation of eyes, throat, nose and skin to minor breathing difficulties.”

15, 2001 to discuss how the job was progressing and HBE told hospital representatives that some work remained to be done on the HVAC system, “in-

and/or not completed, which allowed uncontrolled air to flow out into the area beyond the current Emergency

Hospital case, cont'd on page 4

Corporate dodge

cont'd from page 2

guessed it – Richard Treml. For clarity purposes this company is also referred to as Delcard II in some court documents.

The three-card Monte gambit to escape financial responsibilities in the piping collapse can be seen in this paragraph of the nuns’ amended lawsuit.

“Delcard II has represented that Conectiv assumed all liabilities of Delcard I, including any liability for work performed before the 1996 merger with Service Confidence.”

It then developed that “On or about August 1, 2002 Conectiv was merged with Pepco Holdings, Inc.”

The nuns believe Pepco as a result assumed all of Conectiv’s liabilities and all those assumed from Delcard I.

As an alternative position, the nuns claim that Delcard II has by operation of law assumed the liabilities of its predecessor in interest, Delcard I.”

In other words, school children, Mother Superior is saying that no matter what name tag Richard Treml wants to put on his school uniform, he and his company Delcard Whatever, are going to have to stay after school and clap the erasers to the tune of two million bucks, plus interest.

The Sisters of St. Francis filed a second amended complaint on July 9, 2007 and that case remains pending in U.S. District Court (*Case # CA-07-1936*).

In the original complaint, *The Sisters of St. Francis of Philadelphia, Inc. v. Delcard Associates*, filed in the Delaware County (Pennsylvania) Court of Common Pleas, as Civil Action #06-06189, the sisters have demanded a jury trial and at least \$50,000 in damages.

The 10-page complaint was filed May 23, 2006. It is still pending

Delcard denies responsibility.

The sisters accuse Delcard of 19 breaches of contract ranging from “(a) failing to perform the construction and/or installation in conformity with the contract, plans and specifications,” to “(s) *Corporate dodge, cont'd on page 4*

Hospital case

cont'd from page 3

Department space, circuit court documents assert.

“Despite the inability to balance the HVAC system, a fact that was not conveyed to the Hospital, HBE permitted the Hospital to move the Emergency Department, which occurred on Dec. 4, 2001, and affirmatively warranted that it was safe to do so.”

“Between December 4-11, 2001, employees working in the Emergency Department, even for only a few hours a day, began suffering and reporting varying degrees of illness, varying from irritation of eyes, throat, nose and skin to minor breathing difficulties.”

Events quickly progressed from bad to worse, catching up with Delcard and HBE at an alarming pace.

“On December 17, 2003, HBE subcontractors working in an attached,

but as of yet unused, ambulance bay began scraping off spray-on insulation so that various hangers could be attached and extended down from the roof. The insulation particles were allowed to remain on the concrete floor, crushed into finer particles as workers walked over it, and sucked up into the HVAC system.”

HBE finally shut the emergency room down January 16, 2002 “to conduct a thorough review and sealing of the entire building envelope around the Emergency Department, which identified holes above the ceiling and uncovered additional problems in the hallway of the yet-to-be-completed new nurse’s station.”

More trouble was reported on Jan. 21, 2002. Attempts were made to correct all this but apparently were unsuccessful for “Subsequently, an HBE mechanical engineer visited the site to in-

spect the HVAC system” – Delcard’s work – only to find more “discrepancies between plans and the installed equipment. The discrepancies included the installation of the wrong type of humidistat, which permitted severe swings of humidity to occur throughout the day.”

From December 18, 2001 onward, hospital employees began reporting illnesses with symptoms similar to those reported above, but with greater severity and frequency.

As a result of the air quality problems, the hospital was forced to pay more than \$107,300 in workers compensation benefits to 13 injured or ill employees.

For its part in this construction snafu and embarrassing health debacle, Delcard Associates, Inc. was sued for the \$107,300 amount for negligence (*Case #14-C-04-006076*).

Corporate dodge

cont'd from page 3

failing to otherwise exercise the level of care required of a professional in the mechanical contracting industry.

The installation of the heat pump supply and return loop included 8” diameter steel pipes hanging from the basement ceiling by “pipe hangers,” which consisted of lag screws, threaded rods, steel angle or channel associated hardware.

The lag screws were used to fasten each pipe hanger to the structure. The screws were inserted through the plaster lathe ceiling and

threaded into the bottom of the wood floor joist.

