

2007 Texas Legislature TCA Agenda

The Texas Construction Association Board of Directors has set the TCA legislative agenda for the 2007 Texas Legislative Session. Following is a summary of the key issues that TCA will focus on during the interim and for the 80th Legislative Session in 2007.

Limiting the Use of Contingent Payment Clauses. Many construction contracts include clauses that shift the risk of payment to the subcontractor. Often called pay if paid clauses, contingent payment clauses make payment to the subcontractor by the general contractor contingent on whether or not the owner pays the general contractor. A subcontractor may have not been the cause of why the owner is not paying the general contractor, yet the subcontractor still has to suffer not getting paid.

There are many troubling factors that are associated with contingent payment clauses. First, there is unknown cash flow for the subcontractor. Second, the subcontractor still must pay its employees and suppliers even though no payment has been received for the project. This means that the subcontractor will either have to use internal funds or a bank loan, thus putting strain on the subcontractor's financial

resources. Third, the subcontractor has no grounds on which to sue the general contractor for non-payment if the owner does not pay the general contractor. The subcontractor likely has no bond claim rights and its mechanics lien rights



may be in jeopardy. In summary, it's a bad situation.

Other jurisdictions have barred or restricted the use of these clauses. The Texas Construction Association has reached an agreement with the Texas Building Branch of the Associated General Contractors to restrict the use of contingent payment clauses. The agreement will help stop the abuse of contingent payment clauses. The proposed legislation states that contingent payment agreements may not be used if the non-payment by the owner is a result of actions of the general contractor. The proposed legislation also

prohibits the contingent payment agreement from being used if the non-payment by the owner is a result of work done by another subcontractor. The contingent payment agreement can not be used to defeat lien or bond claims of the subcontractor.

Indemnification Clauses and Additional Insured Endorsements. It has become common practice in construction contracts for one party to shift the risk of doing business to another party. The owner wants to shift risk to the general contractor and the general contractor wants to shift risk to the subcontractor. In addition to the payment of a claim, the broad form indemnification typically includes the subcontractor paying the entire cost of defending a claim regardless of the percentage of fault.

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Member Mentions

ASA-San Antonio

On February 23, 2006, ASA San Antonio will have its 11th Annual Awards Banquet at St. George Maronite Center. On March 5th, the chapter will hold the Annual Subfestival & BBQ Cookoff at Raymond Russell Park #2 Pavilion. June 23rd & 24th will be the Fifth Annual Fishing Tournament in Port Aransas, Texas at the Civic Center. October 2, 2006 is the 14th Annual Golf Tournament at RiverCrossing Golf Club.

ASA San Antonio member, The Blue Book, has announced that in January 2007, the San Antonio/Austin Blue Book will hit the streets marking the company's 26th regional print edition. The San Antonio/Austin edition will be distributed free of charge to

anyone in the San Antonio/Austin region who has a need to purchase or hire construction goods and services. To request a free Blue Book please call 1-800-431-2584.

TxFSCA

On November 8, 2005, Texas Fire Sprinkler Contractors Association presented Texas Scottish Rite Hospital for Children with a check for \$42,000. The TSRHC honored TxFSCA by holding a luncheon the same day for Board members, officers, and supporters. (see photo)

A general membership meeting will be held in Houston on Friday, February 17, 2006, at Wyndham Greenspoint Hotel.



TCA AGENDA

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Another way to shift the risk of doing business for the general contractor is to require the subcontractor to add the general contractor to the subcontractor's insurance as an additional insured. This gives the general contractor access to the subcontractor's insurance in virtually the same position as the subcontractor. Thus the general contractor can use the subcontractor's insurance to pay a claim for the negligent act of the general contractor.

Both forms of risk shifting create a situation where the subcontractor can be held accountable for coverage of a claim for which the subcontractor was not responsible.

TCA believes that these

forms of risk shifting are unfair and create an illogical result when one person assumes the financial consequences of the negligence of someone else. TCA believes that the legislature should make it against public policy to have language in contracts by which a person is required to be responsible for another person's negligence.

