



Next Meeting Dates / Places

- **ASAC Board & GR Committee to meet January 20, 2005 in Sacramento, CA**
- **ASA Business Forum & Convention 2005 "Embrace Your Winning Instincts" March 17-19, 2005 Orlando, Florida**
- April (Annual Meeting, CILC Day at the Capitol) in Sacramento, depending on the CILC date. Details will be announced as arrangements are made.



ASAC Meetings in Sacramento

October 14, 2004



ASA Bay Area Chapter President Brian Jamison of Sansei Gardens and Executive Director Manny Andrade talked about their upcoming Risk Transfer meeting.

Sue Salinas, ED for the Redwood Empire Chapter visited with Clifford Burg, of Painting & Decorating Contractors of California, Inc., ASAC's State Fund Program Administrator.



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A California Appellate Court Holds That A Conditional Lien Release Is Enforceable Even If the Lien Claimant Is Not Paid

By William C. Last, Jr. Attorney at Law

On October 12, 2004, a California Appellate Court published an opinion, *Tesco Controls v. Monterey Mechanical Company*, that held that a statutory conditional lien release waives the claimant's lien rights through the date set forth on the release, whether or not the lien claimant actually receives compensation for the services and materials provided through that date. The lawsuit sought to have the general contractor, Monterey Mechanical, pay a subcontractor's supplier the sum that it had already paid the subcontractor.

This decision is important since no prior appellate court had published an opinion that interpreted the conditional lien release language that is found at Civil Code section 3262. The Tesco Court also enforced a joint check agreement between a general contractor and subcontractor which was made for the benefit of a supplier. This article will discuss the Tesco holding, statutory lien releases and the court's holding relative to the joint check agreement.

Statutory Lien Releases

In order to obtain a valid and enforceable mechanic's lien, stop notice or payment bond release, the lien claimant must sign a document that "substantially" contains language that is set forth in California Civil Code section 3262. That section proscribes the mandatory language that must be included in four types of releases: (1) a conditional waiver and release upon progress payment; (2) a conditional waiver and release upon final payment; (3) an unconditional waiver and release upon progress payment; and (4) an unconditional waiver and release upon final payment.

The statutory language was created in 1983 as a result of a holding in a 1982 California appellate court case, *Bentz Plumbing & Heating v. Favaloro*, which invalidated all lien releases. The scope of the statutory releases came under review by the appellate court in a case entitled *Halbert's Lumber v. Lucky Stores*. The Halbert court concluded that the scope of a conditional lien release was determined by the date listed on the release, not by the amount actually paid. As a result of the Halbert court's decision, the Legislature modified the lien release language.

The modified lien release language is the subject of the holding in the recent appellate court decision. In fact, the opinion in the Tesco case includes an in depth review of the history of the holdings in the Bentz and Halbert cases and the legislative changes to statutory lien releases. With that background, this article will now discuss the holding in the most recent appellate court case, *Tesco*, that concerns statutory lien releases.

The Tesco Decision

In the *Tesco* case, Monterey Mechanical contracted with

the City of Chico. Monterey, in turn, entered into a subcontract with Stratton Electric, Inc. Stratton issued a purchase order to Tesco Controls, whereby Tesco was to provide and install certain controls. Monterey and Stratton also entered into a joint check agreement that was for the express benefit of Tesco.

The joint check agreement provided that any Tesco invoice sent to Stratton would be copied to Monterey who would pay Tesco by negotiable check "in the amount of such invoice" made payable to both Tesco and Stratton. Stratton was to endorse the check and make it payable to Tesco "as payment in full of the related invoice." Payments were to be made when normal progress payments were due.

The parties all agreed that Tesco had fully performed its obligations under the purchase order and that Tesco remained underpaid by \$194,762. However, Monterey asserted that when Tesco signed a March 15th statutory release it released its claims as to that money.

