

TABLE OF EXPERTS

ST. LOUIS BUSINESS JOURNAL



CONSTRUCTION DISCUSSION

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JEREMY BRUMMOND

Jeremy Brummond practices in the Litigation Department of Lewis Rice. Although his focus is on engineering and construction, he represents clients in a variety of commercial litigation matters. Clients include property owners, engineers, general contractors and specialty contractors. Brummond counsels clients in contract negotiation and drafting, and represents such clients in construction-related litigation, including cases involving claimed construction defects, delay and impact claims, and mechanic's lien and payment bond claims. Brummond is a member of the American Bar Association's Forum on the Construction Industry and a member of the Bar Association of Metropolitan St. Louis's Construction Law Committee. He was selected for inclusion in Missouri and Kansas Rising Stars 2010- 2014.



MATTHEW FRAIZER

Matthew Fraizer is a senior manager within Mueller Prost's business services practice and the firm's director of construction industry services. He has over 16 years of external and internal audit experience, serving large public companies and small private businesses. His specializations include the construction, financial and long-term health care services industries. Prior to joining Mueller Prost, Fraizer held leadership and management posts with multinational and national accounting firms. Fraizer is a CPA and a certified construction auditor. He is also active in several industry organizations, including the Associated General Contractors of America, Construction Financial Management Association, National Association of Construction Auditors, the American Institute of Certified Public Accountants and the Institute of Internal Auditors.



TERRY NELSON

Terry Nelson is executive secretary-treasurer of the Carpenters' District Council of Greater St. Louis, representing more than 20,000 tradesmen and women in Missouri, Kansas and Southern Illinois. Known in the construction industry as an outspoken and progressive union leader, he worked his way from carpenter apprentice in the 1960s to head of the union in 1993. He was instrumental in creating the Proloan mortgage program, which provides competitive interest rates for union-built homes, and initiated a market recovery program to promote and finance new construction. Nelson was the driving force behind the Nelson-Mulligan Carpenters' Training Center, which opened in 2002 in South St. Louis County. The facility produces some of the best trained apprentices in a four-year program and provides continual skills upgrade for professional carpenters.



DOUG BONNER

Douglas E. Bonner, PE Bonner graduated from the University of Missouri - Rolla with a B.S. in civil engineering. He began his career as a project engineer in the energy industry in Oklahoma where he completed a variety of projects over the next 10 years. In 2003, Bonner joined Farnsworth Group in St. Louis as a project engineer, and was appointed as a principal in 2012. His experience and leadership has been instrumental in growing a team of professionals who serve the oil and gas industry, while continually building on a foundation of safety, integrity, and service excellence. He is a licensed professional engineer and is the firm's national strategy manager for oil and gas. He was named to Who's Who in Energy-St. Louis in 2013 and 2014. Additionally, he is on the board of directors for the Riverbend Down Syndrome Association.



JOHN BUESCHER

As president for McCarthy's central division, John Buescher oversees McCarthy operations in 29 states east of the rockies. With nearly 25 years of experience in the construction industry, he has played an instrumental role in delivering an exceptional experience for clients in a variety of markets including health care, laboratory, pharmaceutical, manufacturing and education. Buescher joined McCarthy in 1998 as an assistant project superintendent and worked his way up to business unit leader prior to assuming his current role as president. Buescher is a professional mechanical engineer with a bachelor of science degree in mechanical engineering from Purdue University and a master's degree in business administration from Washington University. He also serves as president of the board of directors of The Women's Safe House.



DJ SIMMONS

Since becoming president of ACME Constructors in 2009, DJ Simmons has applied his knowledge of plant processes, management capabilities and communication skills to oversee hundreds of successful projects in 22 states, ranging from routine plant maintenance jobs to complex, multimillion-dollar, design-build plant construction and expansion projects. Under his leadership, ACME has grown from \$7.5 million in revenue in 2009 to \$41.3 million in 2013, and the number of employees has quadrupled to nearly 200. This growth can be attributed to Simmons' implementation of a top-tier safety culture, sophisticated project execution standards and the addition of structural engineering and design-build services. Simmons is also involved in Big Brothers Big Sisters of Eastern Missouri and was named Big Brother of the year in 2002.

