



The Tool Box

Serving the Electrical, HVAC & Plumbing Industries Since 1912

Volume 5, Issue 93 April 1, 2008

Cardinal Change

By: Tom Frisby - www.frisbygroup.org

Most people think of “cardinal” as a pretty red bird or a baseball team. I think of *cardinal* as an egregious act or series of acts that the owner and or his designer representative does to a contractor which causes him serious financial damage.

There is a concept know as a *cardinal change* about which all contractors should be aware in this day and age of hundreds and hundreds of RFI’s (Request for Information), dilatory decision-making, failure of the owner to perform its contractual obligations. (Bear in mind, this indictment does not apply to all owners and their representatives, but it is more widespread than I have seen it in my professional career). A cardinal change is a breach of contract, and if proved, entitles the contractor to recover all its damages due to the breach. Because it also amounts to an abandonment of the contract, it may relieve the contractor of certain rigid written notification rules as well.

There is one underlying concept of cardinal change, and that is that the action or inaction of the owner is *materially outside the scope of the contract*. Let’s look at some examples:

- Multitudinous changes may qualify. But a bunch of changes or RFI’s itself does not make for a cardinal change. For example, even one change could be a cardinal change. The test is: do the changes as a whole (or the single change) result in the contractor performing work materially different than was bargained for?
 - Has the schedule been extended substantially? (A few months won’t qualify. A year extension on a one year schedule gets you into the red zone, at least.)
 - Have the cost of the work (emphasis on labor hours) been increased substantially (over 40% would get you into the red zone)? Have the means and methods been substantially changed from that which was contemplated? Being forced to go from vibratory sheet piling to impact piling in mid stream at least moves you toward the red zone.
 - Has the sequence substantially changed? Due to the changes, has the rhythm of the project completely changed, with constant “stop and go’s”?
 - Is the nature of the work different? An extreme example would be a change of the structure from concrete to steel after the job has begun.
- Breach of contract. Assume that the contract provides that the owner will provide access to certain areas of the site by given dates, and fails to do so until long after the dates specified. That is a breach of contract, but the contractor must also show that its affect materially affected the manner in which he would perform his work.
- Pile on. The more derelictions, delays, breaches . . . the contractor can add to the pile (in other words, there were hundreds of RFI’s and the

(continued on page 3)

INSIDE THIS ISSUE:

Retail Air Services, LLC.	
Mechanical Member Article	2
April Birthdays	2
Safety Tip	3
Page 1 article continued	3
Statewide Rally Thanks	4
Welcome New Members	4
Birth Announcement	4
Condolences	4
Concerns	4
Anniversaries	4
Upcoming Events	4
MCASC Scholarship Tour.	
Tentative Agenda	5
MCASC Scholarship Tour.	
Registration Form	6
Upstate Workforce	
Investment Board	
Associate Member Article	7
Area Meeting Calendar	7
Vision/Mission Statement	8



**Piedmont 2nd Annual
Clays For College
Friday, April 25, 2008
Harris Springs
Sportsman’s Preserve
Waterloo, SC**



**20th Annual
George W. Bryce, Jr.
Memorial Golf
Tournament
Friday, May 2, 2008
Oakdale Country Club
Florence, SC**



**Mechanical Member:
RETAIL AIR SERVICES, LLC**

Retail Air Services is located in Anderson, SC. We have serviced the national retail market in the southeast for the past 5 years. However, we also do industrial and other types of commercial work closer to home.

Our Staff has over 50 years experience in dealing with the retail environment. We use this to provide un-parallel service to our customers.

Tom George has a 21 year background in retail construction. He started out as a field hand, and worked his way up to Superintendent, project manager, and onto vice president with Weekes Construction, Inc.

Scott Dunn has 10 years experience installing, balancing, and trouble shooting retail HVAC systems.

Wilton Mewbourn is N.E.B.B. certified in air and hydronics test and balance.

This combination of experience, combined with the desire to provide outstanding customer service and value, makes our company the sensible choice for any General Contractor.

Our associate company, Duct Worx, manufactures all of our duct, curbs, adapters, etc., which provides us a unique "all in one" package for our customers.