Tesco began shipping equipment to the project site in November 1998 and sent its first invoice, in the amount of \$14,980, on November 10, 1998. Despite the terms of the joint check agreement, Stratton paid that invoice in full with its own check. Prior to receiving the first payment Tesco had invoiced additional shipments. As of January 31, 1999, \$244,762.13, billed on invoices from December 1998 through January 1999, remained unpaid. Tesco continued shipping equipment in February 1999, but received no payments that month.

By March 11, 1999, Tesco had sent invoices in the amount of \$468,946.13. The next day Tesco received a Stratton check in the amount of \$194,762.13. However, Stratton asked Tesco not to deposit the check for 30 days. When the check was finally deposited the bank would not honor it.

On March 15, 1999, Tesco gave Monterey a lien waiver and release conditioned upon receiving a progress payment of \$50,000 (the balance of that date less the Stratton check Tesco was holding.) The release "cover [ed] a progress payment for labor, services, equipment or material furnished to Stratton Electric through 01/31/99 only." The release included the statutory release and waiver language.

During April and May, Monterey learned that Stratton's \$194,762.13 check to Tesco did not clear the bank and that Stratton had not paid Tesco that amount. Monterey then agreed to pay Tesco \$370,553.52 in exchange for Tesco issuing a second conditional lien waiver and release form. The form was dated May 11, 1999 and provided that Tesco agreed to release its mechanic's lien rights upon payment from Monterey of \$370,553.52. The release covered equipment and services rendered through March 31, 1999, and contained the statutory language release language.

Continued Next Page

Release Is Enforceable, continued

On May 13, 1999, Monterey and Tesco entered into the following agreement, that was memorialized by a Monterey employee: "5/13/99 Agreed w/Wally @ Tesco Pay \$200,000 joint check now and 170 balance from 3/31 Release the first week of June 99." In accordance with the note Monterey issued the two joint checks. Tesco applied the two payments to the oldest outstanding balances, including those for which Stratton's bounced check had been designated.

After receiving the checks, Tesco continued providing product and services. By July 1, 1999, Tesco completed shipping and invoicing its work and was owed \$412,024.98. Tesco continued processing and completing change orders through June 2000. Tesco ultimately filed a Stop Notice and then filed a lawsuit to foreclose on the stop notice. Stratton filed for Chapter 11 bankruptcy protection. In June 2001, Monterey issued a check directly to Tesco in the amount of \$217,262.98. Upon receipt of that payment Tesco was still owed \$194,762, the amount of Stratton's bounced check.

Ultimately, Tesco argued that the March 15 lien release, in the amount of \$50,000, released Tesco's lien rights only to that amount. While Monterey argued that when Tesco signed that statutory release, it waived all of its rights to recover for services rendered through January 31, 1999, despite having not been paid for them.

In rendering their decision the Tesco appellate court panel first reviewed the Bentz decision and the legislation that resulted from that decision. The purpose of that review was to determine the Legislature's intent when the lien release and waiver statute was created. The court then reviewed the Halbert decision and the resulting changes to the lien release and waiver statute.

The Tesco court concluded that Legislature "crafted a release that waived mechanic's lien rights, bond rights, and stop notice rights for services rendered and materials provided up to the date stated on the receipt, even if those services and materials were not compensated by the progress payment. However, waiver was limited only to those express lien rights. By executing the release, the subcontractor or materialman did not waive his rights to pursue compensation for unpaid services and materials under the terms of the contract or as otherwise provided by law or equity."

As to lien release statute's language (section 3262(d)(1)) that can be construed to exclude from the release a subcontractor's right to recover compensation for services not compensated by the progress payment, the Tesco court found "that language refers to the subcontractor's right to pursue compensation by means of all available remedies other than the mechanic's lien laws."

It should be noted that the statute provides that a conditional lien release for a progress payment "does not cover any

retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date." The statutory release does affect "rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date ...unless specifically reserved by the claimant in this release."

General Contractor Breached the Joint Check Agreement

The Tesco court held that Monterey breached the joint check agreement by not paying Tesco by issuing a joint check. The Tesco court reached that conclusion because the joint check agreement provided that Monterey and Stratton agreed that Monterey would pay Tesco's invoices on presentation and to pay those invoices in full at the same time normal progress payments were due. The joint check agreement also stated that it was for the express benefit of Tesco.