Construction Discussion

PHOTOS BY DILIP VISHWANAT

▶ WHAT ARE THE BIGGEST CHALLENGES AND GREATEST OPPORTUNITIES FOR OWNERS PLANNING PROJECTS TODAY?

John Buescher: It seems like with most of our projects it is a challenge to meet the budget. Even with the economy starting to awaken and firms seemingly more likely than before to invest dollars in new or existing facilities there is still a healthy element of financial conservatism. We see these projects as opportunities for an owner to not just hire a designer and hire a builder, but to bring on board team members who can collaborate, understand the owner's business model, understand why he's building the project, and then form that team early to work through all of those issues together. You can lock in certainty very early in the process by nailing down your price, nailing down your schedule, nailing down all these various parts and pieces of the project. The owner will have confidence that your team will execute the project and achieve their goals at the end of the day

Terry Nelson: Budget and completion. One of my favorite statements always is



on the budget: "Price is forgotten; quality lives on." And it's hard to remember that. You know, you want to save a dollar. But with your finished product, you've got to be top of the line. Everybody wants the top dollar for a nickel. I understand that. But it's the communications between the contractor, the worker, the builder, the owner, the whole bunch of these guys all work together, believe it or not. And we all sit there in the mornings and afternoons saying, "Well, you know, if we'd have done yadda, yadda,

yadda, we might have been saving \$12 or something." An owner wants to know when can you get it done and how much is it going to cost him. That's priority No. 1.

DJ Simmons: We do the majority of our work in an industrial environment. Over the last decade or so, corporate engineering staffs have been reduced and eliminated as part of corporate cost reductions. So, the industrial owners rely on contractors to do more design-

build construction. This eliminates the owner's need to staff up for short term projects.

Jeremy Brummond: I wouldn't be the attorney at the table if I didn't talk about what happens to risk management as part of the budgeting process. While sometimes it may be OK to get rid of that bonding that typically comes along with the project, which does add cost to the project, certainly, you know, all these team members need to understand that if somebody's new to the table or kind of unfamiliar to the process, you still need to add those costs. With less established contractors, you see it where all of a sudden the bonding's the first thing that goes: "Take that out of there; we don't need it," when really that's to help protect the owner if things are going to go bad.

Doug Bonner: To follow up on what John said about the budget satisfaction from an owner's perspective, we work across the country, and it's valid to say that in all lines of business that we work in, the growing economy, as great as it is for all of us and all of our clients to enjoy, does also create some struggles for the owner. We work at

TABLE OF EXPERTS

the front end of a project, and by the time construction is complete, erratic cost escalation can occur, whether it be material or construction, and then you run into budget concerns from the owner's viewpoint.



“Losing money one year, no big deal; losing money two years in a row, you start to set a trend. Your financial statements need to be in order to present the best picture.”

MATTHEW FRAIZER,
Mueller Prost

► **MATT, YOU MUST SEE IT DIFFERENTLY AS AN ACCOUNTANT.**

Matt Fraizer: I see it more from the back office. When companies are in a struggling economy, you see unfortunate cutbacks of critical staff. Now the economy is returning; creating excitement, but it comes with challenges. We often see companies lacking the appropriate accounting / estimating staff in place to handle the new workload, or having the accounting systems in place to handle additional accounting transactions, backlogs and WIP. Just the hiring of new staff can be a challenge, but hiring quality staff is an even bigger challenge. You need technical staff who know that when you hit the \$10 million threshold on long term contracts it triggers a change in accounting method from a cash-basis contractor to an accrual-basis. Furthermore, implementing new accounting software appropriately when making an accounting software upgrade. Or knowing the proper accounting for a new acquisition or sale of a business. Addressing those type of items, early and getting out in front is a huge deal. They're a much bigger headache if you try to fix them amidst the growth, versus proactively planning for them.

