

Notebook...

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Drilled Studs Reheat Trade Dispute

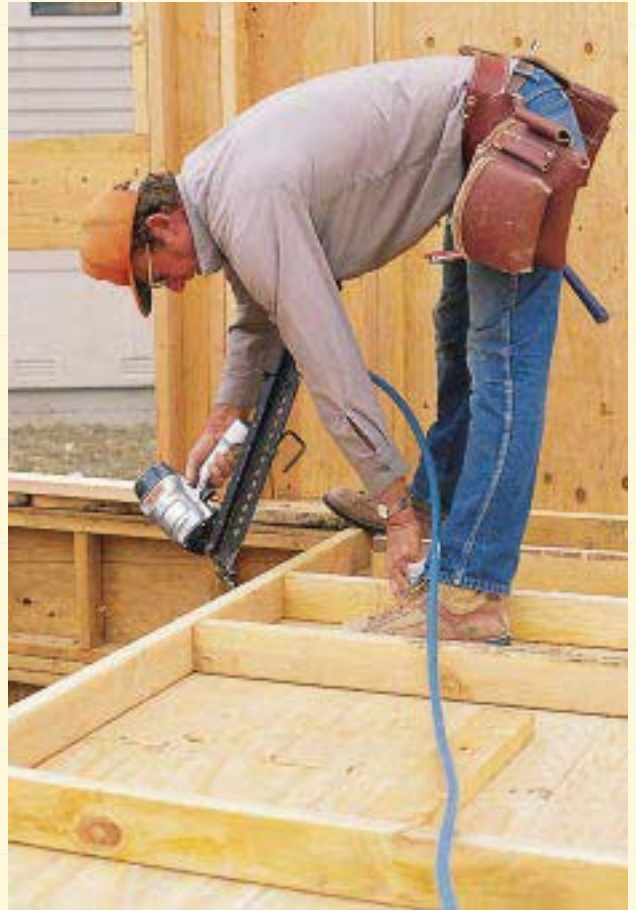
Customs Service moves to plug holes in lumber quota agreement

The U.S. Customs Service proposed in April to reclassify Canadian studs with holes predrilled to accept electrical wire as unfinished lumber, rather than as "joinery and carpentry" products. The decision would make the predrilled studs count toward the duty-free lumber quota allowed under the present U.S.-Canada softwood lumber agreement, and could rekindle a dormant lumber trade dispute between the two countries.

The proposal pleased U.S. lumber companies, who argue that the predrilled studs should count toward the quota. But it infuriated many Canadian lumber representatives, who say the studs are a legitimate value-added product that should be exempt from the unfinished lumber quota. Backing the Canadians was the National Association of Home Builders (NAHB), which says the softwood agreement artificially inflates lumber prices, and thus welcomes any innovation, such as the predrilled studs, that allows more duty-free lumber into the U.S.

"We never liked the agreement in the first place," says Michael Carliner, an NAHB economist tracking the issue. "The trade agreement's limitation on duty-free lumber adds up to \$500 to the price of an average home. If these drilled studs are left exempt to the agreement, they will decrease the effect the quota has on prices — and that'll be good for builders."

This may seem like a lot of hoopla over some half-inch holes, but the predrilled studs have in the last year become a major source of friction between U.S. and Canadian lumber producers — and a test of the 1996 softwood lumber agreement between the two countries. That agreement, which was created in an effort to end years of lumber trade wars between the neighboring countries, eliminated tariffs on Canadian lumber and allowed Canadian producers to annually ship up to 14.7 billion board feet of softwood dimensional lumber to the U.S. duty-free. The next 650 million board feet



beyond that are subject to a \$50-per-thousand-board-foot duty; any imports beyond that pay \$100 per thousand feet. Canada, which supplies roughly a third of all U.S. framing lumber, easily passed the 14.7 billion board foot duty-free quota last year, shipping another 700 million board feet that carried duties.

A preliminary Customs Office ruling in February 1997 held that the predrilled studs, as a more finished product, were exempt from this quota. That exemption took on increased importance as the imported studs grew from a negligible part of the market to a current estimated rate of about 500 million board feet a year. Proponents of the studs say they're a legitimate value-added, engineered product that should be exempt from the agreement, while opponents say the drilled holes are merely a way to create a loophole. In any case, the Canadian lumber producers have seized on the predrilled exemption as a way to send more lumber

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Guidelines in the Pipeline for Radiant Floor Systems

Any time an industry grows 25% to 30% per year for six straight years, as has the radiant floor heating business, you're going to see an up side — opportunity and excitement — and a down side — new problems.