We are currently licensed in South Carolina and Alabama. Scott has passed the tests, and is waiting on the paperwork for Georgia, North Carolina, Tennessee, and Virginia.

We look forward to meeting everyone in the Mechanical Contractors Association of SC, and hope to not only gain valuable information from the members, but to be able to provide them with the same.

Retail Air Services, LLC
3909 Hwy. 24, Anderson, SC 29626-5317
Phone: (864)225-5661 Fax: (864) 225-5662



APRIL BIRTHDAYS

Benny Waldrop	4/2	Waldrop, Inc.	
Tom Minor	4/9	G-M Mechanical Corporation	
Jean Roth	4/9	Freeman Mechanical, Inc.	
Bill Caldwell	4/10	Waldrop, Inc.	
Tom Deer	4/12	B & W Mechanical Contractors	
Jayne Johnson	4/17	Jerry's Plumbing, LLC	Wife of Jerry
Fred Gibbs	4/22	Bear Mechanical Services, LLC	
Sylvia Jacobs	4/22	R. C. Jacobs, Inc.	Wife of Duwayne
Bucky Cole	4/23	AAA Supply, Inc.	
Joe Clarey	4/29	Bradford Sales Company, Inc.	

*Happy Birthday Members! We Would Like To Announce Yours.
Please call the Birthday Hotline at 803-772-7834 or Email to mflowers@mcasc.com*

“Tool Box Talks” - Safety Tip

HOW TO READ MATERIAL SAFETY DATA SHEETS

SECTION 1 – Material Identification

The name of the product and name, address, and emergency telephone number of manufacturer are provided.

SECTION 2 – Hazardous Ingredients/Identity Information

This section contains a list of all the hazardous ingredients which make up more than 1% of the mixture (or .1% for cancer-causing substances). They also list the Permissible Exposure Limit (PEL) for each hazardous ingredient and Threshold Limit Values (TLVs) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) and National Institute for Occupational Safety and Health (NIOSH).

SECTION 3 – Physical/Chemical Characteristics

Physical and chemical characteristics include the chemical's appearance and odor, along with physical properties that indicate how easily a chemical will evaporate and release potentially harmful vapors into the air.

SECTION 4 – Fire and Explosion Hazard Data

This section will provide information on the fire hazards of a product and special precautions necessary to extinguish a fire.

FLASH POINT= if a material has a flash point less than 100° it is flammable; if it's flash point is between 100-200° it is considered to be combustible and they both have special handling and storage precautions.

SECTION 5 – Reactivity Data

This describes the reaction of chemicals when they are mixed together with other chemicals, or when stored or handled improperly.

SECTION 6 – Health Hazard Data

This section describes the health effects of the product, including signs and symptoms of exposure and medical conditions made worse by exposure. Acute (short-term) and chronic (long-term) effects of the exposure as well as routes of entry (inhalation, skin contact, swallowing) are also included.

SECTION 7 – Precautions for Safe Handling and Use (Spill or Leak Procedures)

This section contains information on proper equipment to use and what precaution to follow if a spill or leak occurs. It also describes safe waste disposal methods and precautions to be taken in handling and storing.

SECTION 8 – Control Measures

Lists control measures that can reduce or eliminate the hazard, including ventilation and other engineering controls, safe work practices, and personal protective equipment. Also contains information on the appropriate filter cartridge for respirators and the correct type of glove to be used if necessary.

RSS Safety, LLC

1122 Industrial Drive, Suite 109, Matthews, NC 28105

Telephone (704) 844-2519 Fax (704) 844-0291

(continued from page 1)

owner failed to deliver its equipment on time, and the decision-making process was dilatory . . .), the better its chance of winning.

If a cardinal change can be proved, the contractor can generally prove its claim on a *modified total cost* basis rather than cause and effect pricing. But there are defenses to the cardinal change, among them:

- Accord and Satisfaction (that is the contractor gave away all its rights on the change orders it signed.)
- Pay requests. Watch out for those pay requests where you sign a release of all claims.
- Foreseeability. If the actions of the owner were foreseeable (for example, the contractor negotiates the contract with the owner and knows that the plans are incomplete and replete with errors), or a site visit would have warned him as to adverse conditions that would be encountered.
- Contractor's own problems contributed to its damages.