► **THE LEGISLATURE IS TRYING TO GET A RIGHT-TO-WORK LAW PASSED**

IN MISSOURI. SOME STUDIES SHOW WAGES AND BENEFITS DECLINING IN STATES THAT HAVE PASSED SUCH A LAW. IS THAT SOMETHING THAT THE CONSTRUCTION INDUSTRY HAS A POSITION ON?

Terry Nelson: Absolutely. Because again, there's nobody around this table, even the owners, that don't want a trained, qualified, safe workforce. These people don't get picked off a tree. They get trained; they get cultured; they get nurtured. And all this has to happen in a process. You just can't do

it automatically. And when you do an in-depth study of all the right-to-work states in the United States, we fare much, much better when it comes to wages and benefits – the key word being “benefits.” Because I can live on \$15 an hour; I can't live without health insurance. And that's one of the major things unions bring to the table. We bring you a pension, we bring you benefits, and those are the first things they want to dissolve. I'm one of the few people who think unions are good guys. We're partners. My concern is the budget and the completion, because I've got to be part of the team. And in

St. Louis, we're one of the few areas in the country that is organized as we are, and it's because we have created a partnership. I want one thing and one thing only. I want man-hours for my members, and I only have one place to get them. I went to Wal-Mart, they don't have any; I went to the bank, they don't have any. The only place they've got them is the contractors' workforce. And that's why union contractors are so important. When they try to bar unions,

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TABLE OF EXPERTS

CONTINUED FROM PREVIOUS PAGE

they're just trying to hurt everybody and enrich themselves, and that's why I'm opposed to it.

► **TERRY, YOU'RE AN INVESTOR IN ST. LOUIS CONSTRUCTION, AREN'T YOU?**

Terry Nelson: Every day. And again, that's investing into my region because this is where I get my – keyword here – man-hours. I can't get them from Minneapolis, I've got to get them from here. And that's why this region's got

to be successful. Did you ever hear of a company called Pulte Homes? They're the largest homebuilder in the world. They came in this town and bought the Jones Co., and they had a 9-month contract they had to live up to with me. It was 11 years ago. And they said when they live up to that contract, when it's over, it's done, "We don't believe in unions, yadda, yadda, yadda," you know. OK. So nine months went by, and during that period of time, they said, "Gee whiz. We don't understand why the Workmen's Comp modifier for my Carpenters in St. Louis is under 70; and

around the country it's over 110." There's more accidents, more injuries. They said, "You're doing something right. Maybe we'll sign another contract." And they did. Because we had something to sell them, and that's an investment we make. And we have a pension program right at \$2.3 billion. And that's \$2.3 billion we invest every day in the city of St. Louis. We're part of everything that moves in this city because we are a part of this city. We're a part of this region. I mean I get along with 99.9 percent of the politicians I deal with. I get along with the municipalities. I get along

with them all, but I tell you what I don't do. I don't sugarcoat a thing. If you've got ugly children, I got to tell you that. That's what I do. That's the way you are successful because people learn to trust you and you maintain your integrity.



"I'm one of the few people who think unions are good guys. We're partners. My concern is the budget and the completion, because I've got to be part of the team."

TERRY NELSON,
Carpenters District Council
of Greater St. Louis

► **DJ, WHAT MAKES INDUSTRIAL CONSTRUCTION DIFFERENT?**

DJ Simmons: In industrial construction, if you're a day behind, it's not acceptable. If you're an hour behind, that's not acceptable either. That is the biggest difference between commercial and industrial construction. If an industrial customer needs to be producing their product at seven o'clock the next day, and we are not ready by seven o'clock the next day, we are not going to have that customer again.

