

# NJBMDA

New Jersey Building Materials  
Dealers Association

# BULLETIN

A Quarterly News Digest for the NJ Building Materials Dealers Association

July 2008

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## Upcoming Events...

### July 28

#### Annual golf outing

Battleground Country Club  
Manalapan

For more information  
about the course, log on to  
<http://www.battlegroundcc.com/>

### September 11

#### Annual Management Roundtable

Atlantic City

### November 13

#### Annual Business Meeting

Woodbridge

## Mark Your Calendars for Our September Roundtable

We urge you to attend this year's management roundtable in Atlantic City on September 11, as the focus will be two important industry topics: the economy and green building.

We will welcome back Jeffrey Otteau, who will update us on New Jersey's real estate market, and hear from John Wagner of the *LBM Journal*, one of the most knowledgeable people in the country about the future of green building.

Otteau is widely recognized as the guru of the state's housing market. His analyses of the market are cited in *The Wall Street Journal*, *The New York Times*, *The Star-Ledger* and broadcast news. In last year's talk, Otteau captured the elements of the down market. Attendees used the information to position themselves for 2008. You can expect the same no-nonsense presentation this year.

Green Building is our other important topic. It has become a buzz word, but do people really know what Green Building is? Or what Green Building isn't? One of the countries leading experts on green building is Wagner, who will explain the criteria for green certifi-

cation, is it worth it and how to get green certified.



Wagner writes in a recent column, titled "The End of the Wander Years," that 2008 may be the end of the wander years for the green building movement, as it grows up and its disciples realize that they'll have to enter the mainstream, start playing by some commonly acceptable rules, and begin hanging out with the right crowd.

Wagner writes: "Though there will be a continued renaissance of product development (which has been nothing short of remarkable), national regulatory agencies, code bodies, building standards, and certification systems will bring a more professional tone to green building in 2008 and beyond."

The roundtable is scheduled for September 11th at the Taj Mahal, Atlantic City Resort from 3- 5:45 pm. The attendees will be owners, CEOs and senior management of our member companies. A reception and dinner will follow. On September 12th, a golf outing is scheduled at Twisted Dune Golf Course.

Please plan on attending this important event. ■

# Sales Tax on Fuel Surcharges

By Rick Alampi

Here is the response from our attorney's firm regarding sales tax on fuel surcharges.

*Following is what he e-mailed me:*

"You asked me to look into whether the sale-for-resale exemption is applicable to fuel surcharges that are separately stated on the invoice from the supplier to the retailer and that are included in the price charged by the retailer to the ultimate customer.

Those charges are eligible for the sale-for-resale exemption. Basically, separately-stated delivery charges, which include charges for transportation, are taxable to the extent that they relate to taxable sales and are exempt to the extent that they relate to exempt sales, such as sales subject to the sale-for-resale exemption."

So, if you're passing on the fuel surcharges, issue a resale certificate to your supplier, then collect the sales tax from your customer. ■

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The *Bulletin* is written and designed by Jaffe Communications for the NJBMDA. If you would like to suggest articles for the fall issue, please call 908-789-0700 or email [jonathan@jaffe.com](mailto:jonathan@jaffe.com). For advertising opportunities, please call PMA at 908-359-1184.

## Message from Rick Alampi



Welcome to summer edition of our quarterly news digest, designed to give association members much more news about what is happening in the industry on a statewide and national level, as well how state and local policies directly affect your business.

One of the topics that we have been closely following is the Family Leave Act (page 4), which we are pleased to see is still facing stiff opposition from business groups who recognize that it is a poorly-conceived policy. We are also closely watching issues involving green building, and I am pleased to note that this topic will be a focus of our annual management roundtable in Atlantic City.

There is no doubt the anemic economy has had a drastic affect on our industry, and this association is committed to providing you with the latest information, training and other resources that can help you weather the storm.

I want to stress that this newsletter is written specifically to cater to your interests. To that end, if you have any suggestions about news that should be covered in upcoming editions, please contact our newsletter editor, Jonathan Jaffe at 908-789-0700.

