



# MFC NEWS

*"Building Understanding"*

MFC will find out the truth about buildings and answer the hard questions.

Fall 2012

Volume 7 Issue 4

## Quote of the Day

Good buildings come from good people, and all problems are solved by good design.

~ *Stephen Gardiner*

## What's New at MFC...

Our MFC webmaster, Julia Corcoran, (Myles Corcoran's daughter), celebrated her marriage to Christopher Smith on August 25, 2012.

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### Monterey Towers Condominiums West Cliff Drive, Santa Cruz, California

Myles F. Corcoran Construction Consulting, Inc. (MFC) is part of a multi-disciplinary team bringing the Monterey Towers Condominiums back to life. In 2011, we provided valuable waterproofing design consulting to Daniel Matthew Silvernail Architect for multiple assemblies, from slab foundations to windows. Sound waterproofing is critical at this coastal location in order to prevent a recurrence of water damage to the concrete reinforcement, which is what led to the original structure being red-tagged in 2010. In March 2012, after demolition of the original, red-tagged, three-story complex was underway,

MFC was retained by the Monterey Towers Homeowners' Association to evaluate applications for payment received from the prime contractor. MFC has inspected the site monthly to verify amounts invoiced under the fixed-price contract against MFC observed work completed. We have balanced the HOA's financial interests with the need to keep the project moving on schedule.

Our monthly Invoice Review system has kept lien releases on track and payments to the contractors and suppliers in line with progress.



Monterey Towers Condominiums 9/4/12



## Wisdom Corner

Thank you to Chris Hersey and Jeff Lisenbee of Miller, Morton, Caillat & Nevis, LLP, for contributing this update on important laws.

### Upcoming Changes to California's Indemnity Laws Do Not Be Caught Off-Guard

California Governor Jerry Brown recently signed into law a new Bill that will have a significant affect on contractual indemnity provisions used in the California construction industry. The new law is set to take effect **January 1, 2013**, and will alter the way some developers, general contractors, and subcontractors do business.

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Gaining an understanding of the changes to the indemnity laws is a must and will benefit both you and your clients.

### Senate Bill 474

(Takes effect January 1, 2013)

#### **Limits on the Shifting of Liability**

The major change under Senate Bill 474 is that any contractual indemnity obligations (including the cost to defend) arising out of the *active negligence or willful misconduct* of the indemnified party are void and unenforceable. The law applies to all construction contracts on private commercial projects executed or amended on or after January 1, 2013.

This new law will dramatically affect the allocation of risk on private commercial construction projects. Under current practice, it is increasingly common for owners and general contractors to include what is referred to as a "Type I" indemnity provision in contracts with contractors/subcontractors. "Type I" indemnity allows the owner/general contractor to require the contractor/subcontractor to indemnify the owner/general contractor, even against liability caused by the owner/general contractor's own active negligence or fault. Under the new law, these "Type I" indemnity provisions will no longer be enforceable.

#### **Other Important aspects of Senate Bill 474**

- ▶ Restrictions on the allocation of defense costs
- ▶ Sets up specific procedures for tendering claims based on contractual indemnity
- ▶ Application of California law regardless of contractual "choice of law" provision
- ▶ Does not apply to contracts with design professionals
- ▶ Changes do not apply to various types of insurance policies including requirement for additional insurance endorsements
- ▶ Includes of a number of exclusions to the changes in the law

If you wish to discuss the broader implications of these changes to the indemnity laws or have any questions regarding its impact on your situation, please contact Myles F. Corcoran Construction Consulting, or attorneys Chris Hersey or Jeff Lisenbee of Miller, Morton, Caillat & Nevis, LLP:

**Chris Hersey**, Partner

(408) 292-1765

[chersey@millermorton.com](mailto:chersey@millermorton.com)

**Jeffrey R. Lisenbee**, Associate

(408) 292-1765

[jlisenbee@millermorton.com](mailto:jlisenbee@millermorton.com)



### Construction Woes...



Thanks for the photo to Chris McDougall, Apex Home Inspection, (831) 566-2258.



### About MFC News

MFC News is the e-zine published quarterly by the Editorial team at Myles F. Corcoran Construction Consulting, Inc. (MFC), located in Santa Cruz, California. It is circulated to our colleagues in the construction and construction-related fields. Visit our website [mfcnews@mfcbuild.com](mailto:mfcnews@mfcbuild.com) for more information and testimonials.

Please help us make this a "Construction Community" endeavor by sending us your feedback, comments, wisdom, and ideas for future issues. Call (831)476-4502 or email us at: [mfcnews@mfcbuild.com](mailto:mfcnews@mfcbuild.com).