Jeremy Brummond: I negotiate a lot of industrial contracts, and there is that kind of attitude, especially with the owners. They're expecting perfection from their contractors. And it shows up in the contract all the time because it becomes where the risk gets so one-sided. There are some subtle things that help contractors in that environment of industrial construction, most importantly the trade organizations have done a good job throughout the country in lobbying their state legislatures to put together some laws so that there are protections against indemnifying an owner. There are payment protections in a lot of



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TABLE OF EXPERTS

states where states have enacted prompt pay laws, so that notwithstanding the contract, and you see this a lot with international companies where they're pushing out payment terms 90, 120, 180 days, something ridiculous where the local contractor's basically funding the construction for the international company, there are state statutes that protect companies against that, thankfully.

DJ Simmons: Payment terms are a significant factor in how we evaluate potential projects. Unfortunately, Missouri is not a "prompt pay" state like some in which we work. This means that Missouri does not legislate or limit the maximum time an owner can withhold payment.

Jeremy Brummond: Correct. While Missouri has a prompt pay statute which applies to industrial construction, it won't void payment terms in a contract which are otherwise burdensome. Missouri's prompt payment remedies never make their way into the contracts. And that's something that you do have to talk to your lawyer about so that if things get out of hand, you're going down a project and saying that maybe they're taking those 90-days terms and even going a little bit further, then you can say, "Well, here's the Missouri statute that we could be relying on, customer." I will tell you in practice, the contractors don't push that button that often because they don't need to, because you're hoping at the end of the day that you're going to get paid. And 99 percent of the time you do, right? Especially if you're doing a good job. Illinois doesn't have the same level of protection afforded by Missouri.

Doug Bonner: The industrial client base and industry as a whole is extremely knowledgeable. We have very informed, and in most cases, expert clients. We're working on projects for them that they know every bit as much about as we do. So they analyze everything and are often more involved than many of our other clients. The other aspect that's exciting and sometimes challenging is they're oftentimes much more fast paced than our other lines of business. Construction is always critical, but like DJ said, managing system downtime is vital. When our industrial projects impact an existing system, we're typically involved with planning their downtime, outages and inconveniences by the hour, not just by the day.

Terry Nelson: That gives me an opportunity to get innovative. Because they've got to get that conveyor belt running. And most places in industrial, they like to take a day or two off a week. And while they're off, they want me working. And I got to make a deal. They don't want to pay me double time. That's crazy. "Why would I pay you \$20 when I can get you for \$10?" So I work

out special deals that I work 40 hours in a week. You, Mr. Owner, pick the hours. Tell me when my 40 hours start and when they stop. And you'll say, "Well, gee. That's kind of crazy." It is crazy, but there's a lot of times I work Thursday, Friday, Saturday and Sunday. That's 40 hours, ten hours a day, and I get paid 40 straight time hours. I help the owner, I help the conveyor belts keep running, and I get what I'm looking for, man-hours.

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"In industrial construction, if you're a day behind, it's not acceptable. If you're an hour behind, that's not acceptable either."

DJ SIMMONS,
ACME Constructors



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TABLE OF EXPERTS

CONTINUED FROM PREVIOUS PAGE

► **JOHN, YOU MUST SEE THAT IN A LOT OF YOUR PROJECTS.**

John Buescher: I would say there are two things that we experience with almost all of our industrial clients. The first is that we will self-perform the work. In other words, when they hire a contractor, it is their expectation that they're hiring the company who's going to do the work. The second item is their safety expectations. They

expect perfection, and safety is at the top of their list.

► **DJ, WHY DO YOU CHOOSE TO HIRE YOUR OWN LABORER VERSUS SUBCONTRACTING THE MAJORITY OF YOUR WORK?**

DJ Simmons: Our top priority is working safely and getting the customer's production back on line. We like to be in control of our own destiny to ensure that we meet these needs one hundred percent of the time. When we rely on subcontractors,

we lose some of that control. We are left with legal remedies to get the job done which does not benefit the client when they need to be producing their product.