I look forward to seeing you on July 28 for our annual golf outing. This year, we will be at Battleground Country Club in Manalapan. To register, please call the association office at 908-359-1184.

Details of the golf event and other exciting functions will be highlighted in the upcoming issues of our e-newsletter, which you should be receiving every other week by email or fax. If you are not receiving the e-newsletter, please speak with Noel in the association office, who manages the list.



Thank you,

*Rick*

# Crafting Success in a Weak Market

## *Kuiken Bros. expands while rival suppliers are contracting*

By Martin C. Daks

Reprinted from NJBIZ Magazine

**A**t a time when the housing slump is putting a growing number of construction-services companies out of business, a family-owned supplier of building material is expanding.

Last week, 58-year-old Douglas Kuiken, president of Kuiken Brothers Co. Inc., was hard at work bringing Lumber 1, a Roseland lumberyard and hardware supplier that his company bought earlier this month, into the family business.

Kuiken's 275-employee company sells lumber, doors, windows and other products from eight locations in New Jersey and one in Warwick, N.Y. Sales totaled about \$100 million last year but are expected to dip a bit in 2008.

Nonetheless, Kuiken expects deals like the purchase of Lumber 1 to strengthen the company's foundation for the future. "Since 1912, our company has put our money back into the business during the good times, so we can ride out the tough times," says Kuiken, whose grandfather co-founded the business.

"This approach helped us to get through the Great Depression and other pullbacks in the 1980s and 1990s. Also, when we expand, we do so in a controlled manner, staying focused on the northern New Jersey region that has a high percentage of well-off residents that are more likely to keep spending even during a recession."

The housing slump has proved too much for many similar businesses. No fewer than 22 New Jersey construction-services companies have filed for bankruptcy protec-

tion so far this year through early June, compared with eight in the first half of 2007. Of the companies filing this year, 17 entered Chapter 7 liquidation proceedings and five filed for Chapter 11 reorganization.

"It's no surprise that a lot of building suppliers and other related companies are in trouble," says Rick Alampi, executive director of the New Jersey Building Materials Dealers Association in Hillsborough. "We're in a tough housing market that's even tougher because it's not just the subprime mortgage mess. We're also facing high fuel prices, rising unemployment and other issues that are driving a general recession."

Alampi says that many companies in the industry are laying off workers as part of their cost-cutting efforts. But Kuiken is going against the tide. "I'm familiar with Kuiken Brothers, and I'd say they're really smart guys who are running a really nice business," says Alampi.

"Kuiken certainly has the resources to bid for national-builder jobs, but I think they made the right move by staying with local companies and by diversifying their activities."

As a general rule, a family-owned business may have some advantages over other kinds of companies, says Briance Mascarenhas, a professor of management at the Rutgers School of Business-Camden. "With family ownership there is less worry about demands from external shareholders, or, in the case of publicly held companies, expensive and time-consuming SEC requirements like Sarbanes-Oxley. Instead, family managers can focus on running the business."

Companies like Kuiken Bros. that



*Douglas Kuiken stands outside of Kuiken's Midland Park location.*

save their cash in up cycles can pick up bargains in down cycles, according to Mascarenhas. "In a weak economy, some firms may be forced to sell out," he says, "while a well-capitalized business may be able to buy the firm at a discount, and leverage overhead and other costs to reduce expenses. In the long run, this may lead to higher profit margins for the consolidated company."

But family businesses can face unique challenges. "The owners of a family business may wish to pass on the company to future generations, but there's no guarantee that anyone from the family will be available," says Mascarenhas.

"Sometimes the talent is just not there. Or even if it is, no family members may be interested in joining the enterprise. It's always a risk."

Kuiken Bros. has not yet had to face that problem. "We don't force people to join the business or to stay with it if they don't want to," says Kuiken, who started out loading and unloading trucks when he joined the company nearly 40 years ago. ■

# Family Leave Lawsuits Likely

**W**hy pass a law that, as written, is at odds with its intent? The short answer is: This is New Jersey.

The Paid Family Leave bill recently signed into law got passed with a last-minute caveat that weakens its most controversial element — that it applies to workplaces with 50 or fewer employees — by saying owners of those companies do not have to hold jobs for workers who use the leave.