“On June 4, 2004, the lag screw – wood joist connection failed, e.g., the lag screws pulled out of the wood joists, causing the collapse of the heat pump supply and return loop in the basement of the Motherhouse.”

As a result of the collapse the basement was inundated with water and as a result of this, civil engineer for the local department of safety, “ordered that the building be evacuated and remain unoccupied until made safe and determined to be safe by an independent engineer.”

One sin Delcard committed according to a long list of alleged transgressions was “(f) failing to provide plaintiff with construction and/or installation that would keep the heat pump supply and return loop from collapsing and causing water to flow into the building.”

But perhaps the worst sin Delcard committed in the sisters’ long list of alleged legal transgressions was “(h) failing to advise plaintiff of the inadequacies of the construction and/or installation” (*Case #07M-01-090*).

Update: Delaware lawsuit dismissed

Butler Balancing's suit against Conectiv Services, first filed in New Castle County (Del.) Superior Court July 17, 2001 has been dismissed for lack of action.

The case, *Butler Balancing Company, Inc. v Conectiv Services, Inc., Delcard Associates, Inc. and St. Paul Surety (d.b.a.) Seaboard Surety Company* was ordered dismissed May 21, 2002 by that court's case manager on the grounds of "want of prosecution.

The lawsuit had been referred to arbitration, as previously reported in *The Contractors Critic*.

The civil complaint alleged a breach of contract that resulted in Butler being shafted for \$68,952.31.

That sum represented the amount owed to it by the defendant, Delcard, for work on 11 projects, according to a complaint filed July 17, 2001.

The amounts allegedly owed ranged

et al, civil action #98-C-01-015.

The order, dated Feb. 8, 2000, did not include the arbitrator's fee.

But perhaps the most interesting of the cases so far discovered were the suits stemming from a 1997 automobile accident at the intersection of May Avenue and New Castle Avenue in New Castle County, Del.

The matter of *Frederick G. Durham v. Emmett J. Zickgraf, Jr., Delcard Associates, Inc.*, a Delaware corporation now known as Conectiv Services, Inc., filed in the New Castle Superior Court, on Dec. 18, 1997 described the accident thusly.

"On Sunday evening December 24, 1995 at approximately 9:09 p.m. Mr. Durham was a passenger in a 1984 Oldsmobile Custom passenger car owned by him and operated by Carol Hall, westbound on May Av-

Hall included Delcard in the lawsuit on the grounds of "wanton entrustment" as "Zickgraf did not have a permanent driver's license, but merely a temporary license, based upon a prior DUI."

from \$40,297.50 for work at a Delaware Correctional Facility called Smyrna Prison all the way down to \$1,419.50 Delcard/Conectiv owed it for work at the College of New Jersey Science Building, the lawsuit stated (*Case #01C-07-133*).

In 1998, another New Castle County arbitrator ordered Delcard Associates and others pay a total of \$25,000 in the matter of *Jamie Szymanski v. Commercial Net Lease,*

enue in the vicinity of its intersection with New Castle Avenue (Delaware Route 9) in New Castle County, Delaware."

Durham alleged that at that time and at that place one "James A. Bowers, Jr. was operating a 1995 Pontiac Sunfire owned by Robin Bowers, northbound on New Castle Avenue (Delaware Route 9) in the vicinity of its intersection with May Avenue in New Castle County Delaware."

Closed lawsuit raises eyebrows

The judiciary in New Jersey – imposes an early shut-off of public access to certain court records in some lawsuits.

Efforts by *The Contractors Critic* to find out what happened with Delcard Associates and Conectiv Services in *Syska and Hennessy v. The College of New Jersey* was therefore unsuccessful.

But whatever it was, it must have been interesting since there seem to have been 16 parties involved in the case.

The case was apparently filed Oct. 21, 2003 and accompanied by a demand for a jury trial and saw its last recorded in March 15, 2007.

Court employees declared the case closed, disposed and unavailable when queried by *The Contractors Critic* (*Civil case Docket #L 002734 03*).

And it gets even more complicated.

At that same time and at that same place, Zickgraf was said in the lawsuit to be "operating a 1991 Ford Econoline owned by Delcard. Southbound on New Castle Avenue (Delaware Route 9)' in the vicinity of its intersection with May Avenue in New Castle County, Delaware.

