

APRIL 2024

Welcome to Springtime in St. Louis. April to me means two things: First, a sporadic mix of weather that gives us warm, cold, and thunderstorms all in the same day. Second is the ASA Awards Gala!

APRIL

April 20
31st Annual Awards Gala
The Four Seasons STL

April 20th is the annual ASA Red Carpet Awards Gala at the Four Seasons. If you have not registered to attend, I highly recommend you do so now. This premier event is a chance to recognize our fellow sub and general contractors, those who go above and beyond in making our construction community the best in the nation. When I say, “best in the nation”, I mean it. As a subcontractor who performs work across the country, I can honestly say we have a special dynamic in our market. There is a true sense of teamwork as well as a family feel in the St. Louis Metro construction community.

MAY

May 10
Claybird Tournament
Blackhawk Valley

Back in March, a group of ASA members attended the ASA National SUBExcel convention in New Orleans. This was a great convention filled with informative presentations, networking, and an abundance of good food and good times. Each year at the convention ASA National hosts their own awards gala to honor individuals and chapters across the country. This year, the ASA Midwest Council had a busy night accepting an array of awards.

May 15
Member LUNCH Mtg
Syberg's on Dorsett

First, we garnered an award for Event of the Year, honoring our Meet the GC Expo. I was not surprised by this award at all. Always a huge success, the Meet the GC Expo is unlike any event out there.

May 22
YLPG Networking Event
Ballpark Village Rooftop

Next, our own Ryan Hermann with TJ Wies Contracting Inc. took home the Extraordinary Young Leader Award. Again, no surprise here. Ryan has done an amazing job spearheading our Young Leaders Group, organizing meetings, getting others involved, and planning Young Leaders events.

JUNE

June 12
ASA/SITE Networking Event
CITYPARK Soccer Stadium

Coming up on May 22nd the Young Leaders Group is hosting a networking event at the Cardinals Game. Be sure to check out the ASA Midwest Council website for more information.

Next to the stage was Val Perales with Bazan Painting, receiving the Excellence in Ethics Award. This is a great honor and, again, no surprise that Bazan Painting was the recipient. The Excellence in Ethics Award recognizes a subcontractor's commitment to the ASA values. Those values include quality in construction, a safe work environment, company ethics policies and procedures, and construction practices. Congratulations to Val and the entire Bazan Painting Team.

Finally, Bell Electrical Contractors received a National Safety Recognition Award for their work making safety and safety education a top priority in their company. Congratulations to Steve Williams and everyone at Bell Electric.

*For a complete list of all
upcoming ASA MWC
meetings and events visit
www.asamidwest.com*

As you can see, your ASA Midwest Council had a busy night, making lots of trips to the stage. I am proud of all the award winners, and I am proud of our Chapter. We should all be proud; we have an excellent organization with lots to offer and lots of great people. Thank you all for all you do.

Be sure to congratulate our award winners at the upcoming ASA Red Carpet Awards Gala. I look forward to seeing everyone there.

Dennis Voss
Golterman & Sabo
President, ASA MWC
314-402-5444 | DennisV@golterman.com

Syberg's on Dorsett
2430 Old Dorsett Rd,
Maryland Heights, MO 63043

May 15, 2024 | 11:30 a.m. to 1:00 p.m.
Meet the GC of the Year Award Winners

ASA members-\$30 | Lunch & program included.



OPEN BAR 🍷 APPETIZERS 🍷 STADIUM TOURS

**SUMMER KICK-OFF
NETWORKING EVENT**

JOIN ASA AND SITE FOR A JOINT
MEMBERSHIP NETWORKING EVENT!

