



Illinois Chapter

MERIT UPDATE

JUNE 29, 2009

LEGAL ENFORCEMENT OF SUBCONTRACTS

DOES THE DEFAULT TERMINATION OF A GENERAL CONTRACTOR AUTOMATICALLY TERMINATE THE GENERAL CONTRACTOR'S SUBCONTRACTS? NO AUTHORITY SUPPORTS THIS PROPOSITION, BUT MANY CONTRACTORS AND SUBCONTRACTORS CONTINUE TO ASK THIS QUESTION. A BONDING COMPANY THAT COMPLETES A PROJECT AFTER A DEFAULT TERMINATION ARGUABLY MAY ENFORCE A SUBCONTRACT—EVEN IF THE SUBCONTRACTOR DID NOT SIGN A RATIFICATION AGREEMENT WITH THE BONDING COMPANY—AS LONG AS THE GENERAL CONTRACTOR WAS NOT IN MATERIAL BREACH OF THE SUBCONTRACT. A BONDING COMPANY CAN ENFORCE A SUBCONTRACT ON THREE LEGAL BASES.

EQUITABLE SUBROGATION

A BONDING COMPANY MAY ENFORCE THE GENERAL CONTRACTOR'S SUBCONTRACT WITH A SUBCONTRACTOR PURSUANT TO THE RIGHT OF EQUITABLE SUBROGATION. IN THE 1947 CASE *NATIONAL SURETY CORPORATION V. ALLEN-CODELL COMPANY*, THE OWNER TERMINATED THE GENERAL CONTRACTOR AFTER THE GENERAL CONTRACTOR ABANDONED THE PROJECT. THE BONDING COMPANY COMPLETED THE PROJECT AND THEN SOUGHT TO RECOVER THE COSTS TO COMPLETE WORK THE SUBCONTRACTOR FAILED TO COMPLETE. THE COURT FOUND: AS A GENERAL PROPOSITION, A SURETY WHO, UNDER THE REQUIREMENT OF HIS BOND, COMPLETES THE CONTRACT OF A DEFAULTING CONTRACTOR MAY BE SUBROGATED TO ALL THE RIGHTS AND REMEDIES OF THE DEFAULTING CONTRACTOR AGAINST A THIRD PERSON WHO, BY A SUBCONTRACT, WAS OBLIGATED AND WRONGFULLY FAILED TO PERFORM SOME PART OF THE WORK WHICH THE SURETY WAS REQUIRED TO COMPLETE, ALTHOUGH NO RELATION OF CONTRACT OR OF PRIVACY EXISTED BETWEEN THE SURETY AND THE SUBCONTRACTOR. THE COURT STATED THAT IF A SUBCONTRACTOR FAILS TO COMPLETE ITS SCOPE OF WORK, THE BONDING COMPANY THAT COMPLETES THE WORK IS ENTITLED TO THE SAME RIGHTS AND REMEDIES AS A GENERAL CONTRACTOR COMPLETING THE SUBCONTRACTOR'S WORK.