The Tesco court also held that Tesco did not breach the joint check agreement when it accepted and deposited a check it received a Stratton check. The Tesco court came to this conclusion since the joint check agreement also stated that it was for the express benefit of Tesco.

Conclusion

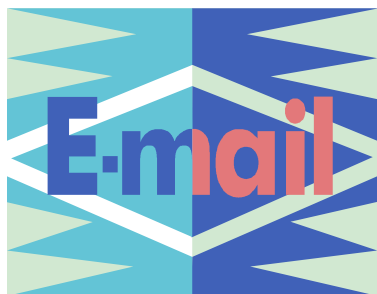
The Tesco court required the general contractor to comply with the terms of the joint check agreement. If you are an owner or general contractor who has entered into a joint check agreement to ensure that a subcontractor's supplier has been paid, you must comply with the terms and conditions of that agreement. If you fail to do so and the supplier is not paid, you may be forced to pay the supplier even if the subcontractor has been paid for the materials.

While a conditional lien release for a progress payment does release a subcontractor or materialman mechanic's lien, stop notice or bond through the date specified in the release, whether or not he receives compensation for all of those services and materials, it does not release those rights for: (1) signed change orders that are expressly excluded; (2) extras furnished before the release date for which payment has not been paid; and (3) unpaid retention. In light of the Tesco decision, if you intend to assert contract rights based on breach of contract, recession or abandonment you should expressly state that in the release.

Clearly, the lien release is not effective if the amount that is to be paid pursuant to the release is not paid. As the conditional release states: "Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned." Thus, if you intend to rely on a release you should verify that the amount set forth in the release was in fact paid. If you issue a joint check you should verify that both payees endorsed the check. If you have entered into a joint check agreement you should also verify that entity for which the agreement was intended to benefit actually received the payment.

This article, copyrighted 2004, was written by William C. Last, Jr. Mr. Last is an attorney who has been specializing in Construction Law for over 25 years. In addition to belonging to a number of construction trade associations, including the Bay Area Chapter of ASA, Mr. Last holds a California "A" and "B" license. He can be contacted at 415-764-1990 or 650-696-8350 (e-mail: wclast@lastlawfirm.com). A number of his past articles can be found on his website (lhconstructlaw.com). This bulletin is published periodically to provide general information about current legal issues. The articles are not intended to be a substitute for the advice of an attorney as to a specific problem. If you have a specific legal question or need legal advice, you should contact an attorney.

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The Uses and Abuses of Joint Checks: An Overview of the Issues That Arise When You Use Joint Checks

By William C. Last, Jr., Attorney At Law

Payment of a balance due by a check issued to two or more payees is a common practice in the construction industry. It is equally common to find a provision in a subcontract that allows the general contractor to unilaterally make the decision to issue a joint check to a subcontractor and its supplier.

While joint checks are commonly used, many contractors and suppliers are unaware of the legal ramifications of such checks. This article will review a number of issues that arise when a joint check is used.

What Is a Joint Check Agreement?

As stated, many subcontracts include a joint check provision. Typically, those provisions give the general contractor the unrestricted right to issue joint checks to the subcontractor and its suppliers.

It is also common for a supplier to require that the general contractor to execute a stand alone joint check agreement before the supplier will extend credit to the subcontractor. There are generally two forms of such joint check agreements.

The first version will require that all payments to the subcontractor be in the form of a joint check. Such a version will also require the general contractor to guarantee that the supplier will be paid for all materials supplied to the subcontractor for the project in question.

The second version is similar to the first version but does not include a guarantee or a requirement that all payments to the subcontractor be in the form of joint checks.

How Are Joint Check Proceeds Allocated Between the Payees on the Check?