JUNE 12, 2024
4:00-7:00PM

CITY PARK
2100 MARKET ST, ST. LOUIS, MO

\$75/PERSON
\$250 BAR SPONSORSHIPS

50/50 RAFFLE
RONALD MCDONALD HOUSE

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ASA
AMERICAN
SUBCONTRACTORS
ASSOCIATION
MIDWEST COUNCIL
Building Community

SIE
IMPROVEMENT
ASSOCIATION

THIS EVENT WILL BE A GREAT WAY TO KICK OFF THE SUMMER!
WE ARE PARTNERING WITH SITE IMPROVEMENT ASSOCIATION FOR A **MEMBER** NETWORKING EVENT
STADIUM TOURS | OPEN BAR | APPETIZERS ARE INCLUDED IN \$75 TICKET

WE ARE LOOKING FOR BAR SPONSORS TO OFFSET THE VENUE COST | ONLY \$250 TO SPONSOR
VISIT WWW.ASAMIDWEST.COM TO REGISTER BEFORE WE SELL OUT!

Greetings ASA Midwest Council Members!
Exciting news about an upcoming Member Benefit!

The ASA Midwest Council is very excited to announce the launch of our own Group 401(k) Plan!

Recent regulations paved the way for associations to begin offering 401(k) Plans for their members.

We believe this is a significant member benefit available to all our members, those with existing plans and those considering starting a plan.

Some Advantages to group plans:

Costs. Group 401(k) plans create cost savings by leveraging economies of scale. Through pooling the assets of multiple participants, these plans can negotiate lower fees with service providers, ultimately reducing overall expenses for both employers and employees.

Individualized Plan. You still have your own 401(k) Plan. Other members do not see how you structured your plan, or anything about you or your employees. You can set up plan provisions specifically for your group.

Fiduciary Status. These plans provide the highest level of fiduciary protection available.

High Touch Local Service: We have partnered with EPIC RPS and Enterprise Bank & Trust to be the recordkeeper and advisor for our plan.

Keith Goltschman from Enterprise Bank & Trust will be reaching out to all members. We encourage you to take a meeting. At the very least, he can provide a review of your current plan or an idea of what it would take to start a plan. If you do not currently have a plan, there are meaningful tax credits available. You receive a 100% tax credit for your costs for three years! Keith can explain the credits in more detail.

Keith M. Goltschman, QKA, QPFC, TGPC | VP, Retirement Plans / Enterprise Bank & Trust | 314-512-7245 | kgoltschman@enterprisebank.com

It is important to note that the ASA Midwest Council does not receive any fees, compensation or other remuneration for making this group 401(k) solution available. ASA is not fiduciary to this program or any participating plans, ensuring transparency and trust. All third parties mentioned are not affiliated or associated with the ASA Midwest Council.

May 15, 2024
ASA Member Lunch Meeting

Syberg's on Dorsett
2430 Old Dorsett Rd | Maryland Heights, MO
11:30 a.m. to 1:00 p.m.

Join us for the upcoming Member LUNCH Meeting on Wednesday, May 15, 2024 at Syberg's on Dorsett. 11:30 a.m. to 1:00 p.m.

We will welcome our three **2023 GC of the Year** award winners, who will all share company and project updates for 2024 and beyond. Network and enjoy lunch with multiple representatives from each general contractor of the year award winner.

The **3 GC of the Year** award winners will be announced at the April 20th Red Carpet Awards Gala at the Four Season Hotel STL. There is still time to register to attend, and also pick your perfect event sponsorship! Visit www.asamidwest.com before April 10th.

MEETING AGENDA:

Networking | 11:30 to 11:45 a.m.

LUNCH | 11:45 a.m. to 12:15 p.m.

GC of the Year Program | 12:15 to 1:00 p.m.

Registration includes Lunch & GC Award Winners
\$30 ASA Members | \$80 Non ASA Members
Register at asamidwest.com by Friday, May 10th.

(Attendees not cancelled by 5.10.24. will be charged per ASA cancellation policy. No refund after 5.10..24. but you may always send someone in your place if you are unable to attend the meeting)

What in the World is Happening in the Insurance Industry?

Chris O'Hagan | JD Kutter

A red, stylized signature logo for JD Kutter, with the letters 'JD' in a smaller font above the name 'Kutter'. The signature is underlined with a thick red line.