Consolidated Insurance Programs.

A consolidated insurance program includes programs such as Owner Controlled Insurance Programs (OCIP), Contractor Controlled Insurance Programs (CCIP), Rolling Owner Controlled Insurance Programs (ROCIP) and similar programs. On projects where a CIP is in place the owner or contractor has purchased insurance typically to cover the general liability

and workers' compensation exposure for all contractors and subcontractors on the project. The goal of these programs is to reduce the overall costs for the project by providing one policy covering everyone. The purchaser anticipates savings through the volume purchase.

What is thought to be a logical result is not always the case. The experience of many contractors has been mixed when CIPs are used, but subcontractors generally have had bad experiences when working on CIP projects. Some of the problems:

- The amount of insurance may not match the magnitude of the job and vast numbers covered under the policy.
- Oftentimes there are gaps in coverage.
- The policy may not provide coverage through the expiration of the statute of repose.
- Off-site accidents, though job related may not be covered.
- There may not be coverage after the subcontractor has completed its work (completed operations).
- Separate payroll and auditing procedures are often required. When a job is finished, final payment is oftentimes delayed because the administrator has not completed the insurance audit.
- In the workers' compensation area, another layer of administration is created, oftentimes leading to failure to adequately provide care, supervise, return to work promptly or other problems affecting the injured worker and the employer. Mix-ups have often occurred on whose experience rating is affected by an injury occurring during the project.
- With CIPs in use, no longer is there as great an incentive to hire the contractor or subcontractor with the best safety record. Usually, there is

no advantage in the bidding process for a contractor or subcontractor with a good safety record and a low workers' compensation rate modifier.

With such experiences, many contractors and subcontractors maintain their own liability insurance and workers' compensation in order to be adequately insured—thereby increasing the cost of the project. Because of the complexities and the costs of administration, CIPs work best on very large projects and are not cost efficient or administratively efficient on smaller projects, yet some owners insist on using CIPs on small projects.

If a CIP is to be used on a project, it should meet certain standards both for the coverage provided and for effective administration of the program. These include:

- CIPs should be standardized to help prevent gaps in coverage.
- At a minimum, CIP coverage should include completed operations, coverage for project related incidents off the jobsite as well as on the jobsite, and coverage until the Statute of Repose expires.
- Per occurrence and aggregate limits of the policy should be enough to protect adequately all those on the job.
- Indemnification clauses from the subcontractors should not be required or at most, the indemnification should be limited to the insurance of the CIP.
- The insurance carrier providing the coverage should have a high financial rating.
- Administrative standards should be established.
- CIPs should be limited to projects that can afford the additional expenses involved in having administrators, safety people, and the additional reporting requirements.

Prohibiting Retainage without interest. Currently, an owner is statutorily allowed to withhold money from construction contractors even if the work is complete. This is called retainage and typically occurs with each progress payment. The common retainage fee is 10%.

Retained funds tie up a contractor's capital and thus can block a contractor's ability to pursue and compete for other projects. Low profit margins take a toll on contractors when fees are retained. If a contractor has a three percent profit margin and the retainage fee is ten percent, it can create a financial burden for the contractor. Employees and suppliers expect to be paid 100% of their labor performed or material supplied. No employee will work for 90% of pay. Suppliers will not accept less than 100% unless interest is paid.

There is no reason to treat construction differently than other commercial industries. Contractors should not be made to finance 10% of the project interest free. Cash flow is imperative for the construction industry and a 10% reduction in cash flow hurts contractors. If money is withheld for properly performed work, then the person who retains funds should pay interest. The legislature should require interest to be paid on retained funds.

Have You Visited Our Website Lately?

The Texas Construction Association proudly offers a "Members Only" section of our website (www.texcon.org). The Members Only section offers TCA members with helpful information for conducting business as a subcontractor or supplier.

In order to enter the Members Only section we must assign you a user name and password. Please visit www.texcon.org, click "Members" and then "Members Only". There you will find how to create a username and password.