Well, it doesn't take an expert in the forensics of car crash calamities to figure out we have a three-car collision coming.

Lawsuit dismissed, cont'd on page 6

Lawsuit dismissed

cont'd from page 5

“At the aforesaid time and place, the Ford suddenly turned left in the intersection of New Castle (Delaware Route 9) and May Avenue, so as to proceed eastbound on May Avenue in the path of the Pontiac. The Ford collided with the Pontiac, after which the Ford then collided with the Oldsmobile. (hereinafter “the collision”).

Must have been quite a bang-up. It took letters (a) through (l) to list the nature of the injuries he suffered, beginning with “cervical strain and sprain” and stretching all the way to “loss of life’s pleasures.”

A jury trial was demanded with Durham demanding an amount in excess of \$100,000 (*Case #97C 12-189*).

Carol Hall, driver of the vehicle which Durham said he was a passenger, also sued Zickgraf and Delcard.

Her case was entitled *Carol Ann Hall v. Emmett J. Zickgraf, Jr. and Delcard Associates, Inc. also known as Conectiv Services, Inc.*

But her list of injuries was even longer, running practically through the entire alphabet from (a) to (r). Only nine from (s) to (z) were left.

Hall also suffered cervical strain and sprain, but she developed “(m) bilateral entrapment neuropathy (carpal tunnel syndrome)” as a result of the accident, the lawsuit contended.

The suit goes on to say Hall lost her job as a result of the accident and that she, too, suffered “(r) loss of life’s pleasures.”

On the serious side of the issue, however, Hall alleged in her lawsuit that at the time of that Christmas Eve accident “Zickgraf did not have a permanent driver’s license, but

merely a temporary license, based upon a prior DUI.”

She also contended that “Mr. Zickgraf is an alcoholic.”

Hall did not specify a specific amount sought in her suit, but included Delcard in the matter of the grounds of “wanton entrustment.”

That would amount to knowingly and recklessly allowing an incompetent person to drive a vehicle (*Case #97C 07-208*).

Finally, in the matter of *Jay W. and Deborah A. McKinney v. N.C. Builders and Delcard Associates*, filed in New Castle Superior Court on Dec. 2, 1996, an arbitrator awarded the

former plaintiff \$38,931.28 and the latter plaintiff \$1,500.

The suit alleged that on Friday “April 28, 1995, male plaintiff (Jay) was employed by HMS interiors and was working at the Corestates Building on Beaver Valley Road in New Castle County, Delaware when he tripped and fell over a pipe sticking up out of through the floor and which had been placed there in a negligent and careless manner by the defendants.”

An arbitrator found the plaintiffs’ assertions to be true. He made the awards cited above in an order issued April 17, 1997 (*Case #96C-12-013*).

Delcard money lawsuit dismissed

A lawsuit Delcard Associates Inc. brought in the Queen Anne County Circuit Court seeking \$250,000 from an insurance company and a school district was dismissed upon an agreement of the main parties.

Delcard Associates Inc. v United States Surety Company, XL Reinsurance America, Inc. and Queen Anne’s County Board of Education, filed Sept. 17, 2004 was ultimately dismissed Aug. 8, 2005, court records showed.

The county school board had been previously let out of the case March 22, 2005.

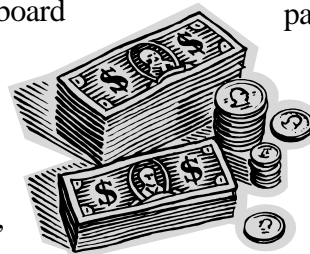
Delcard alleged Maryland Construction,

Inc. had subcontracted with Delcard to do certain work on a \$7.1 million school construction project for renovations and additions to the Centreville Elementary School in Centreville, Md.

Delcard claimed it had not been paid for work done according to 15 “change orders” during the project.

Court papers reported the dispute had been directed to arbitration proceedings and were declared “adjusted and settled by and between parties” and all

parties agreed the matter “be dismissed with prejudice” – meaning that it was closed forever (*Case #CV10416*).



Delcard legal problems should concern to customers

The Contractor's Critic views court cases and liens as a plague on the construction industry. Contractors, employees, employee organizations and customers should be working together and to settle their differences outside of the courthouse. However, the trend in our industry is towards more court suits, not fewer.

Delcard Associates is one of the many contractors who have resorted to suing customers and fellow contractors. The company has also been sued multiple times by disgruntled customers and employees. To make matters

In 2000, Conectiv released the firm plagued by legal and profit problems. Treml then resumed using his firm's original name.

