



Subcontractors Association of the Metroplex

PUNCH LIST

The voice of the Subcontractor's Industry

BEWARE THE "CIPS"



Subbie Sam Says

BIM puts all the information that all the subs are providing on all the documents for all the subs to use.

It won't be long until all the subs will need to use this on all the jobs.

Inside this issue:

Beware the "CIPS"	1
Mike Mehno's construction Forecast	2
Bylaws revised	2
Faces in the crowd	2,3
Upcoming meetings	2
Legalized Marijuana	3
More Legislation & New Board members	3
Our Officers	4

BEWARE OF THE "CIPS"

One of the least understood, and potentially most harmful, trends in construction today is the "Controlled Insurance Program," or "CIP." CIPs are found in numerous guises, but the most common are the Owner Controlled Insurance Program ("OCIP"), and the Contractor Controlled Insurance Program ("CCIP"). The characteristics of these programs are similar, and the problems they present, pervasive.

WHAT ARE THEY?

CIPs are simply programs of insurance which are controlled by someone other than the insured, typically, either the owner of the construction project, or the general contractor. These programs are promoted under the claim that they will save money, for the owner (OCIPs) or for the general contractor (CCIPs). Reasons given for "savings" include phrases like "buying power," "enhanced safety programs" and "volume." Putative benefits include "greater coverage," "higher limits" and coordinated administration. As a subcontractor, though, you can be relatively certain of one thing: controlled insurance programs will cost you money, and may harm your own insurability!

THEY COST MORE

Promoters of CIPs require that subcontractors report their man-hours and insurance costs, then issue deductive change orders against the subcontract total in an amount they contend represents the "value" of the insurance coverage they are providing. Don't fall for it.

Controlled insurance programs are the "wild, wild west" of insurance; you

never really know what coverage you're going to get until after the policy is issued. CIPs never cover subcontractors outside the job site, so subs are still required to provide their own insurance, naming the project owner and general contractor as additional insureds, covering risks excluded from the CIP. Because your regular insurance covers you all the time, this means that you are being charged for insurance which, by its definition, provides less coverage than that what you had before.

CIP promoters claim their higher limits are beneficial to subs, but these "higher" limits cover everyone on the project (and sometimes, everyone on every project the general contractor has going), so the so-called higher limits are shared between a greater number of parties.

CIP savings are also predicated upon the ridiculous premise that the subcontractor's insurance rates will go down based upon the reduced risk being underwritten; while this might apply with regard to Worker's Compensation insurance (but watch out for lost premium volume discounts!), it generally does not apply with regard to liability insurance - but the CIP sponsor still takes money away from you for your liability coverage.

WHAT IF THERE IS A CLAIM?

CIP participants are generally required to agree to egregious provisions in the event of a claim, including an explicit waiver of the right to have independent and unbiased counsel representing their interests, and an absolute obligation to allow the adjuster to settle claims on behalf of the insured. Even if the CIP ends up paying a claim, it may still harm the subcontractor, because the adjusting

process is not performed independently, but rather, liability for losses may be assigned to subcontractors rather than the CIP sponsor, thus harming the loss record of the subcontractor. Another way CIP claims practices harms and subs is that most CIPs include very high deductibles, per claim, thus imposing a much greater expense up front on subs.

WHAT TO DO?

Be sure that, when you bid a job, you are very explicit about whether you're including insurance, or not, and if you are aware there is a controlled insurance program, you may wish to include an explicit provision in your bid, "this bid is provided based upon no insurance being provided." If the CIP plan administrator provides a worksheet for deductive change order for insurance, challenge the numbers - if you can demonstrate that you will not have the savings they claim you will have under insurance, fight the deduction. Don't agree to it up front.

Perhaps most importantly, be sure that your fellow subcontractors, in your trade and in other trades, are well - informed about the true nature of CIPs, so they don't make the boneheaded mistake of assuming a CIP is protecting them.

Spike Cutler is SAM's legal counsel and partner at Cutler-Smith, PC.

MIKE MEHNO'S CONSTRUCTION FORECAST



For the last several years we've been fortunate to have Mike Mehno present McGraw-Hill's construction forecast.

Mike delivered a somewhat more positive forecast than in the last several years. We all know that construction activity has been down since 2008, but

it's on its way up now. Texas optimism and the influx of new residents has created the desire to build new things.

Mike noted that schools and government work that had been the bulk of the construction work had ran their course, but private enterprise has started to take

hold and we should see a marked increase in the near future.

We still have a way to go to get back to the glory years that we had just a few years ago, but we should be seeing some relief from the desperate measures that we had to take to survive.



Top—Mike Mehno of McGraw-Hill
Bottom— Board Candidate, Carrie Edomm of Astro Sheet Metal

BYLAWS REVISED

Welcome to the 21st century. Things we didn't know existed in the 1990s are now commonplace. Who would have thought that facsimiles would be old fashioned in 2013? Who knew that a first class stamp would cost 45 cents, making mail an option that impacts the budget?

The changes were 100% approved by the respondents to the ballot mailed to members. These changes allowed SAM to use electronic transmission for important information; any future changes to the bylaws, election of new directors, or official notices can now be sent other than snail mail.

