



American Subcontractors Association North Texas Chapter

Summer 2008

CALENDAR

MONTHLY MEETINGS

**Las Colinas
Country Club, Irving**

LUNCHEON MTGS

11:00 am Registration
11:30 am BPI & Legal Message
12:00 Luncheon Program

June 26, 2008
July 24, 2008
Aug 28, 2008



TEXAS LIEN & BOND CLAIMS SEMINAR

Oct 8, 2008 - Wednesday
Las Colinas CC, Irving

**Mark Your
Calendars!!**



ASA 26th Annual Golf Tournament

Oct 10, 2008 - Friday
Sky Creek Ranch Golf Club
Keller, TX



GC NIGHT

Nov 29, 2008 - Thursday
Eddie Deen's
Downtown Dallas



LETITIA BARKER
HALEY-GREER INC.



MIKE MC ADAMS
WALKER ENGINEERING



STEVE TUCKER
CUMMINGS ELECTRICAL



JOE SARDINA
LUNDY SERVICES



EDREEVE
TDINDUSTRIES

ASA North Texas Announces the 2008-09 Officers & Directors

Letitia Barker, President – Haley-Greer Inc
Mike McAdams, 1st Vice President - Walker Engineering
Steve Tucker, 2nd Vice President - Cummings Electrical
Joe Sardina, Secretary/Treasurer - Lundy Services
Ed Reeve, Immediate Past President - TDIndustries

Andy Bautz - George D. Alan Co.
Brad Baylis - City Wide Mechanical
Brian Chester - United Mechanical
Steve Hargrove - Hargrove Electric
Jim Hollis - Baker Drywall
Dennis Lewis - Potter Concrete
Rhonda McCune – Daniel Steel
Brian Smith – CMC Rebar
LeaAnn Wood – McGraw-Hill
Richard Young - Striland Construction

Legal Counsel:
Richard Thomas
Thomas, Feldman & Wilshusen, LLP

MEMBERSHIP RENEWALS

Membership renewals are due July 1st.
Invoices were mailed in April. If you did
not receive an invoice for your membership
renewal, please contact the ASA Office.
(817) 640-8275

2008-09 ASA National President's Monthly Newsletter . . .

Dear ASA Member:

Are escalating materials prices on your mind these days? Will your next bid have a fixed price but rising costs for materials? Some materials, such as fuel, asphalt and rebar, are experiencing double-digit percentage increases! There are some market forces over which we have little or no control, like the growing demand for construction materials in faraway places like China and India. So, what can ASA do to help its members?

Managing price increases isn't easy, especially since it's practically impossible to change materials prices locked in by an existing contract. The good news is we offer tools and training that make it possible to negotiate future contracts to account for price swings. Both the ASA Subcontractor Bid Proposal (2008) and the ASA Addendum to Subcontract (2008) include model language stating that "A change in the price of an item of material of more than 5% between the date of [subcontractor's] bid proposal and the date of installation shall warrant an equitable adjustment in the subcontract price." The only catch is you have to use the tools.

We can thank the ASA Task Force on Model Contract Documents volunteers for their foresight in developing the model language. Their foresight shows that we, as ASA, operate in a market regulated by supply and demand, like our own companies do. Volunteers identified a demand and supplied a solution. That is how it's supposed to work . . . it's what we, as ASA, do!

The need to develop such model contract terms remains an ever-evolving and major demand on ASA. Other demands include the need to push for new laws on issues like pay-if-paid and retainage; to provide accurate and timely information on market trends and regulations; and to produce education on key business management topics in convenient formats. (You can learn more about the specific ways in which ASA meets these demands in the June 2008 ASAToday Special Report, posted on the ASA Member Resources page of the [ASA Web site](#).)

Of course, like any good "supplier," ASA is working to be your "preferred" supplier, at least when it comes to subcontractor advocacy and education. That's why ASA tailors its services to meet the demands of you, the member. (Maybe ASA could stand for the American Supply-Demand Association!) ASA identifies the demands of members in numerous ways, including through the ASA Member Needs Assessment, which takes place every three years.

