



TO: Kerry Smith, CNR
CC: Tim Thomas, Chris Sauer, Mike Smith, Susan Winkelmann
FROM: Richard A. Stockenberg (richard@stockenberglawfirm.com 314-324-7001)
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RE: ASA Legislative Agenda for 2025

INTRODUCTION

First, and perhaps foremost, a core principle of the ASA Midwest Council is to be a leading advocate for legislation benefiting its members. For more than 35 years ASA has pushed its legislative agenda and - with support from its partners - has achieved some notable successes such as

Retainage Reform.

Outlaw Broad Form Indemnity Clauses.

“Pay-if-Paid” Clause will not defeat a mechanic’s lien claim.

No Limit on Suppliers’ Right to Claim Under a Bond.

New Payment Bond Rights.

There remains, however, much work that must be done to achieve protection and safeguards for all parties in the construction industry’s contract chain. While much of ASA’s legislative agenda is to help its subcontractor members, there are some core issues that are addressed involving all parties in the contract chain running down from the owner to a material supplier. The agenda for 2025 is far reaching encompassing a *Bill of Rights* to protect the industry. The bill as drafted by ASA is summarized as follows:

2025 LEGISLATIVE AGENDA

- ~ If a dispute exists between, say a Subcontractor and a GC, the GC would not be allowed to withhold from the Subcontractor more than the amount in dispute. This will eliminate the ability to hold back \$100,000 of retainage, when there is a punch list of only \$10,000.
- ~ A Subcontractor would be able to suspend work if it is not being paid per contract terms even if the contract says that it cannot.

- ~ A clause requiring a Subcontractor to continue working if it is not being paid is void.
- ~ A clause requiring extra work to be performed before there is an agreement on payment terms is void.
- ~ A clause requiring a Subcontractor to waive rights it has to recover an amount in dispute as a condition to recover an undisputed amount is void. Thus, suppose that there is a dispute over a \$3,000 change order, but no dispute over a \$50,000 progress payment. The GC may not withhold the \$50,000 progress payment as leverage to fight the change order dispute.
- ~ A GC may not take adverse action against a Subcontractor (e.g. terminate, backcharge, etc.) without first giving the Subcontractor a chance to cure the problem. (Note, all of the above provisions apply to all parties in the contract chain, not just Subs and GCs.)
- ~ Pay-if-Paid clauses are void. The owner's failure to pay the GC shall not be a defense to a Subcontractor's claim against the GC.

In addition under the 2025 Bill, construction contracts shall require certain provision to be included in contracts, and if they are not specifically stated, they shall be deemed by operation of law to include the following:

- ~ The Owner has 40 days to pay the GC for properly performed work. (The 40-Day period represents a compromise with disbursing agents who claim they need 40 days to perform their tasks.)
- ~ If an Owner intends to withhold funds from the GC, the Owner must give written notice to the GC of its intent to do so. Such notice shall be given within 15 days of receipt of the invoice. Failure to give timely notice shall be deemed to be acceptance of the invoice, with the right to later allege some work was non-compliant.
- ~ If the Owner withholds funds from the GC, then the GC must within 7 days provide this information to Subcontractors who are affected and failure to do so shall be deemed to be acceptance of the Subcontractor's invoice, subject to the right to later allege non-compliance.
- ~ A GC may not withhold more from its Subcontractor than the Owner withholds from the GC for the Subcontractor's work.
- ~ With respect to subcontracts, the GC must pay the Subcontractor within 7 days of receipt of funds from the Owner for the Subcontractor's work. Subcontractors, in turn, have 7 days to pay their sub-subcontractors and suppliers. These terms shall also be deemed to be in the subcontracts even if not expressly stated.
- ~ GCs are required to notify their subcontractors within 2 days that they have received payment from the Owner for the Subcontractor's work.
- ~ If a GC is paid by the Owner for a Subcontractor's work, but the GC does not intend to pay the Subcontractor, then the GC must return the sum to the Owner.

~ All rights and responsibilities applicable to upper tier contractors shall flow down to lower tier parties. In other words, the same rights and responsibilities that exist between a GC and its Subcontractors, shall likewise apply between Subcontractors and their sub-subcontractors and suppliers.

~ The terms do not apply to residential projects of 4 units or less.

~ The terms do not apply to public works projects, but they do apply to projects where the land is owed by the government, but will be used for non-governmental purposes.

In summary, ASA seeks long overdue payment protection. Subcontractors (and others) should not have more withheld from their pay applications than the amount in dispute – a common practice. A Subcontractor (and others) should not be required to keep working if it is not being paid per the terms of the contract. A General Contractor should have to pay a Subcontractor who has properly performed all of its work even if the Owner has not paid the General Contractor for the Subcontractor's work. This is the law in many other states and should be the law in Missouri because the GC is in a far superior position to control the risk of non-payment by the Owner than the Subcontractor who has no direct contractual relationship with the owner. ASA firmly believes that the party who can best control the risk should bear the risk and not push the risk downward to someone else such as a subcontractor who has no control over whether the Owner pays its general contractor.