John Buescher: When we can, we like to perform the work ourselves because we believe we can set the expectations and standards high in terms of quality and safety on a job. We're usually one of the first contractors on site doing the concrete foundation work. As the remainder of the subcontractors mobilize to the

project, they can see how seriously we're taking these items; the bar is raised for them to perform at a similar level. Ultimately, we believe the owner realizes real value with these improved results.

► **JEREMY, TALK ABOUT TRENDS AND PAYMENT AND WAYS TO PROTECT YOURSELF AGAINST NONPAYMENT.**

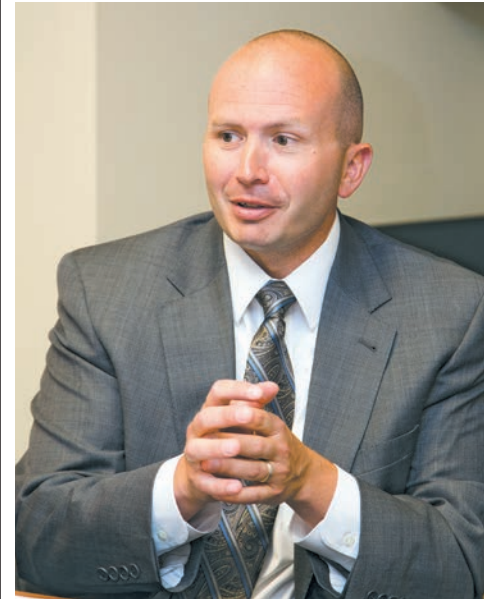
Jeremy Brummond: There are different variations of prompt pay statutes that are out there throughout the country, some of which say you

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“With less established contractors, you see it where all of a sudden the bonding's the first thing that goes.”

JEREMY BRUMMOND

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have to pay your contractor within 20 days, some of which say you have to pay your contractor within 30 days. Others of which say you pay your contractor according to the letter of the contract. And if you don't, you're going to be penalized for it. Missouri falls into that latter category. Owners are – and definitely international owners – are taking the payment terms and extending them. And I also see the process where they're adding different layers to the invoicing process. So it's not just as it used to be whereas, “Hey, we received your invoice pay application. Within 30 days, we're going to pay it.” It's onsite, “We received your invoice application. The onsite people for that customer will review it, look it over. If it's good, we'll get it back to you. If we approve your invoice, then you can submit it.” And then the payment terms kick in, which is just another way to kind of shift the risk over to the contractor. Having appropriate bonding for projects out there for the principal contractor, if you're one of the subcontractors trying to get paid, having lien rights, making sure that you protect those lien rights is very important. In Missouri, we have a wonderful mechanic's lien law for contractors that protects them

under most situations as long as they act reasonably after not being on the site within six months. There are other areas of the country that you need to be aware that you could be required at the beginning of a project to file something in order to even preserve your lien rights.

► **WHAT SHOULD A COMPANY BE DOING TO ENSURE THAT IT'S MOST APPROPRIATELY AND ACCURATELY POSITIONING THEIR FINANCIAL STATEMENT?**

Matt Fraizer: Back in 2008, not everyone was profitable. But now, with the industry turnaround, the sureties are being more critical of who they bond. You've got to be profitable. Why would they take a risk on someone who's losing money? Losing money one year, no big deal; losing money two years in a row, you start to set a trend. Your financial statements need to be in order to present the best possible picture. The first thing is having a CPA that knows the construction industry – there's definitely nuances. For example,



“There's been so many wells drilled over the last decade that there's not pipeline infrastructure in place to handle the volume.”

