

WWEMA Special Report:

2017 Finance & Contract Administration Council Meeting

MAY 17-18, 2017

CHICAGO, IL

Almost fifty representatives from water and wastewater manufacturers, rep firms, and industry-related companies attended the 2017 WWEMA Finance & Contract



Administration Council (F&CA) Meeting, May 17-18, in Chicago. The meeting provided an excellent opportunity for educational programming for anyone working on contracts for their organization. Not only did contract administrators attend, the meeting also attracted Presidents, CEOs, CFOs, COOs, Controllers, Finance Administrators, Applications Engineers, Procurement Managers, Credit Managers, and more.

The session topics were varied with a diverse group of experts in their fields discussing the issues most important to the attendees. Topics included incoterms and

risks; payments and warranties; terms and conditions; a session on start-up, acceptance, warranty, and close-out; a session on licensing agreements and key provisions related to intellectual property; and an insurance broker discussing some important topics like general liability, employment practice liability, and cyber coverage.

The meeting allowed all of the attendees to interact with the speakers and share what issues, concerns, and obstacles they deal with on a daily basis. Many of the presentations offered the attendees an opportunity to gain new ideas and insights into their own contracts.



Copies of the speaker presentations and handouts are available on the Members-Only section of the WWEMA website at <http://wwema.org/login.php>.

Incoterms and Risk

The team of **Lisa Gingerich**, **Bobby Shaida**, and **Don Simon** of Copper-smith Global Logistics offered something new to this year's attendees. Founded in 1948, Copper-smith is a licensed customs broker that handles over 100,000 shipments every year from large companies. Part of the discussion was to enhance attendees' understanding of the forwarding process and the part that incoterms play in the transaction as well as providing information on how incoterms relate to contracts. What are incoterms – which is short for international commercial terms? Incoterms define the mutual obligations of buyer and seller arising from the movement of goods under an international contract of risks, costs, and documents. The most important takeaway for attendees was that they need to keep up-to-date on rapid expansion of world trade, and new trends in global transportation. When writing contracts, defining obligations of both parties involved while determining the distribution and transfer of risks regarding goods delivered from seller to buyer is critical. Not understanding the incoterms can put your company at risk for additional expense.





Payments and Warranties

Phil Beck, Partner at Smith, Currie & Hancock, LLP, discussed the relationship between payment and warranty obligations. Contract managers need to understand their contractual and legal rights and obligations in regard to payment. Phil discussed typical payment terms, fair and unfair payment terms, pay-when-paid provisions, remedies for non-payment, contractors right to withhold payment, relationship of payment and warranty obligations, and length of liabilities and alternative sources of payment.



A key takeaway for attendees was understanding implied versus express warranties. An express warranty is one that is clearly stated either verbally or in writing, while an implied warranty automatically covers most goods valued over a certain amount, but only provides a basic level of protection. Another takeaway for attendees was managing the risk of non-payment. That means the importance of good front-end planning that includes protecting against financial risks even before contract formation, creating contractual protection by requiring the ability to satisfy financial obligations before signing, and managing financial risks.

Licensing Agreements and Key Provisions Related to Intellectual Property and Managing Risk



Michael Carrillo and **Paul Olszowka**, Partners at the law firm of Barnes & Thornburg LLP, shared with attendees the types of attributes of intellectual property (IP), which includes patents, trademarks, copyrights, and trade secrets. Also shared were the key provisions of licensing agreements – ownership, representations and warranties, disclaimers, indemnification, and limitation of liability.

The speakers discussed two important topics. The first topic was types of intellectual property and their attributes. This included features of intellectual property and the legal protections required for designs, processes, and compositions. Key takeaways were the importance of needing the courts, and a lawyer, to protect and enforce intellectual property rights; the two types of patents – utility and design; trademarks and what that means for a company; rights provided under Federal law for copyrights; and protection of intellectual property for patents, trademarks, copyrights, and trade secret laws.

The second topic revolved around licensing agreements with an overview on how licenses are used in a variety of instances including franchise agreements, purchase and sale agreements, and the means to resolve or avoid IP litigation. Additionally, as part of this discussion, some key takeaways were features of indemnity provision and limitations of liability.

How Does Your Company Handle This?

Susan Button, National Contracts Manager for Xylem Water Solutions USA, and a member of the F&CA Council Planning Committee, facilitated this session, *How Does Your Company Handle This?* Prior to the F&CA Council meeting, attendees were asked to submit questions to the planning committee. From past meetings, we know that many attendees have burning questions on how their colleagues handle specific aspects of their jobs, or how to address certain contract language. During the session, Susan and attendees addressed these questions, and then Susan also took questions from the audience. Every year this session is one of the most anticipated as attendees get a chance to hear how others are handling many of the same issues.





Start-Up, Acceptance, Warranty, Close-Out

Phil Beck, Partner at Smith, Currie & Hancock, LLP, returned as a presenter for a second session to discuss when an equipment manufacturer has fulfilled its contractual and legal obligations with a particular transaction or project. He discussed why it is often unclear when to close-out the transaction, and be relieved of obligations. A critical challenge is how to determine that your part in the project has been completed. A key takeaway for attendees was that to avoid any surprises, developing a comprehensive list of what needs to be done is essential. In order to make sure your expectations are in line with your customers, you need to share your lists and get buy-in from all parties.

The session provided some practical guidance for dispute resolution, the importance of identifying both party's expectations, addressing surprises as they happen, creating a project close-out checklist, obtaining buy-in, contract completion versus project completion, when acceptance occurs, when do warranties commence, and commissioning.

Addressing Common Insurance Problems

Mark Herring, Broker at Heffernan Insurance Brokers, addressed attendees about some important topics everyone working with contracts needs to know. Cyber liability exposures, wage and hour issues, employment practices liability, product liability, and how to shop for insurance properly were discussed. Mark stressed the importance of cyber coverage because it covers forensic expenses, breach notification costs, hacker damage, regulatory investigations, cyber extortion, media liability, and your company's reputation. Most attendees were unfamiliar with cyber coverage, so this session provided some good information. In addition, attendees learned about employment practices liability including sexual harassment, discrimination, and wrongful terminations. Finally, information was given on how to shop for insurance effectively with some background on understanding your company, safety procedures, operations, claims, and more.



Terms and Conditions

Finally, the last session, and the most spirited of all, was *Terms and Conditions*. Facilitator **Jim Brown** worked with **John Dettman**, Vice President of Operations and **Chris Durnil**, Purchasing Manager, at Bowen Engineering Corporation, to negotiate Bowen's standard terms and conditions with the attendees. Prior to the F&CA meeting, attendees were able to view Bowen's contract, and then come prepared with their best skills to negotiate the terms. During the discussion, Brown addressed binding effect, fraud, waiver of consequential damages, indemnity, force majeure, and breach of contract.



Every year, this session is the one that receives the most feedback from attendees. Since most of the F&CA meeting attendees work with contracts on a daily basis, they are highly educated in negotiating terms. A key takeaway was that if a contract is written correctly the first time, and that you can come to an agreement with language that says everybody will take responsibility, and that you use standardized documents that are easy to understand, then you can come to terms much quicker. One of the most interesting things about this session is that the team from Bowen learned quite a bit themselves by the time the session concluded.