



# The Tool Box

Serving the Electrical, HVAC & Plumbing Industries Since 1912

Volume 5, Issue 97 August 1, 2008

## ASAC Helps Subcontractors Earn Victory in S. C. Supreme Court

By: Charles "Chuck" H. McDonald—Robinson, McFadden & Moore, P.C.

Subcontractors who perform work on public projects in South Carolina recently won a victory in the South Carolina Supreme Court. At issue in two consolidated appeals was whether a subcontractor performing work on a public project who has not been paid by the prime contractor can recover the amount it is owed directly against a governmental entity when the governmental entity failed to ensure that the prime contractor furnished the required payment bond. In a victory for the subcontracting industry, the high court ruled that subcontractors do have a direct cause of action against the governmental entity under such circumstances. The cases are *Sloan Construction Co. v. South Carolina Dept. of Transportation, et al.* (Opinion 26462 Filed on March 24, 2008) and *Turner Construction v. City of Spartanburg* (Memorandum Opinion No. 2008-MO-016 filed on March 24, 2008). ASAC filed a "friend of the court" brief in both cases alerting the high court to the importance of the issue on appeal to the subcontracting industry and urging the Court to permit recovery against the governmental entity.

The *Sloan* case involved a claim by a subcontractor on a South Carolina Department of Transportation project. While a payment bond was initially furnished by the prime contractor, the payment bond surety went into receivership and the DOT failed to require the prime contractor to furnish a payment bond issued by a solvent and responsible surety. The prime contractor failed to pay Sloan for the work it performed on the project and presumably lacked the means to pay Sloan leaving Sloan with no other party from whom to collect other than the S.C. DOT. In *Turner*, the City of Spartanburg was the partial owner of a conference center, hotel and parking garage. The City contracted with a developer, who, acting as the prime contractor, was obligated to deliver a turn-key project. The developer in turn subcontracted the construction of all facilities to Turner Construction. No payment bond was ever furnished by the developer/general contractor. The developer ran into serious financial problems and eventually declared bankruptcy leaving Turner with no other source for payment other than the City of Spartanburg.

At the heart of both cases was the interpretation of certain provisions of the South Carolina Subcontractors' and Suppliers' Payment Protection Act which ASAC helped get enacted in 2000. The provisions of the Act at issue were as follows:

(1) When a governmental body is a party to a contract to improve real property, and the contract is for a sum in excess of fifty thousand dollars, the owner of the property shall require the contractor to provide a labor and material payment bond in the full amount of the contract.

....

(3) For the purposes of any contract covered by the provisions of this section, it is the duty of the entity contracting for the improvement to take reasonable steps to assure that the appropriate payment bond is issued and in proper form.

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Daufuskie Island  
Resort & Breathe  
Spa  
For A Listing  
See Page 5**



**Mechanical Member:  
W. N. KIRKLAND MECHANICAL CONTRACTORS, INC.**

W. N. Kirkland Plumbing and Heating was founded by W. N. Kirkland in 1927 (81) years ago.

W. N. K. became interested in the Plumbing and Heating Association of South Carolina in the late forties. Evidence of his support is shown in pictures located on walls of the MCASC office, one showing the 1954 convention at the Ocean Forest Hotel, Myrtle Beach.

W. N. K. was instrumental in establishing the up state interest in becoming a Mechanical Contractors Association by electing to let other trades like electrical contractors join.

At present, Gary Kirkland serves as president, Harvey Kirkland (retired) as chairman of the board and Don Kirkland (retired) after 45 years serving as field supervisor. (This is the 2nd generation.) Mike Kirkland serving as vice president, estimator, and project manager, Craig Kirkland serving as safety director, estimator, and project manager. (This is the 3rd generation.)

We are presently arranging for another change in command. Gary Kirkland will be stepping down as president and moving Mike Kirkland to president and head of operations. Serving Mike under his leadership will be Gary Kirkland as vice president, estimator and project manager, Craig Kirkland as safety director, estimator and project manager, Kelly Clark as controller, Sherry Barefoot as secretary, and Ricky Carr as project manager and field supervisor. We are in hopes of Mike taking this company onto another level and continue the family tradition and our employees are dedicated to doing their respective jobs to their very best ability.