Counterintuitive? You bet.

"I find it interesting and very contradictory that they would ... put such an explicit statement in there that anybody who takes it is subject to replacement as long as it's a small employer, with 50 or less employees," said Chris Mills, a partner in Murray Hill-based labor law firm Fisher & Phillips. "I'd be astonished if employee advocates didn't try to find a way around this. It's almost a lose-lose situation here."

Even if the law says workers at small businesses who take paid leave can't sue their bosses if their job is filled while they're caring for a new child or ill family member, Mills said legal challenges are almost certain. People who already have job protections based on age, gender, race, and/or sexual orientation, likely will have their day in court.

"There are still ways people can sue and can contest being let go," Mills said. "For instance, if someone takes time off to be with a new child and that person is a minority and is let go, and the employer let the last three employees, who happen to be Caucasian, take leave and return, that minority can sue."

Other parts of the new law, though less controversial, may also prove vexing. Opponents said it would make New Jersey a less-friendly state for business. Employer groups that argued against it — even though the leave would be funded through payroll taxes for disability insurance starting Jan. 1 — said they'd have to shell out money to implement and administer the leave. That will be especially troublesome for mom-and-pop operations that don't have human resource departments.

"It's going to be felt by smaller businesses in two contexts," said David I. Rosen, a shareholder at Littler Mendelson in Newark. "One is making sure they have sufficient coverage to get the job done during a leave, and the other is keeping tabs of time off and other aspects of administering it."

That may not sound like a big deal for employers with a few dozen or more staffers, but it's a pickle for the deli owner who has one worker per shift slicing meat.

"New Jersey is a very progressive state, with a reputation of being very pro-employee," Rosen said, noting the state is the third in the nation — behind California and Washington — to enact paid leave. "I'm not one to say it's anti-business. ... It's a mistake to say that. But as the business community says, at a time of recession, why impose another burden on employers?"

Both attorneys are recommending their clients, mostly large companies, prepare to implement the law, which workers will be eligible to take July 1, 2009. Smaller operations, each lawyer said, should look to local business associations for

guidance. And no boss, they recommend, should risk being sued by either denying leave or not holding a job, if possible, for employees who take the time.

"Because it's only six weeks, companies with under 50 employees ... most are going to hold a job open because of concern they'll get sued," said Rosen. "It's just not worth it."

Corzine addressed the criticisms with a touch of blunt humor.

"I may be an old washed-up businessman, but I passionately believe this bill is not anti-business," said Corzine, who was chief executive officer of the investment house Goldman Sachs before he entered political life eight years ago.

He said enactment of the leave bill represented a "commitment to family values" and shows just how the state feels about families.

The law would allow workers to apply for up to six weeks off to care for a newborn or newly adopted child, or a sick parent, spouse or child. They could collect up to two-thirds of their pay, up to a maximum of \$524 a week.

The benefit would be funded by a mandatory payroll tax amounting to 64 cents a day or \$33 a year. Employers do not make any financial contributions directly to the program, but that did not dissuade business organizations from trying to defeat bill.

## How it works

**Q. Who can take paid family leave?**

**A.** Workers can take paid leave to spend time with a new child or a member of their immediate

*Continued on page 8*

# News from Trenton

## School Construction

After a mostly partisan battle, the Democratic majorities in both Houses passed a \$3.9 billion measure authorizing the State Economic Development Authority (EDA) to issue bonds to fund school construction projects. Voter approval on the referendum will not be required.

The Schools Construction Corporation will be provided with \$2.9 billion for school projects in urbanized districts formerly known as the Abbotts. Another \$1 billion

will go for school construction in all other districts, mostly suburban, of which \$50 million will be allocated to county vocational school projects. The Alliance for Action strongly supported the school construction bond issue legislation.