Owners, their representatives, and contractors (including subcontractors) should be aware of the doctrine of the cardinal change. But the application of the doctrine is not always clear and there are no “slam dunks” with attempting to use this as a claim concept. If there is ever an area the contractor needs to confer with his attorney - a real construction attorney - this is one. And bear in mind, this column is skimpy at best in fully fleshing out the basis of cardinal changes as well as defenses. And, like all impact claims, by virtue of having a real team approach on a project, the ravages of a cardinal change can be avoided or at least substantially mitigated.

MCASC Statewide Rally and Barbeque

We would like to take this opportunity to thank everyone who participated in making this year's Statewide Rally a huge success. From those who helped setup, bartend and clean-up to those who traveled from across the state

MANY, MANY THANKS

Concerns

Steve Caswell - W. O. Blackstone, Columbia
 Nancy King - Wife of Bert King, Columbia
 Doris Miller - City Plumbing Co., Florence
 Montez Self - Self's Heating & A/C, Camden

Happy Anniversary

Mr. & Mrs. Benny Waldrop - 4/15
 Mr. & Mrs. Rudy Cullum - 4/16
 Mr. & Mrs. Jim Haynes - 4/30

Upcoming Events

2nd Annual Clays for College

Friday, April 25, 2008
 Harris Springs Sportsman's Preserve
 Waterloo, SC

20th Annual George W. Bryce, Jr. Memorial Golf Tournament

Friday, May 2, 2008
 Oakdale Country Club, Florence, SC

The Santee Scholarship Tournament

June 6-8, 2008
 Quality Inn & Suites, Santee, SC
 Agenda & Registration Form
 See Pages 5 & 6

MCASC Summer Convention

July 31 - August 3, 2008
 Daufuskie Island Resort & Breathe Spa
 Somewhere Between Savannah & Hilton Head

Welcome New Members

Jim Hearn - Hayes & Lunsford Electrical Contractors
 Greenville, SC
 Donny Roth - Clarkson Industrial
 Spartanburg, SC
 Jay Jenkins - Viega
 Waxhaw, NC
 John Creech - Ogletree, Deakins, Nash,
 Smoak & Stewart, P. C.
 Greenville, SC
 Matt Telmanik - Carolinas Construction Solutions
 Charleston, SC
 Stan Linker - Sunbelt Rentals
 Anderson, SC
 Art Welling - Condustrual, Inc.
 N. Charleston, SC
 Karen Linden - Central Controls, Inc.
 West Columbia

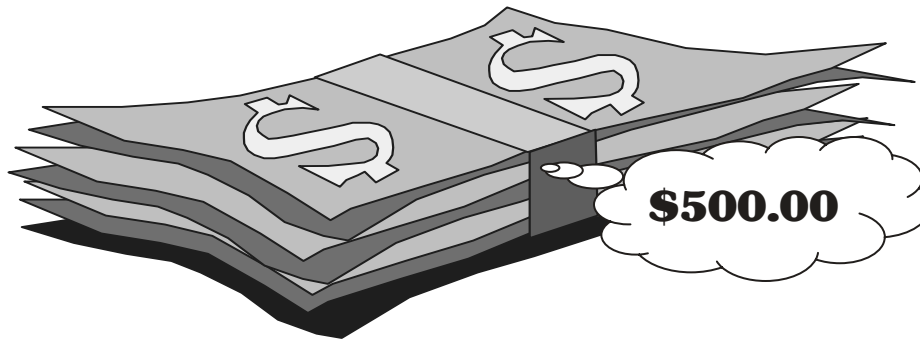
Birth Announcement

Tucker Adam Williams
 Born January 28, 1:51 PM, 8 lbs., 1 oz., 20 1/2"
 Proud Parents: Adam and Lauri Williams
 Proud Grandparents: John and Debbie Williams
 Cashion Electricians, Inc.