Are You Current With Your Insurance?



The use of additional insured endorsements is a common practice in the construction industry. Typically, an owner or general contractor require that a subcontractor name the owner and general contractor as an additional insured on the subcontractor's insurance policies.

The purpose of the additional insured endorsement is to allow the additional insured owner or general contractor access to the subcontractor's insurance policy to provide coverage for claims against the owner or general contractor. Most owners or general contractors want the subcontractor's policy to provide coverage regardless of the fault of the subcontractor, even to the extent that the owner or general contractor is solely responsible for the claim.

Historically, the additional insured endorsement effectively put the additional insured in the same position as the named insured with respect to policy coverage. Thus, the additional insured would rely first on the subcontractor's policy and then on its own in the event the claim exceeded the subcontractor's policy limit.

There are many different additional insured endorsement forms. The most commonly used additional insured endorsement is referred to according to its form name, CG 20 10. There have been five new additions of the CG 20 10 since 1973. The most recent change occurred December 2003, with a new version by the Insurance Services Office (ISO). This

version replaced the words "arising out of" with "caused in whole or in part" by acts or omissions of the named insured.

The change is significant because before this version, if an employee of the subcontractor (named insured) brought a claim against the additional insured, the fact that the named insured company was working on the project was usually enough for the named insured's insurance to provide coverage for the claim against the additional insured. This could happen even if the named insured was never mentioned in the claim. The relationship between the named insured and the project was usually enough to meet the "arising out of" requirement.

The new wording of the CG 20 10 seeks to cover the interests of both the additional insured and the named insured. The additional insured does not want to be liable for any negligent act of the named insured, and the named insured does not want to insure a situation where the additional insured was solely negligent. The current CG 20 10 excludes coverage for the additional insured's acts that are solely caused by the additional insured. This change provides some relief to the subcontractor; however, on construction projects the greater likelihood is that there is joint negligence among several parties in which case the current additional insured endorsement will provide coverage to the additional insured.

PROBLEM

Despite the change in the CG 20 10, adding an owner or general contractor to the subcontractor's policy as an additional insured is still perilous for the subcontractor. The owner or general contractor may require by contract the use of an older form or

even a manuscript endorsement that has wording that is not typical. Some of the issues a subcontractor should discuss with the company's insurance agent prior to entering into a contract where the additional insured endorsement is required:

- What endorsement is being required of the subcontractor?
- Will the insurance carrier provide the required endorsement?
- If not, what will be the liability for the subcontractor if it enters into the construction contract?

It is very important for a subcontractor to make sure that he or she understands what is covered by his or her insurance policy and what insurance coverage is being required by the construction contract. Failure to do so can leave a subcontractor without coverage for contractual requirements and essentially make the subcontractor the insurer of those requirements.

Indemnity Agreements Your company is on the line.

It has become a common practice in the construction industry to shift the risk from one party to another. Broad form indemnification is an example of a risk shifting practice. When a subcontractor agrees to broad form indemnification with the general contractor, the subcontractor agrees to assume all responsibility for the general contractor's negligence, regardless whether the subcontractor was negligent.

For example, four employees of a plumbing subcontractor fell to their deaths in Houston when the outside construction elevator at a high-rise project malfunctioned. An investigation showed that the

see INDEMNITY AGREEMENTS
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TEXAS CONSTRUCTION ASSOCIATION GUIDE TO MARCH 7 CONTESTED PRIMARY RACES

Filing for Legislative seats ended on January 2. Four Incumbent State Senators and fourteen incumbent State House Members retired meaning a large number of open legislative seats. Additionally, a large number of incumbents have found themselves with opponents. A rundown of the contested primary races are listed below and separated by regions. The Texas Construction Association will endorse in a great majority of these races and the endorsements will be released in February and forwarded to the members of TCA.

AUSTIN AREA CONTESTED PRIMARY RACES-MARCH 7 2006

Texas House: Open Seats (No Incumbent)

HD 47 (Southwestern Travis County). Rep. Terry Keel is retiring to run for a judgeship.

