

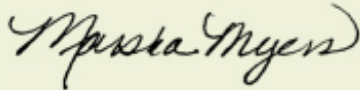
February 22, 2010

Our Annual Conference Is Just Around The Corner!

Last Day For Early Bird Rate Is February 28th

CalGeo's annual conference will be here before you know it! This year we'll be "Teaming Up at Torrey Pines" at the Lodge at Torrey Pines in La Jolla, April 28-May 1, 2010. Don't miss out on getting in on the early bird rate-you only have until February 28th! You'll find a link in this newsletter to download the complete brochure and to register online.

We hope that you enjoy this month's e.Geo and find it informative and useful. Thanks for reading!



Marsha Myers, *Executive Director*

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Call for Member News: Share Your Success!

Are you or your firm doing something worth noting? Did you win an award, get a promotion or finish a recognizable project? If you're making news, we want to hear about it. Send us your stories to cgea@comcast.net and we'll post them in this space in upcoming editions. Items should be 140 characters in length or less.

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Member News

LACO Associates - Consulting Engineers of Eureka is opening a new office in the San Francisco Bay Area in Concord. For over 55 years, the LACO team has offered a broad range of consulting services, and has been creating successful projects that benefit the businesses, communities, and the environment surrounding their Eureka home office and Ukiah. They stand ready to assist local government, businesses, and individuals throughout Northern California. From community planning and building design to surveying and environmental assessments, geology/geotech and materials testing to engineering design and construction management, LACO is equipped to support every step of their clients' projects from concept to completion. Contact LACO at (877) 733-5777 or stop by at 5167 Clayton Road, Suite D, Concord, California 94521.

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Legislative Update

CalGeo Supports Passage of SB 972

CalGeo is proud to stand with ACEC California in supporting the passage of SB 972 (Wolk). This bill would

expand the existing rules that are applied to the interpretation of a contract of indemnity to "provide that the person indemnifying has no obligation to defend actions or proceedings prior to a preliminary or final determination of liability, nor any amount that exceeds the finally determined indemnification percentage of liability based upon the comparative fault of the indemnitor." In other words, this bill, if it becomes law, will limit the responsibility of a consultant to defend those claims only where that consultant was found negligent. Please join our efforts in contacting your state representatives asking for their support in passage of this important piece of legislation.

See the following link for more information:

http://info.sen.ca.gov/pub/05-06/bill/sen/sb_0951-1000/sb_972_cfa_20050826_110927_sen_floor.html.

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Technical Corner

Should Design Professionals Work for Free?

Written by: Danny Cohen (Hetherington Engineering, Inc.)

(Based on "How To Get a Design Professional to Work for Free" by IOA Insurance Services)

In recent years, we have all learned the importance of reading a contract properly and understanding the provisions included therein before signing it. Yet in the last few years we have also seen an alarming trend where more and more contract provisions from builders and developers tend to give the builder/developer an unfair advantage. These provisions, that we are now all too familiar with, have included limitations of liability clauses that do nothing to protect the design professional, and duty to defend and indemnification agreements that attempt to make the design professional liable not only for damages "related to their work" but also to pay for all the defense costs of the builder/developer, including their "reasonable" attorneys fees.

Another type of provision was recently brought to my attention that affects the design professional's ability to provide services and be properly compensated. The provision in question generally states that the builder/developer may withhold payment in the event of any dispute, yet still requires that the design professional must continue to perform services. The end result is the design professional working for free or face being sued for breach of contract.

In the past such provisions were rare, as the design professional worked under a "fee for services" type of agreement, receiving payment as services were rendered, and continuing to do so as long as payments were received in a timely fashion. When this type of provision is included, it gives the builder/developer almost unlimited discretion in determining that any unresolved situation has risen to the level of a dispute and therefore they can legitimately withhold payment. When this occurs, the design professional is left with a difficult decision to make. Once put on notice of the dispute, which may be something as mundane as a builder/developer disagreeing with all or part of an invoice, since the provision rarely defines what a dispute is, the design professional must choose to either abide by the contract and continue working for no payment, hoping that the dispute can be resolved quickly and with little legal input, or cease work and subject themselves to contractual liability. If the design professional does take this avenue, there is a high likelihood that he would have to pay damages to the builder/developer that may result from this breach, such as those related to delays caused by the work stoppage.

