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SUBCONTRACTORS: Tell Your Story !

Let Your Voice Be Heard... Share your stories and provide examples that clearly describe major problems that put subcontractors at a disadvantage.

ASA-MN and the Contractor Bill of Rights Coalition (CBRC) are gathering information that will support legislative changes impacting the Minnesota contractual business relationship between general contractors and subcontractors.

Please respond no later than August 15...Go online at asamn.org for instruction

ROUTING	



Mary Cave
Construction Specialist

RJ AHMANN COMPANY
7555 Market Place Drive
Eden Prairie, MN 55344

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www.rja.com

Innovative Insurance Solutions



Caulking - Firestopping - Tuckpointing - Traffic Coatings - Expansion Joint Systems - Water Proofing

Business: Carciofini Caulking Company

Started: 1975, New ownership in 2002 enhancing services and product line.

Scope: Caulking, Waterproofing, expansion joint systems, traffic coatings, restoration, fire stopping

Employees: 35

Website: www.carciofini.com

Other group affiliations: MBEX, BEXSP, MCMCA, Mankato BEX, IFMA, NASMS, AGC, FCIA

Mission Statement: Carciofini is a company based on customer service, we are flexible to meet the needs of others, reliable to stand behind our product, and are a knowledgeable recourse our customers can count on when in need of advice.

Honors/Awards/Certifications: Certified Balco expansion joint installer. Certified Watson Bowan expansion joint installer.

ASA member contact: Jake Bauer, Est./Project Manager, 952-252-0303, jake.bauer@carciofini.com.



Committed to Quality
Subcontracting

SUB-NEWS

The Voice of Subcontractors

Volume 12, Issue 36

Quarter 2, 2008

ASA-MN 10th Annual Golf Tournament, Great People, Great Day, Great Golf!

June 16, 2008—StoneRidge Golf Club, Stillwater, MN. ASA-MN held it's 10th annual golf event. Our best attendance ever. Over 100 golfers and volunteers joined in the effort to raise money for student scholarships and local advocacy efforts.

The course was in excellent condition and the weather picture perfect for a great day of golf at StoneRidge Golf Club in Stillwater. The tournament was made possible by the generous participation of companies (see inside) who provided golfers, sponsorships and volunteer support.



Congratulations to first place team Gunderson Construction (1). 2nd Place Collins (2), Honorable mention, best looking group with high score, Empirehouse (3.)



The course was in great shape as was the facility which also provided a fabulous buffet dinner. Team and individual skills were rewarded with cash and prizes.



ASA-MN would like to thank our volunteers, along with all the participants of the golf event whose generous participation helped raise significant funds benefiting student scholarships and local advocacy initiatives.



Welcome New Members

Electrical Builders Inc.
Henry Ewers, General Manager
PO Box 299, Clear Lake MN 55319
320-743-5511 Fax 320-743-5507
hewers@electricalbuilders.com
www.electricalbuilders.com — Electrical

Empirehouse Inc.
James Bringle, General Manager
5200 Quincy Street, Mounds View MN 55112
763-535-1150 Fax 763-535-9151
james@empirehouse.com
www.empirehouse.com — Doors and windows

Minnesota Insurance Brokers
Matthew Broderson, Account Executive
60 East Marie Avenue STE 209
West Saint Paul MN 55118
651-389-4016 Fax: 651-457-3324
mbroderson@mninsurance.net
www.mninsurance.net — Insurance, Risk Management

Nadeau Excavating Inc.
Shonna Nadeau, CEO
12175 - 240th Street East, Hampton MN 55031
651-438-8692 Fax 651-438-2963
nadeau@embarqmail.com
www.nadeauexcavating.com — Site work, special construction

Northland Concrete & Masonry Company LLC
Allen Skogquist, Project Manager
12026 Riverwood Drive, Burnsville MN 55337
952-890-1650 Fax 952-890-1699
askogquist@northlandcm.com
www.northlandconcreteandmasonry.com
Concrete, masonry

Safegate Airport Systems Inc.
Rich Weyandt, Operations Manager
7107 Northland Circle, STE 203
Brooklyn Park MN 55428
763-535-9299 Fax 763-535-2307
rich.weyandt@safegate.com
www.safegate.com— Specialty contractor

WTG Terrazzo & Tile, Inc.
Tony Grazzini, Project Manager
755 East Cliff Road, Burnsville MN 55337
952-746-9060 Fax 952-746-9059
tony@wtgtt.com
www.wtgtt.com— Finishes, terrazzo and tile



Thank You Golf Participants & Sponsors 'Listed in Blue'

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Lloyd's Construction Services*
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Zurich
 *ASA-MN Members, Blue are Sponsors

Contractor Bill of Rights Coalition (CBRC) Update

The Contractor Bill of Rights Coalition (CBRC) has continued to meet during the summer in preparation for the next legislative session. You may recall seeing a call for a Legislative Survey earlier in the year. The ASA provided the same survey to the many associations making up the CBRC; the resulting input is being used to help develop legislation.

More recently, we are issuing a call for subcontractor stories that illustrate the issues we are trying to address. The call was sent to all ASA-MN members by email earlier in July. We will take the best stories, pull them together and use them in discussions with legislators.

Discussion with subcontractors and attorneys representing them during our meetings led to a realization that many are not aware of the rights they already have under existing law. We have asked ASA MN Attorney and Board Member Curt Smith of Moss & Barnett P.A. to address this concern and thank him for the following article.