In a case that was decided by the California Supreme Court (Post Bros. v. Yoder (1977) 20 Cal. 3rd 1), a general contractor issued a joint check to its subcontractor and the subcontractors supplier. The subcontractor and the supplier had a "gentlemen's agreement" whereby the supplier would endorse the check, the subcontractor would deposit the check and subsequently pay the supplier. However, the subcontractor kept the funds.

Subsequently, the supplier recorded a mechanic's lien and filed a lawsuit to foreclose the lien. The supplier lost the foreclosure lawsuit. The supplier also set forth a cause of action that sought payment on the payment bond.

The California Supreme Court recognized that use of joint checks was common in the industry. The Court went on to hold that (1) where subcontractor and its supplier are joint payees and no agreement existed with the owner or general contractor as to any allocation of proceeds, the supplier by endorsing the check was deemed to have received the money due him, and (2) because the joint

Continued Next Page

Joint Checks, continued

check was deemed payment to the supplier, the supplier could not recover on the owner's or contractor's surety bond.

California Civil Code, § 1479, provides that proceeds of a payment are allocated in accordance with the intention of the debtor if manifested, and if not manifested the creditor may allocate in any manner chosen within a reasonable time. The court held that the section is not applicable to joint checks issued to a subcontractor and his supplier where the owner or general contractor is not the debtor of the supplier. When an owner uses a joint check he manifests his intent that the proceeds shall be divided among the payees to discharge obligations to them.

In essence it is the duty of the supplier to ascertain the intentions of the issuer of the check as to the allocation of the proceeds of the joint check. If the supplier fails to get written instructions from the issuer of the joint check prior to endorsing it, the supplier is deemed to receive all the check proceeds.

There are exceptions to the ruling in the Yoder case. One exception is when the owner designates the payment for specific merchandise. If the balance due for the merchandise is satisfied with a portion of the joint check the balance paid to the subcontractor is not applied to any other balance due the supplier.

Does endorsing a joint check only act to release lien rights?

California Civil Code section 3262 prescribes the mandatory language that must be included in the conditional or unconditional lien releases. If the check endorsement includes the mandatory language the endorsement of the check by the joint payees should constitute a lien release.

If the endorsement includes a statement that the payment is being received in full payment for the goods and services provided for a specific project, the issuer of the check may be able to argue that there is a full satisfaction and accord of the obligation to pay for the goods and services delivered prior to the date of the check. Thus, ending any duty to pay the joint payee who did not receive its share of the proceeds.

What are the legal ramifications if a party receiving a joint check wrongfully deposits the check without paying the other joint payee?

If a payee on a joint check wrongfully endorses and cashes a joint check, the issuer of the check may still be

liable to pay the party that did not receive any of the proceeds of the check. In the case of Crystaplex Plastics v Redevelopment Agency of the City of Barstow (2000) 77 Cal App. 4th 990, a general contractor, Rectech, employed a subcontractor, Earth Inline Hockey, Inc. (EIH), who contracted with Crystaplex. After Crystaplex performed its obligations under the contract, the owner, Redevelopment Agency, issued joint check payable to EIH and Crystaplex.

EIH allegedly forged Crystaplex's signature and deposited the check in its account. After Crystaplex failed to receive any of the proceeds from the check it sued the owner. The Court allowed the Crystaplex to recover from the owner.

The Court relied on certain provisions of the California Uniform Commercial Code (UCC) when it concluded that Crystaplex could recover its share of the check proceeds from the Redevelopment Agency. If a check is stolen from a payee, the payee may turn to his or her drawer for payment. UCC § 3-309, allows a person who loses a check by loss or theft to enforce it in specified circumstances. In the limited cases covered by UCC § 3309, the payee may sue the issuer of the check on a stolen or lost instrument, provided the payee indemnifies the drawer against the possibility of a second claim on the stolen check. As to the joint check payee issue, UCC § 3110 (d), provides that an instrument made payable to two or more persons, not alternatively, is payable to all of them and may be negotiated only by all of them. Therefore, joint payees are treated as one, and delivery to one joint payee is delivery to all of them. As a result the unpaid joint check payee could meet the requirement that it had possession of the check before it was lost or stolen.