ASA couldn't be the success it is, nor your "preferred supplier," without the dedication and support of volunteers at the national, state and local levels. We owe them our thanks. If you are tempted, want to take a test ride, or are already committed to taking the next step, join the task force or committee of your interest. I've never attended an industry function where someone was recognized for his or her participation and said it took too much effort. Time after time, I hear "the benefits outweighed the effort!" We need you — I need you — to see for yourself how right they are! Learn more at www.asaonline.com by clicking on "About ASA" and then on "Involvement in ASA."

While helping ASA meet the demands of building an effective subcontractor movement in your community and/or nationwide, you just may discover it was the best investment you've made in some time! I ask you to please join me and participate in the ASA Champions Academy 2008, Sept. 13-16 in the nation's capital ([register at www.asaonline.com](http://www.asaonline.com)). The Academy will help you reach your full potential as a leader in the construction industry.

If you have any questions or comments, please feel free to contact me via e-mail at bolmo@asa-hq.com. Thank you.

Very truly yours,
William J. Olmo, III



New ASA-NTC President Takes Gavel . .



Ed Reeve (TDIndustries) hands the gavel over to newly elected 2008-09 ASA-North Texas President Letitia Barker (Haley-Greer Inc).

ASA Membership Drive

You can WIN a
"Pot of Gold"



For every new member you bring in,
you win a crisp \$50 bill,
Your name will then be placed into
a drawing for a
Pot of Gold - \$500

New member's annual dues
will earn you additional entries:
\$880 - 1 Entry
\$1480 - 2 Entries
\$2080 - 3 Entries
\$2680 - 4 Entries

Contest ends when we reach our
goal of 25 new members.
Every ASA member is eligible to win.

Everyone knows ONE prospective member.
If every member brings in ONE new member,
we will double the size of our Chapter.



ASA Website Links

ASA will link to your website at no charge.
We would also like you to link ASA to your website.

If you do not have a link by your listing on the ASA
Website, please let us know your website address.

www.asa-northtexas.org



2008-2009 ASA-NTC COMMITTEES

BUSINESS PRACTICES INTERCHANGE (BPI)

Sylvia Stephens - TDIndustries
(817) 640-8275

EDUCATION & SEMINARS

Linda White - ASA
(817) 640-8275

FUNDRAISERS

Joe Sardina - Lundy Services
(214) 951-8181
Rhonda McCune - Daniel Steel
(972) 226-7656

GOLF TOURNAMENT

Brian Chester - United Mechanical
(214) 803-5434
Brad Baylis - City Wide Mechanical
(214) 821-8468

LEGISLATION

Brian Chester - United Mechanical
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Ed Reeve - TDIndustries
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MARKETING & PROMOTIONS

Dennis Lewis - Potter Concrete
(214) 630-2191
Mike McAdams
(817) 540-7736

MEMBERSHIP & RETENTION

LeaAnn Wood - McGraw-Hill Constr Dodge
(972) 819-1302
Ed Reeve - TDIndustries
(972) 888-9340

PROGRAMS

Jim Hollis - Baker Triangle
(972) 289-5534 Ext 340
LeaAnn Wood - McGraw-Hill Constr Dodge
(972) 819-1302

VISIBILITY & AWARENESS

Steve Tucker - Cummings Electrical
(817) 355-5312

HELP WANTED

Our very busy North Texas Chapter has openings for a limited number of individuals who are willing and able to serve on committees. Very interesting work and good opportunity for advancement. Ample rewards, many fringe benefits. Members only need apply. For information call (817) 640-8275.



THE HIDDEN DEADLINE FOR FILING YOUR LIEN ON RETAINAGE

by Irina Visan
Thomas, Feldman & Wilshusen, LLP
Dallas, Texas
www.tfandw.com

On commercial, private projects, a subcontractor must comply with numerous statutory requirements to perfect a lien on retainage. Chapter 53 of the Texas Property Code permits a construction subcontractor to claim a lien on funds retained by the owner if the subcontractor sends the required notices in the time and manner required, and files an affidavit claiming a lien not later than the 30th day after the work is completed. The Texas Property Code also requires owners to retain either "10 percent of the contract price of the work to the owner" or "10 percent of the value of the work ... using the contract price or, if there is no contract price, using the reasonable value of the completed work" for "30 days after the work is completed." Thus, the period during which a claimant must file a lien on retainage is the same period that an owner must withhold retainage. Consequently, it is in the best interest of all construction participants to know when the thirty-day period expires.