Condolences

Bob Newbill & the Staff of Simpsonville Chevrolet
 On the loss of Their Friend and Colleague
 Gordon Smith
 Mr. Rudy Sheppard & Family and "The Posse"
 On the loss of Wife, Mother and Friend
 Cindy J. Sheppard

How would you like to win



IF SO, THEN MARK YOUR CALENDARS FOR THE...

**17th Annual
 MCASC Scholarship Tournament
 Swatter-Snagger-Shagger Weekend
 June 6, 7, 8, 2008 - Santee - Quality Inn & Suites**

TENTATIVE AGENDA

FRIDAY:

Check In - Quality Inn & Suites	3:00 PM* - UNTIL	*Earlier If Room Is Ready
GOLF: SANTEE COOPER COUNTRY CLUB	10:15 AM Tee Times Begin	(Tee Times Will Be Published)
Hospitality Suite	4:00 PM - MIDNIGHT	Room 122
Poker	IT'S YOUR DEAL	Room 126
Seafood Dinner	7:00 PM	Santee Cooper Country Club - Clubhouse

SATURDAY:

Buffet Breakfast	6:00 AM - 10:00 AM	Carolina Grill
FISHING	5:30 AM - UNTIL	Jack's Creek Marina ???
GOLF: LAKE MARION	1:30 PM - SHOTGUN START	Captain's Choice Format
Hospitality Suite	4:00 PM - MIDNIGHT	Room 122
Poker	IT'S YOUR DEAL	Room 126
Swatter-Snagger Awards & Door Prizes	7:30 PM	The Shed at Lake Marion
BBQ & Rib Dinner	8:00 PM	The Shed at Lake Marion
Entertainment	After Dinner	???

SUNDAY:

Buffet Breakfast	6:00 AM - 10:00 AM	Carolina Grill
Check Out - Quality Inn & Suites	12:00 NOON	Have A Safe Trip Home!!

\$500- Hole-In-One Contest

\$500 will be awarded for each hole-in-one made on Hole #6 (166 yds).

\$500 Angler Contest

\$500 will be awarded to the angler that captures the largest fish (weighed in ounces)

IF their lucky number matches the winning number.

Tale Of The Tape

Got \$20.00 ??? Buy a Hole-In-One !!!



**17th Annual
MCASC Scholarship Tournament
Swatter-Snagger-Shagger Weekend
June 6, 7, 8, 2008**



NEW LOCATION: Quality Inn & Suites - Santee

REGISTRATION FORM AND INFORMATION

COST:

**Swatter/Snagger - \$240.00/person (based on double occupancy)
Non-Sportster - \$190.00/person (based on double occupancy)**

NOTES:

- Any singles add \$27.75, \$55.50 or \$83.25 Depending On Package
- If you choose to go down on Thursday, there will be an additional room cost of \$71.04
 - Please indicate below so we can make the necessary accommodations
 - Cancellations and/or Substitutions Accepted Thru May 23rd

Hole Sponsor - \$150.00

Boat Sponsor - \$150.00

****Make checks payable to: MCASC Scholarship Fund****

REGISTRATION DEADLINE: MAY 9, 2008

Below, indicate activities with a ✓ mark

Complete registration form & fax to (803) 731-0390 or mail to: mflowers@mcasc.com

NAME:	HCP	HOTEL THURS.	GOLF FRI.	GOLF SAT.	FISH SAT.	NO SPORT	SPONSOR
1.							
2.							
3.							
4.							

IMPORTANT NOTE: FRIDAY & SATURDAY, Pre-arranged foursomes will be accepted both days provided you have contacted the MCASC State Office & submitted your team by no later than May 9, 2008. If you do not pre-arrange your foursome, & would like to play with a particular individual, please note on form. Otherwise, the Golf Committee will assign teams.

**Associate Member:
UPSTATE WORKFORCE INVESTMENT BOARD**

The mission of the twenty-five member business led Upstate Workforce Investment Board is to build and maintain a continuously improving workforce system that meets the needs of the businesses in Spartanburg, Cherokee, and Union counties. We accomplish this through our Business Services Team and our Career Source One Stop Center.