## County Transportation Monies

In another action, the State Department of Transportation has \$25 million available for counties to reinforce or rebuild deteriorated county bridges. The maximum amount for each county will be

\$1 million, with the balance of \$4 million remaining in the account for future uses. The funds will be available after July 1 for counties which are ready to accept bids and move ahead on construction.

## Building Permits Extended

The Legislature also approved legislation to extend the life of old and new building permits and sent it to the Governor for his consideration. The votes were 70-9 in the Assembly and 31-2 in the Senate. ■

# News from Washington

**Softwood Imports at Issue in Farm Bill:** With Congressional leaders anxious to complete conference negotiations on the Farm Bill by May 16, when the latest extension of current funding expires, Canadian softwood lumber imports have become a sticking point. Sen. Saxby Chambliss (R-GA) has attempted to insert a provision requiring a certification system, which would force importers to certify that shipments are in compliance with the Softwood Lumber Agreement. This would duplicate current customs record-keeping requirements and add an additional expense and time burden on importers.

**Rail Competition Advances:** Legislation to eliminate the antitrust exemption currently held by the railroad industry was approved by the House Judiciary Committee April 30. The move has long been sought by customers who had little recourse to challenge unfair rates before the Surface Transportation Board (STB). H.R. 1650 also clarifies that the Justice Department and Federal Trade Commission also have oversight of rail mergers and allow shippers or state attorneys general to file injunctions over anti-competitive behavior. Companion legislation (S.772) was cleared by the Senate Judiciary Committee last fall.

**Clean Water Act Expansion Considered:** The Senate Environment and Public Works Committee held a hearing April 9 on legislation (S.1870/H.R.2412) that would significantly expand the jurisdiction of the Clean Water Act by changing the term "navigable waters" to "waters of the United States." The ambiguous new term could allow any wet area, including ponds and streams, to fall under EPA control, impeding both forest management and prospective development.

**Coalition for Fair Lumber Imports Flaunts New Lobby Law:** The Coalition for Fair Lumber Imports, representing a group of US producers in the softwood lumber dispute, was one of a handful of trade associations who failed to disclose members who contributed over \$5,000 to lobbying activities by the April 21 deadline. The new reporting requirements for lobbying disclosure went into effect January 1, and attempts by the National Association of Manufacturers to block this provision were denied by the courts. Despite the 2006 Settlement Agreement, the CFLI remains active on the Hill, logging \$360,000 in lobbying expenses in the first quarter of 2008. ■

# Measure Your Employees' Performance but Don't Forget Why...

Source: PROSALES Magazine  
Publication date: May 6, 2008  
By Greg Brooks

I know it's not football season and there may be people in New England who don't want to talk about it, but here's a headline and subhead to consider:

Last-Minute Rally Lifts New York to Super Bowl Upset! Giants: Just enough points. Patriots: Not quite as many.

Little bit of a letdown, isn't it? Even if you're not interested in football, it's the score that makes the story, and the same goes for your business. The problem is that the rules aren't as clear-cut.

For example, I saw Ruth Kellick-Grubbs's presentation at last year's NLBMDA Summit on the importance of measuring OTIFs-on-time, in-full deliveries ProSales, August 2007). Ruth's right. In a business where service is the only differentiator and everyone claims excellence, not knowing how closely your walk matches your talk is like leaving the front gate open at night: It may not get you in trouble the first night, but sooner or later it will and you won't know it until after the damage is done.

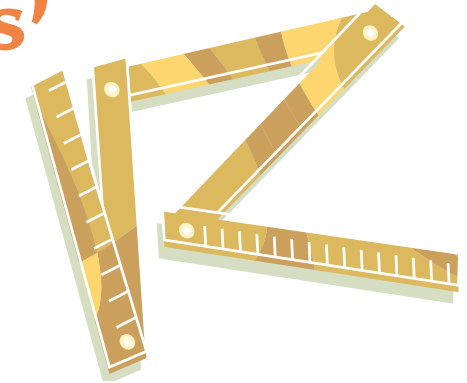
So I was a little surprised when Ruth asked the audience of 100-odd dealers how many track OTIFs and only three hands went up. I'd have thought I was in a room full of beanbags except that I knew a lot

of the people and knew there were some very successful operations represented.