Gained in this on-again, off-again corporate switcheroo move was a device Treml could later use to "disassociate" – at least in theory – the "new" firm with the multiplying state and federal lawsuits hovering over the firm.

To date, *The Contractors Critic*

has uncovered over 30 legal actions against Delcard filed in district, state and federal courts in four eastern states during the initial investigation alone. The list below is only a partial list of cases involving Delcard, its subsidiaries and its associates.

The various courts include, but are not limited to: the federal U.S. District Court of Maryland; the Court of Common Pleas of Delaware
Legal problems, cont'd on page 8

To date, investigations have uncovered over 30 legal actions against Delcard filed in federal, state and district courts in four eastern states.

worse, Delcard Associates has adopted multiple identities in multiple states. These identities are coming to light as investigations reveal numerous legal problems that have developed around the firm's work quality and business practices. (See *Who is Delcard Associates? at right.*)

Delcard Associates, Inc. was originally formed in Delaware in 1985, where it operated as an HVAC firm, before allying itself in the mid-1990s with the mid-states behemoth Conectiv Services, Inc.

Treml remained the main man at the retitled Delcard.

But that alliance did not last long.

Who is Delcard Associates?

1985

The original Delcard Associates, Inc. is formed.

1996

Delcard Associates is absorbed by Conectiv Services, Inc.

2000

Conectiv releases the troubled firm.

2000

Delcard president Rick Treml resumes using the original Delcard Associates name.

Legal problems

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County, Pennsylvania; New Castle County Superior Court in Delaware; as well as other pending litigation in New Jersey.

These cases – some involving allegations over deceptive practices, pay rate manipulations, poor work and multiple safety violations – represent only a first-blush glance at the legally troubles the firm currently faces.

Some of the cases listed in the litigation chart on the following pages, may have been consolidated in higher courts.

This concerns the *Critic* and should concern present and potential customers of Delcard Associates.

The *Engineering News-Record* of Feb. 15, 1999 editorialized, “If your only tool is a hammer, then every problem will look like a nail. When it comes to the construction industry, the main dispute resolution tool remains a lawyer, and every disagreement still looks like a lawsuit.... Law-suits go against the basic nature of the industry.”

The editorial continued, “Construction is not an individual endeavor... but rather a business of team building.... Successful teams and projects are built on the strengths of each member, while lawsuits and unsuccessful projects are founded on the weaknesses of team members.... A decade or more may pass before there is any resolution of a dispute by the courts, leaving no one a winner. Some industry sources claim that the tide of dispute resolution may be turning

Legal problems, cont'd, pg 9

Delcard litigation

Below is only a partial listing of litigation involving Delcard Associates, Inc. and it's affiliated companies.

The Sisters of St. Francis of Philadelphia v. Delcard Associates, Inc.; Case # 07M-01-090, Filed 2/23/2007, Superior Court State of Delaware

The Sisters of St. Francis of Philadelphia v. Delcard Associates, Inc.; Case # 1566679, Filed 10/24/2006, Court of Common Pleas, Delaware County, PA

Delcard Associates, Inc. v. United States Surety Company XL Rein; Case # CV10416, Filed 8/8/2005, Queen Anne's County Circuit Court, MD

Christine Worth, et al v. HBE Corporation, Delcard Associates, Inc., et al; Case # 1:05-CV-00102, Filed 1/12/2005, U.S. District Court- District of Maryland, Baltimore

Sharon Dempsey v. Delcard Associates, Inc.; Case # 1:05-CV-00101 CCB, Filed 1/12/2005, U.S. District Court- District of Maryland, Baltimore

Katherine Simmons v. Delcard Associates, Inc.; Case # 1:05-cv-100CCB, Filed 12/20/2004, U.S. District Court- District of Northern, Maryland

Katherine Simmons v. Delcard Associates, Inc.; Case # 14-C-04-6222, Filed 12/20/2004, Kent County Circuit Court, MD

Christine Worth, et al v. HBE Corporation, Delcard Associates, Inc., et al; Case # 14-c-04-6223, Filed 12/20/2004, Kent County Circuit Court, MD

Sharon Dempsey v. Delcard Associates, Inc.; Case # 14C04006221, Filed 12/17/2004, Kent County Circuit Court, MD