The insurance industry is in a full-blown state of flux. And contractors are seeing the results of that flux in their insurance premiums. Certain coverage lines are experiencing softening pricing while other lines are experiencing double digit rate increases. Underwriters are turning more to using actuarial modeling to justify pricing. Here is what you can expect in 2024 (and maybe beyond):

Property Insurance

The property market is a hot mess. Everywhere. Catastrophic climate events are wreaking havoc on property risks across the U.S, causing building owners to completely reevaluate their metrics. Increased wind/hale deductibles are the new norm. Builders Risk coverage is tightening, with frame (see habitational) and coastal projects taking the brunt of the hit. Other Inland Marine coverages (Contractor's Equipment, Installation Floater, etc.) are holding steady.

General Liability

Rates are stable but creeping up. Carriers are increasingly adding deductibles for third-party property damage and underwriters will continue to try to "get rate" on this line. Contractors should expect carriers to seek increased rates on subcontracted work as well, as these carriers are seeing increased losses from uninsured or underinsured subs.

Auto

Contractors should expect near double digit increases in this line for the foreseeable future. Maybe forever. Carrier are seeing loss ratios as high as 1000% in some cases that are being driven by (no pun intended) distracted driving losses, increased costs of auto repair and nuclear jury verdicts. Expect this line to be volatile for quite a while.

Workers' Compensation

Finally, some good news. Carriers have significant capacity in this line and contractors with good loss history should expect better rates. Pay attention to carriers trying to "take back" schedule credits to offset big reductions in a contractor's EMR.

Umbrella/Excess

The chaotic days of the early 2020's have settled down and pricing has leveled off but we're not out of the woods yet. Expect increased underwriting scrutiny for heavier risks – including street and road and anyone doing work on bridges. Larger subs should not be surprised to see Excess carriers pushing increased underlying limits on the General Liability and Auto to give them some breathing room on large losses.

Specialty Lines

Executive Risk lines (Directors & Officers, Employment Practices and Fiduciary) are all soft or stable. Pay attention to your Contractor's Pollution and Professional coverage and consider combining limits for these coverages as you can create efficiencies. If you don't carry Cyber Liability coverage – GET

IT!. It's pricey but it's the only protection you've got from bad actors increasingly targeting lack of technological sophistication in the construction industry.

This sounds bad but the reality is that it could be much, much worse. Insurance carriers are for-profit companies and the losses sustained over the last decade have come home to roost. Pay attention to what you can control – your own loss activity. That is still the best way to keep insurance costs manageable.

ASA MIDWEST COUNCIL'S

Red Carpet Awards Gala 2024



Saturday, April 20, 2024
6:00 to 11:00 p.m.

The Four Seasons Hotel
999 North Second Street
St. Louis, MO

VISIT asamidwest.com TO REGISTER BY APRIL 10, 2024 | \$250 PER PERSON | VALET PARKING INCLUDED | BLACK TIE OPTIONAL
CALL ASAP 314.881.5757 TO RESERVE A HOTEL ROOM AT ASA RATE OF \$255 | ROOM BLOCK EXPIRES 4.5.24 (or when block is full)

6:00 - 7:30 PM - PRESIDENT'S COCKTAIL RECEPTION

7:45 - 9:00 PM - DINNER SERVED

9:00 - 10:00 PM - AWARDS PRESENTATION

10:00 - 11:00 PM - CELEBRATION!

VISIT ASAMIDWEST.COM TO REGISTER BY APRIL 10, 2024
\$250 PER PERSON | VALET PARKING INCLUDED | BLACK TIE OPTIONAL
CALL 314.881.5757 TO RESERVE A HOTEL ROOM AT ASA RATE OF \$255
ROOM BLOCK EXPIRES 4.5.24 (or when block is full)

2024 NOMINEES

General Contractor 2024

CATEGORY A

BSI Constructors
CLAYCO
Contegra Construction Co.
Kadean Construction
Tarlton Corporation

CATEGORY B

Goodwin Brothers Construction Co.
Kozeny-Wagner
McGrath & Associates
Musick Construction
Rhodey Construction

CATEGORY C

Eagan Building Group
G.S.&S. Construction
Helmkamp Construction Company
Spiegelglass Construction Co.