Republican Primary:

Alex Castano	Commercial Real Estate Broker
Terry Dill	Self-Employed/Pro Golfer
Rich Phillips	Business Development Consultant
Dick Reynolds	Consultant/former Ins. Commissioner
Bill Welch	Businessman

Democratic Primary:

Valinda Bolton	Non-Profit Organization Director
Jason Earle	Community Relations
Royce LeMoine	
Eric Beverly	

HD 48 (West Central Travis County). Rep. Todd Baxter resigned. Special Election for unexpired term Jan. 17. Candidates listed below are running for 2 year term beginning in 2007.

Republican Primary:

Ben Bentzin	Investor/Retired Dell
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Democratic Primary:

Andy Brown	Attorney
Donna Howard	Nurse/former School Board Member
Kathy Rider	Mental Healthcare Provider/Ex-School

HD 54 (Lampassas, Bell (part), & Burnet Counties). Rep. Suzanna Hupp retired.

Republican Primary:

Jimmie Don Aycock (Lampassas)	Retired Veterinarian
Dan Corbin	Attorney/CPA
Hans Dersch (Marble Falls)	Businessman
Dale Hopkins (Marble Falls)	Businessman

Democratic Primary:

Jesse Martin	
Edward Lindsay	

Texas House: Contested Primaries Involving Incumbents:

HD 50 (Northeastern Travis County)

Republican Primary:

Don Zimmerman	Engineer
Mary Wheeler	Retired

Democratic Primary:

Mark Strama (I)	State Representative/High Tech Exec.
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HD 52 (Williamson County)

Republican Primary:

Mike Krusee (I)	State Representative/Consultant
Barbara Samuelson	Self-Employed

Democratic Primary:

Karen Felthausen	Substitute Teacher
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DFW AREA 2006 CONTESTED PRIMARY RACES

In the **State Senate**, the only primary race is **SD 2**, with incumbent Bob Deuell being challenged by a Rockwall City Councilman, Tim McCallum in the Republican Primary.

Texas House: Open Seats (No Incumbent)

HD 63 (Denton County) Rep. Mary Denny is retiring.

Republican primary:

Ricky Grunden	Financial Advisor
Anne Lakusta	Realtor/former School Board
Tan Parker	Businessman
Michael Savoie	College Professor
Bill Lawrence	Consultant
Larry T. Smith	Businessman

HD 91 (Tarrant County/NE Suburbs) Rep. Bob Griggs is retiring.

Republican Primary:

Pat Carlson	Business Owner/Ex-Republican County Chair
Kelly Hancock	Wholesale Distributor/Ex-School Bd Member
Michael Logan	Retired Fire Marshall/Fire Chief
Charles Scoma	Business Management/former Mayor

HD 106 (Grand Prairie area) Rep. Ray Allen is retiring.

Republican Primary:

Kirk England	Insurance Agent
Edward Smith	Dir. Governmental Affairs

Texas House: Contested Primaries Involving Incumbents:

HD 2 (Hunt, Raines & Van Zandt counties)

Republican Primary:

Dan Flynn (I)	State Representative/Banker
Chuck Tull	Firefighter/School Board

HD 4 (Kaufman & Henderson counties):

Republican Primary:

Betty Brown (I)	State Representative
Wade Gent	Attorney

HD 10 (Ellis & Hill counties)

Republican Primary:

Jim Pitts (I)	State Representative/Attorney
Q.D. "Duke" Burge	Computer Management School Board

HD 94 (Arlington)

Republican Primary:

Kent Grusendorf (I)	State Representative/Investments
Diane Patrick	College Professor

HD 98 (Southlake, Colleyville)

Republican Primary:

Vicki Truitt (I)	State Representative/Small Business Owner
Bill Skinner	Retired Educator

HD 99 (NW Tarrant county)

Republican Primary:

Charlie Geren (I)	State Representative Restauranteur
Colby Brown	Corrections Officer
Chris Hatley	Retired Army Colonel

HD 101(Mesquite, Garland)