Chester River Health System, Inc. v. HBE Corporation, Delcard Associates, Inc., et al; Case # 30400010332004, Filed 10/1/2004, Queen Anne's County District Court, MD

Delcard Associates Inc. v. United States Suerty Co. XL Reinsurance; Case # 17C04010416, Filed 9/17/2004, Queen Anne's County Circuit Court, MD

Chester River Health System, Inc. v. HBE Corporation, Delcard Associates, Inc., et al; Case # CCB04CV2948, Filed 9/14/2004, Kent County Circuit Court, MD

Chester River Health Systems v. Delcard Associates, Inc., Case # 04-CV-02948, Filed 9/14/2004, Breach of Contract, Negligence, US Dist. Court-Dist. Of Maryland-Baltimore, MD

Sharon L Dempsey, et al v. HBE Corporation, Delcard Associates, Inc., et al; Case # 14C04006076, Filed 7/27/2004, Kent County Circuit Court, MD

Chester River Health System, Inc. v. HBE Corporation, Delcard Associates, Inc., et al; Case # 14-C-04-00-6076, Filed 4/27/2004, Kent County Circuit Court, MD

Delcard litigation, cont'd, page 9

Delcard litigation

cont'd from page 8

Rhonda Woodland v. Delcard Associates, Inc.; Case # 209010779, Filed 9/17/2002

GBI Inc. v. Delcard Associates, Inc.; Case # L000102 02, Filed 1/1/2002, NJ

Sharon L Dempsey, et al v. HBE Corporation, Delcard Associates, Inc., et al; Case # 41C-04-006221, Filed 12/20/2001, Kent County Circuit Court, MD

Delcard Associates, Inc. v. United States Surety Company XL Reinsurance America Inc., et al; Case # 20300042772001, Filed 9/10/2001, Wicomico County District Court, MD

Butler Balanceing Co. v. Conectiv Services, Inc. and Delcard Associates, Inc.; Case # 01C-07-133, Filed 7/20/2001, Superior Court Civil Justice, Delaware

Butler Balancing v. Conectiv and Delcard Associates, Inc.; Case # SS0007013301C, Filed 7/17/2001, Superior Court of Delaware New Castle County, Delaware

Butler Balancing v. Delcard Associates, Inc.; Case # 01 05897, Filed 1/1/2001, Pennsylvania

Jaime F. Szymanski v. Commercial Net Lease and Delcard Associates, Inc.; Case # 98C-01-015, Filed 2/14/2000, Superior Court of Delaware New Castle County, Delaware

Dept. of Labor and Industry, Bureau of Labor Law Comp. v. Vincent Ganc and Delcard Associates, Inc.; Case # 34 CD 1998 Filed, 5/13/1999, Commonwealth Court of Pennsylvania

Frederick G. Duham v. Emmett J. Zickgraf, Jr. and Delcard Associates, Inc.; Case # 97C-12-189 Filed, 12/24/1997, Superior Court of Delaware New Castle County, Delaware

Carol Ann Hall v. Conectiv and Delcard Associates, Inc.; Case # SS0007020897C, Filed 7/23/1997, New Castle County Superior Court, DE

Carol Ann Hall v. Conectiv and Delcard Associates, Inc.; Case # 97C-07-208WTR, Filed 7/23/1997, Superior Court of Delaware New Castle County, DE

Jay W. McKinney v. NC Builders and Delcard Associates, Inc.; Case # 96C-12-013 Filed, 12/2/1996, Superior Court of Delaware New Castle County, DE

Queen Anne's County Board of Education v. Maryland Construction, Inc. and Delcard Associates, Inc.; Case #1033-2004 Filed, 6/26/1995, District Court of Maryland, Queen Anne County, MD

Delcard Associates, Inc. v. Healy Management Services; Case # 93L-02-042, Filed 3/5/1993, Superior Court Civil Justice, DE

Legal problems

cont'd from page 8

back towards the courts. This may indicate that the industry has become too complacent... to combat creeping litigiousness.”

The Critic could not agree more with this *Engineering News-Record* editorial. These are the reasons why the Critic devotes so much of its resources to researching and publishing details on litigation in the construction industry.

School closed

cont'd from front page

boiler heating system to another. Only a few hours earlier the system had been inspected by Delcard employees and declared “Fine,” it was reported.

Emergency teams removed most of the spilled No. 2 fuel oil that night, but “Unsure about possible health risks” the school district closed the school.