Thanks to the Bylaws revisions, SAM has sent the ballots for election of two new Directors, and it didn't cost you members anything to post the ballots electronically.

UPCOMING MEETINGS

In August, SAM will present all-star trainers from Baker—Triangle to get us up to speed on Building Information Management. BIM combines the electronic shop drawings in one format from all trades to be sure that everything fits and goes smoothly on the job. This is a huge step from the hand-drawn shops of the past where we had to read through many different trade shop drawings and rely on memory to be sure that our contribution to the job fit. BIM is here, and it's here to stay, so we all need to be ready to join this technology parade.

September is the witching hour for new Texas laws. Most of the laws enacted take effect on September 1. SAM will lead you through them so that you'll be prepared to comply with them or use them to your advantage.

October is scheduled for an update on the far reaching mandates of Obamacare, and our experts will give us an in-depth view of how this affects us as independent business owners.

November is the time for our highly acclaimed Contract Law Seminar. Spike Cutler will arm you with all the knowledge you need to escape the bad clauses and come up with a contract that gives you a fighting chance.

December is time for Christmas parties, and SAM takes the month off to allow its members to celebrate.

January is: "Crisis Management; every contractor should have a plan."

SAM says: If you have any programs that you would like, let us know and we'll do our



Claudia Ronzani of Armor Wealth Management



Ian Buchanan of The Interface Financial Group



The NSA has grown to be the largest Subcontractor organization in the United States.

LEGALIZED MARIJUANA: A WORKPLACE NIGHTMARE!

Texas is not a state with Legalized Marijuana, but if things go the way some would like it, it will be. This is something that all employers should be aware of, and keep their legislators informed of the danger of giving in to. If this happens in Texas, we will have a real problem.

Eighteen states and the District of Columbia have now legalized medical Marijuana use. The state laws vary greatly and present employers with a workplace nightmare!

Employers and Human Resources professionals are finding themselves rewriting their employment policies in the following states:

Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Michigan, Montana, Nevada, New

Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington

The workplace conundrum is that Marijuana use is a violation of the federal law but legal in the above referenced states for medical purposes!

Some of the state laws such as in Arizona, Connecticut, Delaware, Massachusetts, Montana, and Rhode Island are particularly challenging, based on the specific restrictive language against employment discrimination.

The workplace nightmare comes into play when an employee has tested positively on a drug test for post-accident and/or pre-employment testing and has a legitimate medical marijuana explanation. Furthermore, the use of

medical marijuana is illegal under federal law, employers can refuse to consider accommodations that would acknowledge or support illegal activity.

Another key point to note is that **medical marijuana is not a legitimate medical explanation for a positive test result for marijuana** under federal employee testing programs for the United States Department of Transportation. Currently, and as the result of the critically important U.S. Supreme Court decision, *Alberto R. Gonzales, Attorney General, et al., Petitioners, v. Angel McClary Raich et al*, in most states with medical-marijuana laws, an employer may safely refuse to accept medical marijuana as a reasonable medical explanation for a positive drug test result.

Furnished by DiAnn Sanchez of DAS HR Consulting



Rare Sighting, Director Tim McSorley



Director Eric Lindberg of PCI construction

LEGISLATIVE SPECIAL SESSION

As this column is written, Gov. Perry has just called a third special session for the Texas Legislature, to address funding for Texas highways. Recent years have been unkind to Texas roads, traditionally some of the best in the country, as older roads and bridges deteriorate. With the recent resurgence in business activity and tax revenues, it is high time for the state to do some necessary infrastructure investment. Properly – administered, increased highway funding should be good for the state, its economy and, of course, for the Texas construction industry. Be sure to let your elected representatives know if you favor well planned infrastructure improvements.

From Spike Cutler, SAM Legal Counsel

ELECTION OF NEW DIRECTORS

The board of directors has voted to increase the number of directors from Seven to Nine.

The nominating committee, chaired by Clem Lesch, have nominated Carrie Edomm of Astro Sheet metal to be a Subcontractor representative, and MaryEllen Evans of the Independent Insurance Group to be an Associate representative.

You all should have received your ballots by now to ratify these nominees, or to place your write in names for election.

As SAM grows, we plan on adding more directors to get up to our mandated maximum.



Board Candidate MaryEllen Evans of Independent Insurance group with RW Smith of Master Construction and Engineering.



Subcontractors Association of the Metroplex



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The Subcontractors Association of the Metroplex was founded with the purpose of creating an affordable forum for Subcontractors to exchange information and learn from each other how to be better business men or women.

Sam is a member of the National Subcontractors Alliance, the largest Subcontractors association in the USA, and also a member of the Association of Specialty Contractors where we have a voice in National Legislation.

Sam is also allied with the National Federation of Independent Business who has a voice in the Texas Legislature on small business issues.

**Your Source for Subcontractor's
information.**



Visit us at:
<http://www.sam-dfw.org>



Our Association Officers

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If you're not a member of SAM,
you should be.

Call Pete Snider for a membership application.

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**SUBCONTRACTORS—
THE ONES WHO
REALLY BUILD THE
BUILDING**