

DISCA newsletter

Annual Golf Classic to be Held June 13th



Jasna Polana will once again be the setting for DISCA's Annual Golf Classic. Situated on 230 acres of breathtaking countryside, this award-winning championship golf course is designed by the legendary Gary Player and stands on the sprawling former Johnson and Johnson estate in prestigious Princeton. It's not too late to register for this "don't miss" event! Registration information is included with this newsletter so sign up today!



Princeton's exclusive **Jasna Polana** will once again be the site for DISCA's annual golf outing to be held on Monday, June 13th. Last year's outing was such a huge success, the board voted to once again hold the event at this spectacular course. See registration form elsewhere in this newsletter and don't miss it!



John Andersen, Clint Valleau, John Reilly, and Tony Emmolo had a great day at the 2010 golf outing.



Now that's concentration! Scott Hoglander lands a spectacular putt.

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What's Your Greatest Safety Exposure?

by Kevin Monaco, *Leading Edge Safety and Health*

While OSHA statistics will indicate that falls are the greatest hazard on any construction project, along with electrical issues, struck by and caught in incidents, most contractors fail to realize that complacency is their biggest risk.

DISCA members are among the most competent, pro-active and well managed contractors in the nation, with a workforce that is better educated, more experienced, and more productive than most others. So why do we still have OSHA violations, near misses, injuries, and fatalities? The answer in many cases is complacency.

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Scholarship Application Deadline Extended

The deadline has been extended to **May 31st, 2011** for receipt of applications for DISCA's 2011 scholarship Program. This program has been established to help defer the college and other educational costs of the children of management employees of companies contributing to the DISCA Industry Promotion Fund (IPF). Any student who will be pursuing a two or four year education at an accredited college or vocational school is eligible. DISCA recommends that the scholarship program announcement be posted in a place accessible to all your management employees, and promoted by including a copy of the application and the program requirements with your employees' payroll.

This is a wonderful opportunity for you to provide meaningful employee assistance with tuition expenses this fall. We encourage you to make all your employees aware of the program, and have them bring home the application to their family members. The final four recipients will be awarded up to \$20,000 to help defer some of the cost of their education.

This is an amazing opportunity for bright, hardworking students and their families, so please make sure you get the word out. Wouldn't it be nice if one of the selected recipients were part of your "corporate family"?

Contact the office at info@disca.org to obtain a copy of the application. But hurry – the clock is ticking!



Message from the President

It has been a great honor to serve as President of the **Drywall and Interior Systems Contractors Association, Inc. of New Jersey** for the last two years. While

I believe I have fulfilled my obligations and duties, I wish that I had the time to do even more to serve the association and our members during my term.

2010 continued the downward trend to be a challenging year for our business and the economy, and as an organization, we met the challenges as they came. Our initiatives were implemented and although participation was down for some contractor and associate members, we have those building blocks in place for the future.

Looking forward, some signs of life are in the not too distant future: Bidding is increasing for our contractors, The Architectural Billing Index for the Northeast is over 50 for the first time since 2007 and an overall feeling of optimism is being felt by most.

On June 13th, we will have our annual golf outing once again at the fabulous Tournament Players Club at Jasna Polana in Princeton. We expect a sellout again this year and hope for good weather! Special thanks to Tom Amatuda, Golf Committee Chairman and of course Bob Partyka who oversees all social events and Tara Gonzalez who does all the work!

Our annual convention this year will be a one night only celebration of the top jobs in New Jersey, and hopefully all our contractor members will have submitted their best jobs for Excellence in Construction Award consideration.

I would like to thank not only the Board of Directors for their support and hard work, but also the committee members and general membership because an organization can't survive without strong, active members. I'd also like to thank Rick Alampi, our Executive Director, for all his hard work and for his continued self education about our Association and our Industry. I'd also like to thank Tara Gonzalez for putting it all together with enthusiasm and professionalism.

Best regards,

Clint Valleau

Clint Valleau
Allied Interior Products

Greetings from the Executive Director

by Rick Alampi

Are you taking advantage of all the benefits DISCA provides to members? Please review the following list and contact the office if you want to learn more about how you can receive the full value of your benefits–