ASSIGNMENT IN THE INDEMNITY AGREEMENT

A BONDING COMPANY ALSO MAY ENFORCE SUBCONTRACTS PURSUANT TO THE ASSIGNMENT PROVISIONS IN THE STANDARD INDEMNITY AGREEMENT THAT BONDING COMPANIES OBTAIN FROM GENERAL CONTRACTORS. BASIC TENETS OF CONTRACT LAW ALLOW A PARTY TO ASSIGN ITS RIGHTS TO PERFORMANCE UNDER A CONTRACT TO ANOTHER PARTY. THE BONDING COMPANY IS TYPICALLY THE ASSIGNEE OF THE GENERAL CONTRACTOR'S RIGHTS IN ALL SUBCONTRACTS. VIRTUALLY ALL INDEMNITY AGREEMENTS CONTAIN AN ASSIGNMENT PROVISION, SUCH AS: IN THE EVENT THE CONTRACTOR SHALL BREACH, OR DEFAULT OR DELAY THE PERFORMANCE OF, ANY BONDED CONTRACT, OR FAIL PROMPTLY TO DISCHARGE ALL OBLIGATIONS UNDER ANY BOND EXECUTED IN CONNECTION THEREWITH, THE UNDERSIGNED, AND EACH OF THEM, HEREBY ASSIGN UNTO THE SURETY, AS OF THE DATE THEREOF, THEIR RIGHT, TITLE AND INTEREST IN AND TO ALL SUBCONTRACTS RELATING TO THE WORK UNDER SUCH CONTRACT WHICH HAVE BEEN OR HEREAFTER MAY BE MADE, TOGETHER WITH THE MATERIALS EMBRACED THEREIN, AND ALL SURETY BONDS AFFECTING THE PERFORMANCE OF, OR THE DISCHARGE OF OBLIGATIONS INCURRED IN CONNECTION WITH, SUCH SUBCONTRACTS, HEREBY AGREEING THAT THE SURETY MAY ENFORCE THE SAME IN THE NAME OF THE CONTRACTOR OR OTHERWISE. BASED ON THE ASSIGNMENT IN THE INDEMNITY AGREEMENT AND ON THE OWNER'S DEFAULT TERMINATION OF THE GENERAL CONTRACTOR, A BONDING COMPANY, AS THE GENERAL CONTRACTOR'S ASSIGNEE, MAY ENFORCE A SUBCONTRACT AND RECOVER ANY LOSSES IT SUFFERED BY VIRTUE OF THE SUBCONTRACTOR'S FAILURE TO PERFORM THE SUBCONTRACT.

ASSIGNMENT IN THE GENERAL CONTRACT

A BONDING COMPANY ALSO MAY ENFORCE A SUBCONTRACT PURSUANT TO ITS RIGHTS AS THE OWNER'S SUBROGEE OR ASSIGNEE, ASSUMING THE GENERAL CONTRACT PROVIDED FOR THE GENERAL CONTRACTOR'S ASSIGNMENT OF ALL SUBCONTRACTS TO THE OWNER, AS FOLLOWS: THE OWNER SHALL, IN ITS SOLE AND EXCLUSIVE DISCRETION, HAVE THE OPTION OF REQUIRING ANY SUBCONTRACTOR OR MATERIAL SUPPLIER TO PERFORM IN ACCORDANCE WITH ITS SUBCONTRACT OR PURCHASE ORDER WITH THE CONTRACTOR AND ASSIGN THE SUBCONTRACT OR SUCH OTHER PERSON OR ENTITY SELECTED BY THE OWNER TO COMPLETE THE WORK. ACCORDINGLY, IF A SUBCONTRACTOR REFUSES TO COMPLETE ITS WORK UNDER THE SUBCONTRACT, THE BONDING COMPANY ARGUABLY HAS THE SAME RIGHT TO PROCEED AGAINST THE SUBCONTRACTOR AS AN OWNER COMPLETING THE PROJECT ITSELF. A SUBCONTRACTOR MUST BE AWARE OF ITS OBLIGATION TO COMPLETE ITS SCOPE OF WORK, WHETHER IT SIGNED A RATIFICATION AGREEMENT OR SUBCONTRACT WITH THE BONDING COMPANY AFTER THE DEFAULT TERMINATION OF THE GENERAL CONTRACTOR. FAILURE TO DO SO MAY RESULT IN PAYING THE BONDING COMPANY FOR THE COST TO COMPLETE THE SUBCONTRACT.

KAREN SHANBROM IS SENIOR ASSOCIATE AND MARILYN KLINGER IS PARTNER AND CO-CHAIR OF SEDGWICK, DETERT, MORAN & ARNOLD LLP'S CONSTRUCTION PRACTICES GROUP, SAN FRANCISCO. FOR MORE INFORMATION, EMAIL [KAREN.SHANBROM@SDMA.COM](mailto:karen.shanbrom@sdma.com) OR [MARILYN.KLINGER@SDMA.COM](mailto:marilyn.klinger@sdma.com). SOURCE: ABC NEWSLINE

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IMPROVE YOUR SAFETY PERFORMANCE USING STEP

ABC WANTS TO REMIND MEMBERS AND CHAPTERS THAT THEY CAN SUBMIT APPLICATIONS TO ABC'S SAFETY TRAINING EVALUATION PROCESS (STEP) THROUGHOUT THE YEAR. TO DATE, 1,927 ABC MEMBERS HAVE RECEIVED STEP AWARDS FOR 2009.