To determine when the thirty day period ends, we look to the statutory definitions of "work" and "completion" of an original contract. The Property Code provides that "completion" of an original contract means the actual completion of the work, including any extras or change orders reasonably contemplated under the original contract. "Work" is defined as "any part of construction of repair performed under an original contract." Although the law seems to give subcontractors a clear deadline for filing their lien on retainage, there are circumstances when this deadline can set a trap, which if not detected can make a filed lien affidavit as to retainage untimely. One such circumstance is when the general contractor on a project is terminated or when the general contractor abandons the project.

Texas courts have held that work is completed when the requirements of the initial original contract are finished, either by the first general contractor or by subsequent general contractors. Texas courts state that work must be defined in relation to a particular original contract, and the work under that original contract is completed when the contract is terminated or when the general contractor abandons the project. Texas courts have consistently held that when a contract is terminated and the work performed thereunder is terminated or abandoned, the lien on

retainage must be filed within thirty days of the original contract's termination or the general contractor's abandonment. Thus, a subcontractor must not rely on a visual examination of the worksite to determine whether work has been completed. A subcontractor who views a half-completed project, and assumes that the lien on retainage is not yet due runs the risk that the general contract had been terminated and that the affidavit deadline has passed. Thus, to protect their retainage, a prudent subcontractor should take precautions and file the lien on retainage within thirty days of completing their own work. Doing so would protect their retainage even in the case in which the general contract has been terminated or abandoned. In addition, another way in which the subcontractor can protect itself is by sending a lien notice letter to the general contractor and owner prior to the general contractor's abandonment or termination of the original contract. Sending this lien notice letter statutorily obligates the owner to notify the subcontractor when the project is complete, abandoned or terminated.

In conclusion, to protect your retainage, it is important that subcontractors determine when the original contract is terminated or abandoned. It is also important that subcontractors also comply with all notice requirements of Chapter 53 Texas Property Code. Since Texas lien law is one of the most complicated in the country, it is crucial that subcontractors, with the help of their attorneys, set up a system within their organization which helps them automatically comply with these statutory requirements to secure payment on both retainage and progress payments.



ASA Champions Academy

Sept. 13-16, 2008
Arlington, VA

"Early Bird" Registration - 8/11/08
Save \$50

Crystal Gateway Marriott Hotel
800-228-9290

For discount price register by
August 11, 2008

Fly into Washington Reagan Natl Airport



ASA Champions Academy . . . Mark your calendars

Catch Monthly Podcasts Starting in Sept

Who ever said that contract education has to be inconvenient? Not ASA and the Foundation of ASA, who are for the first time offering podcasts as part of their distance-learning program for subcontractors with monthly audio podcasts focused on different aspects of contract evaluation. The ASA/FASA Essentials of Contract Evaluation Podcast Series starts in Sept 2008 with the podcast, "Reading Between the Lines: What the Subcontract Really Says," and continues for 23 more monthly editions.

The first 12 ASA/FASA podcasts, which are included in the Year 1 Subscription, will treat:

Reading Between the Lines: What the Subcontract Really Says (Sept 2008)

- Identifying Contract Omissions (Oct 2008)
- Evaluating Transfers of Design Responsibility (Nov 2008)
- Defining Design Responsibility (Dec 2008)
- Understanding Warranty Types (Jan 2009)
- Controlling Risk With the Right To Cure (Feb 2009)
- Writing and Enforcing a Warranty (March 2009)
- Preparing for the Unexpected (April 2009)
- Preserving Claims for Schedule Changes (May 2009)
- Preserving Claims for Scope Changes (June 2009)
- Eliminating or Limiting Retainage (July 2009)
- Establishing the Right to Payment Assurances (Aug 2009)

Each 20-minute podcast, presented by the law firm of Kegler, Brown, Hill & Ritter, will be released on the 25th of the indicated month as a downloadable audio file in MP3 format for playback on your computer or MP3 player. Purchase annual subscriptions of 12 podcasts for \$300 (member price) or \$400 (nonmember price), or buy the podcasts individually for \$45 (members)/\$65 (nonmembers).