Republican Primary:

Elvira Reyna (I)	State Representative
Thomas Latham	Former Police Captain/City Council

HD 110 (DeSoto, Lancaster, So. Dallas)

Democratic Primary:

Helen Giddings (I)	State Representative Businesswoman
Cedric W. Davis	Ex-Wilmer-Hutchins School Board Member

HD 112 (Richardson)

Republican Primary:

Fred Hill (I)	State Representative/Businessman
David Stephenson	Sales Manager

EAST TEXAS 2006 CONTESTED PRIMARY RACES

Texas Senate:

SD 3 (Conroe north thru Deep East Texas to Louisiana border)

Republican Primary:

Frank Denton (Conroe)	Businessman
David Kleimann (Conroe)	Small Business Owner
Robert Nichols (Jacksonville)	Self-employed
Bob Reeves (Center)	Entrepreneur

Texas House: Contested Primaries Involving Incumbents:

HD 6 (Tyler)

Republican Primary:

Leo Berman (I)	State Representative
Gus Ramirez	

HD 7 (Longview)

Republican Primary:

Tommy Merritt (I)	State Rep./Business Owner
Mark Williams	

HD 11 (Palestine/Jacksonville)

Republican Primary:

Mike Alberts (Wells)	Teacher
Larry Durrett (Jacksonville)	Restaurant Owner
Brian Walker (Tatum)	Attorney

Democratic Primary:

Chuck Hopson (I)	State Rep./Pharmacist
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HD 17 (Bastrop/La Grange/Columbus)

Republican Primary:

Herman Brune (Columbus)	Rancher/Writer
Tim Kleinschmidt (Lexington)	Attorney

Democratic Primary:

Robby Cook (I)	State Rep./Farmer
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HD 62 (Sherman)

Republican Primary:

Larry Phillips (I)	State Rep./Attorney
Charlie Williams	Retired Educator

HOUSTON AREA 2006 PRIMARY RACES

Texas Senate Open Seats:

SD 3 (Part of Montgomery County through Deep East Texas) Sen. Todd Staples retired to run for Agriculture Commissioner

Republican Primary:

Frank Denton (Conroe) Businessman
Dave Kleimann (Conroe) Small business Owner
Robert Nichols (Jacksonville) Self-employed
Bob Reeves (Center) Entrepreneur

SD 7 (NW Harris) Sen. Jon Lindsay retired.

Republican Primary:

Mark Ellis (Houston) Houston City Councilman
Peggy Hamric (Spring) State Representative
Joe Nixon (Houston) State Representative
Attorney
Dan Patrick (Houston) Radio Talk Show Host

SD 18 (Houston SW suburbs and west past Victoria) Sen. Ken Armbrister retired.

Republican Primary:

Gary Gates (Rosenberg) Real Estate/Cattle Rancher
Glenn Hegar (Katy) State Rep/Rice Farmer/Atty
David Stall (La Grange) City Manager

Democratic Primary:

Bret Baldwin (Victoria) Business Consultant
Henry Boehm, Jr. (Brenham) Physician

Texas House: Open Seats: (No Incumbent)

HD 16 (Conroe Area) Rep. Ruben Hope retired to run for District Judge

Republican Primary:

C. Brandon Creighton (Conroe) Attorney/Businessman
Dale Inman (Conroe) Businessman
Vicky Rudy (Conroe) City Administrator

HD 28 (Rosenberg/Wharton/Katy area) Rep. Glenn Hegar retired to run for Senate

Republican Primary:

Mike Baldwin Civil Engineer/Rancher
Michael Franks Businessman/Political Printer
Stan Kitzman Public School Teacher
David Melanson Banker
David Showalter Real Estate/Attorney
Randy Smith Business Owner
John Zerwas Physician/Anestheologist

HD 126 (Spring, Klein, Houston) Rep. Peggy Hamric retired to run for Senate

Republican Primary:

John Devine Retired District Judge/Attorney
Patricia Harless Former Car Dealer

HD 133 (West Houston) Rep. Joe Nixon retired to run for Senate

Republican Primary:

