For the well-known Boston general contractor, it suddenly wasn’t at all going well—and he had the impression, distinct and painful, that this particular individual wasn’t your normal, subservient, buckle-under type of subcontractor.

When the general, in the finest tradition, had earlier sought to salvage his lost profits on the job by composing a lengthy and outrageous backcharge of $25,000 for the Visalli Plastering Company, of Belmont, Mass., the reaction had been equally traditional.

Anthony Visalli, the founder of the firm, had fumed, screamed, called the general on the telephone and shouted. But the general sat back and smiled because he just knew that when the shouting died down Visalli would pay up and allow himself to be gypped fair and square. It was tradition, wasn’t it?

Then Visalli let his son-in-law, Guy Eugene Guarino, who was general manager of the Visalli firm and a law school student, get into the act. That’s when the general abruptly discovered the tradition can be broken.

Guarino did not shout or threaten. As a matter of fact, he speaks so gently and softly that one must sometimes lean forward to hear.

Guarino did not conduct negotiations by telephone. The general began receiving letters—carefully couched in pleasant legalities—demanding that all charges be substantiated: no payments would be made without substantiation.

So the general, not one to be outbluffed by a mere subcontractor, substantiated: hadn’t he provided all that extra electrical power to run Visalli’s mixer motors?

Why, answered Guarino by letter, when the mixers had been run by gasoline motors—and he could prove it.

Such interchanges were repeated enough times so that eventually the general and Visalli agreed on the final settlement of $1,800—and today Guy Guarino feels he could have had that amount eliminated had he really gone on the attack.

And also today, Guy Guarino is President of Visalli Plastering Company, Inc., a diversified $1,000,000-a-year wall and ceiling firm with specialties in lathing and plastering, drywall, acoustical ceilings, fireproofing, and steel framing.

In addition to his contracting firm, Guarino has recently been admitted to the Bar of Massachusetts. Consequently, he has hung out his shingle in Belmont, Mass., where his construction company is headquartered, and is ready to represent the contractor from the vantage point of both lawyer and contractor.
In Belmont, Mass., subcontractor Guy E. Guarino hangs out his shingle but keeps his hand in

For Guy, it has been a long trip. A third generation Bostonian, he is the son of Pat and Angela De-Florio Guarino, both living in Boston, a 1954 graduate of Boston Technical High School, and a 1958 graduate of Boston College with a degree in economics.

Between 1958 and his 1973 graduation from Suffolk University Law School, Guy went after a varied career experience. Out of college, he worked for a customs brokerage firm before serving a two-year stint of military service as a Second Lieutenant. Both years of his military time involved his selection as one of only 13 individuals chosen nationally to serve with the Army Security Agency, a quasi military intelligence operation.

When discharged he went to work in sales and marketing for an industrial valve manufacturer and then later with BTU Engineering. In 1962 he joined RCA as project administrator for black box radar units for the Navy.

Two years later, he opted for the construction industry, becoming an estimator for the Visalli company which had been started 30 years earlier by his father-in-law and which enjoyed an area-wide reputation as a quality plastering firm, especially ornamental type work.

By 1969, Guy decided to add lawyer skills to his credentials and enrolled in night school at Suffolk University. Inasmuch as he was already functioning as general manager, Guy sandwiched his law classes into a 3-nights a week 6-9 PM schedule with evenings and week-ends devoted to studying.

By his own admission, his wife, Frances, and daughters, Jennifer, 10, and Francesca, 9, saw little of him until he received his Juris Doctor degree in 1973. The press of business problems, switching the company over to a

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corporation and Anthony Visalli’s temporary health problems all combined to keep Guy from taking his bar exams.

But this year he cleared that last hurdle.

Of course, the workload hasn’t slackened any. He and Frances, who live in nearby Lincoln, Mass., still put in time in the contracting firm and work toward building the law practice.

Guy retains his memberships in iaWCC/GDCI, the Master Plasterers’ Association of Boston, and is treasurer of the Lincoln School Association, and member of the Town Neighborhood Planning Committee.

Still, he found time to talk to CONSTRUCTION DIMENSIONS about the potential of contracting and of a contractor/lawyer in an industry that is rapidly changing.