"Podcasts offer a practical solution for subcontractors who enjoy learning by listening," said ASA Executive VP Colette Nelson. "It's your choice: Download the podcast and listen right away, or save it for a future date when you're working on that part of a contract."

After listening to a podcast, a purchaser may take the ASA/FASA learning assessment for that podcast. A passing grade will entitle the purchaser to access and print out an ASA/FASA Certificate of Achievement.

Downloading ASA/FASA podcasts requires a computer with an Internet connection and a media player or "podcatching" software that can play MP3 files such as RealPlayer, Microsoft Media Player, or iTunes. Many of these applications can be downloaded for free on the Internet. (Search Google for RealPlayer or iTunes.) View the 24-month schedule and register online at www.asaonline.com.

Reaching your full potential as a leader in the local construction industry takes skills that you can't learn just anywhere. Recharge, reconnect with fellow leaders, and acquire the skills you need in your role as a leader in our local industry by participating in the **ASA Champions Academy 2008, Sept. 13-16, 2008** in the Nation's Capitol.

Building on the success of the inaugural Academy in October 2007, this year's Academy will include workshops focused on building chapter value and helping you be the most informed and persuasive leader you can be when dealing with other ASA members, prospective members, industry representatives, and public officials. In addition to workshops, the Academy's hands-on training includes legislative briefings and visits to legislators' Capitol Hill offices to promote ASA-supported federal public policies. Review the schedule and registration information online at www.asaonline.com by clicking on "Register for a Meeting."

Members can take advantage of an "early-bird" registration fee of \$600 through Aug. 11, 2008 - a savings of \$50. Additional registrants from a registered company pay a further-discounted rate of only \$550. Make sleeping room reservations at the **Crystal Gateway Marriott Hotel no later than Aug. 11 by calling 1-800-228-9290** and mentioning ASA. The hotel connects to Washington, D.C.'s subway system, providing easy access to Washington Reagan National Airport, Capitol Hill and other attractions in the nation's capital.

Fax your registration form to (703) 836-3482, or contact ASA Meetings & Education Manager Jackie Achekian at (703) 684-3450, Ext. 1304, or jachekian@asa-hq.com.

Downloading ConsensusDOCS Easy as 1-2-3!

Need sample copies of the ASA-endorsed ConsensusDOCS family of model contract documents? Log on to www.ConsensusDOCS.org and get them free of charge!

To download free samples: Log on to ConsensusDOCS.org and create an account. Click on "Purchase" on the home page. Then, click on "ConsensusDOCS Sample Contracts," which is at the bottom of the pop-up window, and add the documents you need to your shopping cart. Proceed to checkout & follow the download instructions. ASA members seeking to purchase ConsensusDOCS model contract documents can receive a discount of nearly 20% off the cover price by entering partner code **ASA** and promotion code **200**. For more information, see the "**How to Order ConsensusDOCS**" guide located in the ConsensusDOCS section of the ASA Member Resources page at www.asaonline.com. This guide provides a step-by-step process for ordering copies or downloading sample copies of ConsensusDOCS.



GENERAL MEMBERSHIP MEETING SCHEDULE

Dinner Meetings:

5:30 - Cocktails
6:15 - BPI & Legal Message
6:45 - Dinner Program

Luncheon Meetings:

11:30 - BPI & Legal Message
12:00 Noon - Luncheon Program

- July 24, 2008
- August 28, 2008
- September 25, 2008
- Oct 10, 2008 - Golf Tournament *
- Nov 20, 2008 - GC Night *
- Dec 17, 2008 - Christmas Buffet
- January 22, 2009
- February 26, 2009
- March 26, 2009 - Awards Night & Silent Auction*
- April 23, 2009
- May 28, 2009
- June 25, 2009
- July 23, 2009
- August 27, 2009
- September 24, 2009
- Oct 23, 2009 - Golf Tournament *
- Nov 19, 2009 - GC Night *
- December - Christmas Luncheon