CONTRACTOR'S BILL OF RIGHTS FOR PRIVATE CONSTRUCTION PROJECTS

Minnesota Statutes provide certain protections to contractors, subcontractors and suppliers for private construction projects. The areas covered by these statutes include: (1) the location of litigation or arbitration and the law governing them, (2) lien waivers, (3) prompt payment to subcontractors and material suppliers, and (4) progress payments and retainage.

Choice of law and venue

Commercial and industrial construction has become a regional, if not a national, business. Many projects are being constructed by out-of-state general contractors using Minnesota subcontractors and suppliers. With increasing frequency, these out-of-state contractors have been using subcontracts which contain clauses requiring that all disputes be resolved in a court or arbitration proceeding in the general contractor's home state and applying the law of that state to the contract, rather than in Minnesota. Such clauses can pose an unfair economic burden on a subcontractor or supplier who has not been paid.

Minn. Stat. § 337.10, subd. 1, renders such clauses void and unenforceable. The effect is to cause disputes arising out of Minnesota projects to be resolved in Minnesota, applying Minnesota law. A question exists, however, whether a court in another state would honor Minnesota's law if an out-of-state contractor commenced a lawsuit in that court. In addition, federal courts have invalidated such provisions to the extent they seek to render void an arbitration clause that requires an arbitration hearing to be held in a particular location, as a violation of the Federal Arbitration Act. Accordingly, prudence may dictate that Minnesota subcontractors and suppliers commence a lawsuit or arbitration in Minnesota before a general contractor commences one in its home state.

Waiver of lien or bond claims

Lenders or developers sometimes require a general contractor and its subcontractors and suppliers to prospectively waive mechanics' lien rights in the contract or before beginning work. For example, the Mall of America was a project where such a requirement was imposed. A variation on this same theme occurs when a contractor or subcontractor is required to waive lien rights or a bond claim before receiving payment. Obviously, such requirements can have devastating effects on unpaid subcontractors or suppliers whose lien rights are lost.

Minn. Stat. § 337.10, subd. 2 renders such clauses and requirements void and unenforceable. However, if an innocent third party, such as a lender or owner, relies on a lien waiver in making a payment, it may be enforced against the party who signed the lien waiver. The statute strikes a balance between the need to rely on lien waivers in the disbursement process, and insuring that those who supply labor and materials get paid. *(continued on page 3)*



ASA-MN 08-09 Board of Directors and Overview

ASA-MN Plans for Exciting Year Ahead

July 10, 2008, Burnsville – ASA-MN Board of Directors held its annual planning session at Kraus-Anderson Insurance hosted by past president Patrick Kennedy.

The group was introduced to Mike Schmaltz as incoming Executive Director, pending final approval. Mike also serves as the Executive Director of the Minnesota Glass Association (MGA) of which he has been associated since its inception over thirty years ago. In addition, Mike offers experience in government affairs at a variety of levels, some of which has resulted in new legislation in Minnesota. He is a key member of the Contractors Bill of Rights Coalition (CBRC) and has extensive relationships in the advocacy arena.

Below is a recap of the planning session:

Goals

- Grow membership by 15 new members
- Retain 90% of existing members
- Contractors Bill of Rights Coalition (CBRC) Development

Events

- October 16, 2008 - Performance Measurement & Tax Opportunities
- November 19 - CFMA Day – Cosponsor on Consensus Docs
- January 22, 2009 - Annual TOPS Dinner & Awards Banquet
- 2009 Three additional educational programs in Dec, Feb, April
- June 15, 2009 - Annual Golf Tournament

(continued from page 2) The statute does not, however, resolve all issues regarding the scope of a lien waiver. For example, a commonly used form states that all lien rights are waived up to the date of the waiver. Disputes can arise regarding extra work or delay which precedes the date of the lien waiver. An owner may claim that all lien rights for work predating the lien waiver has been waived while the contractor or subcontractor claim that the waiver only relates to undisputed sums owed. The statute does not expressly address this situation, but gives the contractor or subcontractor an additional argument for limiting the scope of the waiver.

Prompt payment to subcontractors

Minn. Stat. § 337.10, subd. 3 essentially requires the same prompt payment for private projects as for public ones. A prime contractor must pay subcontractors or suppliers within ten days of receipt of payment from the Owner. Likewise, subcontractors must pay its sub-subcontractors and suppliers within ten days of receipt of payment from the prime contractor. The parties may agree to a shorter, but not a longer, period. Late payments accrue interest at 1½% per month, and attorneys' fees are recoverable if litigation is necessary to collect. This provision does not apply to residential projects consisting of one-to-four units or to structures consisting of fewer than thirteen attached single-family dwellings.

Progress payments and retainage.

Minn. Stat. § 337.10, subd. 4 requires an owner or other person making a progress payment to make payments monthly, unless the contract specifically requires otherwise. The parties may specify a different payment schedule in their contract which supersedes the statutory time. The amount shall be based on estimates of work completed as approved by the owner or the owner's agent. By making a progress payment, the owner does not accept the work or waive any defective work.

The statute also limits the amount of retainage to 5%, unless the contract specifically provides otherwise. The parties may expressly state a higher percentage in their contract, but if no amount is stated the 5% limit applies. Due to the subcontractor prompt payment provision discussed above, a contractor may not withhold more retainage from a subcontractor than has been withheld by the owner. Contractors must take care to specify the same retainage percentage in subcontracts as is in the prime contract, or they may be limited to 5%.

This provision is also subject to the limitation on residential construction discussed above. This provision does not apply to residential projects consisting of one-to-four units or to structures consisting of fewer than thirteen attached single-family dwellings.

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