DOUG BONNER,
Farnsworth Group

under-billings can be a sign of lost profit. Over-billings could be attributed to job borrowing, which could mean you're in financial trouble because you are shifting cost from one job to the other to stay afloat. Having an accurate WIP is very important; sureties do not want to see repeated profit gain or fade, as it could be a sign of weak estimating abilities. Additional items sureties take into account are a high number of claims, both in and out, which means you may not be working well with owners or suppliers. Having positive working capital backed by a line of credit is very important. This indicator lets the surety know you have enough

money to pay your bills if something should happen. However, there are alternative bonding options available if needed: a joint venture. Partnering with a larger contractor that has more bonding capacity than your company in order to take on some bigger projects than your bonding allows. The partner supplies the bonding and in turn share in the profit. Finally, you should know there are other financial statement presentation options with the new revenue recognition and lease accounting standards on the horizon. A company may choose to report under

FRF for SMEs (Financial Reporting for Small-Medium-sized Entities) instead of GAAP, which would still give your bonding company the exact same financial statements they're receiving today, but without implementing those new costly accounting standards. Those are a few of the types of items that can be addressed in order to present the best financial picture to help increase your bonding capacity or keep your bonding

► **SO, JOHN, WHEN YOU HAVE LARGE BONDING CAPACITY, CAN YOU NOW BE A LITTLE BIT PICKIER ABOUT WHO**

YOU DO BUSINESS WITH, AS THE ECONOMY GETS A LITTLE BETTER?

John Buescher: Through the recession, we remained disciplined and kept our balance sheet in great shape and are fortunate to have substantial bonding capacity. However, even with this capacity combined with an improving economy, we are certainly not to the point where we are dismissing potential projects out of hand. In terms of potential partners on projects, we do two types of

CONTINUED ON NEXT PAGE

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TABLE OF EXPERTS

CONTINUED FROM PREVIOUS PAGE

joint ventures. The first is what we call a peer-to-peer joint venture with a firm that is of similar size to us. These are usually for what we refer to as a “mega project” and can range from \$400 million to \$1 billion projects. We also do joint ventures with a smaller contractor who may have a relationship with an owner. This owner has a particularly large project coming up that the contractor is not prepared to handle alone or that requires additional specialized expertise.

We will partner together to provide the owner with the strongest possible team. Each of these relationships is established on a case-by-case basis, depending on the relationship or the size or the type of project

► **DOUG, HAS THE PRICE OF CRUDE OIL AFFECTED CONSTRUCTION IN THE ENERGY INDUSTRY?**

Doug Bonner: It’s definitely affected the exploration and production end of the industry, much more so than others parts of the industry. The rig

counts have been significantly reduced in the U.S. – that’s drilling rigs – and that has certainly affected those who work in the shale regions around the country, as well as related businesses. As far as the project load across the rest of the industry, I think it’s somewhat of a short-term viewpoint right now since we’re still inside of a year of the price drop. There has been a significant quantity of projects that continue to move forward in the industry, even major projects, mainly because the existing pipeline systems are lagging, and have not yet been built to handle

the production capacity that we’re seeing. There’s been so many wells drilled over the last decade that there’s not pipeline infrastructure in place to handle the volume. So the demand is justifying those major projects. If we see the price continue to stay low, or drop further, then potentially down the road we may see some more slowdown in the industry. But on the flip side, a large portion of the construction projects in the industry are related to maintaining the systems and aging infrastructure in the United States. That is not going to change anytime soon.



“Our approach to projects is, it’s an opportunity for an owner to not just hire a designer and builder, but to bring on team members who can collaborate.”

JOHN BUESCHER
McCarthy

► **ARE THERE ENOUGH SKILLED AND PROPERLY TRAINED WORKERS TO KEEP UP WITH CONSTRUCTION IN ST. LOUIS?**

Terry Nelson: The answer is yes in what I’m responsible for – the carpenters, the millwrights, the pile drivers, the floor coverers, the roofers, the very different aspects of the construction industry that I do. I cover two and a half states, number one. Kansas, Missouri and 33 counties in southern Illinois. We’ve got 11 training centers in Kansas, Missouri and Illinois. I can crank them up in a real rapid period. I’ve got the staff, the facilities to do it. I’m living right now in an eight –year void where I didn’t train any minor league players. I don’t have my minor league setting there right now. Because for eight years, as the economy went down, I went from a 1,400 apprenticeship training class to a 400 apprenticeship training class. But that’s ramping up right now. I went from 400 in the St. Louis training center to 900 carpenters.

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