SPECIAL EVENTS

- Sept, 2008 ASA Natl Champions Academy
- * Oct 10, 2008 ASA-NTC Annual Golf Tournament
- * Nov 20, 2008 GCNight
- March 6-8, 2008 . ASA Natl Convention, Charleston, SC
- * March 26, 2008 Awards Night & Silent Auction
- May, June, July & Aug Luncheon Meetings
- Sept, Jan, Feb & April Dinner Meetings

“Construction Related Topics Always!”
Prospective members are welcome.

Reservations must be made prior to meetings.
Metro (817) 640-8275
FAX (817) 695-7769
lwhite@asa-northtexas.org
www.asa-northtexas.org



2008-09 ASA Seminar Schedule

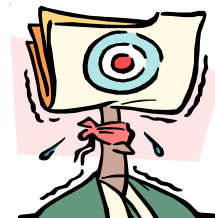
- July 19, 2008** **Texas Lien & Bond Claims**
Wednesday
Thomas, Feldman & Wilshusen, LLP
Las Colinas Country Club, Irving
- Oct 30, 2008** **Killer Clauses in Contracts**
Thursday
Thomas, Feldman & Wilshusen, LLP
Las Colinas Country Club, Irving
- Dec 11, 2008** **Sales Tax Seminar**
Wednesday
CEF Facilities (DFW Training Center)
- Jan 7, 2009** **Texas Lien & Bond Claims**
Wednesday
Thomas, Feldman & Wilshusen, LLP
Las Colinas Country Club, Irving
- Mar 18, 2009** **Killer Clauses in Contracts**
Wednesday
Thomas, Feldman & Wilshusen, LLP
Las Colinas Country Club, Irving
- April 8, 2009** **Texas Lien & Bond Claims**
Wednesday
Thomas, Feldman & Wilshusen, LLP
Las Colinas Country Club, Irving
- May 19, 2009** **Credit & Contract Processing Over View**
Don't Let Construction Claims Bite You
in the Assets
Tuesday
Las Colinas Country Club, Irving

Note: Other seminars may be added during the year

Dates are subject to change due to attorney's court schedule changes

Seminar Registration Forms will be faxed & emailed with details

Seminars Open to Members & Non-Members





Subcontractors Warn IRS That 3 % Withholding Could Add to Payment Problems

In comments submitted April 28, 2008, the [American Subcontractors Association Inc. \(ASA\)](#) cautioned the Internal Revenue Service against exacerbating the slow and partial payment issues experienced on construction projects, and against creating “a major overhaul of the entire contracting, bidding and procurement processes at all levels of government,” when the agency writes rules implementing a 3 percent tax withholding requirement.

“ASA told the IRS that the 3 percent withholding requirement should be repealed, but if it isn’t, the regulation needs to be written to minimize negative effects on cash flow,” said 2007-08 ASA President David H. Bradbury, Precision Concrete Construction Inc., Alpharetta, Ga. “Many firms in the construction industry operate on very small profit margins that would be erased by a 3 percent tax withholding. ASA doesn’t believe that the law requires withholding specifically from subcontractors, but that doesn’t mean subcontractors are shielded from the effects of withholding. If prime contractors react by withholding funds from subcontractors, it could mean more payment problems on public projects — unless the rules ensure prompt payment.”

A provision of the Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109-222), the law will require federal, state and local government entities with annual budgets over \$100 million to withhold 3 percent on all contracts for goods and services, including construction. It is set to take effect on Jan. 1, 2011. Responding to the IRS’ March 31, 2008, request for public comments regarding the law’s implementation, ASA made the case that the requirement should not apply to subcontractors since the government does not pay them:

... [P]ayments are made directly to the prime contractor and not the subcontractors. In many situations, the government entity may not even know the names of the subcontractors working on a project or the dollar value of their contracts with the prime contractor. How would the IRS propose that a government entity withhold funds under these circumstances? It would be problematic without a major overhaul of the entire contracting, bidding and procurement processes at all levels of government.