MEP Subcontractor 2024

CATEGORY A

Corrigan Company
Guarantee Electrical Company
Jarrell Mechanical Contractors
Murphy Company

CATEGORY B

Bi-State Fire Protection
C&R Mechanical
O.J. Laughlin Plumbing Co.
Pipe and Duct Systems
R.F. Meeh Co.

Specialty Subcontractor 2024

CATEGORY A

Aifton Fabricating & Welding Co.
Flooring Systems, Inc.
H&G/Schultz Door
Titan Carpentry LLC
T.J. Wies Contracting

CATEGORY B

AME Constructors
Imperial Metal Company
Meyer Painting Company
Total Contractor Services LLC

Service Provider/Supplier 2024

JD Kutter
MJ Products
Nu Way

SFW Partners LLC
The Sherwin Williams Paint Co.
Too Creative

Upcoming ASA Midwest Council Meetings & Events



April 20

***The Red Carpet Awards Gala
The Four Seasons Hotel STL***

May 10

***ASA Claybird Tournament-ALMOST SOLD OUT!
Blackhawk Valley Hunting Club***

May 15

***ASA Monthly Member LUNCH Meeting
Syberg's on Dorsett-Let's celebrate our award winners!***

May 22

***Young Leaders Peer Group Networking Event
St. Louis Cardinals | Ballpark Village Rooftop***

June 12

***ASA/SITE Joint Networking Event
CITYPARK Soccer Stadium***



***SCAN QR CODE TO VISIT ASAMIDWEST.COM
TO REGISTER FOR EVENTS & MEETINGS***

*ASA Midwest Council is on
Facebook, Instagram, X & LinkedIn*

***Follow ASA Midwest Council
for the latest news and information!***





AMERICAN
SUBCONTRACTORS
ASSOCIATION
MIDWEST COUNCIL

ASA YLPG

#buildingleaders

ASA YOUNG LEADERS NETWORKING EVENT

WEDNESDAY, MAY 22, 2024 | 12:15 GAME TIME | CARDS VS ORIOLES

ALL INCLUSIVE TICKETS ONLY \$65 | INCLUDES FOOD & DRINK |
BALLPARK VILLAGE | HOFFMAN BROTHERS ROOFTOP



OPEN TO
ALL
YOUNG
LEADERS
IN THE STL
CONSTRUCTION
INDUSTRY



VISIT asamidwest.com to register before May 15th to Reserve your Spot!

THANK YOU to the MEMBER COMPANIES that attended our March BPI Meeting

*Afton Fabricating & Welding
Bazan Painting Co.
Blakely Sheet Metal LLC
D. Johnson Painting Co.
D&L Painting and Drywall
Golterman & Sabo*

*George McDonnell & Sons
Integrated Facility Services
KJ Unnerstall Construction
Leach Painting Co.
Luby Equipment
MC Mechanical*

*Meyer Painting Co.
MJ Products
Mid America Specialty Svcs.
Midwest Construction Svcs.
Orion Environmental
P&A Drywall Supply*

*Precision Analysis
Ritchie Brothers
Schaeffer Electric
St. Louis Roofing Co.
The Stockenberg Law Firm
T.J. Wies Contracting*



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ASA Midwest Council needs your time and talent!



**Are you a new member looking to get more involved with the ASA?
Or perhaps you are a long time member, and have never joined a committee!**

**We are always looking for committee members to assist with our
quarterly events, as well as the ongoing committees,
that help run the organization & further ASA's goals!**

**If you are interested in joining a committee, contact executive director,
Susan Winkelmann 314.845.0855 or susan@asamidwest.com**

As of the writing of this newsletter, members of the General Assembly are back in their home districts for the annual legislative spring break. Typically, this would signal the halfway point in the legislative session, but we have already passed that mark as there will only be eight weeks of session remaining when legislators return to Jefferson City on March 25. As we mentioned in last month's column, not a single piece of legislation has passed and been sent to the Governor for his signature. That fact has not changed as movement of bills in the Senate continues at a snail's pace.

