



# SAFETY EMPHASIS

*"SAFETY THROUGH EDUCATION"*

A MONTHLY NEWSLETTER OF THE COLUMBIA-WILLAMETTE CHAPTER OF  
THE AMERICAN SOCIETY OF SAFETY ENGINEERS

March 2004

[www.assecwc.org](http://www.assecwc.org)

Vol. 24 No. 7

## **2003-2004 Elected Officers**

### President

David R. Parsons  
503/789-4736

### President Elect

Kim Gamble  
503/283-1884

### Vice-President

Wesley Lashbrook  
360/576-1975

### Secretary

Jamal Abusneineh  
503/823-5316

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Jill Jones  
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### House Delegates:

John Remmers  
503/342-1511  
Tony Howard  
503/799-3916

### Delegates At Large:

Michelle Potter  
503/219-2937  
Bruce Conrad  
503/235-6067

### Santiam Section

Alan Samarin  
503/315-3566

### Mt. St. Helens

Chris Carlson  
360/397-2446

***Volunteers are the Key to our  
Success***

## **General Membership Meeting**

### **Topic: New Developments @ MHCC**

### **Speaker: Javid Mohtasham, Ph.D., Coord./Advisor EHS Program Mt Hood Community College**

The Mt Hood Community College EHS program and its status with respect to the budget short fall will be highlighted. Also discussed will be MHCC's relationship with ASSE and the different ways that it can expand in the near future. The last topic will be the role of MHCC's current students, ASSE student section, and graduates of the EHS program.

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**March 5th** - Columbia Willamette Brown Bag Lunch  
Great Western Malting  
1701 Industrial Way, Vancouver, WA  
11:30am - 1pm

**March 8th** - Columbia Willamette Membership Meeting  
Sweetbriar Inn, Tualatin 11:30 AM - 1:00 PM

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### **Brown Bag Luncheon Friday, March 5th**

See flyer page 5



Occupational Health Nurses at the Joint Meeting with the Columbia Willamette Chapter

# **Court Case May Impact How Business is Conducted in Oregon**

## **Walsh v. Mutual of Enumclaw**

**By Dan Sabatino**

The September 10<sup>th</sup> decision of the Oregon Court of Appeals in the Walsh Construction Company (Walsh) v. Mutual of Enumclaw case has upset the balance between owners, generals, and subcontractors with respect to the validity of additional insured policies.

Walsh v. MUTUAL OF ENUMCLAW is a case arising out of MUTUAL OF ENUMCLAW 's refusal to defend Walsh in a third party negligence suit. Walsh subcontracted with Ron Rust Drywall (Rust) on a remodeling job, when one of Rust's employees was injured on the job. The employee filed a claim against Walsh, and Walsh in accordance with its subcontract with Rust, tendered the cost of the defense to Rust's insurance company Mutual of Enumclaw (MUTUAL OF ENUMCLAW ). MUTUAL OF ENUMCLAW refused to defend Walsh citing the insurance provisions of the subcontract were in violation of ORS 30.140, which prevents a general contractor from requiring a subcontractor to defend against the general contractor's negligence. However, ORS 30.140 does allow a general contractor to require the subcontractor to indemnify the general contractor against negligence caused by the subcontractor.

Walsh settled the claim with Rust's employee, and no formal allegations were filed, leaving the court without any record or determination of fault by either Walsh or Rust. After the settlement, Walsh filed suit against MUTUAL OF ENUMCLAW for breach of their insurance agreement. The trial court agreed with MUTUAL OF ENUMCLAW 's assertion that the insurance portion of the subcontract was in violation of ORS 30.140, and decided on summary judgment to reject Walsh's case. At the Oregon Court of Appeals, MUTUAL OF ENUMCLAW continued to argue that the contract violated the provisions of ORS 30.140 and the Court ignored the second half of the statute, which allows a general contractor to require the subcontractor to provide indemnity against the general for negligence on the part of the subcontractor.

It is this author's belief that the Court made an error in ignoring the second half of the statute. Because the claim against Walsh made by Rust's employee never resulted in a trial, no one knows to what extent Rust may have been liable for the employee's injury and to what extent Walsh may have been liable for the employee's injury. It is often the case that multiple parties bear a portion of the responsibility for an injury. MUTUAL OF ENUMCLAW could not have known at the time that it denied Walsh's request as an additional insured whether or not Walsh bore the sole responsibility for the employee's injury. The Court lacked information as to the extent of Walsh's responsibility, because it was never determined. If Rust were 50% responsible for the employee's injury, Rust would be liable for a portion of the defense costs. Since MUTUAL OF ENUMCLAW refused to defend Walsh, the amount of responsibility held by each party is not known. In short, the Court did not have enough information, and in its ruling took a very narrow set of facts and has applied them very broadly to all additional insured endorsements, upsetting the careful balance struck by ORS 30.140.