Payment issues top the list of subcontractors’ most important business concerns. ASA urged the IRS to include prompt payment protections in its regulation for any funds withheld from subcontractors under the auspices of the tax withholding requirement. ASA said:

... a provision [should] be added to any implementing regulation that requires the total amount of any funds withheld from subcontractors by prime contractors to be released within 7 days of receipt from the government or accrue interest at a rate in compliance with section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). A provision such as this parallels the federal Prompt Payment Act and would ensure that monies withheld under the auspices of this law are not abused or used for any purposes other than intended. It will also ensure that subcontractors do not bear an unfair share of the burden.

Even as it urged the IRS to exercise care when writing the rule, ASA supported legislation that would repeal the onerous tax withholding requirement. An ASA-supported bill providing full repeal is pending in the U.S. House of Representatives (H.R. 1023) with 250 co-sponsors. However, under House rules, spending bills need to be offset by revenue-raising bills, and House members have been unable to find a way to fund the repeal. On April 15, 2008, a measure (H.R. 5719) passed the House that would delay the effective date of the tax withholding requirement by one year until Jan. 1, 2012. As of the date of ASA’s comments, the Senate Committee on Finance had yet to vote on the legislation. ASA continues to call on Congress to pass full repeal. For more information, contact ASA Director of Government Relations Freeman Smith at (703) 684-3450, Ext. 1321, or fsmith@asa-hq.com.

2008-09 ASA Webinar Dates Announced

Mark your calendar for ASA’s 2008-09 Subcontractor Empowerment Webinar Series, a series of eight two-hour webinars that will take place between September 2008 - May 2009. Each of the eight webinars in the series, which can be experienced as a group with a computer plus a speakerphone and a projector in a conference or training room, will take an in-depth look at a particular business challenge for subcontractors and offer solutions that empower them to overcome it. Attorneys and other professional advisors will deliver the presentations in an interactive format that allows users to submit questions over the phone or in writing through “chat” technology. The schedule for the 2008-09 series is:

Sept. 9, 2008: Cashing In on the ConsensusDOCS

Oct. 14, 2008: Getting Paid on Federal Construction

Nov. 18, 2008: Default and Denial: Questions You Should Ask About Surety Bonding & SDI

Dec. 9, 2008: Evaluating and Bidding Wrap-Up Projects

Jan. 13, 2009: Getting the Right Customers

Feb. 10, 2009: Negotiating Green Building Projects

April 14, 2009: Hold Harmless or Hold Harmful? Limiting Your Liability for Others’ Mistakes

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Why Subcontractors in North Texas Use CenterPoint:

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Get rid of Non-Money Making Frustrations and get back to Growing Your Business!

For more information about our company or a **free quote** you can contact Mark Mettille or Quent Johnson at 817-410-7785 or access our website: www.centerpointoutsourcing.com



ASA Newsletter Ad Rates

PLACE ONE AD TODAY :

Full Page (7.5 x 10)	\$250 per issue
Half Page (7.5 x 5)	\$150 " "
Quarter Page (3.75 x 5)	\$100 " "
Business Card (3.75 x 2.5)	\$ 50 " "

PLACE FOUR ADS TODAY :

Full Page Ad	\$ 850
Half Page Ad	\$ 500
Quarter Page Ad	\$ 300
Business Card Ad	\$ 150

(Non-Members rates also available)

Newsletter Ads:

Camera ready artwork required for ALL ads. Space is limited & is available on a first-come, first-served basis.

PLACE YOUR AD TODAY ..

Call ASA (817) 640-8275

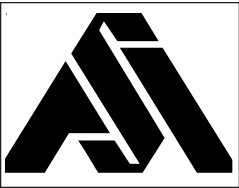
**AMERICAN SUBCONTRACTORS ASSOCIATION INC.
NORTH TEXAS CHAPTER**

2008-2009 BOARD OF OFFICERS / DIRECTORS

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Lea Ann Wood (McGraw-Hill Constr Dodge)
Richard Young (Striland Construction)

Linda White - Executive Vice President
Richard Thomas (Thomas, Feldman & Wilshusen, LLP) - Legal Counsel



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