GUARINO: There are two reasons. The first is that business has been getting tight in the plastering trades and it has been most difficult to shift the image of this firm from plastering to drywall.

Second, it was a matter of challenge and personal growth. So many times I could see that the general contractors with whom I dealt had in-house attorneys with an appreciation of legal concepts. The pressures that you can experience in such a situation when differences of opinion occur is severe. And even with large, reputable contractors there is always room for disputes.

GUARINO: I’d have to say it’s their willingness and readiness to handle problems verbally. That is, they simply aren’t letter writers—unfortunately.

Most subcontractors have a forceful approach—sometimes too forceful—in settling matters. Maybe letter writing is difficult, and it is, but a well written letter can be a double edged sword because it can indicate commitments, contain the elements of law which eventually must be proven . . . in short, contain all sorts of legal requirements.

A handshake and a slap on the back may be tine when things are going along smoothly. They don’t hold up very well—and neither do telephone calls—when you get in court and the rules of evidence apply.

GUARINO: Everything starts out little—and then grows. So who knows. A letter can be used as evidence later. It clears up ambiguities that may be claimed or vice versa. And remember, the answer to your own letter is often more damaging to the general contractor than your initial letter.

GUARINO: Actually, sending a letter registered is more of a psychological ploy than anything. I used to get upset when I received a registered letter, but no more. It really has no more value than a correctly addressed letter.

If it’s correctly addressed, the other party received it: you know it and so does he. Claiming you didn’t get the letter—blaming the Post Office—is a weak argument and someone is down grasping at the final threads when he must resort to that argument. Just make certain it’s properly addressed.

GUARINO: You just said it—at the beginning. When the sub negotiates the contract the traps begin. The first rule is: don’t leave it out of the contract and then be in a position where you must fight for it later.

If you settle all those gray areas before you sign the contract, you’re better off. Nor should you feel obligated to sign any contract the general puts before you.

If it’s his contract, you may be assured that he’s taken steps to protect himself completely—and
GUARINO:

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usually at your expense. The A-401 by the American Institute of Architects is a good subcontractor agreement to use.

DIMENSIONS: What would be some good, broad guidelines for a subcontractor to follow in order to avoid legal difficulties and yet not become his own lawyer?

GUARINO: Common sense is the rule. First, read all of the sections for work that may involve you—and read the general conditions. Second, write letters confirming understandings, agreements, problems, or verbal orders and the like.

Let me make myself a little more clear on the importance of letters. Letters prior to the signing of the contract may be excluded where a contract is later executed and the parties to the contract intend that writing to be the complete and final expression of the rights and duties undertaken.

However, letters prior to the signed contract may generally be shown to indicate fraud, duress, illegalities, or incapacity to contract. The letter may also indicate ambiguity or customs in the trade.

Letters after the signing of a contract may be sufficient to modify the contract.

Third, don’t assume that a layman’s interpretation of a contract is identical with the court’s. Contracts are complicated and lawyers’ and laymen’s interpretations are not equivalent. Finally, read everything that is given for you to sign: know what you’re signing.

DIMENSIONS: From the binocular view of a contractor/lawyer, how can a wall and ceiling contractor make the most advantageous arrangement to have legal counsel—by specific need or retainer?

GUARINO: The retainer approach is probably the least expensive and most advantageous. When a subcontractor can call and get a few words of advice on a potentially serious situation, the advantage is obvious.

In my own case, my construction background provides me with an extra instinct for detecting potentially troublesome areas.

DIMENSIONS: In the absence of legal advice, many subcontractors can be bluff, can’t they?

GUARINO: You’d better believe in the truth of that statement. A contract is similar to a lease with a landlord. Some leases are actually unenforceable.

As a result, some subcontractors give up their legal rights and buckle because, they reason, it’s in the contract and they must do it. That’s nonsense. The language in some contract clauses—such as the more severe forms of hold harmless clauses—don’t worry me. They’re simply unenforceable.

DIMENSIONS: Let’s take backcharges as a problem. You told me how you handled the rip-off attempt on your father-in-law. How should the wall and ceiling contractor handle backcharges that are patently ridiculous?