Our company focus mainly is in plumbing, service work, outside utilities, including domestic water lines, firelines, sanitary sewer lines, roof and storm drain lines, and process piping.

We specialize in commercial, industrial, institutional, and residential.

While most of our work is bid thru architect agencies, W. N. K. prides ourselves in design/build projects. With our valve engineering, we feel like we can save the owner time and money. Each project manager, officer, and estimator has the capability to assist and design in these projects.

We are looking forward to better years in the future and hope to share these years with the MCASC. The friendship, competitive spirit and knowledge we have shared in the past will make this industry more visible and attractive for future generations to come.

***W. N. Kirkland Mechanical Contractors, Inc.  
2409 South Pine Street  
Spartanburg, SC 29302-4333  
Phone: (864) 582-6701 Fax: (864) 591-1938***

***HAPPY AUGUST BIRTHDAYS***

Hank Garrison	8/2	Aero Service	
Guy Hancock	8/2	H. R. Allen, Inc.	
Tonja Ivey	8/2	Computer Design Consulting Service	
Jan King	8/2	James M. Pleasants Co., Inc. (G'ville)	Wife of Harry
Joe Richardson	8/2	Atlantic Electric Company	
Pat Deer	8/3	B & W Mechanical Contractors, Inc.	Wife of Tom
Richard Miller, Sr.	8/5	City Plumbing Co., of Florence, Inc.	
TJaye Wheeler	8/9	Eastern Industrial Supplies, Inc.	Wife of Greg
Gary Mullins	8/12	Insulation Contractors, Inc.	
Candy Cartin	8/13	C. R. Hipp Construction, Inc.	Wife of Dan
Bob Hill	8/13	Honorary Life Member	
Beth Higdon	8/15	Bryce Mechanical Contractors, Inc.	Friend of Darlene
Missy Hunter	8/17	Ferguson Enterprises	Wife of Michael
Buz Teas	8/18	Smith & Stevenson, Inc.	
Sharon Burkett	8/19	Burkett Electric & Electronic Systems	Wife of Tommy
Allen Goff	8/21	SIFCO Mechanical, Inc.	
Jim Haynes	8/21	Faulkner, Haynes & Associates	
Reece Mc Williams	8/21	Columbia Cooling & Htg. Co., Inc.	
Freddie T. Zeman, Jr.	8/21	Honorary Life Member	
Raymond DeAntonio	8/22	Transworld, Inc.	
Miriam Allen	8/22	H. R. Allen, Inc.	Wife of Roddy
Edward Gibbs	8/22	Bear Mechanical Services, Inc.	
Jimmy Shealy	8/23	Shealy & Sons Electric Co., Inc.	
Judy Minor	8/25	Honorary Life Member	
Mike Ribbich	8/27	Johnson Controls, Inc.	
Bob Duke	8/27	Honorary Life Member	
Cindy Prevatte	8/27	North Strand Mechanical, Inc.	Wife of Paul
Ron Kolanko	8/30	Atlantic Occupational Health	

**“Tool Box Talks” - Safety Tip**  
**GENERAL SAFETY - UNSAFE ACTS**

Most of us know that accidents are caused by only two things - unsafe acts or practices, and unsafe conditions. Some of us even know that 9 out of 10 accidents are the result of unsafe acts, or things we do when we know better. This is kind of strange if you think about it. *We have more to fear from our own actions than from any other job hazards around us.* Why do we deliberately expose ourselves to injury every day?

It Won't Happen To Me

Basically, most of us are just thinking about getting the job done and we tend to rationalize the risk of getting injured. We think to ourselves that we have done this job many, many times this way and nothing bad has happened. Therefore, nothing bad will happen to us today. On an intellectual level, we realize there is a potential danger, but decide that the risk of being injured is low. Because we have not been injured so far, we actually think of ourselves as being very safety conscious. We know the right way to do it, we realize that it is hazardous to do it this way, but what we are really thinking to ourselves is "it won't happen to me."