Barbara Larson Attorney
Jim Murphy Businessman
Mike Schofield Attorney/former Counsel for Governor

Texas House: Contested Primaries Involving Incumbents:

HD 26 (Fort Bend County area)

Republican Primary:

Charlie Howard (I) State Rep./Businessman
Ron Booker Attorney

HD 27 (Rosenberg and Richmond area)

Democratic Primary:

Dora Olivo (I) State Representative/Attorney
Steve Brown American Heart Association Lobbyist

HD 140 (North Houston)

Democratic Primary:

Kevin Bailey (I) College Instructor
John Reyes

HD 146 (So. Houston)

Democratic Primary:

Al Edwards (I) State Rep./Minister
Alfred H. Bennett Attorney/Law School Professor
Gerald LaFleur
Borris Miles Businessman

SAN ANTONIO 2006 CONTESTED PRIMARY RACES

Texas Senate Seats:

SD 19 (San Antonio to El Paso)

Democratic Primary:

Frank Madla (I) State Senator/Business
Carlos Uresti State Representative/Attorney

Texas House Seats:

HD 73 (Comal, Gillespie, Kendall & Bandera counties)

Republican Primary:

Carter Casteel (I) State Representative/Attorney
Nathan Macias Retired Military

HD 118 (Southern and No'eastern Bexar county) Rep. Uresti retired to run for Senate.

Republican Primary:

George Artuna Consultant/Ex-Aide to Sen. Hutchison
John Lujan Firefighter
Steve Salyer Physician Assistant

Democratic Primary:

Joe Farias Harlandale School Bd/Retired CPS
Pedro Molina, Jr. Labor Arbitrator
Tony Mandujan
Larry Ricketts Law Enforcement/Ex-Sheriff Candidate

SOUTH TEXAS 2006 CONTESTED PRIMARY RACES

Texas House:

HD 38 (Harlingen area) Rep. Jim Solis is retiring.

Democratic Primary:

David Gonzalez Assistant District Attorney
Eddie Lucio III Attorney
Alfred Montanyo Attorney
Arnie Olivarez Insurance Agent

Republican Primary:

Luis Cavazos Businessman

HD 42 (Laredo area)

Democratic Primary:

Richard Raymond (I) State Rep./Law Student
Mercurio Martinez Former County Judge
Sergio Mora Former House Aide
Rudy Ochoa Businessman

HD 43 (Kingsville to So. Padre Island)

Democratic Primary:

Juan Escobar (I) (Kingsville) State Rep./Retired
Immigration Officer
Richard Valdez (Harlingen) Attorney/CPA

Republican Primary:

John Hubert (Kingsville) Attorney

WEST TEXAS 2006 CONTESTED PRIMARY RACES

Texas House:

HD 60 (SW of Fort Worth to Brownwood)

Republican Primary:

Jim Keffer (I) (Eastland) State Rep./Business
Owner

Democratic Primary:

John Blagg (Brownwood) Attorney
Roland Graves (Brownwood) School Administrator
Robert McKelvain (Moran) College Professor

HD 71 (Abilene area) Rep. Bob Hunter is retiring.

Republican Primary:

Rob Beckham Computer Sales
Kevin Christian Attorney/Eco. Development
Susan King Nurse/Business Owner/School Board
John Young Attorney

HD 72 (San Angelo area)

Republican Primary:

Scott Campbell (I) State Rep./Rancher
Drew Darby Attorney
Kevin Housley Communications Subcon.
School Bd.