- Labor relations (management) for the drywall and interior systems industry. In NJ statewide collective bargaining and labor dispute resolution with trade unions representing members' employees
- Collective bargaining and labor relations on a multi-national level, in conjunction with its parent association, AWCI, Association of the Wall and Ceiling Industry, with national labor unions representing specialties in the industry
- DISCA maintains a comprehensive information and resolution center in its administrative offices, including legal counsel, website with hyperlinks, contractor referrals, research materials and national trade library access
- Events and functions – seminars, joint functions with other industry associations, conventions, education and training sessions, business meetings, social and sporting events
- Information dissemination – a directory of available services and products
- Scholarship program for DISCA member employees- currently supporting over twenty students!
- Awards program, recognizing the Best of the Best work performed by DISCA members- a great promotional tool for winners
- Safety consulting services to all DISCA contractor members. The services are provided by Leading Edge, whose principal, Kevin Monaco, has extensive experience in the construction industry and with OSHA. Services offered are:
 - Leading Edge Safety & Health provides a qualified and experienced construction safety professional to perform a comprehensive review of all safety & health policies and procedures for any DISCA contractor member firm requesting such service. Comprehensive reviews will include:
 - Review of all written safety & health policies & procedures
 - Review of all safety & health records and recordkeeping policies
 - Discussion and review of key elements of an effective safety & health program with key management
 - Review of the OSHA inspection process with each firm.

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- At least one comprehensive on-site project safety inspection which shall follow the same basic guidelines as an OSHA inspection, and shall focus on OSHA compliance as well as industry best practices.
- Complete and thorough written report of findings and recommendations shall be provided exclusively to the DISCA member.
- Leading Edge will also be available to DISCA members and staff for reasonable consultations on safety & health related matters via phone or email.

This service is provided **at no charge** to DISCA contractor members. To schedule an appointment, contact Leading Edge at 732-223-7800 or e-mail at Kevin@LeadingEdgeNJ.com. To learn more about Leading Edge, go to their website www.LeadngEdge-Safety.com.

- Transportation consulting, including driver qualification files, interstate transport regulations, training and record-keeping, transportation safety and other related transportation issues is an excellent member benefit. To help DISCA members comply, DISCA has retained North American Transportation Consultants (NATC) to assist its members. NATC will provide DISCA with periodic newsletter items to inform members of transportation requirements and regulatory updates. Simple telephone questions, involving straightforward answers, would be processed at no charge to DISCA members. Should DISCA members choose to retain NATC to perform services for their respective companies, NATC would negotiate its own fees with the member.
- Access to the Reed CONNECT Project News Database and Unlimited Project Specification searches. This valuable data collection tool includes:
 - All project values included
 - All project phases included (planning, bidding and post bid)
 - All work types included (new, additions, alterations and additions with alterations)
 - All general building project categories included (residential, retail, commercial, medical, educational, industrial, community, government and military) – No civil project categories have been included
- Geographic Access: All State of NJ; NY Counties of Richmond, Kings, Queens, New York, Bronx, Nassau, Suffolk, Rockland, Westchester, and PA Counties of Philadelphia, Delaware, Bucks, Montgomery and Chester

All reports continue to reflect the very slow business climate for all building construction- no surprise to any of our members.

The big news is the merger of the NJ Regional Council of Carpenters and the Empire State Council. Michael Capelli will remain as Executive Secretary-Treasurer of the new organization. After a comprehensive analysis by both the NJRCC and the ESRCC, they concluded the membership of the region would be best served by one streamlined regional council organization. The findings of the analysis also showed that a consolidation of local unions within each state would help to create more man hours and market share.

Within New Jersey, there will be seven locals as follows:

Commercial Local 253: (formerly 6, 15, 124 & 1342)

Commercial Local 254: (formerly 31, 155, 455, 620, 781 and 1006)

Commercial Local 255: (formerly 121, 393, 542, 623, 1489, 1743, 2018 and 2250)

Floor Layers Local 251: (formerly 29 and 2212)

Mill Cabinet Local 252: (formerly 42, 821 & 209)

Homebuilders Local 178

Tapers Local 39

DISCA representatives will be meeting with Mr. Capelli to discuss potential changes in portability, bargaining agreements, contact personnel within the new locals and other issues.

Watch for updates as they become available!

Best regards,



Rick Alampi

Executive Director

Drywall and Interior Systems Contractors Association,
Inc. of New Jersey

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Company Asset Purchases May Bring Liability for Pension Contributions

by Mary Pat Gallagher

Reprinted from the New Jersey Law Journal

The Third U.S. Circuit Court of Appeals has for the first time recognized that a company buying the assets of another can be liable for delinquent contributions to a multi-employer union pension or health fund.

Such successor liability can exist if the buyer had notice of the shortfall prior to the sale and there was continuity of operations between the seller and buyer, the court held on Jan. 21.

The precedential ruling in *Einhorn v. M.L. Ruberton Construction Co.*, No. 09-4204, exposes the buyer to nearly \$1 million in potential liability to two Teamsters funds, the Pension Trust Fund of Philadelphia & Vicinity and the Health and Welfare Fund for the same region, which includes New Jersey.