The Upstate Workforce Investment Board’s vision is to ensure that our employers have a work-ready pool of applicants and a point of contact to obtain other employer related services. The following services illustrate how the Upstate Workforce Investment Board is working for our area businesses:

- FREE Job Postings (posted in Spartanburg, Union, and Cherokee counties, 24 local agencies and colleges, and advertised in the local papers)
- Pre-screening of Applications and we mean ‘really’ screening
- Interviewing Space
- Help with Developing and Registering Apprenticeships
- Work Experience Grants (we pay this wage to the worker directly and they are not on your payroll)
- On the Job Training Grants with up to 50% wage reimbursement on the applicant hired from us
- Labor Market Information
- Incumbent Worker Training Grants used to train the existing employees in your company
- WorkKeys Profiling and Testing (a great E.O. compliant assessment tool)
- Small Business Start-Up help

For more information on any of these services, please contact us at 864-596-2028 (TTY: 711) and ask for Beverly Deal or by email at bdeal@upstatewib.org. If you are not located in one of our three counties, every area of our state has a local Workforce Board. For contact information on other local boards, please give us a call.

Upstate Workforce Investment Board
P. O. Box 5666, Spartanburg, SC 29304-5666
Phone: (864) 596-2028; Fax: (864) 596-2199

**Congratulations to our next Associate & Mechanical Members who will be highlighted in the upcoming issue of “The Tool Box”:
 Premier Lighting of Charleston, Charleston - Associate Member
 Hayes and Lunsford Electrical Contractors, Greenville - Mechanical Member**

APRIL 2008 MONTHLY AREA MEETINGS

MIDLANDS AREA

Thursday, April 3, 2008 @ 4:30 PM
 Location: MCASC State Office, 1504 Morninghill Dr., Columbia
 Sponsor: Meetze Plumbing Company, Inc.

Annual Legal Workshops
Presented By: Robinson McFadden
Election of 2008-2009 Officers & Board

PIEDMONT AREA

Tuesday, April 8, 2008 @ 6:00 PM
 Location: 720 Mauldin Road, Greenville
 Sponsor: G-M Mechanical Corporation

Joint Meeting With ASHRAE
Election of 2008-2009 Officers & Board

PEE DEE AREA - NOTE: CHANGE IN DATE

Thursday, April 10, 2008 6:30 PM
 Location: Roger’s Barbeque, 2004 W. 2nd Loop Rd., Florence
 Sponsors: Cayce Co., Eastern Industrial Supplies & Erico Hangers

Topic: Presentation of New Erico Products
Speaker: Adam Varnadore
Snider, Inc.
Election of 2008-2009 Officers & Board

COASTAL AREA

Friday, April 25, 2008 7:00 PM Boarding 7:30 Departure
 Location: The Beauregard, Patriot’s Point, Mt. Pleasant
 Sponsor: Sunbelt Rentals

Annual Coastal Area Harbor Cruise
Election of 2008-2009 Officers & Board



P.O. Box 384, 29202
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E-mail: mflowers@mcasc.com
www.mcasc.com

*Serving mechanical contractors in
South Carolina since 1912.*

MCASC Executive Board & Staff

Henry Poplin, President
Chris Cullum, Vice-President
Richard Miller, Jr., Treasurer
Steve Brewer, Secretary
Bob Jacques, Associate President
Mona Flowers, Managing Director

Mechanicals make it happen -
Be part of the best!

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MCASC Vision Statement

The Mechanical Contractors Association of South Carolina (MCASC) will be the leading construction association in South Carolina for specialty contractors and suppliers in the electrical, mechanical (HVAC), and plumbing fields by serving its membership, the industry, and the Community in a vibrant and harmonious fashion.

MCASC Mission Statement

The Mechanical Contractors Association of South Carolina (MCASC) will provide its membership with:

- current business/technical information and support
 - a proactive political/legislative agenda
- a joint industry collaboration to improve relative business practices
- an ongoing effort to offer training opportunities for both professional and craft personnel
 - educational scholarships for deserving students
- the development of industry related career opportunities

The Association's objective for this mission is to enhance the future of the Construction Industry in South Carolina.