The one-day closure was decided about midnight the same night of the spill. Some students did show up the next day, not having gotten the word of the closure soon enough.

Government inspectors were called in.

Later, after reviewing the situation, officials from Delaware’s Division of Public Health Environmental Health Evaluation and Toxicology officials decided the oil leak had been sufficiently contained and declared the school building was “safe for use and occupancy,” the newspaper reported.

Pictures tell tale, Delcard nailed in NJ labor case

Story reprinted from The Contractors Critic, Delcard Associates, Inc., Issue No. 1

One employee's complaint led to a New Jersey regulatory agency investigation in 2002 that proved Delcard Associates had systematically swindled unsuspecting workers out of tens of thousands of dollars in wages.

The New Jersey Department of Labor ultimately levied payments and fines totaling nearly \$100,000.

The case was brought against Delcard as a result of a complaint Pedro Concepcion filed April 19, 2001, government records show.

Conectiv Services/Delcard Associates, Inc. was found to be guilty of violating three areas of reporting law for which it was fined and assessed \$96,487.84.

Investigators discovered that Delcard had either failed to pay workers at all or paid them late on heating ventilation and air-conditioning work in Ewing, N.J.

Dept. of Labor administrative detectives also learned and proved that when Delcard did pay wages, they calculated them at rates far below the prevailing rate they were legally obliged to pay and by this device manipulated the amounts paid downwards.

Dept. of Labor investigators further found that Delcard failed to keep records of pay transactions, or hid what records it did keep, a tactic that is blatantly unlawful.

One can easily picture the scene. Just visualize it the dirt, the dust, the electrical lines strung everywhere and pipes piled up.

It's payday and the worker is anxious to get home. A suddenly friendly

foreman or mysteriously palsy manager calls the worker — him or her — aside and says something to the effect that a deal could be struck that would be beneficial to both of them.

"Look, Pedro (or Carol), you like working here and we like your work, but this is cash out of my own pocket.

"If the government got its bite it would only come of your share anyway. Besides, it reduces my bookkeeper's workload. We all benefit."

Knowing that to refuse such a proposal would endanger his or her job, the worker goes along.

Other cases involve not telling the worker anything. Period.

"Edna, it's a cinch. They don't speak English very well, can't read or write, and they probably wouldn't wise up to the action 'til the job is over, anyway."

Concepcion's individual real-life case, as it was memorialized in the "Audit Narrative Report" that one of the investigators jotted down went like this:

"Mr. Concepcion indicates he worked as a Sheet-Metal Mechanic on the College of NJ project, and provided pictures to bolster his contention.

(So, Concepcion apparently wasn't the patsy they took him to be.)

"Concepcion also completed an Affidavit and MW-15."

(And he knew how to keep his own records and fill out regulatory reports.)

"The Employer paid Concepcion at a Laborers rate, when he should have received the rate of a Sheet-Metal Mechanic for all hours worked.

"On the CPR's (Certified Payroll Records) the proper pay rates were not paid on virtually all of job titles worked, (emphasis added) based on the Mercer County Wage Determination for 8/21/98 (enclosed).

"There were also numerous Overtime violations, where employees were either not paid overtime at all or were paid improper OT (over time) rates.

"Audit should also check for any Apprentice violations, based on the enclosed B.A.T. letter of Feb. 22, '01.

"Conclusion: (1) Pedro Concepcion should receive Sheet-Metal Mechanic rate.

(2) A; affected employees should be brought up to prevailing rate, per the enclosed Wage Determination. (3) Employees who worked OT should get proper OT wage. (4) Employer failed to provide proper verification on fringe credit and all fringe credit should be disallowed... Cite Employer for Records Violation, failure to pay prevailing rate (including OT), and do not allow fringe credit to company.

"Also, check for Apprentice violation(s)."

Investigator John Stevens signed this report/statement Nov. 2, 2001 (NJDoL#PC-811-1101-STE).



Construction Industry Problems Recognized

Construction quality stinks

John R. Butler, Jr.

In Georgia, where I oversee the majority of the state's major construction projects, general contractors are not performing their duty to provide quality construction. My agency, the Georgia State Financing and Investment Commission, sells approximately \$500 million in general obligation bonds annually, primarily for new construction. This year, our governor recommends doubling that sum. But even as a fairly large player, my agency struggles to ensure quality construction.