Conclusion

Joint checks can be traps for the unwary. If you are an owner or general contractor, issuing a joint checks may be an effective method for ensuring that a supplier is paid. If you are a payee on a joint check you should ascertain if there is any existing agreement as to the allocation of the check proceeds. If there is such an agreement the allocation of the proceeds should be made in compliance with that agreement. If there is no agreement you may want to obtain such an agreement or instructions from the issuer of the check before you endorse the check. Under all circumstances if you issue joint checks or receive one as a co-payee you should determine the intentions of the party who issued the joint check and comply with his wishes.

This article, copyrighted 2004, was written by William C. Last, Jr. Mr. Last is an attorney who has been specializing in Construction Law for over 25 years. In addition to belonging to a number of construction trade associations, including the Bay Area Chapter of ASA, Mr. Last holds a California "A" and "B" license. He can be contacted at 415-764-1990 or 650-696-8350 (e-mail: wclast@lastlawfirm.com). A number of his past articles can be found on his website (lhconstructlaw.com). This bulletin is published periodically to provide general information about current legal issues. The articles are not intended to be a substitute for the advice of an attorney as to a specific problem. If you have a specific legal question or need legal advice, you should contact an attorney.



ASAC – We watch your back while you watch your business!!!

LA/Orange County Chapter holds 7th Annual Awards Banquet

The American Subcontractors Association Los Angeles/Orange County Chapter held their 7th Annual Construction Industry Awards Banquet on October 21, 2004. Erik Dickerson welcomed everyone to the special event, which was held at The Turnip Rose in Orange.

The audience was captivated by the comedian Danny V, a fantastic entertainer. Erik Dickerson and Warren Hennagin presented the Awards to the finalists.



← Special guest, *Owner of the Year*, was the Facilities Services Division, Los Angeles Unified School District. Guy Mehula, Deputy Chief Facilities Executive, talked about the opportunities the subcontractors and suppliers have with the school district. A 33 million construction program has now been generated, and they are seeking new companies.

National Association of Women in Construction was a finalist in the “Innovator of the Year” category, and many members represented their organization. It was a fantastic evening enjoyed by all who attended. The Awards Banquet gives everyone the opportunity to network with the individuals “who make up” the different facets in the construction industry.

→ “Subcontractor of the Year” nominees were Universal Flooring Systems Inc., Schroeder Iron, Cell-Crete Inc., and Smith Bros. Crane Rental Inc. The winner, pictured here between representatives from Universal Flooring and Cell-Crete, is Schroeder Iron of Fontana.



← Outstanding General Contractors for 2004 were Swinerton Builders, Matt Construction (winner), and KPRS Construction Services Inc.



← Outstanding Construction Innovator of the Year finalists were Moore Stephens Wurth Frazer & Torbet, HMC Architects (winner) and National Association of Women in Construction (NAWIC).



→ Rob DeSpain of Hensel Phelps Construction (right) was the winner of the Outstanding Superintendent of the Year award. Shown with him is his nominee Bill Branschreiber of Pankow Company. Also nominated was Steve Mason of The Hale Corporation.

← Outstanding Project Managers nominees shown are Dave Chapman of Pinner Construction Co. Inc., Russell Welch (winner) of Matt Construction, and Jerry Mejia of Swinerton Builders Also a finalist was Richard T. Hale III of The Hale Corporation.



← Outstanding Material Supplier of the Year Finalists were Eagle High Reach (winner), The Home Depot, and Waco Scaffolding.

Roger McIntyre Honored for 2 Terms as ASAC President

Roger McIntyre of The McIntyre Company received a plaque honoring him for his work as ASAC President. Roger served two terms, from July 2001 through June 2003. He was followed by Dave Moore of Rex Moore Electric, and now by current president, Guenter Meiburg of Dynamic Pre-Cast Company.



Coming Next Issue –

Pictures from the Capital City Chapter General Contractor of the Year Program and the Redwood Empire Casino Night.