You never heard of a dealer measuring OTIFs 30 years ago; it was too labor-intensive. When I was on the counter, we just asked our drivers to write the time of delivery on invoices so we'd have something to go on in a dispute. They did it faithfully. Orders went out complete and correct because the dispatcher made sure of it, and he let us know about any breakdowns on the spot (and at maximum volume if we were to blame). The only glue holding the whole thing together was our sense of professionalism. We all hated to drop the ball-and the owners knew it.

Some say that ethic doesn't exist in today's workforce. I don't believe it for two reasons. First, I've seen yards running like clockwork with no performance measurements while others are in disarray with reams of data to prove it. Second, it isn't as if beanbags were just invented. I once had a foreman whose favorite joke was to call you to the warehouse to "show you something." What he wanted to show you was that he could toss a lighted match into a half-full five-gallon can of gasoline and the gas would extinguish the flame before it ignited the fumes.

Science isn't my strong suit but I



learned something about sports that day: Anyone can run a 30-yard dash in 4.4 seconds if they are motivated enough.

Motivation reduces the need for measurement, but measurement can be a motivator if you use it that way. Years ago, I knew a dealer who created a delivery "golf tournament." Whenever a new subdivision started, he'd make a dry run and time it. His drivers received a birdie for each delivery made under the specified time, a par if they were within 15 minutes, and a bogey if they ran longer. The best score at the end of the month got a free dinner for two at a nice restaurant. A speeding ticket disqualified them.

Yes, it was time-consuming and no, it wasn't foolproof. It worked because it engaged people. Keeping score isn't just about proving yourself to your customers-it's also about employees proving themselves to themselves. Software and GPS make it easy to keep score. How you use all that data determines the impact.

And just for the record, it was Giants 17, Patriots 14. ■

*Greg Brooks is a former editor of ProSales who now is president of Building Supply Channel Inc., a training and consulting firm based in New Albany, Ind. Contact him at [greg@cs24.us](mailto:greg@cs24.us) or at 866.272.4776.*

# 2008 Legislative Conference Wrap-up

**D**uring the 2008 Legislative Conference, more than 150 NLBMDA members took to Capitol Hill to discuss housing, the Innocent Sellers Fairness Act, green building and health care.

The discussions could not have been more timely, as the Senate spent the week debating major legislation to assist homeowners and the housing industry. With more than 100 members of Congress called on by NLBMDA dealers, significant progress was made in raising awareness and building support for Innocent Sellers (H.R. 989).

We have heard of at least a dozen representatives who committed to add their support to this NLBMDA-initiated legislation. The first two to sign on following

requests from their constituents are Representatives John Duncan (R-TN) and Todd Platts (R-PA). Visit the Innocent Sellers Action Center at [www.BuildtheVote.org](http://www.BuildtheVote.org) for updates to the cosponsor list.

While the housing package is still evolving on the Senate floor, several significant provisions will assist building material dealers and help revive the housing market:

- Net operating loss carryback to allow businesses with losses this year and next to offset those against the previous four years' profits
- Overhaul the FHA
- Create \$7,000 tax credit for purchase of a home in foreclosure
- \$10 billion bond authority to assist borrowers in refinancing

subprime mortgages

- \$4 billion Community Block Grant funding to purchase foreclosed properties
- \$100 million to fund expanded counseling for at-risk borrowers.

A provision to allow judges to alter the terms of mortgages in bankruptcy proceedings, opposed by lenders and the building industry, was offered in an amendment by Sen. Chris Dodd (D-CT) and voted down by a vote of 58-36 (60 votes are being required to amend the bill). Once the Senate passes the package, it will go back to the House where members may attempt to negotiate several changes with Senate leaders, specifically related to FHA loan limits and down payment requirements. ■

## Builders Look for Bargains

**I**f you haven't yet been hit with builder customers looking to negotiate prices for your products and services, count yourself among a shrinking pool of dealers. An updated survey of more than 300 builders, weighted to reflect national industry demographics, says that 80 percent of them are somewhat to very likely to negotiate price with their suppliers.