Defects

Almost every project that we build has construction defects. Some are fairly major, such as in a multistory building where a contractor failed to install 98% of the brick ties needed to keep exterior brick from falling onto the sidewalk. At a parking structure, a contractor left out or misplaced much of the reinforcing steel needed in columns and post-tensioned beams. And at a major new laboratory that we wanted to use to aid in anthrax research, we cannot because the cracked, ostensibly airtight walls cannot contain airborne bacteria and viruses.

Believe me, we tried to prevent such errors by using supervising architects, field inspectors and testing laboratories. But we erred in that all of us wrongly assumed that the crews who were installing the work knew what they were doing and cared about providing construction quality.

Too often, facilities owners blame construction defects on architects who release incomplete drawings and specifications. We seem to have forgotten one simple fact. The constructor, whether a general contractor, construction manager at-risk or a design builder, has complete responsibility for the proper and timely completion and installation of the work.

Even if a project's architect did not provide any inspection services at all, the project's constructor is still expected, indeed required, to perform inspections to insure that the work is installed properly. Isn't that what the project superintendent is supposed to do? Isn't he or she supposed to supervise the work instead of just making sure that the subcontractors show up? Doesn't the contractor have to have a quality control individual?

We all know about the duties and responsibilities under construction agreements, but haven't we forgotten one important point? Who is responsible for the proper construction of the project? To whom do we look to complete the work? If not the constructor, then whom?

I've seen a lot of changes in the construction industry in the past 30 years. Construction systems have become more and more complicated. Disciplines have divided and subdivided and whole new trades have sprung up. The whole concept of the general contractor, like the master architect, is becoming a thing of the past. When was the last time you had a project that

didn't have a project manager, a project engineer *and* a superintendent? Did any of them do anything more than push paper? Did any of them walk the jobsite to make sure that the folks with the hammers and nails weren't putting holes in the roof?

Today's general contractor seldom self-performs a substantial portion of the work, and functions instead as more of a construction manager than a GC. To make matters worse, subcontractors are beginning to do the same by hiring their own subs to actually perform the work. With tier upon tier and with responsibility spread around, whom do you deal with when you have a problem on site?

How many times have you heard your GC's superintendent say, "It's not my fault, it's the specialty contractor's. Why didn't the owner's architect catch the problem. Didn't you have an inspector on site?"

I say that the people who pay the bills need to demand that constructors meet their obligations to install the work right. We need to put the responsibility for proper completion back where it really belongs. So what am I doing to address this problem? Besides increasing the quality and quantity of inspections performed by our designers and project managers, I'm trying to put the emphasis back on the constructors.

Control

I'm changing the terms of our contracts to limit the "construction planning period" to just the first 60 days after the award of the contract, before the notice to proceed. During that period, contractors will be required to review and comment on the plans and specifications, forcing them to actually look at them. They'll be required to prepare and submit construction management plans, to think about what resources they need and about where they need to put them. They'll have to submit detailed projects schedules using the critical path method. And most importantly, they'll have to develop quality control plans, which they and all of their subs must sign.

I know that these requirements won't solve all the problems. I'm only addressing the symptoms. The disease is lack of training and loss of pride. The symptoms are construction defects. The solution is craft training. Quality construction ultimately depends on the men and women who drive the nails, tie the steel, pour the concrete and lay the bricks.

I'm working with the National Association of State Facilities Administrators as well as the Associated General Contractors of America to publicize the pervasive lack of construction quality. I'm also looking for ways to improve the training and competency of craft labor. Won't you help?

Problems in the Construction Industry as voiced by John Butler Jr., Director of the construction division of the Georgia State Financing and Investment Commission. Reprinted from the March 18, 2002 Engineering News-Record.

LASER couldn't agree more with Mr. Butler's observations about contractors today.

Source Notes

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CORPORATE INFORMATION:

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Delcard Associates, Inc. Website: <http://www.delcard.com>

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The information contained in The Contractor's Critic does not reflect a complete history of the business practices of Delcard Associates, Inc. and/or its related companies. LASER is publishing information that contractors do not and will not publish about themselves. LASER has relied on the public record to present this information to the public in an effort to promote safety, productivity, and honesty in the Construction Industry. Delcard Associates, Inc. has been given the opportunity to review this material for errors and inaccuracies.

As of publication, Delcard Associates, Inc. has not made any suggestions or refuted any of the information in this publication.

*LASER, Inc. will continue to seek and publish additional data.
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