To address the latter, specifically the negative effects that in-floor radiant heat can have on such materials as wood and vinyl, the Radiant Panel Association (RPA) is putting together task forces of professionals in related industries to formulate guidelines for proper installation and material selection.

"We're looking for answers," said Larry Drake, executive director of RPA, who invited truss, wood flooring, carpet, and engineered-wood specialists to give presentations at RPA's annual conference in April. Afterward, Drake said, participants confronted flooring specialists "with questions about problems they didn't even know were out there."

While it will take at least a year for RPA-generated guidelines to be issued, builders can try to avoid problems by following a few guidelines offered by others in the field. According to John Siegenthaler, a frequent *JLC* contributor and the author of *Modern Hydronic Heating* (Delmar Publishers, 1995), "There have been some material problems, such as wood shrinkage and cracking of vinyl flooring, due to what I regard as poor installation methods of the floor heating system, combined with high operating temperatures." And while radiant floor systems generally have good track records, he said, "there are many new installers entering the market, not all of whom are aware of the basic material issues."

Siegenthaler offered the following observations about radiant floor installations and materials:



New recommendations from the Radiant Panel Association should help builders avoid problems with finish materials installed over radiant floor heating.

- Laminated hardwood flooring tends to shrink less than solid sawn hardwood.
- Beware of staple-up systems. Tubing stapled directly to the underside of the subfloor with no aluminum heat dispersion plates can cause flooring failures.
- All floor heating systems should be operated for several days prior to installing the finish floor. This drives out residual moisture from the slab or subfloor so it doesn't get driven up into the finish floor.

A *JLC* feature in September will look further into these issues. In the meantime, a free booklet, "Installing Hardwood Floors Over Radiant Heating," is available from the Hardwood Manufacturers Association by calling 800/373-9663. You can also contact the Radiant Panel Association (P.O. Box 327, Hyrum, UT 84319; 801/245-0128; www.rpa-info.com).



Drilled Studs Dispute

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south duty-free. As one Canadian trade spokesperson told the *Toronto Globe and Mail*, "People looked for a loophole and then they drove a truck through it.... It was a blind spot in the agreement."

What does all this mean for contractors? If the Treasury Department reverses the Customs Office proposal and maintains the exemption for predrilled studs, Canadian producers will almost surely start shipping even more predrilled studs to the U.S. This will increase


supply, which will tend to lower prices for studs.

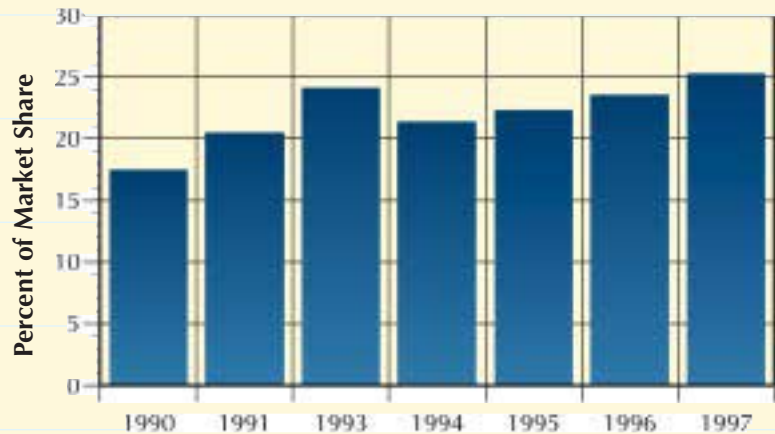
However, if the Treasury Department agrees to reclassify the predrilled studs as plain lumber, contractors may notice a shortage of predrilled studs, since Canadian producers will likely make and ship fewer of them, but prices won't likely rise in the short term — they'll simply fail to fall as they might if predrilled stud production went up.

NAHB's Carliner (along with most experts) feels that the exemption will eventually be upheld. "We've asked a number of law firms to assess this," he says, "and everyone seems to think we'll likely win. But it may take a while."



