

MBCEA News

Vol 8 September 2013



Member Spot-Light Dutton & Garfield

Dutton & Garfield, Inc. is a full service construction company located in Hampstead, New Hampshire. They have served the New England community

since 1970. They provide full Design/Build, Supply/Erect as well as Re-Roofing services to their clients. Many of their current customers are actually former customers that come back to Dutton & Garfield because they were so pleased with the work performed. Dutton & Garfield has a strong reputation to consistently delivery projects on time and on budget.

Dutton & Garfield has recently completed the supply and erection of a new iron foundry for Watts Water Industries as well as the new prep/wash building for Ritchie Brothers Auctioneers, both are companies that operate worldwide. For more about Dutton & Garfield visit them on the web at www.duttongarfield.com

We recently asked Steve Webster, President of Dutton & Garfield a few questions:

Who has been the biggest influence in your career? I would have to say my father, as I grew up in the construction industry working for him at his company and learned many lessons about working with clients, getting through tough times, etc.

How long have you been involved in the metal building industry? I have been in the metal building industry for well over

METALCON INTERNATIONAL

Going to MetalCon? The MBCEA has a limited number of FREE exhibit hall admission passes. Contact Sasha (hit reply to this email) if you are interested.

You must be a MBCEA member in good standing to take advantage of this \$60 value.

If you have ever considered joining the MBCEA, now is the time to do it! We are offering a one time 50% discount to new members for 2014! [Join Today!](#)

Did you know that the MBCEA

- Offers inexpensive and sometimes free training seminars on a regular basis?
- Believes in the safety and education of all our members?
- Championed the MBI in having our trade recognized by the Federal Government?
- Helps you upgrade and certify your work force?
- Keeps you up to date with the ever changing developments in the metal building industry?
- Offers a mentoring program?
- Maintains an on-line membership directory?
- Has available Employee Safety Handbooks and Tool Box Talks Sheets?

45 years first, working for my father's business and then as the President of Dutton & Garfield, Inc. since 1988.

What is your favorite part of the job? Working directly with my repeat clients that we have established a rapport with. It's rewarding to take a project from its infancy in the planning stages to its completion.

What do you find the most challenging about your work? Trying to provide a competitive product in today's economy where suddenly everyone who's worked construction, thinks that they can install metal buildings with no experience. We try to be professional in every way.

What is your advice for someone who is young and emerging into the field? Get as much education and hands on training as you can to develop your skills at the same time. Join the Metal Building Contractors and Erectors Association and meet peers in the Industry that will pass along knowledge that you will not find in a textbook. Check out The Metal Building Institute to find the on-line training and certification program that is available. Also, encourage your employer to start an apprenticeship program which is another program available at the Metal Building Institute.

What is the most rewarding part of your work? To work with talented people in the industry that we can count on and to train the younger associates and let them run with it.

What achievements are you most proud of? All of the great quality building projects we have completed. Just ask my kids, I've pointed every one of them out as we travel down the road. (they say, ya we know...)

Share your favorite networking tip. Call your past customers, ask how they are and if there is anything you can help with. They may not have anything going but will tell you about other things they know about.

- Will help you bring the passion and excitement back into your business?

[Download the application and join today.](#)

Want to get involved? Click your region below and send an email with your name and contact information:

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**Save the date for Boston
45th Annual MBCEA Conference
May 22-24, 2014**



Midwest Chapter Kick-Off

Join us at the Best Western Premier K, which is adjacent to the Kansas Speedway, on October 4th for a Midwest Chapter Kick-off meeting. This free event, open to members and curious non-members is a must attend event for all contractors and erectors in the Midwest area. Successful and active Chapters are the best forum for subsidized quality training and certification programs. They are the ideal place to keep current on industry news, regulations and issues. Stay on top of your business and competition with ample networking opportunities.



Email Midwest@mbcea.org today for additional details.