THE STEP PROGRAM RECOGNIZES THE EFFORTS OF ABC MEMBERS WHO CONSISTENTLY STRIVE TO ACHIEVE EFFECTIVE BEST SAFETY PRACTICES ON JOBSITES AND PROVIDES CONTRACTORS WITH A TOOL TO OBJECTIVELY EVALUATE THEIR SAFETY PROGRAMS, POLICIES AND PROCEDURES. ALL THAT A MEMBER COMPANY NEEDS TO COMPLETE A STEP APPLICATION ARE THEIR CURRENT OSHA 300 AND 300A FORMS.

APPLICATIONS ARE EVALUATED AND AWARDED EITHER PARTICIPANT, BRONZE, SILVER, GOLD OR PLATINUM STATUS BASED ON SAFETY PERFORMANCE AND THE APPLICANT'S SCORE ON THE "20 KEY COMPONENTS," ABC'S INNOVATIVE SAFETY EVALUATION SYSTEM.

"THE STEP PROGRAM HAS PROVIDED AN OUTSTANDING REVIEW OF OUR SAFE PRACTICES AND AN OPPORTUNITY FOR CONTINUED IMPROVEMENT," SAID ROBERT MHYRE, VICE PRESIDENT OF BUSINESS DEVELOPMENT FOR STRAUB CONSTRUCTION, INC. OF SAN DIEGO, WHICH HAS ACHIEVED STEP PLATINUM LEVEL. "WE ARE COMMITTED AS A COMPANY TO THIS PROACTIVE METHOD OF SAFETY PROCESS IMPROVEMENT AND APPRECIATE THE OPPORTUNITY TO PARTICIPATE IN THIS PROGRAM."

BY PARTICIPATING IN THE STEP PROGRAM, ABC MEMBER COMPANIES BECOME ELIGIBLE TO APPLY FOR ACCREDITED QUALITY CONTRACTOR STATUS. IN ADDITION, STEP PLATINUM RECIPIENTS ARE ELIGIBLE TO APPLY FOR THE PRESTIGIOUS NATIONAL SAFETY EXCELLENCE AWARD, PRESENTED ANNUALLY AT THE EXCELLENCE IN CONSTRUCTION AWARDS CEREMONY.

FOR MORE INFORMATION ABOUT STEP OR TO FILL OUT AN APPLICATION, VISIT WWW.ABC.ORG/STEP, OR CONTACT PETE ETHELLS AT ABC, ETHELLS@ABC.ORG.

GET A MEMBER, GET SOME CASH !

ANY MEMBER WHO RECRUITS A NEW MEMBER THAT PAYS IN FULL IN JULY WILL RECEIVE \$100.00 CASH! FOR MORE INFORMATION PLEASE CONTACT ALICIA MARTIN AT 217-523-4692



ABCIL ANNUAL CHICAGO GOLF OUTING



THE 2009 CHICAGOLAND GOLF OUTING IS ONE MONTH AWAY! REGISTRATION IS LIMITED TO THE FIRST 100 GOLFERS! DON'T WAIT, SIGN UP TODAY!

AVAILABLE SPONSORSHIPS: PRESENTING SPONSOR, T-SHIRT SPONSOR, DINNER SPONSOR, BEVERAGE CART SPONSOR, DOOR PRIZE SPONSOR, CONTEST HOLE SPONSOR, GOODIE BAG SPONSOR, HOLE SPONSOR.

CALL THE ABCIL OFFICE TODAY TO SIGN UP!

**ABCIL'S ANNUAL
CHICAGOLAND
GOLF OUTING**



COST:

- ⇒ INDIVIDUAL GOLF & DINNER \$165
- ⇒ FOURSOME GOLF & DINNER \$600,
- ⇒ DINNER ONLY \$40

COST INCLUDES:

- ⇒ GREEN FEES
- ⇒ LUNCH
- ⇒ ALL BEVERAGES AND ITEMS FROM THE BEVERAGE CART/KEG HOLE
- ⇒ DINNER BUFFET
- ⇒ ONE HOUR OPEN BAR AT DINNER
- ⇒ DOOR PRIZES

AVAILABLE SPONSORSHIPS:

PRESENTING SPONSOR
\$2,000

T-SHIRT SPONSOR
\$2,000

DINNER SPONSOR \$1,000

BEVERAGE CART
SPONSOR: \$600 EACH (2
AVAILABLE)

DOOR PRIZE SPONSOR \$500
EACH (4 AVAILABLE)

HOLE SPONSOR \$ 250
(15 AVAILABLE)

KEG HOLE SPONSOR SOLD!