Are these provisions legal? So far the courts in several states, including California, have ruled in favor of upholding these provisions. Generally parties are considered to be free to enter into a contract, particularly those that are considered to have equal bargaining power. As long as the provisions are considered legal and are not against public policy, the courts will hold them to be binding on the parties to the contract. While there may be an argument that the 13th Amendment to the United States Constitution bars involuntary servitude, it is unlikely that the court would hold that a design professional being forced to work without compensation based on a contractual agreement is equivalent to slavery.

So until the courts decide otherwise, contractual provisions such as this are binding and enforceable. Make sure you read your contracts, and though it may not always seem so, all such provisions are negotiable.

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CalGeo's Annual Conference

Have You Ever Been To A Speakeasy?

We have a great lineup of speakers for our attendees this year, but we also have some fun events planned, too. All work and no play... you know the saying! On Friday (April 30) the conference attendees and their registered spouses or guests will attend a special luncheon where we'll have a Chef from the hotel demonstrating how to cook up some incredible dishes. The best part will be getting to eat what is cooked! Yum!

At the closing night event on Saturday (May 1), guests will be transported from the Lodge to the Evans Garage in San Diego. This private museum featuring world-class collections of classic & antique cars and artifacts is the perfect setting for CalGeo's Roaring 20's Speakeasy! Guests will need a password to enter (don't worry, we'll provide those) and once in can enjoy the casino action - and, everyone will be eligible for prizes. An open bar, delicious appetizers and an elegant dinner will be provided. We will also hold our annual Silent Auction to raise money for our Student Outreach fund, so there will be a lot of action going on. We're hoping that the attendees will get into the spirit and come garbed in Roaring 20's costume... think the Great Gatsby, a Gangster and his moll, Charles Lindberg, Eliot Ness, Charlie Chaplin, Flappers and Rakes!

We've worked hard to put together a stimulating conference with top-notch speakers and relevant subjects, and have lowered the price of the conference to help you get there! We are also offering one-day-only sessions so if you can only attend one day, you can choose from Friday or Saturday.

For a complete brochure with all the conference information, click here: <http://www.cgea.org/annualconf.html>.

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Safety First

Communicating Safety To Your Multi-Lingual Workforce

Written by: Judy Kerry (State Compensation Insurance Fund)

Cal/OSHA requires employers to provide safety training in a language that is understandable to their workers. With today's multilingual workforce, the attempt to comply with this regulation can be a challenge. In order to assure that all workers understand important safety information, employers first must be aware of their workers' native languages. They also need to assess their workers' ability to understand English in written and verbal forms. Then they need to provide instruction in those native languages, provide translators, or translate the safety materials.

In order for employers to identify the best way to communicate to their multi-lingual work force; they can test worker understanding using simple and complex written documents and verbal instructions. Workers may be uncomfortable demonstrating that they don't understand the information presented in English. They may be reluctant to ask for instructions in their own language or for repeated English instructions. A worker may nod their head or say "yes" while you explain something, but may not understand you. Ask the worker to repeat instructions back to you. Ask them to demonstrate the technique, etc. that you just taught them. Encourage workers to ask for help or clarification when they need it.

If an employer translates or offers training in another language, the same materials and amount of detail must be covered as the English language training. Interactive training provides workers with hands-on experience and allows them a chance to ask questions. Give simple, direct verbal instructions such as "wear your hardhat" instead of "hard hats are required onsite to protect your health and safety" and give directions in the order that

they should be performed. For example, "First, open the door. Then, remove the hardware." Don't say, "Remove the hardware after you open the door".

Workplace documents that must be translated include hazard warning signs and lockout-tagout devices and signs. Safety and hazard signs should have pictures and words that everyone can understand. Confirm that all of your employees understand the signs' directions. If the job has many technical terms for material and equipment, teach workers what the words mean.

Translate company safety policies and procedures. Translate equipment manuals and instruction booklets. Provide material safety data sheets (MSDS) in appropriate languages so your workers know how to properly handle, store, and dispose of chemicals. When you have materials translated, ask a bilingual reader to review them for mistakes.

Identify bilingual workers that can serve as interpreters on the job site, during training, or act as resources for reviewing written materials. Make sure workers know who is bilingual on the job and encourage them to use interpreters as a communication resource.

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