

THE FLOW

AUGUST 2019

Upcoming Events

August 1st

**Locating Roundtable
Hosted by Vallencourt
Construction
11:30 am to 1:00 pm**

August 3rd

**Fishing Tournament
Northeast Florida Marlin Assoc.
St. Augustine
Raffle Ticket Order Form
On page 11**

August 14th

**Primavera P-6 Training
A.J. Johns Training Center
9:00 am**

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PRESIDENT'S MESSAGE

Dear Friends,

I hope that you all are healthy and doing Well. Thank you to all our monthly sponsors, we couldn't be as successful as we are without you!

We had a great turn out for the Scholarship Night on July 11th, we appreciate all of those who attended and supported our Scholarship winners. On September 26th, we will have our Board of Directors Meeting and General Meeting, location TBD. NUCA of Florida will be holding the Poker Tournament and President's Cup Golf on September 19th & 20th. See registration and sponsorship information in this edition.

We will be hosting a Primavera P-6 Training Class on August 14th. Please let Kathy know if you would like to attend.

As always, please continue to support our members and associates. If there is anything, I can do to help you out, please do not hesitate to give me a call. I look forward to working with you all.

Sincerely,

Chad

2019 NUCA of North Florida

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Sterett Heavy Hauling

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Contractors

CALENDAR OF EVENTS

August 1st

**Safety Director's Forum
Vallencourt Construction
Locates & Construction
11:30 to 1:00**

August 3rd

**Fishing Tournament
NEFMA St. Augustine**

August 13th

Executive Committee

September 19– 20th

**NUCA of Florida
Texas Hold'em &
President's Cup Golf**

September 26th

**Board of Director's Meeting/
General Meeting**

November 6th

Sporting Clay Challenge

The Law and Your Business

The Law and Your Business – Arbitration Clause in Original Special Warranty Deed is Binding on Subsequent Home Purchaser’s Construction Defect Claim Against the Builder

By Rebecca Ross, Regan Atwood. P.A.

In *Hayslip v. U.S. Home Corp.*, the original buyers entered into an agreement with U.S. Home in 2007 for the purchase of a newly constructed home in Lee County, Florida. U.S. Home conveyed the home to the buyers via a Special Warranty Deed. The Special Warranty Deed contained an arbitration clause for resolution of any disputes concerning, among other things, warranties made by the seller or property damages. In 2010, the original buyers sold the home to the Hayslips. The 2010 warranty deed to the Hayslips did not contain any arbitration provisions, but it did indicate that the conveyance of the home was subject to easements, restrictions, reservations and limitations, if any.

In 2017, the Hayslips filed a lawsuit against the builder, U.S. Home, alleging that it inadequately installed the stucco on the home in violation of the Florida Building Codes Act. U.S. Home then moved to stay the proceeding and compel arbitration per the language in the original Special Warranty Deed. The Hayslips argued that there was no valid arbitration agreement because the original buyers did not sign the Special Warranty Deed. Generally, Florida law favors arbitration and any doubt about the arbitrability of a claim should be resolved in favor of arbitration. Additionally, the appellate court explained that neither the Florida Arbitration Code nor the Federal Arbitration Act require an arbitration agreement to be signed to be enforceable. Instead, a party’s conduct can demonstrate intent to be bound by the agreement.

Here, the original buyers acquiesced to the arbitration provision because they were on notice of the arbitration provision and took title to and possession of the property. Also, the appellate court found that the arbitration provision was a real covenant that runs with the land, which means that it binds the heirs and assigns of the original buyer including the subsequent purchaser, the Hayslips. Thus, the Hayslips were required to pursue their construction defect claims against the builder in arbitration. The issue in this case was described as a case of first impression in Florida with potentially wide-ranging effect and was, therefore, certified as a question of great importance.

Cockrell Installed as Chapter President

At our meeting on July 11th, Chad Cockrell, A.J. Johns, Inc. was installed as Chapter President. Chad will serve until January 2021. We thank Mike Kivlin for his 18 months of service. Mike was installed as NUCA of Florida President at the NUCA of Florida Conference in July. We thank Mike for his service and we appreciate Chad's commitment to lead our organization over the next 18 months.

On hand as special guests were Deryle Calhoun, Jr. and Jackie Schell from JEA. We also presented the J. Richard Baker Sr. Scholarship and the Mike Allen Scholarship. See additional articles in this edition detailing each of the scholarship recipients.