House Budget Chairman Cody Smith has released his version of the Fiscal Year 2025 state budget, making numerous changes to the spending plan put forth by Governor Mike Parson. Smith's FY25 proposal cuts \$2 billion from Parson's plan, leaving the overall state budget sitting at \$50.7 billion. One of the newsworthy items in the version outlined by Smith is an earmark of \$727.5 million for major reconstruction projects on Interstate 44. It is anticipated that House members will debate the spending plan on the House Floor the week following the legislative spring break. From there, the Senate will have their turn in making modifications to the proposal. The state constitution mandates the budget must be finalized by May 10.

Embattled House Speaker Dean Plocher recently appeared before the House Ethics Committee, as the months-long probe into his actions continues. The committee is rumored to be looking into several potentially damaging allegations against Plocher, including filing expense reports seeking reimbursement for travel already paid for by his campaign; firing staff members who acted as whistleblowers; and urging House staff to enter into a contract with an out of state private contractor for services already performed by in-house staff. Plocher testified before the committee along with two of his attorneys in a closed session of the committee.

By House Rules, Ethics Committee proceedings are confidential, and will not be made public until a final report is released by the committee.

The latest push in the General Assembly to assist potential employees to enter the workforce centers around providing adequate childcare for workers with children. Recently, the Senate Governmental Accountability Committee heard testimony on legislation that would establish tax credits for employers who make contributions for their employees' childcare expenses and would also set up a tax credit framework for parents who pay for childcare and childcare providers. The Missouri Chamber of Commerce has been leading the push for passage of the bill, along with numerous trade and retail associations and organizations. Additionally, the legislation is a priority for Governor Mike Parson and has bipartisan support in both the House and Senate.

Filing for elected office remains open through March 26 for statewide offices, all 163 House seats, and 17 of the 34 Senate seats. We will keep you apprised of any news on that front, along with other political happenings that impact ASA and the construction industry.

If you aren't receiving your weekly ASA Legislative Update via e-mail, please send email to susan@asamidwest.com

Nikki Strong, Strong Consulting Group.



