



BUILD UP!

NORTH AND SOUTH CAROLINA BUILDING DIVISIONS NEWSLETTER

CAROLINAS AGC – MARCH 22, 2006

JULY 20-23 BUILDING DIVISION MEETING

We're gearing up for what promises to be an excellent annual BUSS Meeting (Building/Utility/Subcontractor-Specialty Contractors) that will be July 20-23, 2006 at the Marriott Grande Dunes in Myrtle Beach. The theme of this year's meeting is: "Together We Win...Training, Entertaining, Political Explaining." Registration packets will go out in May and plans include:

* John G. Miller, an internationally known organizational development speaker and author, will give the keynote address. His presentation will focus on making personal accountability a core value for organizations and individuals. This 1.5-hour program -- which CAGC members and their spouses/guests are encouraged to see -- will include key information from his powerful and eye-opening books, "QBQ (Question Behind the Question): Practicing Personal Accountability at Work and in Life" and "Flipping the Switch: The Five Keys to Success at Work and in Life."

Based in Denver, Colorado, Miller promises to deliver key principals that will dramatically improve your company's bottom line and culture as well as your personal life and those in your family. A 1980 graduate of Cornell University, some of his clients include Blockbuster Video, Verizon Wireless, Bausch and Lomb optical company, Wells Fargo, Boeing Aircraft, Applebee's and the U.S. Department of Defense.

* NC Sen. Richard Stevens, a former Wake County manager in Raleigh, will discuss the importance of the construction industry getting involved politically and tips to help your business.

* Programs on the future of training, opportunities for military work and CAGC's new so-called "Project Independence" array of services.

* Outstanding golf, a special program for the Ladies Brunch and activities for the kids.

* And to top off the three-day BUSS meeting, plan to stay at the hotel through Sunday because Saturday night we will have a dinner-dance featuring an outstanding 10-piece band, The Soul Searchers, a Raleigh-based band that can do it all - oldies, beach music, rock 'n' roll, etc.

Sponsorships: If you are interested in helping to sponsor speaker John Miller and other events at the BUSS meeting, please contact Dave Simpson at dsimpson@carolinasagc.org. So far, sponsors who already have pledged \$1,000 include:

Smith, Kesler & Company - Hospitality Suite
Johnston, Allison & Hord - Friday Golf Tourney
Elmore & Wall - Friday Reception
BB&T Boyle-Vaughan Insurance - Saturday Reception
Ogletree, Deakins, Nash, Smoak & Stewart - Saturday Dinner
Smith, Currie & Hancock - Saturday Dance
Taylor Penry Rash & Riemann - Keynote Speaker
Vaughn Wicker, International Code Council - Keynote Speaker

In addition, Crumpler Plastic Pipe, Inc., has pledged \$500 for Golf Prizes. Sponsorships still are needed for Meeting Breaks, Golf Box Lunches, Ladies Brunch and the Keynote Speaker.

DOUBLE PAYMENT, IMMIGRATION ISSUES

Double Payment Problem in North Carolina: About 35 representatives of all segments of the construction industry met on March 16 in Raleigh in a Carolinas AGC meeting to discuss problems general contractors are facing concerning having to pay twice for the same work or materials. The problem, which is widespread and costly, usually stems from general contractors paying first-tier subcontractors, who in turn don't pay second-tier suppliers or subcontractors. Those second-tier suppliers and subcontractors then file claims against the general contractor's payment bond. Thus, the general contractor often must pay twice for the same work or materials.

The meeting involved the Double Payment Subcommittee of the NC Bar Association/CAGC Joint Committee. That committee is co-chaired by Bill Gammon of Nelson Mullins Riley & Scarborough, Raleigh, where the meeting was held. The Double Payment Subcommittee is led by Co-Chairs John Muter, Barnhill Contracting Co., Raleigh Building Division, and Keith Coltrain, Elmore & Wall, P.A., Raleigh.

In addition to the co-chairs, attendees included Barry Gardner, Shelco, Inc., and senior vice chairman of CAGC's Board of Directors; Chuck Wilson, C. T. Wilson Construction Co., Inc., and past CAGC board chairman; Bill Gammon; Hank Jarrett, Conner Gwyn Schenck, PLLC; Andy Penry, Taylor, Penry, Rash & Riemann, PLLC; Nan Hannah, Vann & Sheridan; Debbie Morse, L&W Supply; Amy Simmons, Triangle & Colonial Materials, Inc.; Chris Williford, Southern Piping Co.; Graham Moore, APAC-Atlantic, Inc.; Vicki Fleshman, Vulcan Materials Co.; Ken Randolph, Sunrock Group Holdings; Matt Riggs, Centurion Const. Co.