Acquiring companies tend to prefer buying the assets rather than the stock so that they do not take on liabilities along with the rest of the business, but the ruling reduces that incentive at least for delinquent contributions to jointly administered union funds.

The case arose out of M.L. Ruberton Construction Co.'s purchase of the assets of Statewide Hi-Way Safety Inc. on Oct. 10, 2005, for \$1.6 million. An audit of Statewide's payroll records done earlier that year had revealed the company was delinquent almost \$600,000 in its contributions to the funds, an amount that included liquidated damages owed as a result under the Employee Retirement Income Security Act (ERISA).

The companies discussed the delinquency during their negotiations but did not resolve it as part of the deal.

The funds had sued to block the sale because Ruberton was a nonunion employer but the sale went forward after Statewide agreed it would make future contributions and Ruberton agreed to hire Statewide employees and operate under collective bargaining.

Two months after the transaction, on Dec. 13, 2005, the funds sued both companies over the missing monies. That case settled in March 2006 when Statewide agreed to pay, but it breached the agreement. In June 2006, fund administrator William Einhorn sued Ruberton based on the theory of successor liability.

District Judge Joseph Irenas granted summary judgment to Ruberton on Oct. 26, 2009, relying on the common law rule that liabilities are not transferred when a company sells its assets.

Reversing, Circuit Judges Dolores Sloviter Maryanne Trump Barry and D. Brooks Smith held that "a purchaser of assets may be liable for a seller's delinquent ERISA fund contributions to vindicate important federal statutory policy where the buyer had notice of the liability prior to the sale and there exists sufficient evidence of continuity of operations between the buyer and seller."

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Special thank you to Tom Amatruda, member of the Golf Committee (far left) for his help in planning the event. Also pictured are Ann Garcia, Stan Sudol, and John Hawkin



Executive Director Rick Alampi stands guard over the many giveaways and prizes at last year's golf outing.



How many golfers does it take to make the perfect putt? In this case, four from Wiss & Company: Mike Testani, Brian Reingold, Jonathan Burt, and Thomas Jacobson



Immediate Past President John Anderson shows off his form and his great legs.



Bob Partyka, Golf Outing Chair (far right) received much thanks for planning a memorable event. He's joined here by Jim Moliano, and Bill and Bob Auld



Monday, June 13, 2011
at TPC Jasna Polana

4519 Province Line Road | Princeton, NJ 08540 | 609.688.0500 | www.tpcatjasnapolana.com

Schedule of Events:

Monday, June 13, 2011

- 10:00 am Registration
- 11:00 am Lunch
- 12:00 pm Shotgun start
- 5:00 pm Cocktails
- 6:30 pm Dinner

Registration:

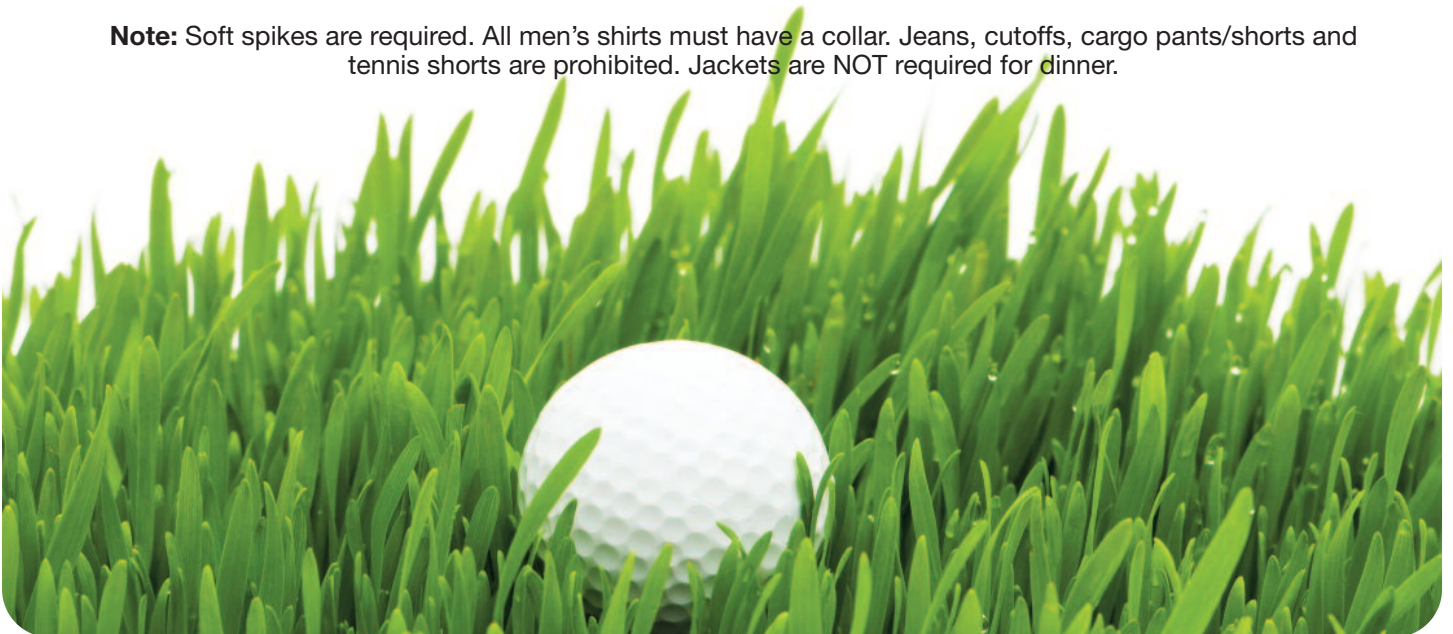
- Cost per Golfer: \$ 350
- Cost per Foursome: \$1,050