High-Efficiency Furnaces Gain Market Share

High-efficiency gas furnaces (those rated at 88% Annual Field Utilization Efficiency or better), broke a market milestone last year by exceeding 25% of total shipments for the first time ever — up from a 1990 share of 17% (see chart). As reported in *Energy Design Update*, use of high-efficiency units increased by 4% in 1997, even though total gas furnace sales dropped by 3%. 




Safety Agency Held Liable in Worker's Death

When a fatal tragedy strikes a construction site, you can expect the lawsuits to fly. And that's exactly what happened in Arizona after Rodolfo de la Cruz was killed on a construction site in 1993 by a collapsing wall of dirt.

Lawsuits against the contractor and the property owner were settled out of court, but de la Cruz's widow also sued the Arizona Division of Occupational Safety and Health

(ADOSH), whose inspector had conducted a "comprehensive inspection" of the site a month before the collapse. At trial, the jury found the state liable for 15% of the \$1.5 million in assessed damages. An appellate court upheld that finding, even though state attorneys claimed ADOSH had immunity from lawsuits, according to reports in the *Arizona Business Gazette*. Appellate Judge Jan Smith Florez said the inspector had failed, among other things, to examine the ADOSH on-site file, "which would have directed his attention to concerns about the excavations previous inspectors had addressed."

Connie Wilhelm, President and Executive Director of the Arizona HBA, believes this ruling will result in "more enforcement and more inspection" of job sites by ADOSH — and presumably by other state OSHA agencies as well. 

Offcuts ...

Termites are attracted to houses partly because they are drawn to the odor of carbon dioxide, according to recent research from Colorado State University, as reported in the *Rocky Mountain News*. Rotting wood, other building materials, and human beings' respiration all produce carbon dioxide, drawing the termites houseward. The researchers hope the findings might lead to carbon-dioxide baited termite traps or other control measures.

Texas mortgage lenders settled a lawsuit over allegedly discriminatory lending practices by agreeing to make nearly \$1.4 billion available to low-income and minority home buyers over the next three years, according to the *New York Times*. The March settlement was the largest ever in a lending discrimination case, and comes as lending regulators are cracking down on discriminatory lending practices.

Tool theft is becoming a racket, according to a recent *Chicago Tribune* story, which reported that some organized crime rings have gone into the tool theft business. The story reported the arrest of one thief whose garage held some 2,000 tools valued at an estimated \$350,000.

Expert Witnesses: Putting Your Knowledge to Work

by Kathy Price-Robinson

If you're like most contractors, you probably have an opinion about nearly every facet of your field. But outside of the job site, you never get to put your expertise to work.

It doesn't have to be that way. Some contractors are applying their construction knowledge by serving as expert witnesses in legal proceedings. The work can be exacting, say some who have tried it, but it can pay quite well. And for the right personality, working as an expert witness can be gratifying in other ways as well.

"If you have an opinion, someone will pay you for it," says Bill Dexter, a licensed general contractor in San Luis Obispo, Calif., who also works as a construction-defects consultant, and who earns up to \$250 an hour as an expert witness, usually defending contractors.

Expert witnesses (also known as forensic consultants, litigation consultants, or expert consultants) serve as the walking, talking encyclopedias of their specialties — in this case, construction — in legal disputes. They are asked why this window failed or why that roof leaked and who's at fault. It's a high-profile, critical role that can be both thrilling and draining.

"It's a game," says Dexter. "But it's a treacherous game. The attorneys for the other side are trying to dis-

credit all your opinions, and it can be extremely embarrassing if you're unprepared. It's not for everyone."

Indeed, one respected contractor (who preferred to go unnamed) said he was flattered the first time he was asked to be an expert witness, but soon tired of the hostile atmosphere. "A lot of these disputes get wildly blown out of proportion by the attorneys," the contractor said. "It's just the wrong way to do things. There should be more mediation with a panel of construction experts instead of lawyers."

Still, the legal world being what it is, there remains a need for expert witnesses, both in lawsuits and (sometimes) in mediation or arbitration programs that settle cases out of court. But before you start calling attorneys in your area and telling them that you are offering your services as an expert witness, put together a flattering resume. Highlight your credentials by listing every article you've written, position you've held, and seminar you've taken or given. Enhance your qualifications by being involved with trade organizations and volunteering your services.

More important, make sure you're the right kind of person — extroverted, articulate, honest, and unflappable. Know the terminology of your field and learn that of the courtroom. Understand the legal ground rules, and who you can and can't talk to (your client's lawyer can help you with much of that).