One of the major concerns for contractors is the broad application of the decision. Because of the way the Court of Appeals wrote its decision, nearly all additional insured policies may be at risk. With the onset of increasing litigation for construction defects, there is great concern that unless the Supreme Court takes review of the case, the 10-year backlog of closed construction contracts that may find themselves the subject of a construction defect case will have additional insured policies that will be ignored by insurance companies. The impact is widespread across the whole industry.

Currently, there are groups filing briefs with the Supreme Court asking for the court to review this case in the hopes that the court will restore the balance struck by ORS 30.140. If the Court does not take review of the case, the decision will become law, fanning the flames of the fire that is the liability insurance crisis in Oregon.

### **Construction Safety Summit News by Michelle Potter**

David Zenthoefer from Hilti, Inc. will be presenting some innovative products for the construction industry at our March meeting. The tools he will bring will cover many different trades and applications ranging from small Hammer Drills to large Combi Hammers and breakers. David will primarily be discussing how these dust and vibrating limiting tools can increase productivity and worker comfort.

## **OR-OSHA's 502 COMMITTEE by Michelle Potter**

A new committee has been established by OSHA to look at certain construction processes to identify which fall protection systems are compatible with the process or type of work being performed. The committee will also examine those construction processes where it may not be feasible to implement one of the fall protection systems listed in 1926.502, and identify any alternative work procedures, methods of construction or fall protection measures.

The 502 committee is comprised of OR-OSHA and industry representatives who will provide information for a process-oriented fall protection guide that will be published in sections for each construction process as they are completed. The first process we are looking at is for landing and setting trusses.

The first meeting of the 502 committee was held last week. Members include Rocky Shampang, Bob Bryant and Ellis Brash from OR-OSHA, Bob Harris from Marion-Polk Building Industry Association, Paul Allen from Breeden Homes and Michelle Potter from Walsh Construction Co. The committee would be interested in hearing from companies who can offer their proven safety means or methods for working with trusses. The next meeting is scheduled for March 31<sup>st</sup>.

## **Job Placement News by Brian Clarke**

In the past few months we have been able to place a number of ASSE members at various safety/health position throughout OR and SW Washington. All these placements have been through the Chapter's web site. Currently there are a few positions posted for our area on the web site - please check it out. Additionally there are two Regional positions open that are not posted (as they are out of the area). Mortenson Construction is currently looking for a Regional Safety Manager for Seattle and Weitz Construction is looking for a Regional Safety Manager in Denver. I know both company's commitment to safety and speak highly of each. Please contact me if you have an interest in either of these positions. I post all local openings on the chapters' web site as I get them - please review the site often. Another very good resource for safety positions is the Safteng.com web site [http://www.safteng.net/ehs\\_job\\_postings.ht](http://www.safteng.net/ehs_job_postings.ht). As of 2/2/04 there were 19 job postings; all but one current, within the last 30 days. Even though most of these openings are Midwest and east coast, it is an active, well-managed web site with a current listing of safety positions.

## **GOSH PROGRAM COMMITTEE by Kim Gamble**

The GOSH Program Committee met February 13 and successfully selected the keynote speaker. Jack McGowan, Executive Director of SOLV has been selected as the keynote speaker for the Oregon Governor's Occupational Safety and Health Conference, 2005. Many of you probably remember Jack McGowan from his days on Channel 8 as a co-host of a local television show. The organization SOLV - Stop Oregon Litter and Vandalism - is best known for its clean-up the beaches campaign. The committee is well on its way to developing a great program for 2005, however if you have a great topic or speaker it is not too late to get in your idea. Send your topic to [king@andersen-const.com](mailto:king@andersen-const.com)

## **Mt. St. Helen's Section**

The Section is working on a Professional Development Conference in May. The topic will be Fleet Safety. Specific information as to date, time and location will be announced later. The section is also preparing a High School Workshop Safety Program. Tony Howard is chairing the committee assisted by Dick Fabbro. The section is looking for people to select topics and work on the Accident Prevention Fundamentals Panel for the Washington Governors Conference this fall. Contact Chris Carlson for more information.