Included in Registration:

- Greens Fees
- Cart Fee
- Driving Range and Locker Room Gratuity
- Lunch
- Cocktails
- Dinner

Registration Deadline: May 31, 2011

Note: Soft spikes are required. All men's shirts must have a collar. Jeans, cutoffs, cargo pants/shorts and tennis shorts are prohibited. Jackets are NOT required for dinner.



Return form with payment for golf and sponsorship to:

DISCA, 390 Amwell Road, Suite 402, Hillsborough, NJ 08844 | FAX: 908.359.7619 | EMAIL: info@disca.org



Sponsorship Opportunities

We would like to co-sponsor the Cocktail Hour for \$750 \$ _____

We would like to sponsor a Tee or Green for \$250 \$ _____

**** Sign up (2) Foursomes and get TEE SPONSORSHIP FREE!!!**

We will donate a Door Prize _____

We will contribute a Handout for each golfer _____

Company Name should appear on the Sponsorship Sign as follows:

Golf Signups

Company Name: _____

Names of Golfers:

1. _____ 2. _____

3. _____ 4. _____

Email Address for Primary Contact: _____

Cost per GOLFER: **\$350**

Cost per FOURSOME: **\$1,050**

Payment

Please Submit Payment by May 31, 2011

Total Sponsorship Charge: \$ _____

Total Golfer Charge: \$ _____

Total Amount Due: \$ _____

Our check in the amount of \$ _____ is enclosed.

Please charge my credit card (Visa, Amex, MC, Discover) in the amount of \$ _____

Card # _____ Exp Date _____

Name on Card _____

Return form with payment for golf and sponsorship to:

DISCA, 390 Amwell Road, Suite 402, Hillsborough, NJ 08844 | FAX: 908.359.7619 | EMAIL: info@disca.org

What's Your Greatest Safety Exposure?

by Kevin Monaco, *Leading Edge Safety and Health*



DISCA contractors and their employees for the most part know their jobs extraordinarily well. They work with a great deal of oversight, and have extensive training. The reality is most DISCA firms and field employees know what they are supposed to do, and know how to do it. Outside forces, however, often impact the decision making process on jobsites. OSHA inspectors can recite the rationale for safety shortcuts which they regularly hear from good contractors, “We’ve done this job a thousand times”, “It will only be for a minute”, “We didn’t have time”. Too often because someone had a bad day, or they just forgot, or they have done a specific task over and over, or they feel pressure to drive production, good contractors and good field employees take shortcuts and put themselves and their fellow workers at risk. The key is to keep focus on key safety issues, at all times, even when production pressures are mounting, even when you’re having a bad day.

With OSHA’s renewed emphasis on enforcement, DISCA members face a double edged sword. It is critical to properly evaluate your work sites, train and educate your employees, and provide appropriate safety equipment. Doing this however, potentially allows you to build a case against yourself. From OSHA’s perspective, if you have trained, qualified people, and you are exercising appropriate oversight on the project, there should be no excuse for safety violations, other than willfulness. We have seen multiple cases recently in New Jersey where good, talented, hard-working field employees have made a series of relatively minor oversights on a project that taken together created a more serious situation. OSHA has been very aggressive in these cases, issuing willful and egregious citations more frequently. You must do what is required, but you must do it all day, every day. Safety is a process, not an event.