Something All Contractors Should Know:

**You May Have A Claim Against The
Design Professional**

A recent decision by a federal court in New Jersey has brought further attention to a



METAL BUILDINGS INSTITUTE™

The MBI website has been updated. Check it out at www.metal-buildings-institute.org !

WELCOME NEW MEMBERS!

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growing trend in construction law. Courts across the country are permitting contractors and subcontractors to hold design professionals directly accountable for the damages they cause.

In SRC Construction Corp. of Monroe v. Atlantic City Housing Authority, the New Jersey District Court held that the economic loss rule does not apply to bar a contractor's negligence claim against the project design professional if there is no contract between the contractor and the design professional. Based on this conclusion, any participant on a construction project in New Jersey may have a remedy in tort.

By its classic definition, the economic loss rule operates to limit a Plaintiff to a recovery of the economic damages that flow from a breach of contractual expectations. Its effect is to prevent contract based actions from being converted into tort claims with more subjective and, often times, higher damages calculations. While there are different permutations of this rule, the concept is generally the same from state to state.

In SRC, the Atlantic City Housing Authority entered into a contract with the contractor to build a senior living center. The Housing Authority also entered into a separate contract with a design professional to design and administer the project. The contractor alleged that the architect increased the contractor's performance costs by delaying the acquisition of building permits, submitting drawings that did not meet the building codes, failing to timely respond to the contractor's request for information, and verbally ordering changes that were not honored by the Housing Authority. Because the contractor did not have a contract with the architect, it made allegations of negligence to claim these losses. The architect defended the case by arguing that the economic loss rule precluded the contractor's claims and, in the alternative, that the contractor's claims were barred because it had the same causes of action in contract against the owner.

After undertaking a review of New Jersey state law on the economic loss rule, the federal court affirmed the long held belief that the rule was designed to maintain the conceptual distinction between contract and tort claims. The only exception - which did not apply here - is if the Plaintiff can establish an independent duty of care separate from the contract between the parties. Plaintiffs

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should not otherwise be permitted to enhance the benefits of the bargain they struck in the contract by bringing an action in tort.

The SRC court relied on two state court cases to illustrate its point. In *New Mea Construction v. Harper*, a claim against a builder that installed lesser grade materials was deemed to effectively be a breach of contract action. Attempts by the Plaintiff to cast it as negligence were improper under the economic loss rule. Conversely, homeowners were permitted to pursue the subcontractor in negligence for faulty workmanship in *Juliano v. Gaston* since they had no contract with that subcontractor.

The federal court held that the case before it was more like the *Juliano* case and determined that the contractor's claim was not barred by the economic loss rule. Since there was no contract, the tort claim could not be a "contract claim in tort clothing". The existence of a contract between the owner and the contractor did not protect the architect either.

Decisions like this one carry some level of common sense. The lack of a contract between a design professional and the contractor does not mean that the design professional has no impact on the contractor's performance. While design professionals have long tried to insulate themselves from these types of claims, courts are increasingly holding design professionals accountable for mistakes they make in design or contract administration. If you are a contractor, don't assume there is no cause of action against a design professional that has caused your company damages. If you are a design professional, be aware of the impact your decision and actions have on all parties on the project so as to avoid claims by parties with whom you don't have a written agreement.

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Photo by Joe Allen of Thomas Phoenix International, Inc.





Got something on your mind, we want to hear from you.

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Quote of the Day

*"You can make more friends in two months by becoming interested in other people than you can in two years by trying to get other people interested in you."
- Dale Carnegie*



About the MBCEA

The Metal Building Contractors & Erectors Association (MBCEA) is a trade association organized in 1968 to provide programs and services to the contractor and erector segments of the metal building industry. The association proudly boasts membership from virtually every aspect of the industry. The MBCEA is a membership-driven association, promoting the professionalism of its contractor and erector members. The association relies on the input and feedback of its members to create and deliver programs of real value.

Interested in being the next member spot-light?
Have content to share?
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Contact Jackie Meiluta at jmeiluta@comcast.net

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