## **Candidates Announced by Dan Sabatino, 2004 Nominations Committee Chair**

**President** - Kim Gamble (Automatic succession) **President Elect** - Frank Upham

**Vice President** - Tony Howard **Secretary** - Jamal Abusneineh

**Treasurer Elect** - Lee Briney-Ekman **House of Delegates** - Bill Wood and Gene Patrick

**Delegate at Large** - Stan Strickland, Melissa Diede and Ashley Cooper

## Key Dates to Remember March

2	Tue	Santiam membership meeting - 7:10am Chalet Restaurant
3	Wed	Mt. St. Helen E-Board - 12:00pm Oak Tree Restaurant
8	Mon	CWC Chapter Meeting Sweetbriar Inn 11:30am -1:00pm
18	Thur	Santiam E-Board Meeting - 4:00pm Marion Polk Building Industry Bldg
18	Thur	Mt St Helens Memberhsip Mtg - 7:30 Monticello Hotel, Longview
23	Thur	CWC Executive Committee Mtg 7:30 am Elmers

## April

6	Tue	Santiam membership meeting - 7:10am Chalet Restaurant
7	Wed	Mt. St Helen's E Board 12:00 Oak Tree Restuarant
12	Mon	Membership Meeting Columbia Willamette Chapter - Sweetbriar 11:30
15	Thur	Mt St Helens membership Mtg - 7:30 Charlies
15	Thur	Santiam E Board Meeting - 4:00 Marion Polk Building Industry Bldg
27	Tue	CWC Executive Committee Mtg 7:30 am Elmers

Be sure to check out the webpage [www.assecwc.org](http://www.assecwc.org) for Chapter and Section bylaws, minutes, announcements, and job listings, etc.

### Welcome New Members

James Gama,  
Brandi Hodgson  
Charles Sparks

### A Word from Our President...

The sun is out and spring is right around the corner. As safety professionals, we will be preparing for a busy season. Many exciting things have been happening in our Chapter.

The February membership meeting was our annual meeting with the Occupational Health Nurses. Heather Hall, from Intel, spoke on return-to-work programs. It's a great pleasure to partner with the occupational health nurses organization to focus on our common goal, the prevention of injuries.



We also honored all of our Past Presidents in February. The twelve Past Presidents that attended shared their best experience while serving as President. We also had a moment of silence remembering past presidents who are no longer with us. We also took a moment to remember Judy Reschke. Judy did so much for our Chapter and we are slowly working to find members to complete all of the tasks that Judy did.

The GOSH Executive Committee held a contest for the logo and theme of the conference. It's my pleasure to announce that we had two winners, Gene Patrick and Mary Mullen. Both had great ideas and we combined their ideas to develop the 2005 GOSH Conference theme and logo. The theme of the conference is Lewis and Clark Expedition. The title of the conference is: "Safety and Health Expedition: Advancing Knowledge and Practices for Industry." Congratulations to both winners.

I hope everyone has a wonderful month. Please plan to attend one of the chapter functions this spring. I hope to see you there!

Sincerely

President

### Safety Emphasis

Columbia-Willamette Chapter ASSE  
P.O. Box 6556  
Portland, Oregon 97228

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# WELCOME TO THE MARCH BROWN-BAG LUNCH SERIES

Our Next Brown-Bag Lunch Meeting will be held:

11:30 a.m. – 1:00 p.m.

March 5th, 2004

at

Great Western Malting.

1701 Industrial Way, Vancouver, WA

Contact: Mr. William Kirkham 360-699-6754

How the ingredients of beer are made is the focus of this tour of Great Western Malting. We will be the guests of Mr. William Kirkham. Please meet at the lobby of Great Western Malting at 11:30 a.m. and wait for your tour guide. It is very important that you bring **safety glasses** and a **hard hat**. Also wear **safety shoes** or at least DO NOT wear any open toed shoes.

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**WHAT'S FOR LUNCH?  
WHO'S ATTENDING?**

Please complete the following order Form and return it to the fax number below.  
(Lunch will be provided, however, you are welcome to bring your own lunch)

<u>NAME</u> _____	<u>COMPANY</u> _____	<u>PHONE #</u> _____
1. -----		

Sandwich Order:	MEAT ___ VEGIE ___ MY OWN ___	SODA	BRING
-----------------	-------------------------------	------	-------

EMAIL OR PHONE TO: Mary DeVany  
mdevany@earthlink.net  
Phone: 360/576-1975

Please make checks payable to ASSE.

Clip/Mail, FAX, or Phone your order in **BY 9:00 a.m.** the Wednesday BEFORE the event

Please do not forget to send or bring your total payment with you.  
**Thanks for supporting ASSE Brown-Bag Lunch Series Meetings!**