ASAC Meetings Held in Sacramento

October 14, 2004

Patricia Walsh presided over the GR Committee meeting, and Guenter Meiburg presided over the Board of Directors meeting. Present were:

Officers:

President	Guenter Meiburg
Secretary	Ziggy Muhlhauser
Legal Counsel	Scott Holbrook

Staff:

Manny Andrade	Bay Area ED
Skip Daum	ASAC Legislative Advocate
Jordi Grant	ASAC Executive Director
Sue Salinas	Redwood Empire ED

Chapter Representatives, Guests:

Dave Alvarado	Insurance Committee
Cliff Burg	State Fund Administrator
Tommy Conner	Bay Area GR Committee
Brian Jamison	Bay Area President
Janet Rhodes	Capital City Member
Patricia Walsh	GR Committee Chair
Gregg Wright	LA-Orange President

Notes from the Government Relations Committee:

CILC, the Construction Industry Legislative Council, was discussed. CILC had their annual meeting the previous day, with Patricia Walsh and Sue Salinas in attendance for ASA and ASA Redwood Empire, respectively. They reported that much of the CILC meeting was spent discussing how to explain their mission and make members more aware of what they provide. Skip Daum, who served as CILC’s administrator and lobbyist, said ASAC is very well respected at CILC. ASAC profits from the visibility CILC gives, and for the opportunity to discuss our concerns with other industry groups.

Chairwoman Patricia Walsh reported on SB 30 (Figueroa) that was signed into law and takes effect July 1, 2005. It is a consumer protection bill to benefit homeowners. Consumers will now have simplified procedures that protect them and contract/notice writing that explains their rights in a straight forward manner.

Legislative Advocate Report – Skip Daum:

The governor has charged the Law Revision Commission with cleaning up California Mechanic Lien Law. The laws are not bad, but are spread around and need to be consolidated in one place with clear procedures.

ASAC monitored 5 dozen bills this year. Skip briefly went over a few of them and explained our position and reasoning:

AB 286 – Dutra’s mechanic lien protection of homeowners, supported by AARP & realtors, died a quiet death. It would have set aside the first \$15,000 and protected it from mechanics liens, and was of course opposed by subcontractors. The problem this bill hoped to solve should be alleviated by the application of SB 30 [see above.]

AB 2147 (Kehoe) – was the NECA sponsored bill that was signed by the governor. It involves wrap-up insurance policies, and is important to our members. [Editor’s note: Attorney William Last has agreed to write an article on this for a future newsletter.]

AB 2549 (Pacheco) increased the amount of retention allowable. Although opposed by ASAC and other construction groups, this bill went all the way through the process and was vetoed by the governor.

Update on Indemnification Reform – Tommy Conner: For background on this, see the front page of the September-October *ASACCalifornia*.

Meetings of the ten, with Dunn and Dutra in attendance, have now resumed. Conner is writing the consensus bill, with the help of four others of the ten Task Force members. Once the five approve of the piece of legislation, it will go to the ten for approval, and to be presented as a bill in the 2005 session, involving residential only. Once that is accomplished, commercial/industrial will be worked on by the same Task Force.

The Bay Area Chapter will be hosting a meeting in Oakland with Indemnification Reform as the topic. Conner and Walsh along with representatives from Webcor and Swinerton Builders will be on the panel. There is talk of opening this meeting up to all interested parties, as well as potential coalition partners, i.e. other construction industry associations.

The ASA Report Card – Jordi Grant: ASA National graded the states on seven different issues, and posted charts on the website www.asaonline.com showing how each state did on each of the issues. According to their grading system all states got “F” except New Mexico, with a “D”. California was actually second among the states, for overall good laws on the seven issues. In the next several months these issues will be examined and elaborated on in this newsletter and at chapter meetings. We’ll explore the current status of each issue and our options for improving each.

California Performance Review – Skip Daum: Several construction industry organizations got together and wrote a letter to the Governor concerning facets of the CPR that affect construction. ASAC was given the opportunity to join in this effort, but did not have time to properly review the report and form our position on the items in question. We shall monitor the movement as it continues to evolve.