ERICKSON AWARDED J. RICHARD BAKER SCHOLARSHIP

This year's recipient of the J. Richard Baker Sr. Award is Ashton Erickson, daughter of Rick Erickson, Beard Equipment Company and Shannon Erickson. Ashton recently graduated from Ponte Vedra High School where she had a class standing of 29 out of 452 students and a GPA of 4.55. While at Ponte Vedra High, Ashton was Editor in Chief of the Tiburon, co-founder and officer of the Young Feminist Club, and Girls Basketball team. In the community, she volunteered at Camp I am Special and at Jacksonville Beach Elementary School, and Tutoring in Spanish, Math, Chemistry and Biology.

Ashton will be attending the University of Florida and intends to major in Journalism and Political Science.

This award is given to a high school student or high school graduate who is the daughter or son of a NUCANF member company employee, and will be enrolling full or part time in an academic institution of higher education, beginning this summer/fall. The enrollment may be in any curriculum for any number of years. This may be a four-year college or a community college anywhere in the United States. The J. Richard Baker Scholarship is a \$2,000 one-time award.



Atwell receives Mike Allen Scholarship

This year's recipient of the Mike Allen Award is Colt Atwell, son of Lauren Atwell, Petticoat-Schmitt Civil Contractors and Melanie Atwell. Colt will begin his final year at Embry-Riddle Aeronautical University this fall majoring in Aviation Maintenance Science. While in college, he has been active in the Society of Aviation Technicians, Florida Tech ASCE Concrete Canoe team, Florida Tech Integration Bee and Discovery Day. Outside of school, Colt has participated in the City Rescue Mission Bed Race and Seamark Ranch Mud run and assisted clients during their adaptive shooting program at Brooks Rehabilitation Adaptive Sports. In his spare time, Colt enjoys hunting, fishing, horseback riding, building functional model rockets, competitive shooting and longboarding. Colt was unable to attend this evening as he is interning at Textron Aviation as an A & P Mechanic Intern..

The Mike Allen award is given to a high school student, High School graduate, Undergraduate College Student or Graduate Student who is the daughter or son of a NUCANF member company employee or a member company employee and is enrolled or will be enrolling full or part time in an academic institution of higher education this summer/fall. The enrollment may be in any curriculum for any number of years. This may be a four-year college or a community college anywhere in the United States. The Mike Allen Scholarship is a \$1,000 one-time award.



NUCA of Florida Conference Highlights

A great time was had by all who attended the NUCA of Florida Conference in Clearwater Beach Florida. The conference kicked off with a Board of Directors meeting followed by a Welcome Reception on Thursday evening. Friday morning began with a breakfast and awards presentation as well as the installation of the NUCA of Florida Board of Directors. Our chapter representatives this year will be Mike Kivlin, President of NUCA of Florida, Jon Woodall, Gabriel Powers and Paul Gilsdorf.

Our Construction Industry Day forum speakers were George Spafford and William McFetridge IV from GrayRobinson, P.A. George and William provided an update on key legislation issues which were recently signed into law in Florida and other legislation that did not pass this year. Our second speaker was Joe Clements who discussed motivating millennials in today's workforce. Joe gave us a lot to think about and there was a lively Q & A session. Some attendees went on an optional private cruise.

Saturday Night was the awarding of the NUCA of Florida Scholarships followed by a Pirate themed dinner, silent auction and auction baskets as well as a treasure chest with three lucky keys.

Save the date for



next year's conference at the Ritz Carlton in Naples July 23rd to 25th.





The 2019 TSSD Reaches More than 40,000 Workers - Nearly Doubling Last Year!

And we're not done yet! When all of the counting is done, there's a good chance we will double the 2018 numbers. Let's take a moment to applaud the industry's commitment to excavation and trench safety. Thank you to all who took the time to hold these stand downs and for keeping our people safe in the trenches. Special thanks to our TSSD Sponsors, SAC, NAXSA, TSSA, and NAHB.

Failing Infrastructure Nationwide Emphasizes the Need for Federal Investment

While states and localities are doing their best to fund infrastructure projects while they wait on congressional action, continued water main breaks are causing street swallowing [sinkholes](#) to open up, aging electric systems with single point faults are leading to [power outages](#) for entire city blocks, and old, corroding pipes in our drinking water systems are causing unsafe lead levels in [at least 2%](#) of our communities, with [certain localities](#) topping 77ppm. The Senate must act to pass an infrastructure funding bill so these critical systems can be repaired. Find and contact your Senators [here](#) and urge them to act today.

Toolbox Talks: Keeping Cool When the Weather's Hot

With record temperatures throughout the nation, it is vital that our workers stay cool. This week's topic, keeping cool when the weather is hot: [English](#) | [Spanish](#). Toolbox Talks are free to NUCA members.