ASA Midwest Council Members

A-1 Professional Asphalt & Sealing
Acoustical Ceilings, Inc.
Affton Fabricating & Welding
AME Constructors
American Steel Fabrication, Inc.
Aqueduct Plumbing LLC
ArchKey/Sachs Electric
Archview Metal Systems Co.
Armanino LLP
Aspen Waste Systems
Associated Bank
Barnhart Crane & Rigging
Bazan Painting Company
Bell Electrical Contractors
Bene Smart
Bi-State Fire Protection Corp.
Blakely Sheet Metal, LLC
Boyer Fire Protection
Budrovich
C. E. Jarrell Contracting
C&R Mechanical
Central Power Systems & Services
Century Fire Sprinklers
CK Supply
CliftonLarsonAllen LLP
CMIT Solutions
CNA Surety
CNC Foundations
CSA Advisors LLC
Cardinal Elevator
Century Fire Sprinklers, Inc.
Construction Risk Partners
Corrigan Company
D. Johnson Painting
Daniel and Henry Company
DJM Ecological Services
D&L Painting and Drywall
Deltek ComputerEase
Drilling Service Company
Dynamic Controls, Inc.
E. Meier Contracting
ELCO Chevrolet Cadillac
Empire Fence & Custom Iron Works
Enterprise Bank & Trust
Eyes on Crimes
Fabick CAT
FastTrac Rentals LLC
Federal Steel & Erection Co.
Flooring Systems
Focal Pointe of St. Louis LLC
Foreman Fabricators
Gateway Fire Protection Systems
Gateway Safety Consulting
George McDonnell & Sons
Golterman & Sabo
Grant Contracting
Grasser Electric
Greensfelder, Hemker & Gale
Guarantee Electrical
H & G /Schultz Door Inc.
Haberberger, Inc.
Hanenkamp Electric
Hansen's Tree, Lawn & Landscaping
Hawkins Construction & Flatwork
Hayden Wrecking
Heitkamp Masonry
Imperial Metal Company
Integrated Facility Services
Irwin Products
JD Kutter
J.F. Electric
J & S Industrial Services
J.W. Terrill
John J. Smith Masonry
KJ Unnerstall Construction
K & K Supply
Kaemmerlen Electric
Kaiser Electric
KAM's Mechanical LLC
Kay Bee Electric
Kirby-Smith Machinery, Inc.
Knapheide Truck Equipment
Lawrence Fabric & Metal Structures
Leach Painting Company
Liberty Mutual Surety
Lindberg Waterproofing
Linek Plumbing Co.
Luby Equipment Services
Marketeer, Inc.
Maxim Crane Works LP
Metal Supermarkets
Meyer Painting Co.
MC Mechanical
Mid-America Carpenters Reg. Council
Mid-America Specialty Services
Middendorf Logistics
Midwest Construction Services
Midwest Elevator
Midwest Monogram Promotions
MJ Products
Mold Solutions
Modern Communications
Montgomery Bank
Murphy Company
Musselman and Hall Contractors
National Sales Company (NSC)
Negwer Door Systems
Nu Way
O.J. Laughlin Plumbing Co.
Orion Environmental, Inc.
P & A Drywall Supply
Parkway Construction Services
PayneCrest Electric
Pipe and Duct Systems
Precision Analysis, Inc.
Professional Metal Works, LLC
R.F. Meeh Co.
RJP Electric
Reinhold Electric, Inc.
Rental Supply
Ritchie Bros
RubinBrown LLP
Saint Louis Roofing Company
Schaeffer Electric Company
Schmersahl Treloar & Co.
Seiler Instruments
SFW Partners, LLC
The Sherwin-Williams Co.
SIC Midwest
Stifel Financial
Stylemaster Promotional Products
Sunbelt Rentals
Swanson Masonry, Inc.
Titan Carpentry LLC
T.J. Wies Contracting
The Stockenberg Law Firm
Too Creative
Total Contractors Services LLC
TROCO Custom Fabrication
UHY LLP
United Rentals
USI Insurance Services
Vee-Jay Cement Contracting
Vision Electric & Systems
Wipfli
Zurich Surety

Each month you will receive an update on the committees within ASA, to keep you informed on current happenings at the committee level. Below are this month's committee reports. Interested in joining a committee? Contact Susan Winkelmann, ASA Executive Director- susan@asamidwest.com or 314.845.0855



SAFETY

For additional information regarding the ASA Safety Committee, or to join the committee, contact our Safety Committee Co-Chairs: Rose Kastrup with CSA Advisors at (417) 761-4194 or Steve Williams with Bell Electrical at (314) 447-9071.



MEMBERSHIP

ASA Continues to grow, we have welcomed 22 new members this fiscal year (since July 1)
If you know a subcontractor who would benefit from the resources that ASA brings to its members, let us know. The benefits of ASA membership are many and our committee is very focused on adding quality new members. For Additional information contact our Membership Committee Co-Chairs, Chris O'Hagan, JD Kutter. (314) 444-4949 chris@jdkutter.com. OR Rob Meeh, R.F. Meeh (314) 608-0361/rjmeeh@rfmeeh.com

CONTRACT REVIEW

Did you know ASA Midwest Council has an extensive library of General Contractor contracts on file? These contracts have been reviewed by the Contract Review Committee, and include comments/suggestions of changes you may want to request during your contract negotiations. The contracts are available to ASA members only, and can be requested by sending an email to susan@asamidwest.com

If you have questions regarding the contract review service offered to our ASA members, please contact the Contract Review committee chair, Dick Stockenberg, ASA MWC chapter attorney, The Stockenberg Law Firm; richard@stockenberglawfirm.com