Once you've got the job, read everything you can that explains the subtleties of the expert witness process. A good place to start is the *California Expert Witness Guide* by Raoul D. Kennedy & James C. Martin, (published by the University of California's Continuing Education of the Bar, 2300 Shattuck Ave., Berkeley, CA 94704; 510/642-3974)



Offcuts ...

The Florida legislature recently passed a bill giving the state a uniform building code for the first time. While establishing a uniform statewide building code, the new law would allow counties or communities to enact tougher standards, as many in South Florida did following Hurricane Andrew in 1993.

A new foundation system promises to give the benefits of foam insulation without problems associated with insect and mechanical damage. The new Verticast system sandwiches the insulation within the concrete panels. For information, contact Structura Technologies (6300 Equitable Road, Kansas City, MO 64120; 800/858-1390).

Straw-based particleboard is beginning to take hold in North America, according to a recent issue of *Engineered Lumber Trends*, an industry newsletter. Strawboard panels, now made by at least nine companies in North America, are being used for both structural and nonstructural purposes. For more information, contact the Irland Group (RR 2, Box 9200, Winthrop, ME 04364; 207/395-2185; Irland@aol.com).

Building for Ghosts and Posterity

by Lew Sichelman

You usually hear about it when someone builds a house really fast. But consider the opposite — the world's longest continuous house construction. That title belongs to the Winchester House in San Jose, Calif., which took 38 years to build.

According to the *Guinness Book of Records*, the original 8-room house was built on the 161-acre estate of arms manufacturer Oliver Fisher Winchester, inventor of the Winchester rifle. When Oliver died in 1886, his widow, Sarah, was told by a psychic that the only way to make up for all those killed by Winchester firearms would be to never stop construction on the estate. So Sarah Winchester set about turning the 8-room house into a mansion. When she was done, the place had 13 bath-

rooms, 40 staircases, 2,000 doorways, 52 skylights, 47 fireplaces, 10,000 windows, 3 elevators, and assorted secret passages and trap doors.

Guinness doesn't say who holds the record for fastest construction. Near as I can tell, the record was set in 1980 in Phoenix, when an 1,800-square foot house was erected in 19 hours, 37 minutes.


A few other records from Guinness:

Longest tenure in a house: 102 years, by Virginia Hopkins Phillips of Onancock, Va., who lived in the same house from her birth in 1891 until a few months before her death in 1993.

Tallest building: the 110-story, 1707-foot Sears Tower.

Tallest structure: a 2,063-foot television tower near Fargo, N.D., built in 30 days by 11 workers.

Tallest house of cards: an 83-deck high, 16-foot wide structure built by Bryan Berg of Spirit Lake, La., in 1995.

Tallest Lego tower: a 72-foot high tower built in 1994 at the Lego factory's Legoland in Luxembourg. 



Tax Talk...

IRS Sharpens Employee vs. Sub Guidelines

by Milton Zall

The IRS has revised its training manual and guidelines for that perennial subject of importance, "Independent Contractor or Employee?" (Rev. 10-96). These revisions, which stem partly from the Small Business Job Protection Act of 1996, establish a set of requirements that employers can meet to reduce their liability in cases where there might be some confusion regarding whether a worker is a subcontractor or an employee. The revised guidelines concern provisions within Section 530 of the IRS Code that give businesses relief from federal employment tax obligations if they meet certain requirements. Contractors that pay close attention to these provisions can reduce or eliminate many of the problems they may be having with the "independent contractor or employee" issue.

When its requirements are met, Section 530 terminates a business's liability for employment tax and for any interest

or penalties attributable to such liability. What are these requirements? A business must meet the tests for both "consistency" and "reasonable basis" in treating any workers as subs rather than employees.

A business meets the "consistency test" by filing all required Form 1099 paperwork (referred to as "reporting consistency"), and by treating all workers in similar positions the same way (called "substantive consistency").

In addition, a business must show it has a "reasonable basis" for categorizing its payees as subcontractors by relying on one of the following:

- A prior favorable audit determination from the IRS.
- A favorable judicial precedent.
- A prevailing industry practice known to be acceptable.
- Some other reasonable basis.

The last criterion must be used with caution, and it's wise to consult with a tax attorney in evaluating the other criteria. However, the revised Section 530 guidelines say that if you meet the consistency and reasonable-basis tests in good faith, your business should be able to claim relief from employment taxes with respect to workers whose status is in question. 