

June 2003

## June meeting to be hosted by Pella at the Design Center Pella representatives will show participants how to properly install their windows

The next Ohio Valley NARI dinner meeting will be a hosted event by Pella Windows of Cincinnati on Thursday, June 12, 2003 at the Design Center on Kemper Road. Pella will demonstrate how to install and flash their windows. The evening promises to be not only full of networking opportunities, the ability to see what products and services Pella has to offer, but a tremendous opportunity to learn more about window installation.

### Marsh Building Products hosts chapter

by Greg Fischer, CR

The entire Ohio Valley NARI gang thanks Marsh Building Products, Neil Winter and the Marsh team for extending their hospitality and welcoming us to their facility on May 8th for our regular monthly meeting.

Thursday evening provided an excellent opportunity to get away from the

normal rush of remodeling and be with industry friends getting brought up to speed with the latest advancements in vinyl siding installation.

Some of the Contractor of the Year (CotY) winning crew from Murphy Home Improvement demonstrated on an actual full size framing mockup what some of the new designs in vinyl look like. We also saw Derek and Larry install straight cut and novelty cut cedar replicated, vinyl siding. They were in both single and double row designs which speed installation. Tom Murphy gave a comprehensive explanation of the various manufacturing details and specifications that make up the product line as well as a short history of vinyl siding.

Ed Kramer, President of Ohio Valley NARI, presented CotY awards to Neal's Remodeling and Murphy Home Improvement. A Regional Honorable Mention Award went to Neal's

Remodeling for the \$100,000 to \$250,000 Residential Addition category. The Entire House Region CotY and the Entire House National CotY was also presented to Neal's Remodeling. A Regional CotY for Residential Exterior was presented to Murphy Home Improvement. Congratulations to our 2003 CotY

winners!

Of course the dinner provided to the OVNARI members and guests at this meeting was very tasty, Marsh always provides us with fine cuisine and this year's meal was from Montgomery Inn. Imported German beers also



### Call to RSVP

What: Membership Meeting  
When: Thursday, June 12, 2003  
Where: The Design Center  
3200 East Kemper Road  
Time: 6:30 p.m.  
RSVP: Ohio Valley NARI at (800) 498-NARI  
Cost: Hosted by Pella Windows

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## Contractors coverage as an additional insured not limited to vicarious liability

by Donald I. Renau, JD, CPCU, CIC, AAI

An employee of a masonry subcontractor was injured while working on a construction project. He fell from a scaffold when he was hit by a mortar pan attached to a crane operated by an employee of the general contractor.

The general contractor's contract with the masonry subcontractor required it to make the general contractor an additional insured under the subcontractor's primary and umbrella liability insurance. Coverage was limited to liability arising out of the work the subcontractor performed for the general contractor.

The injured employee sued the general contractor and its crane operator for damages. The general contractor filed a third-party complaint against the subcontractor and its insurers, alleging coverage existed for his claim. (This case is from Ohio, which has a monopolistic state compensation law.)

The subcontract between the contractor and subcontractor was subject to Ohio Revised Code §2305.31. According to that statute and established case law, an additional insured endorsement can provide liability coverage to a contractor only for its vicarious liability for

actions of the subcontractor. Thus, it was against Ohio public policy for the subcontractor's policies to defend or indemnify the contractor and its crane-operator employee.

The general contractor and employee answered the injured employee's complaint against them with an allegation of contributory negligence on the part of the injured employee. The trial court noted, however, that their complaint did not imply any negligence on the part of the subcontractor, such that might trigger coverage under the subcontractor's policies. Nor, said the trial court, did O.R.C. §2305.31 differentiate between sole or concurrent negligence. Therefore, the court said, neither the subcontractor's liability nor umbrella insurer was required to indemnify or defend the general contractor.

The general contractor settled the injured employee's complaint rather than proceed to trial. The general contractor also settled its third-party complaint against the subcontractor. It continued the third-party complaint against the subcontractor's insurers, however, seeking a declaratory action in a federal District Court, which ultimately dismissed the complaint for lack of jurisdiction.

The complaint was then taken to a state appellate court. Citing information made available at the federal District Court, the state appellate court threw some light on what had happened at the construction site. As it turned out, the masonry subcontractor had no crane or operator on the job site but still required the use of a crane for, among other things, lifting mortar in pans to its employees on its scaffolding. To perform that hoisting, the



### Coming Events

**June 12, 2003** - 6:30 p.m.

Location: Pella - The Design Center

**July 10, 2003**

Topic: Paul Meyers, Assistant Building Official Cincinnati, President of the International Code Council

Location: TBD

**August 14, 2003**

Golf Outing at Twin Oaks

subcontractor used the general contractor's crane and employee. The subcontractor's employees provided on-the-scene instructions to the general contractor's employee operating the crane. They told him when to lift the mortar pan and where it should be placed.