HD 75 (El Paso)

Democratic Primary:

Chente Quintanilla (I) State Rep./Retired Educator
Anibal Olague Housing and Economic
Center Director
Willie Gandara Business/ex-Mayor/School Board

HD 76 (El Paso)

Democratic Primary:

Norma Chavez (I) State Rep.
Martha Reyes School Board Member

HD 78 (El Paso)

Republican Primary:

Pat Haggerty (I) State Representative
Lorraine O'Donnell College Professor/School Board

HD 79 (El Paso)

Democratic Primary:

Joe Pickett (I) State Rep./Businessman
Jerry "Thumper" Kelly

HD 83 (Lubbock Area)

Republican Primary:

Delwin Jones (I) State Rep./Small Businessman
Frank W. Morrison Business Owner
Van Wilson Real Estate Developer

HD 84 (Lubbock Area)

Republican Primary:

Carl Isett (I) State Rep./CPA

Democratic Primary:

Linda DeLeon
Pearlie Mayfield Teacher

HD 85 (Plainview and southeast to Big Spring) Rep. Pete Laney is retiring.

Republican Primary:

Jim Landtroop (Plainview) Insurance Agent
Jerry Lee Middleton Self-employed
Drew Mouton (Big Spring) Attorney

Democratic Primary:

Joe Heflin (Crosbyton) Crosby County Judge

HD 87 (Amarillo/Dumas)

Republican Primary:

David Swinford (I) State Rep./Businessman
Anette Carlisle School Board



TCA's Local Political Action Committees

In order to receive greater input concerning legislative races from the members of the various Member Associations belonging to the Texas Construction Association, the TCA has organized local Political Action Committees in several areas across the State.

The role of the local PACs includes evaluating and making recommendations concerning which legislative candidates should be endorsed, helping to deliver contributions to endorsed candidates, and having the opportunity to be more involved with elected officials who represent you in the Texas Legislature.

At the present time, the local Committees will be established in the Austin area, Dallas/Fort Worth area, Houston area, Rio Grande Valley, and San Antonio area. Additional local PACs will be established outside of those areas in the future.

Members can participate in the PACs. If you have an interest in participating, call Harold Freeman at Texas Construction Association, 512-473-3773.

TCA★PAC Support Form

Name: _____

Company: _____

Address: _____

City/State/Zip Code: _____

Phone # _____ Fax #: _____

Email: _____

Please use separate sheet for each person or for each credit card if using more than one to pay.

I am a believer! I want to show my support of the TCA★PAC by being made a badge member. (Can not be corporate funds.)

I will be a **Blue Badge** Blue Badge Member - \$100 **Silver Badge** Silver Badge Member - \$250 **Gold Badge supporter** Gold Badge Member - \$500

I am a TRUE believer! Enclosed is my additional contribution of \$ _____

A non-corporate check payable to TCA★PAC is enclosed

Charge the non-corporate card below:

Visa Master Card American Express Discover

Name on credit card: _____

Card Billing Address: _____

Card Number: _____

Card Expiration Date: _____ Card ID Number (3-4 Digits): _____

Fax to: TCA★PAC 512-473-3777

Mail to : TCA★PAC 602 W 13th, Austin, TX 78701



Without a road map it is not always easy to determine where you are!

The safety hazards you know about may not be as important as the ones you have not identified. A comprehensive Safety Program Assessment from WorkSafe can not only tell you where you are but can help you with directions to where you should be.

WorkSafe is a highly qualified safety consulting company capable of giving you a safety program with a direction. ALL of your safety needs can be addressed by WorkSafe. We give you straight talk and you receive preferred pricing through our endorsement with the Texas Construction Association.



The Safety Program Assessment will identify immediate deficiencies in a safety program. It will establish a clear indication of the effectiveness of a program and will provide specific remedies.

You are a professional and your safety program should be managed by a professional.

The Key Components include:

A Review of General Safety Enforcement and Administration

- disciplinary process
- drug testing
- Hazcom
- return to work
- accident investigation
- employee review

A Review of Written Materials and Programs

- site specific written programs
- safety manuals

A Review of Training Programs and Materials

- certified -competent-qualified in accordance with OSHA Standards

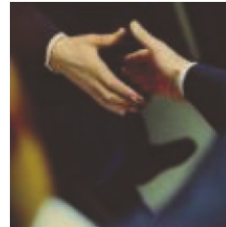
A Review of Recordkeeping

- OSHA regulation CFR 1904

A comprehensive field inspection simulating an OSHA visit.