To avoid complacency, contractors have to create an environment where safety is a core value of the company. Every employee has to understand and appreciate that when the owner of the firm says safety is the most important element of the project, it is the truth. Company owners have to back up words with actions and provide employees the equipment, tools and resources they need. Company owners need to walk the walk when they are on the jobsite by setting a good example. All the policies and procedures in the world mean nothing if the owner of a company can walk onto a project with no hard hat or no safety glasses, when every other person on the project is required to wear them.

Safety must also be a key component of all project meetings: safety issues should be listed as an agenda item, and employees should feel comfortable in bringing legitimate safety issues to the attention of management. Tool box talks must be implemented and documented in a serious manner. Everyone on the project should be encouraged to implement a job hazard analysis, even in its most basic form; “What task am I doing? What are the potential hazards? What am I doing to eliminate and/or protect against these hazards?”

Perhaps most important, we need to look out for each other onsite. Employees and managers should take the initiative when someone forgets a safety policy. Experienced workers should coach younger workers on the requirements for a safe work site, and set a good example for others on the project. We all understand that building the project is a team effort, creating a safe work environment takes the same commitment. The words of North Carolina State Basketball Coach Jim Valvano emphasize the approach responsible contractors need to take with safety, “Don’t Give Up, Don’t Ever Give Up.”

For further information visit: www.leadingedgenj.com

Company Asset Purchases May Bring Liability for Pension Contributions

by Mary Pat Gallagher

Reprinted from the *New Jersey Law Journal*

Though it was undisputed that Ruberton had notice of the delinquency, the panel remanded on the issue of whether there was substantial continuity, identifying the relevant factors as whether the buyer used the same workforce, equipment and location; completed the predecessor’s work orders; and served the same customers.

The deficiency in the funds has now grown to almost \$1 million, on account of legal fees, pre-judgment interest and liquidated damages that the funds will be able to recover if they prevail.

Ruberton’s attorney, Jonathan Landesman, says the decision “means that a billion-dollar union fund will be treated like a victimized employee when seeking to establish successor liability, instead of like an ordinary creditor.”

It also means lawyers representing asset purchasers “must carefully consider ERISA liability when conducting due diligence,” says Landesman, of Cohen, Seglias, Pallas, Greenhall & Furman in Philadelphia. Ruberton is considering its options, including seeking a rehearing en banc or certiorari, he adds.

The funds’ lawyer, Frank Sabatino, of Stevens & Lee in Philadelphia, says the district court ruling “flew in the face of a lot of authority,” noting cases from the First, Second, Seventh and Ninth Circuits and numerous district court rulings. Or as he says he argued in his brief, “Our opponents were asking the Third Circuit to become a minority of one.”

Reinstatement of the claims against Ruberton is bad news for two of its former attorneys who are fighting third-party malpractice claims in the matter, Ronald Tobia and David DeClement.

Tobia, a labor lawyer, allegedly represented both Statewide and Ruberton in their pre-sale dealings with the union and had an irreconcilable conflict of interest. He allegedly attended a pre-sale meeting between the union and both companies at which the fund deficiencies were discussed but failed to advise Ruberton of its potential exposure to successor liability or protect the company against it. Tobia also allegedly told Ruberton the union was giving up the right to sue it over the unpaid contributions though he never obtained such a waiver.

Ruberton also faults Tobia, its original defense counsel in this action, for opposing the union’s motion to disqualify it and, after losing, trying to get the court to reconsider, claiming it incurred additional legal fees on account of Tobia’s “nonsensical motions practice.”

DeClement allegedly was Ruberton’s attorney for the purchase of Statewide and failed in his due diligence regarding the unmade contributions.

Tobia, of Tobia & Sorger in Harrison, says he has no comment and DeClement, a Pitman solo, could not be reached.



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Upcoming DISCA Events – Mark Your Calendar!

Tuesday, May 31, 2011
Scholarship Applications Due

Monday, June 13, 2011
11:00am - 8:00pm
Golf Classic and Annual Meeting
TPC Jasna Polana, 4519 Province Line Road, Princeton, NJ

July 2011
12:00pm – 2:00pm
Scholarship Luncheon
Park Avenue Club, Florham Park, NJ

September/October 2011
Details coming soon!
Excellence in Construction Awards Gala

Tuesday, September 13 - Saturday, September 17, 2011
AWCI Conference
Coeur d'Alene, Idaho

November, 2011
Membership Meeting 5:00 - 6:00pm
Reception 6:00 - 7:30pm
Park Avenue Club, Florham Park, NJ

390 Amwell Road, Suite 402
Hillsborough, NJ 08844