GUARINO: Any subcontractor should work very hard to develop a reputation as quickly as possible that he will not accept ANY unsubstantiated backcharges. All of his customers—general contractors—should be informed that backcharges must be substantiated in a way that will stand up in court.

DIMENSIONS: Is that by letter?

GUARINO: Absolutely. Telephone calls go on and on: they don’t stand up in court, but letters—with copies—do. You’d be astonished at the response that a carefully worded letter to a general contractor will achieve, especially if you ask for substantiation on a backcharge.

DIMENSIONS: Guy, do you see a growing need for a subcontractor to have legal counsel today? For the most part, they’ve been able to avoid the cost of a lawyer reasonably well in the past?

GUARINO: Aside from my own feelings as a lawyer, I’d need to say yes in all honesty. It’s the climate of the time . . . malpractice suits against doctors . . . (Continued on page 36)
GUARINO:
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sumerism . . . insurance settlements increasing at staggering rates . . . nuisance claims . . . greater reliance by the public on attorneys . . .

DIMENSIONS: Your general contractor customers must feel rather uncomfortable dealing with a lawyer sub who can litigate his disagreements easily and cheaply?

GUARINO: Well, I plan to stay in construction. But I realize that as my reputation as an attorney increases this may cause some problems because of clients who might consider it a needless danger.

It is my hope that as an attorney serving in the construction industry that my forte will certainly be the knowledge and experience to develop construction facts in a legally significant manner.

As for my general contractor customers, I’m avoiding any unnecessary concern right now with extra patience. Anyway, I don’t push for a legal remedy until all else has failed and I’m forced to go that route. That doesn’t mean, though, that I’m not laying the groundwork for in or out of court settlement.

DIMENSIONS: Most of your work is repeat work with existing customers. How do you maintain good public relations with these valuable clients?

GUARINO: I avoid out-of-towners mostly because when I take on a job with a general I’m looking forward to the next job. Every effort is made to communicate the fact that we have a total commitment by this company to theirs. They know I’ll stick with them and that they can depend on me.

Even when I don’t want a job I’ll bid it so my customers know they can rely on me. That’s why we have so many requests for bids . . . I believe myself to be a sincere person and I try to maintain that sincerity across the board.

DIMENSIONS: Specifically, how do you handle the communications of affirming your company’s commitment?

GUARINO: On any job, I work and talk with the general’s people, too . . . his laborers, carpenters, superintendents, project managers, and right into the general’s office. I visit job sites and by spending five minutes with these people I get valuable insights into the job and potential problems.

For my part, it’s merely showing honest concern for their success and this translates into success on my company. This way, my customer, the general, knows I’m following HIS job closely.

DIMENSIONS: One famous general contractor said the mark of a good sub is not to argue about manning a job. He contends that if the GC wants, say a half dozen men, put the men on and quit arguing . . . that you’ll be repaid many times?

GUARINO: Well, that’s true, I suppose. You shouldn’t be complaining about every little thing. But you must also have confidence in yourself as a specialty contractor.

I know of one well-known general in Boston who wanted me to put 14 men on a job. I told him, ‘Look, I’m the specialist. It’s my money. Let me man the job my way and we’ll stay ahead. If not—we’ll do it your way.’

We put on 4 men and stayed ahead of everyone. I think that general today has more respect for me for having the confidence to do our part.

DIMENSIONS: You earlier emphasized the difference between a business and a contracting firm. Why did you do that?

GUARINO: Because there is a difference, if only in definition. A business is organized for the purpose of seeking profit; a construction firm seeks activity. The two are not necessarily the same.

If you run a business you are a manager and that means you must do your job, set goals, and then strive to attain them. Anything less than that is role playing and I have little use for that kind of individual.

DIMENSIONS: Where do you see business going in the next few years?

GUARINO: I think there is a very healthy uptrend here in the Northeast. Most work right now is institutional but as the economy improves we’ll see office and manufacturing construction. The existing inventory is reasonably well depleted now.

If we contractors can keep our heads, we’ll be in for some good business years ahead.