



Subcontractors Association of the Metroplex

PUNCH LIST

The voice of the Subcontractor's Industry

LEGISLATION, WE ARE UNDERWAY!



Subbie Sam Says

In a climate where you can be held responsible for everything that goes wrong, you'd better be prepared to put the blame where it belongs

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SAM Members heard from our friends and advocates in Austin, the Texas Construction Association (TCA), last month. As promised TCA's legislative agenda has begun to move forward, with bills on file on every key issue. Here's a quick update for SAM members.

Consolidated Insurance Programs
 HB 1206 by Representative Dan Huberty (R-Humble) referred to House Insurance Committee.

SAM members know how harmful Controlled Insurance Programs (CIPs) can be to a subcontractor's profitability and operations. TCA is fighting to have some regulation of these "Wild West" insurance schemes, including mandatory disclosure of the existence, terms and required participation before bid time, and the right of regulation for CIPs by the Texas Department of Insurance. Public hearing was held on 25 March, 2015, with good testimony and support from TCA members and other groups. Reports are that there was little opposition voiced - maybe we should be nervous!

Notice of Lender Default
 HB 1208 by Representative Cecil Bell (R-Magnolia) is pending before the House Business & Industry Committee.

Currently, construction lenders have no obligation to notify the construction team that the owner of the project is in default, and that the lender will no longer fund a construction loan. The construction team continues work, blissfully ignorant that they might well not get paid! We're looking for statutory relief, mandatory notice to the construction team of a default by the Owner.

Retainage Trust Fund
 HB 1966 by Representative Jim Keffer (R-Eastland) was filed on Thursday,

February 26 and is pending before the House Business & Industry Committee.

This legislation amends the Construction Trust Fund statute to require that retainage be set aside in a separate escrow or trust account during the life of a project, to ensure that contractors and subcontractors will be paid the retainage to which they are entitled. In lieu of setting aside the retainage each month, the project owner may purchase a retainage bond for the benefit of the construction team under language in the bill to be filed.

Worker Classification
 HB 434 by Representative Senfronia Thompson (D-Houston) was referred to the House Business and Industry Committee on Wednesday, February 18.

Employers are required by law to classify workers on construction projects as employees, or independent contractors. When an employer does not classify properly, they don't pay their fair share of taxes, and gain an unfair competitive advantage in bidding for jobs. Current penalties for not classifying properly are limited to payment of back taxes owed, plus nominal interest and tiny penalty - not enough to deter employers from not classifying properly. TCA's approach would allow sufficient penalties for misclassification to genuinely deter this unfair act.

Other Construction-Related Legislation Being Followed

HB 689 by Rep. Armando Walle (D-Houston) has been referred to the House Business & Industry Committee and is awaiting a hearing. Its companion bill, SB 155 by Sen. Jose Rodriguez (D-El Paso) has been referred to the Senate Business and Commerce Committee. This legislation

would establish mandatory workers' compensation coverage for all building and construction contractors.

HB 889 by Rep. Tony Dale (R-Cedar Park) has been filed, and is referred to the House State Affairs Committee. SB 401 Sen. Charles Schwertner (R-Georgetown), the companion bill to HB 889, has been referred to the Senate Business and Commerce Committee. This legislation would require any contractor or subcontractor providing goods or services to a state agency to register with and participate in the E-verify program to verify employee information during the term of the contract with the agency.

HB 1784 by Rep. Paul Workman (R-Austin) has been filed and referred to the House Judiciary and Civil Jurisprudence Committee. This legislation provides that liability for defects in construction or repair of an improvement to real property to decrease by ten percent for each year after completion, thus protecting contractors from unreasonable "ninth-year Nelly" claims of defects.

With as many new legislators in the state house as there are, a great deal of "getting acquainted" time is being expended, so watch for a feverish flurry of activity as the autumn-hours of the session come around. SAM and TCA are in your corner this year, and please, be certain that if you're called for testimony in Austin, you make time to show up and describe your business experiences to legislators - they need to hear from you!

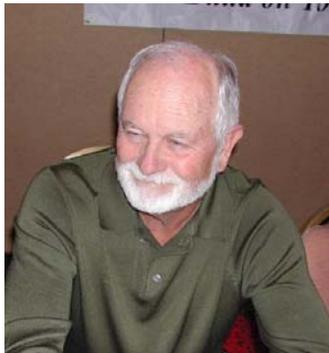
Spike Cutler of Cutler-Smith, PC is Legal Counsel to SAM and a regular contributor to the Punch List.



Top: Our Seminar Sponsor, Clem Lesch of PCL Contract Bonds,
Bottom: Seminar Presenter, Garrin Fant of Cutler-Smith



New Board member, Paul Holden of Facility Construction Svcs.



New Board member, Gary Ardis of Anderson Asphalt and Concrete



Long time member Rod Kropelin of Striping Plus



Flavio Ronzani of Ronparco



Rocky Epps of Complete Landsculture

GETTING HIGH TECH IN THE OFFICE AND FIELD

The highly respected General Contractor, Rogers-O'Brien shared some of their talent with us for our February meeting. Blake Potts brought us into the 21st century with an entertaining and informative program on the technology that is being used in the office and the field and is creat-

ing profits because of the speed of sharing information. With the proper communications, errors are reduced, misunderstandings are eliminated and a job flows as it should.

Blake led us through some real life situations and showed us where the use of this new software will be of

benefit to us. All that attended left with a better understanding of construction technology, and we all had a good time learning about it.

Thanks to Rogers-O'Brien Construction for sharing Blake with us!