Meeting Notes Continued

According to the CPR the Contractors State License Board is considered expendable. CPR recommends taking away the enforcement of violations and giving that to a different department that would cover more than one industry.

Planning for the 2005 Legislative Session – Patricia Walsh: We will be proceeding with Indemnification Reform and making sure commercial interests are protected, as most of our members do commercial as opposed to residential work.

Ziggy Muhlhauser suggested we present a 5% cap on retention bill again, as our efforts a few years back went easily through the legislature(s) but were vetoed by the governor(s). Now, with Schwarzenegger in office we may have better luck. It was decided that ASAC will introduce a bill on this issue for the 2005 session.

Walsh suggested looking at Pay When Paid and determining if anything can be done to tighten it up. It is being used to delay payment to subcontractors, i.e. “when all monies are received from the owner”, “after all disputes are settled”, etc., to the point it delays payment indefinitely.

Conner mentioned supporting CEA (Construction Employers Association) in their efforts to stop the end run around work comp provisions. Too many times suits are filed against other liability policies instead of being solely held to workers compensation solutions.

Notes from the Board of Directors Meeting:

Insurance Reports: Dave Alvarado gave a brief report about group insurance programs and the growing importance of disclosures for insurance income by associations.

Cliff Burg reported on the State Fund group 12-042. The program is going well, maintaining a 34 % loss ratio. In July the loss ratio was only 13%, which is fantastic, as they normally run 50-60%. The Admin fee of 1% of our group member’s premium will be paid to ASAC by the end of the year. ASAC will send out a conversion form again to members, so they can move their State Fund policy into our group and save 6%.

Government Relations Committee Report – Patricia Walsh: Given that the same group was present at the GR meeting, the report was very brief. Walsh reported that contracts and the available insurance are not always in sync, and suggested our members should be advised how to handle this problem. [Editor’s note: Watch this newsletter for an article on this subject in the near future.]

Legal Counsel Report – Scott Holbrook: Nothing of importance happening in the courts in regard to construction. Holbrook will review and update the judicial pages from the website, at the request of Grant.

Statement from the President – Guenter Meiburg:

The ASAN Leadership Council in Denver was well attended, at a nice hotel, and full of good speakers. Several from California were in attendance. FMI did the presentations. The education sessions were excellent.

Next ASAC Meeting Dates / Places:

- ★ **Board & GR Committee to meet January 20, 2005 Host Airport Hotel, Sacramento CA**
- ★ **April (Annual Meeting, CILC Day at the Capitol) in Sacramento, depending on the CILC date.**



Scott Holbrook of Crawford & Bangs trades off with Bill Crawford in covering ASAC’s Legal Counsel needs.



Janet Rhodes of Sacramento Rebar is new to ASAC’s leadership. She represents the Capital City Chapter. Gregg Wright is President of the LA-Orange County chapter, and a long time participant at ASAC.



One More time: What's Bugging You?

In the coming months, ASAC will be reviewing issues and planning for future legislative campaigns. As we continue the fight for **Indemnification Reform**, we want to also move forward on other issues and be sure we provide the representation you need in Sacramento.

Please give a brief description of a problem you face as a subcontractor, then fax this page (including the address info below) to the ASAC office. We want to include your thoughts in our decision making.

Contact Person: _____ Phone: _____

More than one issue can be noted.

Fax to 530-662-2865. If you prefer e-mail, address it to asac@asacalif.com.

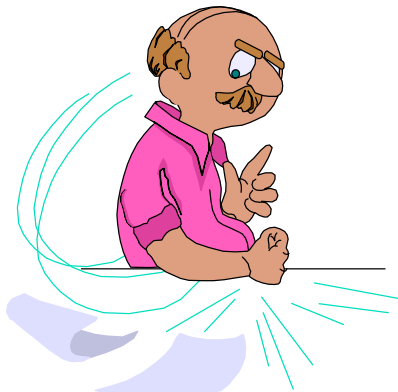


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