In performing this work, the crane operator did not become the subcontractor's employee; rather, he remained subject to the overall direction of the general contractor's project superintendent and, ultimately, of the general contractor's project manager. Nevertheless, at the time he was performing work for the subcontractor, the District Court had noted, the crane operator was under the immediate direction of the subcontractor's employees.

The District court found that the injuries of the subcontractor's employee arose out of the subcontractor's operations performed for the general contractor and also "out of its use of certain facilities it constructed to perform those operations, to wit, the scaffolding." It also noted that no provision in the subcontractor's CGL or umbrella policy limited the general contractor's coverage as an additional insured

to vicarious liability for the subcontractor's acts.

The state appellate court, now hearing the case, noted that the carriers' argument against coverage for the general contractor was based on the Ohio Revised Code §2305.31. However, the court cited an exception to §2305.31, recognized in *Brzecek vs. Standard Oil Co.*, 4 Ohio App.3d 209, 447 N.E.2d 760 (Lucas County, 1982). In that decision, the court found that a "distinction must be drawn between contractual provisions which seek to exempt a party from liability to persons who have been injured or whose property has been damaged, and contractual provisions, such as those involved in this suit, which in effect simply require one of the parties to the contract to provide insurance for all the parties. "Such a provision was not against public policy, the appellate court said. The appellate court held that both the general contractor and the crane operator employee were entitled to defense and indemnity under the sub-contractor's primary and umbrella liability insurance policies and sent the case back to the state trial court.

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## May's meeting *(continued from page 1)*

added a special touch letting the NARI members and prospects feel extra welcome.

How many times do we run into a supplier's place, get our order and rush on to the job with barely a thought as to what new products may be setting in the dealer's shop? Being at an on-site meeting at Marsh also gave an excellent opportunity to spy the latest products on display in their showroom. I noticed an impressive roll-up screen door for those hard to fit areas or places you don't want to cover up the beauty of the door but still require a screen. Other contractors were checking out windows, doors, siding and other products.

The chapter is on a roll with site provided education. Both the June and July meetings will be excellent educational opportunities. With all the importance of building dry buildings, Pella is going to show us how to

properly install and flash their windows at The Design Center on June 12. Put down your tools a little early and come out and enjoy some fun with Fred Cernetisch and the Pella crew.

Also mark your July calendar for our Sharon Woods Picnic/Tool Swap with guest speaker, Mr. Paul Meyers. Paul is the first president to serve after the unification of BOCA, ICBO and SBCCI. He also is the Assistant Director of the Cincinnati Department of Buildings and Inspections.

Paul will be speaking on the new unification of the building code and the development of one set of building codes for the entire country. Come and hear how this will affect our permit requirements. What a special resource we have locally. Paul will be available to answer questions about this national change at our meeting on July 10.



## Ohio Valley NARI

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### The mission of Ohio Valley NARI is:

- ✓ To establish and maintain the association's firm commitment to developing and sustaining programs that expand and unite the remodeling industry as well as to ensure the industry's growth and security.
- ✓ To encourage ethical conduct, sound business practices, and professionalism in the remodeling industry.
- ✓ To present NARI as the recognized authority in the remodeling industry.

### These missions are carried out by:

- ✓ Promoting the common business interests of those engaged in the industry.
- ✓ Sponsoring educational programs and activities for members.
- ✓ Enlightening consumers to the needs and advantages of home remodeling and maintenance, thereby improving the nation's housing inventory.
- ✓ Recommending legislative and regulatory action that safeguards and preserves the remodeling industry, and stimulates the marketplace.

### Goals of chapter to accomplish mission:

- ✓ To provide education to enhance professional and personal competencies.
- ✓ To create and encourage networking.
- ✓ To develop and promote the profession.
- ✓ To serve as a resource center.
- ✓ To provide quality publications to members.
- ✓ To improve membership and membership participation.
- ✓ To improve consumer awareness.
- ✓ To remain proactive on current and pending legislation.

## Managing the independent

You may have crew or staff members who can't take a step without talking to you, the boss, about it. And then you may have staff members who prefer to remain as independent as possible on the job—even if they're working right under your nose and you have a tendency to be a control freak!

These independent, Lone Strangers/Rangers, can be a real challenge to the hands-

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on entrepreneur and corporate executive who needs team work. How do you handle them to continue to be productive and at the same time give them flexibility to work alone and have autonomy?

### 5 steps for dealing with the Lone Wolf:

1. Play to their strengths and focus on that!
2. Continuously connect with them on an adult-to-adult basis (read "No parenting!").
3. Acknowledge WHO they are vs. what they have done.
4. Be a model of lateral relationships.
5. Give them rewards, status and authority.

The independent type is an important player on your team. Don't lose them by putting up walls between the two of you.



## THE NARI RENOVATOR

A Publication of the Ohio Valley Chapter of the National Association of the Remodeling Industry

The Ohio Valley NARI newsletter, *The NARI Renovator*, is produced by Ohio Valley NARI as a service and benefit to its membership. The organization's office is located at 136 South Keowee Street, Dayton, Ohio 45402; (800) 498-NARI or fax (937) 222-5794.

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