PROGRAMS

We want to hear from our members to ensure we are providing the best content possible to meet your needs! Who would you like to hear from at an upcoming meeting? If you have any suggestions or feedback, please contact our Programs Committee Co-Chairs: Chris O'Hagan, JD Kutter chris@jdkutter.com (314) 444-4949 OR Dan Tucker, MC Mechanical Services dtucker@mcservicestl.com (314) 707-7595

ASA Supports H.R.4366 The Consolidated Appropriations Act of 2024

ASA, along with the Transportation Construction Coalition (TCC), sent a letter to Congress stating that infrastructure investment spurs job creation and economic growth, and to maximize this, we urge them to vote YES on H.R. 4366, Consolidated Appropriations Act of 2024, which contains the Fiscal Year (FY) 2024 transportation spending bill. H.R. 4366 would support the funding levels authorized in the Infrastructure Investment and Jobs Act (IIJA), allowing improvements to roads, bridges, and public transit systems.

Meeting the investment levels authorized in IIJA will allow the states to continue planned enhancements for all users of the nation's transportation network. Further, the bill provides supplemental investment for highway, public transportation, airport, and multi-modal projects, which will enable the delivery of more transportation system improvements and demonstrates continued congressional support for infrastructure. Federal investment in infrastructure is critical to building on the economic growth and quality of life enhancements already underway via both the IIJA and previous appropriations laws.

The Foundation of the American Subcontractors Association (FASA)

The Foundation of the American Subcontractors Association (FASA) was established in 1987 as a 501(c)(3) tax-exempt entity to support research, education and public awareness.

FASA is committed to forging and exploring the critical issues shaping subcontractors and specialty trade contractors in the construction industry. FASA provides subcontractors and specialty trade contractors with the tools, techniques, practices, attitude and confidence they need to thrive and excel in the construction industry.

Mission:

To educate and equip subcontractors and suppliers with the knowledge and resources they need to thrive in the construction industry. Additionally, FASA raises awareness about issues critical to and about construction in the United States.

Initiatives:

FASA Cares is the main initiative of FASA and will focus on Diversity & Inclusion and Suicide Prevention in the Construction Industry.

**For additional details visit
www.asaonline.com/foundation**



Contesting an OSHA Citation



Anyone so unfortunate to have received an OSHA citation likely knows that you need to decide relatively quickly on how to respond. Simply reaching for the checkbook and deciding to just pay the citation is one approach. Another approach -- a more recommended approach -- would be to take advantage of the procedures in place to help you resolve citations.

One option is to immediately request what is referred to as an "informal conference" with the OSHA area director. The informal conference must take place no later than 15 business days of the employer's receipt of the citation. Informal conferences are very popular because they present an opportunity at an early stage of the process to negotiate a penalty reduction, extension of abatement dates, deletion of violations, and/or reclassification of violations. But that option may not fit all circumstances. What if you feel the right path for your company is to resist any notion that you can't fight city hall and you decide to contest the citation? The reasons could be more complex than the simple dollars and sense of a potential penalty. How does one do that, what should you expect, and -- the big question -- can you actually win? Further, after you contest a citation, can you still settle the citation with OSHA, or is there no turning back?

There are well-defined procedures to navigate this process and understanding them is crucial in order to make an informed decision and plot your desired course.

The First Step — Better Never than Late?

The act of formally contesting an OSHA citation is rather simple, but you must adhere to a rigid time deadline, or not only will you lose the right to contest the citation but, even worse, the citation will become final. Specifically, to contest, you must submit a Notice of Intent to Contest in writing to the OSHA area office within 15 working days (this excludes weekends and federal holidays) of your receipt of the citation. Importantly, this is the same deadline for appearing at an informal conference. The Notice of Contest must clearly state what is being contested (e.g., the citation, the penalty, and/or the abatement date) and must be made in good faith (meaning you must sincerely believe you're in the right).

The Venue and the Players — Can You Get a Fair Shake?