Nearly as many are on the lookout for new suppliers offering lower costs, better values, or better selection to help them weather the housing industry's prolonged correction in starts, sales, and price appreciation from the heydays of 2004-05.

If that's not enough of a wake-up call, the latest version of the Soft Market Study, released by the National Association of Home Builders at the 2008 International Builders' Show in February, reveals the methods builders are using to secure sales and reduce costs—both of which have implications for dealers anxious to stay afloat—until the market recovers.

"Manufacturers and suppliers that adapt to this new reality stand to gain the most when housing recovers," says Ed Hudson, director of the market research division of the NAHB Research Center in Upper Marlboro, Md., which conducted the study following a similar effort a year earlier.

### Key Findings

The survey results, available through the Research Center's bookstore for \$200 ([www.nahbrc.org/bookstore](http://www.nahbrc.org/bookstore)), are rife with opportunities for dealers far beyond the section focusing on changes in supplier relations. "One key finding is the degree that builders are allowing buyers to suggest changes to the floor plan and design, which has proven to be one of the most effective sales tactics," Hudson says.

Dealers fit into that finding with their willingness and ability to alter framing packages, deliver short orders, and supply or act as a

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# ProDealer Conference and NLBMDA Industry Summit Merge

**T**he National Lumber & Building Material Dealers Association and the ProDealer Conference (presented by *Home Channel News*) have merged their two annual industry conferences: the HCN ProDealer Conference and the NLBMDA Industry Summit.

The new combined conference, renamed the ProDealer Industry Summit, will be held October 1–4 at

the Westfield Marriott Resort in Chantilly, VA, and will be jointly run by both organizations.

“We are excited to bring together two great conferences for the overall benefit of the industry,” said Diane Swenson, new president of the NLBMDA.

“Both conferences have served the industry quite well,” said Jeff Arlen, publisher of *Home Channel News*, “the ProDealer Conference

has grown significantly over its 11 years, and the NLBMDA Industry Summit has been a success for more than 21 years.”

“We will now be able to offer to the industry a single event, combining all of the benefits of each conference, while delivering more value to the vendors and manufacturers who support these events,” said Jim Reynolds, managing director of the ProDealer Conference. ■

## Builders Look for Bargains

*Continued from page 5*

conduit to a wider range of products within key finish categories—namely countertops, flooring, and cabinets—to help builders in a buyer’s market. “Home buyers are in the driver’s seat, and builders need to be flexible across their entire operations,” Hudson says.

Other opportunities buried in the results include an increasing propensity among builders to use higher value, low cost, and innovative materials to help reduce hard costs, create a marketing distinction, and boost buyer interest. Builders also are interested in sourcing products that come with marketing support from the manufacturer or supplier, and solutions that reduce construction cycle time to realign their production costs with lower profit margins. ■

## Family Leave Lawsuits Likely

*Continued from page 4*

family who is sick. For a new child, the leave must be taken within 12 months of the child’s birth or adoption, and the worker must give 30 days’ notice prior to taking leave. To care for an immediate family member (which means a child, parent or spouse — no second cousins, grandmothers or great-uncles), the employee must give 15 working days’ notice.

**Q. How much will I be paid?**

**A.** Up to two-thirds of your salary, to a maximum of \$524 per week, tax-free, up to six weeks.

**Q. Are there any special requirements?**

**A.** Employers can require workers to use up to two weeks of available vacation time, sick time or personal days before they are eligible for paid family leave.

**Q. Is anyone exempt?**

**A.** The law will not apply to federal government employees.



**Q. Am I guaranteed my job will be waiting when my leave is finished?**

**A.** Federal and state family medical leave laws already require companies with 50 or more people to hold the job of someone on leave. This bill does not change that. If you work for a company with fewer than 50 workers, there is no such requirement and you forfeit the right to sue or take any other action against your employer if you are replaced.

**Q. When will this law take effect?**

**A.** Payroll deductions to pay for family leave will show up in your paycheck beginning in January. Workers will be able to begin applying for paid leave benefits in July 2009. ■