SAFETY NEWS

By Jeff Blomgren
Safety Director at Petticoat-Schmitt Civil Contractors

OSHA Inspections: What to expect

So many times we read about OSHA inspections and breathe a sigh of relief that it wasn't us. Why is that? Many times we are not confident we have engineered out all the risks of our jobsites, many times we don't have the confidence that all our employees are complying and many times we have the opinion that OSHA is looking to punish us and will keep looking until they find something to site us for. But, how many times have we been inspected and OSHA didn't find any exceptions? We don't remember those but they do happen.

Let's review the procedures; OSHA arrives, OSHA knows that they may be asked to wait a reasonable amount of time to begin their inspection. Usually it's an hour before they start noting the delay. This actually allows you to correct some minor issues and to prep for the inspection. This is not cheating. Also, how you treat the inspector is just part of the right relationship. You don't have to be chummy, just courteous and respectful. They have a job to do. The inspector will tell you why they are on your site. It could be a complaint by an employee or an observation they have made. A huge mound of dirt is a pretty good indication there's an excavation going on.

The inspector will take pictures and even video. It's a good idea for you to take pictures and video at the same time. If you are the senior person on site it would be good to ask the inspector if you can take your "go to" competent person to walk with you and train him to be aware of what the process is during an inspection. Make it an educational opportunity.

It's our responsibility to be aware of the need to comply. Trenches, PPE, equipment, seat belts and any visible controllable hazards need to be identified and corrected before any inspection and is a daily responsibility of a competent person. Internal scored audits will help in identifying areas that need correction. There are outside companies that will perform this service for you if you want to verify your compliance.

Knowing the rules and abiding by them will keep things from becoming a problem. Being able to produce documentation of training, jobsite job briefings, site action plans, inspection records and record keeping are important. That's our part.

There's a lot of information out there on what to do during an OSHA inspection. The bottom line is, if we do what we do in the right way, and know what our priorities are in safety and comply, we have a pretty good chance of having a successful OSHA encounter.

2019 FISHING RAFFLE

TICKETS: \$10 EACH OR 3/\$20

To Purchase tickets, complete bottom of this form and mail with payment to: NUCANF, PO Box 16810, Jacksonville, FL 32245. Drawing will be held on August 3RD at the Fishing Tournament. You do not need to be present to win.

Prizes:

**Pair of 10 Foot Fishing Kayak
With Paddles
Donated by Nimnicht Buick & GMC
Value: \$625**

**30" diameter custom Bobcat Fire-pit
with grill top and stoker
Donated by Bobcat of Jacksonville
Value: \$375**

Visa Gift Card
Value: \$100

of Tickets_____

[illegible]

1st Choice of Prize: Kayak Grill Gift Card
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Payment: ☐ Check (NUCANF) ☐ Bill my account ☐ Charge credit card*
 Visa/MC/AX: Exp Date: V-Code:
 Billing Zip Code

(The V-Code is the last three digits in the signature strip on the back of the credit card (Visa/Mastercard) or the digits on the front on the card for American Express.

Name on card: _____



September 19-20, 2019 Rosen Shingle Creek | Orlando, FL

REGISTER TODAY

Join us September 19-20, 2019 at Rosen Shingle Creek in Orlando for the NUCA of Florida Texas Hold'em and Presidents Cup Golf Tournament Events. The Texas Hold'em fee of \$100 includes a reception, poker tournament, beverages, appetizers, and a chance to win a \$500 gift card! The President's Cup Golf Tournament fee of \$150 includes the Thursday night reception, Friday breakfast, Awards Luncheon, golf fee, cart, drink tickets and cash prizes!

Participate in both events for only \$225 and support the NUCA of Florida PAC. Reserve a golf foursome for \$750 and get a Hole Sponsorship too!

NUCANF NEW MEMBER SPOTLIGHT



An Established Leader in **Surveying & Mapping**

ETM Surveying & Mapping, Inc., is a professional land surveying and mapping service provider for both public and private sector clients. An affiliate of England-Thims & Miller, a full-service planning, development management and civil engineering firm, ETM Surveying & Mapping delivers historical experience, progressive technology and technical expertise to projects of any size and scale.

Surveying is a key element for the successful delivery of any engineering project, and clients are able to increase overall project value when engaging ETM Surveying & Mapping as their partner. We utilize the most advanced technologies and offer the most highly trained professional licensed surveyors, technicians and field crews to deliver accurate, high-quality products.

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- Design Surveys
- Route Surveys
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- Right-of-Way Mapping
- Laser Scanning
- Asset Management
- Subsurface Utility Engineering



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