Steve Faney, Bryant-Durham Electric; Steve Brown, Bryant Durham Electric; Tom Oxholm, Wake Stone Corp. (who said he was representing the N. C. Aggregates Association); Gary Roth, Precision Walls, Inc.; Richard Mountcastle, Interior Distributors, Inc.; Theresa Rosenberg, Architect and Attorney; Zack Abegunrin, State Construction Office; Randy Bishop, St. Paul Travelers Bond; Henry Jones, Jordan Price; Gloria Shealey, The Daniele Co. (UMCNC); Bob Chandler, Chandler Concrete; Chuck Easley, Shelco, Inc.; John Starr, Starr Electric; Wayne Carver, Southern Building Material Association; Farad Ali, Institute of Minority Economic Development; Perry Safran, Safran Law Offices; Henry Lancaster, Lancaster, Craig & Associates (UMCNC); Berry Jenkins, Dave Simpson and Bill Stricker of Carolinas AGC.

John Muter led a discussion about what appears to be an increasing problem of general contractors having to pay twice for the same work or materials on bonded construction projects. It is recognized that the solution to this problem is controversial and affects different entities in the construction industry in different ways. It was noted that, before any legislative efforts are pursued, it was important for the wide-ranging group to come together and discuss possible solutions to this problem, which affects everyone in the construction industry.

The double payment problem often involves suppliers of drywall, electrical, plumbing, carpet and rental equipment items, though it is not limited just to those materials and equipment. While it usually involves second-tier suppliers, the problem can continue to go down the food chain with the lower-tier subs or suppliers. The problem is becoming very costly, with some companies having lost in the range of \$100,000 to over \$1 million.

The big problem concerning double payment is that general contractors simply do not know that lower-tier subs and suppliers are not being paid until it is too late for them to withhold payment to the higher-tier subs and suppliers until lower-tier subs and suppliers are paid. In many cases, the general contractors do not even know those lower-tier subs and suppliers are supplying labor or materials for the job site. Further, it appears that some material suppliers may have adopted a business strategy of extending credit to otherwise non-credit worthy clients on bonded jobs knowing that they can seek relief from the general contractor if the non-credit worthy client defaults.

For a complete look at the problem and solutions, go to: http://www.cagc.org/contractors_bldg/. We'll keep you up to speed on continuing developments on this double payment issue.

Immigration: The good news is that a large number of CAGC members in both Carolinas are contacting their members of Congress about urging them to support a guest-worker program, a position that reportedly is opposed by the following members of Congress:

- Gresham Barrett (3rd-SC); Virginia Foxx (5th-NC); Walter Jones (3rd-NC)

- Patrick McHenry (10th-NC); Sue Myrick (9th-NC); Charles Taylor (11th-NC)

CAGC Building Division Chair Keith Wayne and James M. Young, Congressional Relations, AGC of America, urge all CAGC members to contact these legislators and tell them to support the following AGC positions:

- AGC supports the creation of a new guest worker program that would reduce the paperwork burden on the employer and limit the bureaucracy faced by immigrants and employers. Immigration reform can help address the shortage of skilled and unskilled workers which continues to face the construction industry.
- Any legislation will need to seek to address immigration issues with an eye on both security and economics.
- AGC members encourage Congress to draft legislation which will tighten the federal documentation process and hold the federal government responsible for ensuring the accuracy of identification cards and social security numbers, in order to help employers avoid having undocumented workers on their jobsites.
- Congress and the Administration have indicated that immigration reform is a priority for 2006.

“The immigration issue is vitally important to the construction industry and it is definitely time for a call to duty to make these labor needs known to our Congressmen and Senators on a national level,” said Keith Wayne of Wayne Brothers. “This affects all CAGC members -- whether they are general contractors, subcontractors, suppliers, vendors, you name it.”

We need your voice now! Please contact your elected officials and let them know how vital immigration reform is to our industry. Find your elected officials now for both NC and SC by visiting http://www.bipac.net/lookup.asp?g=agc_carolina.