With the Occupational Safety and Health Act of 1970 (OSH Act), Congress created not only OSHA, but also the Occupational Safety and Health Review Commission. Whereas OSHA is a part of the Department of Labor, the Commission is an independent federal agency, separate and apart from the Department of Labor. The Commission serves as the court system to adjudicate disputes between employers and OSHA arising from contested workplace safety inspections. Among its roles, the Commission employs administrative law judges (ALJs) who hold administrative hearings and decide contested citations. If you contest a citation, you will end up before an ALJ. The Commission, itself, is composed of three members who are appointed by the president.

Fortunately, although OSHA and the Commission were created by the same legislation and share similar names, the ALJs do not merely serve as a rubber stamp for OSHA. In fact, a review of ALJ decisions indicates that in 21% of the cases, *all* of the contested citations were vacated (in favor of the employer) and no associated penalties were imposed. In an additional 23% of the cases, at least one (but not all) of the contested citations was vacated. In sum, employers experienced at least some degree of success in approximately 44% of the contested cases. Of course, each case is dependent on its facts, but the odds as a whole do not appear to be stacked against you.

Pleadings, Discovery, and the Hearing -- Learning Each Other's Case

Within 20 calendar days of receiving the Notice of Contest, the Secretary of Labor must file a written complaint with the Commission and also provide a copy to the employer. The employer, in turn, is required to file a written answer within 20 days denying the allegations the employer wishes to contest and also describing any "affirmative defenses" that it intends to raise, such as "infeasibility," "unpreventable employee misconduct," and/or "greater hazard posed by compliance." (A number of procedural and/or substantive defenses may exist in any particular case and should be analyzed as early as possible in the process. Consultation with counsel in this regard may be advisable.)

After the answer is filed, the ALJ will impose a schedule for the case, and also may hold a conference with the parties to clarify the issues, explore the potential of settlement, or discuss other ways to expedite the future hearing. Discovery (the method by which parties obtain information and documents from each other) may include written questions (called "interrogatories"), oral statements taken under oath (called "depositions"), asking the opposing party to admit or deny the truth of certain facts (called "notices to admit"), and/or requests for the opposing party to produce documents. Notably, depositions are only available if the parties consent to take them or, if one party refuses to consent, the court directs this type of discovery to proceed. In addition, parties may, upon application to the ALJ, serve subpoenas requiring the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence, or documents.

After discovery is completed, a hearing will be conducted before the ALJ. Witnesses will testify under oath and be subject to direct and cross-examination. The Federal Rules of Evidence will apply. After the hearing is completed, each party is given an opportunity to submit a post-hearing brief to the ALJ essentially arguing why the judge should decide in its favor. Afterward, the judge will issue a decision.

Notably, in addition to conventional proceedings (the process described above), contested cases may, in certain circumstances, proceed pursuant to simplified proceedings. Simplified proceedings may be appropriate for cases with less complex issues and short circuit much of the steps involved in conventional proceedings. For example, in simplified proceedings, complaints and answers are not required, the Secretary of Labor is required to provide the employer with documents early in the process, discovery is not permitted (except as ordered by the ALJ), and hearings are less formal. Any party may request that a case be assigned for simplified proceedings and the Chief ALJ may make this decision as well.

One Additional Step?

After the ALJ issues a decision, the losing party can object to the decision by filing a Petition for Discretionary Review. Review by the Commission, however, is not a right and the Commission may or may not elect to review the decision. Notably, however, even if a party does not file a Petition for Discretionary Review, the Commission may voluntarily, on its own initiative, elect to review the decision, in which case it will ultimately issue its own decision that will become the final order of the Commission. Any party who is adversely affected by a final order of the Commission can appeal to a United States Court of Appeals.

Conclusion — Why Litigate?

The decision to contest an OSHA citation should never be made lightly. Indeed, many factors might be relevant to the decision-making process. These may include not just the potential penalty amount but perhaps, more importantly, the citation's potential impact on future civil litigation (and potential civil liability), the potential for "repeat" OSHA violations in the future, your reputation for safety within your particular industry and the potential for future lost business, and, finally, the costs associated with abatement -- for example, will abatement require that entire processes be changed, at significant expense?

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