SAM ELECTS BOARD MEMBERS

In our yearly election, we elected Paul Holden and Gary Ardis to the Board of directors to replace Eric Lindberg and Kay Schultz who have retired from the board after a long and distinguished service. Re-elected to the board were MaryEllen Evans and Clem Lesch who serve one year terms as associate members.

NSA ANNUAL MEETING

Board members Carrie Edomm, Don Weempe, MaryEllen Evans and Paul Holden were joined by SAM's legal counsel Spike Cutler and his associate, Karen Ensley as well as E.D. Pete Snider and TCA V.P. Jeff Webb at the National Subcontractors Alliance annual meeting in Austin.

counsels and executive directors meet to share information and through this they are better able to serve their membership.

The weekend program was designed to allow us to learn from each other, as well as to have a marvelous program on membership and communication. It was time well spent by your representatives.

The NSA alliance officers, legal

Right: NSA Representatives from Boston, Albany, New York City, Philadelphia, Charlotte, Akron, Southwest Ohio, Minneapolis, Chicago, Indianapolis, and Tucson met in Austin to enjoy some Texas Hospitality with the SAM crew.



ANOTHER DAY AT THE FORUM

This is a story about two subcontractors - Sanfordinius and Son Construction and Maximus Specialty Contractors. Subbinius Samicus, president of Sanfordinius and Son Construction, specialized in the installation of animal and human cages. Flavius, owner of Aqueduct Lining, Inc. and specializing in the installation of lead lining into aqueducts, had been a long time member of the local chapter of the NSA, SAM. They regularly attended meetings where they were able to obtain parchment scrolls listing the developers and owners who had an excessive number of liens filed against them. Subbinius, however, chose to spend the first Thursday evening of every month gambling and carousing in the forum and as a result didn't understand the importance of reading and negotiating contracts as well as performing due diligence on the ability of owners to pay. In the year 79 AD, both contractors were invited to bid on the new Circus Minimus, where Christians could be fed to the lions, but only a few at time as opposed to the Circus Maximus, where Christians became cat food by the dozens. Upon getting his bid invitation, Flavius had his assistants, Peteium and MaryElleninus, search the lien scrolls for the developer/owner of this project, Shafticus LLC. Peteium pointed out numerous liens filed in the past year against this company and upon consulting with Cutler - Smithicus, Flavius decided to pass on this bid invitation.

Subbinius, however, not a SAM member and nursing a very serious hangover from the excessive wine imbibed the evening before, in other words the usual, did what he always did, spent valuable resources procuring the contract parchments and submitted his bid. After several weeks, Subbinius was contacted by the successful General Contractor and were informed that while they were not the low bidder,

they would be low if they would drop their price 15% (or 32 pieces of gold). Subbinius, again nursing a wicked hangover and desperate for work, readily agreed and the GC sent over his contract by chariot. Subbinius glanced at the thick roll of parchment, glanced at his sundial and turned to the signature page of the parchments and quilled his name in the appropriate places.

The project started out well for Sandfordicus and Son but problems with the GC's job site supervision soon had the project in chaos. Meanwhile, the owner, Shafticus made some bad investments with the money loaned to him by his Senator investors. He had used the gold and silver to purchase some expensive mosaics that he had shipped to Pompeii, but his investment ended up buried under 10 tons of volcanic ash. Now penniless, Shafticus calculated that if he accelerated the completion schedule, the Project would be that much closer to finishing and have more value that he could then sell to another set of investors and payoff the original investors. The GC agreed to accelerate the schedule and have the project completed in half the time originally allotted (the GC had very little skin in the game as there was practically no supervision, no job site trailer, and no trash dumpsters for the subs). Contained in the "boilerplate" contract to the subs was the ability of the GC to demand additional labor at any time and at their sole discretion, with no remedy.

Subbinius protested this acceleration but the only reply he received stated "read your contract". So Subbinius decided to finally read his contract, employing Cutler-Smithicus as the contract was Greek to him (the contract was actually written in Greek). Cutler-Smithicus translated the contract documents for Subbinius and informed him that he

him that he was up the flumen without a paddle. Subsequently, Subbinius completed his portion of the project, failed to heed Cutler-Smithicus' advice to file the appropriate liens on time, was never paid (ancient Rome was a pay-when-paid state) and ultimately fed to the lions in the newly completed Circus Minimus along with other debtors, criminals, and the ubiquitous Christians.

Meanwhile, Maximus Specialty Contractors along with Cutler-Smithicus were able to successfully negotiate a contract to build the new lead-lined aqueduct to provide needed water to the newly completed Circus Minimus. This project went very smooth and they were promptly paid every month. However, the final draw and retainage were not paid on time but thanks to the monthly reminders to not miss the lien filing deadlines that Cutler-Smithicus sent out by a special chariot courier service, Flavius was paid his entire contract amount within 2 months of substantial completion. So don't make the same mistakes that Subbinius made-join SAM and attend the monthly meetings or take a chance on getting fed to the lions.

Sam President, James Mayhew has become SAM's Poet Laureate.



As a SAM member, you are also a member of the Texas Construction Association.



Debbie Denman of DDC Fuel Services



Karen Ensley of Cutler-Smith



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 a member of the Texas Construction Association, the unifying voice of the trades in the Texas Legislature and as such all SAM members have access to all the benefits of the TCA.

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>



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**SUBCONTRACTORS—
THE ONES WHO RE-
ALLY BUILD THE
BUILDING**

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

Call Pete Snider for a membership application.

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