All findings are summarized and remedies offered.

YOUR COMPANY DISCOVERS ITS PROBLEMS AND WE HELP YOU SOLVE THEM



- ✔ Consistent Content and Delivery
- ✔ Easy Implementation and 24 hr Availability
- ✔ Ensures OSHA Compliance
- ✔ Customized to your Specific Needs for Guaranteed Success
- ✔ Everything We Provide is Available in English and Spanish

Call us at

877-233-8986

A TEXAS BASED SAFETY SOLUTION



Workers' Compensation Insurance

Exclusively for Subcontractors



Contract with us...

for Group Buying Power

Program highlights include:

- Program developed **by** subcontractors to **benefit** subcontractors
- *Lower premiums* due to group purchase power and larger premium discounts!
- Coverage written in special Group Purchase Program through Texas Mutual Insurance Company
- Aggressive claims and loss control services provided
- Participants eligible for Texas Mutual regular dividends*
- Participants eligible for the special TCA group dividend*
- Coverage is purchased through your agent with no reduction in commission
- Program has strong safety focus

* By law, dividends cannot be guaranteed and are subject to the approval of the Texas Mutual Insurance Company's Board of Directors.

This program is developed exclusively for TCA companies, including members of:

- American Subcontractors Association of Texas
- Associated Plumbing-Heating-Cooling Contractors of Texas
- Mechanical Contractors Association of Texas
- National Electrical Contractors Association - Texas
- SMACNA North Texas Chapter
- Southwest Terrazzo Contractors Association
- Texas Council of Painting & Decorating Contractors
- Texas Fence Association
- Texas Fire Sprinkler Contractors Association
- Texas Glass Association
- Texas Iron Workers Employers Association
- Texas Masonry Council
- Texas Structural Steel Institute
- Wall & Ceiling Associations - DACA

*To receive a quote,
Agents should send application to:*
Texas Mutual Insurance Company
Please direct questions to the Master Agent, Gina Jones of Anco Insurance -
(512) 330-9836, ext. 24.



Important note for Agents:

When sending your application, please do the following:

1. Check "Participating" box
2. Insert in Dividend Plan/Safety Group box one of the following:
 - "TXD" for electricians or iron and steel erectors
 - "TXC" for all other subcontractor classifications

INDEMNITY AGREEMENTS

continued from page 4

regular elevator operator, an employee of the general contractor, had left the controls in the hands of an inexperienced worker. A brake pin came loose and after the elevator free-fell several stories, the worker panicked and threw the wrench in reverse, snapping the cable. The general contractor installed the elevator and his employee caused the accident. Nevertheless, because the general contractor passed liability for the accident to the plumbing subcontractor, the plumbing subcontractor was obligated to defend and pay the judgement against the contractor, even though the subcontractor had no responsibility for the accident.

General liability insurance policies traditionally covered the

subcontractor's exposure for an indemnification agreement. Recently, insurance carriers have begun to reassess the exposure they have for their insured subcontractor's obligations for indemnification. This change in stance by many carriers is due to losses incurred from indemnification claims. While the carrier has the ability to underwrite its insured client, it is not able to underwrite the client's customer; thus there is a potentially large exposure for only nominal premium. A broad form indemnification agreement creates substantial risk for a company. Not only does the agreement shift the risk of negligence to the subcontractor, but it shifts the financial consequences to the subcontractor as well. If a claim is for \$5 million and the subcontractor is insured for \$1 million, the subcontractor is responsible for the remaining \$4

million. This puts the subcontractor in the position of being the insurer. A subcontractor's insurability and financial stability becomes jeopardized for an accident that was caused by someone else's negligence.

Learning about risk shifting contracts can be valuable to your company. Invest the time and money to understand the risks that broad form indemnification agreements present. The bottom line is that entering into a broad form indemnification agreement puts the keys to your company on the line and the ability to insure that agreement is becoming tougher everyday.



REPRESENTING TEXAS SUBCONTRACTORS AND SUPPLIERS

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