SOUTH CAROLINA LEGISLATION

Workers’ Comp: The South Carolina legislative session kicked off in Columbia on Jan. 10 and we are already half way through this session. While some bills have seen a good bit of action, the bill CAGC is most interested in, workers’ comp reform, is not moving as quickly as we had hoped. The full House Labor, Commerce and Industry committee finally approved a watered-down version of the workers’ comp legislation filed by the business community at their meeting March 14. In light of the recent assessments and the increasing workers’ comp rates in this state, we are disappointed that the Committee did not approve a stronger bill. The amendment the committee approved was offered by Chairman Harry Cato and it included only five of the twelve provisions that were in the original bill, H. 4427. The amended version of the bill is as follows:

- 1) A scaled back version of the Second Injury Fund, where we had requested dissolution of the fund. The fund would now only apply to 3 injuries: loss of limb, loss of sight and ruptured disk. The bill also provides for a sunset of the fund in 2012 if it exceeds \$8 million in assessments.
- 2) The Tiller Case was repealed, which means that an expert witness would have to be a licensed professional.
- 3) The Fraud section clarifies that the definitions of “false statements and misrepresentations” must be proven to be intentional false reports or intentional misclassifications by an employer.
- 4) The Repetitive Trauma section was amended to remove repetitive trauma from the definition of an accident, and expert medical evidence that an injury is due to a person’s employment is required.
- 5) Brown v. BiLo is repealed which allows an employers representative to contact the employees treating physician directly.

With the exception of the changes to the Second Injury Fund, all of the items above were included in the bill we originally filed. However, there were several other sections which were not included that are imperative for us to have true workers’ comp reform. The one section that we have agreed is worth fighting for is the inclusion of the AMA guidelines, which is the section of the bill that limits disability claims. Carolinas AGC and the SC Civil Justice Coalition will be working the members of the House, once this bill reaches the floor, to restore the AMA guideline language.

Right to Cure: S. 807, right to cure legislation, has received approval by the sub and full committees of the Senate Labor, Commerce and Industry Committee. As drafted, the bill would allow commercial contractors 90 days to repair any defects found before a lawsuit could be filed.

Real Estate Licensee Lien Legislation: Recently we were successful in amending S. 46, the real estate licensee lien legislation, in subcommittee in the House. The intent of the bill is to allow real estate licensees to file a lien against a landlord who tries to avoid honoring their brokerage agreements when the licensee secures a tenant for the landlord. However, we were concerned that the bill, as drafted, would dilute the contractor's lien rights which our members worked so hard for several years ago. Our amendment, which was approved in the House committee, would give a contractor's lien priority over any other lien, including a real estate licensee lien. A huge thanks to Jim Tharp and Frank Elmore for their work on this amendment.

Landfill Legislation: There have been several landfill bills filed this year. They were initially filed to address concerns over a proposed landfill in Spartanburg County, but the passage of the bills would have statewide implications, causing more landfills to close and driving up the cost of disposing waste throughout the state. The House committees have adjourned debate on the bills, but the Senate took action on one House bill that passed through the House without reference, meaning no hearings were held on the bill. As amended and approved in the Senate committee, it would eliminate the grandfather clause which allows companies currently operating a landfill in the state to replace the existing facility once it reaches its capacity. If the bill passes as amended, five landfills – Palmetto, Union, two in Richland County, and one in Dorchester County – would reach their capacity and close within 12 years and would not be able to be replaced. Thus, there would be a higher demand in the landfills that are open in the state, which in turn will increase costs to our members who are disposing of waste in those landfills.

Special Inspections: Recently, CAGC and representatives from the AIA, Charleston Contractors, Mechanical Contractors and CSI Associations presented a proposal to the State Building Code Council requesting that they consider creating a license classification for Special Inspectors under the purview of the Building Code Council. Since the Special Inspections (Chapter 17) section of the building code has gone into effect, there is a lot of confusion and a great deal of overlapping services statewide.

Our group would like to have the Building Code Council license special inspectors on a statewide level in an effort to reduce cost to local building officials and departments by eliminating the need for them to individually (and redundantly) establish criteria, evaluate, license, certify, administrate and track Special Inspectors. Our intent is to simplify the process and not to reduce a local building official's authority to perform and administer IBC Chapter One inspections, review and approve plans for construction. The Council agreed to the concept we proposed and is reviewing the statutory laws that would be needed to make such a change to the building code.

NORTH CAROLINA LEGISLATION

The short session of the N.C. General Assembly begins May 9, 2006. Following one of CAGC's most successful long sessions ever last year, a number of important issues are likely to be considered by lawmakers this year, including a move to roll back the 2.9-cent recent gas tax adjustment, which CAGC opposes; limiting retainage held on public work; local option sales tax authority to raise taxes for public construction projects; and wide-ranging infrastructure needs involving building, highway and construction work.

The Rural Economic Development Center is recommending \$1 billion for water and sewer bonds. Look for universities and public schools to be seeking hundreds of millions for construction work. Other issues that should surface in the short session include tax credits for renovating abandoned mills for other uses; improving health care costs; clamping down on reverse auction bidding, a position being led by CAGC; preserving vocational education funding; environmental and Historically Underutilized Businesses (HUB) participation matters; and workers' comp reform.

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