CONTEST HOLE SPONSOR
\$100 PLUS GIFT FOR
CONTEST WINNER

GOODIE BAG
SPONSOR PRODUCT ONLY

FOR MORE INFORMATION OR
TO REGISTER/SPONSOR
PLEASE CONTACT LISA AT
LISA@ABCIL.ORG

DON'T MISS THESE EVENTS!

JULY 14, 2009

BUSINESS NEEDS AND OSHA

THIS SEMINAR IS IDEAL FOR BUSINESS OWNERS, SAFETY MANAGERS, AND/OR FACILITY MANAGERS OF MANUFACTURING, DISTRIBUTION, OR INDUSTRIAL BUSINESS. AREAS TO BE COVERED INCLUDE: WHO NEEDS TO BE IN COMPLIANCE AND WHEN DOES OSHA COME INTO PLAY, THE BASIC SAFETY NEEDS OF A BUSINESS, "GENERAL DUTY CLAUSE", HAZARD RECOGNITION, INSPECTION AND DEALING WITH YOUR WORKPLACE HAZARDS, AND "INSPECTION" VS. MANAGEMENT OF SAFETY.

MORNING SESSION: 8:00—10:00 AM. AFTERNOON SESSION: 4:00-6:00 PM

LOCATION: ABCIL OFFICE, 1541 ELMHURST RD. ELK GROVE VILLAGE, IL 60007

COST: \$10.00 PER PERSON

FOR MORE INFORMATION PLEASE CONTACT STEVE FOLTIN AT 847-709-2960

JULY 15, 2009

BANKING & BONDING WEBINAR

TIME: 11 A.M. (ET) / 10 A.M. (CT) / 9 A.M. (MT) / 8 A.M. (PT)

LENGTH: 75 MINUTES REGISTRATION FEE: \$99

WHO SHOULD ATTEND

- CONTRACTORS
- CEOs/OWNERS
- COOs/CFOS
- SENIOR MANAGERS
- FINANCIAL MANAGERS
- ANYONE INTERESTED IN LEARNING ABOUT THE INDUSTRY AND ITS BONDING PRACTICES!

WEBINAR DESCRIPTION

SECURING CONTRACTS IS A CRITICAL PART OF A SUCCESSFUL CONSTRUCTION BUSINESS. A CONTRACTOR'S ABILITY TO SECURE WORK MAY BE LIMITED IF IT IS UNABLE TO OBTAIN BID, PERFORMANCE AND PAYMENT BONDS—THREE ESSENTIAL SURETY BONDS REQUIRED FOR PUBLIC CONSTRUCTION PROJECTS.

THIS WEBINAR WILL GIVE PARTICIPANTS AN OVERVIEW OF THE SURETY BONDING PROCESS, INCLUDING HELPFUL GUIDANCE AND INSIGHTS ON BONDING OPTIONS AND REQUIREMENTS, HOW TO INCREASE BOND CAPACITY, AND HOW TO WORK MORE EFFECTIVELY WITH AN AGENT.

PARTICIPANTS WILL HEAR ABOUT THE STEP-BY-STEP PROCESS OF OBTAINING A SURETY BOND, AS WELL AS LEARN HOW TO INCREASE CONTRACTING OPPORTUNITIES, SECURE LOANS, COMPETE FOR MARKET SHARE AND GROW. **FOR MORE INFORMATION PLEASE CLICK [HERE](#).**

JULY 30, 2009

ABCIL ANNUAL CHICAGOLAND GOLF OUTING

THE EVENT WILL BE HELD AT PHEASANT RUN RESORT, 4051 EAST MAIN ST. SAINT. CHARLES, IL 60174. REGISTRATION WILL BEGIN AT 11:45 AM, LUNCH WILL BE SERVED AT 12:00 PM, FOLLOWED BY A 1:00 PM SHOTGUN START. DINNER WILL BEGIN AT 6:00 PM. (PLEASE SEE THE COST LIST IN THE LEFT MARGIN)

FOR MORE INFORMATION OF TO REGISTER PLEASE CONTACT LISA AT LISA@ABCIL.ORG