We Take Short Cuts

Some of us are fairly meticulous about following safe work practices, but because a job "will only take a minute" we use an unsafe method or tool. For example, not putting on our safety glasses because the job will only take a minute, or not locking out a machine because an adjustment will only take a second.

Usually we think about it just before we do something a little unsafe, or maybe quite a bit unsafe. We know better, we know the safe way to do it, but we take that little chance. In effect we are saying, "I know that this could result in an injury, but "it can't happen to me."" Maybe it's human nature to think that accidents always happen to someone else, but they can happen to you too. What makes you different?

Why take a chance in the first place? Only you can decide to take the time to do your job safely and correctly the first time.

RSS Safety, LLC

1122 Industrial Drive, Suite 113, Matthews, NC 28105

Telephone (704) 844-2519 Fax (704) 844-0291

**Happy Anniversary**

**Mr. & Mrs. Tom Brock - 8/4**

**Mr. & Mrs. Jim White - 8/9**

**Mr. & Mrs. Chris Cullum - 8/22**

**Mr. & Mrs. Calvin Meetze - 8/26**

**Mr. & Mrs. Stan Harbourt - 8/28**

**Mr. & Mrs. Paul Clark - 8/30**

**Welcome New Members**

**David Dunn - Pro Source Supply  
Greenville, SC**

**Sean Thornton - Kudzu Staffing  
Piedmont, SC**

**Dawn Borgo - Carolina Fluid Air  
Greenville, SC**

**Condolences**

**Mr. Richard Miller, Sr.**

**Mr. & Mrs. Richard Miller, Jr. & Family  
City Plumbing Company of Florence - Florence**

**On the loss of wife & mother  
Doris T. Miller**

**Mr. & Mrs. Ned Forsberg & Family  
Metro Electric Company - Charleston  
On the loss of his mother  
Helen W. Forsberg**

**Mr. & Mrs. Mike Kirkland & Family  
W. N. Kirkland, Inc. - Spartanburg  
On the loss of her mother  
Patsy P. Smith**

**Ms Linda Burkett & Family  
ASAC - Lancaster  
On the loss of her father  
Lewis Dabney**

**Concerns**

**Steve Caswell - W. O. Blackstone, Columbia**

**Birth Announcements**

**Turner Pace Smith**

**Born April 2, 2008, 7 lbs. 11 oz.**

**Proud parents: Charlie & Michelle Smith  
ECK Supply, Charleston**

**JaVon Braden Adams**

**Born June 30, 2008**

**Proud parents: Cory & Sharon Adams  
Boykin Contracting, Inc.**

(continued from page 1)

S.C. Code Ann. § 29-6-250. The unpaid subcontractors in both cases argued that this statute created an enforceable legal obligation on the part of the contracting governmental entity to ensure that the proper payment bond was in place on the projects. The remedy sought by the unpaid subcontractors was the right to receive payment directly from the governmental entity since no payment bond existed from which they could recover. The governmental entities argued that the statute did not create a direct cause of action against them by unpaid subcontractors or suppliers despite the duties imposed on them by the statute.

In deciding the issue on appeal, the South Carolina Supreme Court ruled that the Subcontractors' and Suppliers' Payment Protection Act does create a private cause of action and that an unpaid subcontractor or supplier may bring an action for payment directly against a governmental entity when the governmental entity has not fulfilled its duty to ensure that a proper payment bond is in place for the particular project. The Court's ruling provides a new and important payment right for subcontractors who perform work on public projects. However, the Court's ruling did offer a significant concession to the public owner. The Court held that the public owner's liability to unpaid subcontractors and suppliers is limited to the amount the public owner owes the prime contractor when it first receives notice of non-payment from a subcontractor or supplier to the prime contractor. This is the same extent of liability imposed upon a private property owner under South Carolina's mechanic's lien laws. Just as is the case for perfecting a mechanic's lien on private property, subcontractors and suppliers on public projects in South Carolina must now give direct notice to the public owner when they have not been paid for labor or materials furnished to the project. While the Court's ruling offers no guidance on the form and timing of such notice, subcontractors and suppliers are advised to give written notice of non-payment with confirmation of same and to do so as soon as a progress payment is overdue.

## **Don't Be True to Yourself**

### **By: Tom Frisby**

Some ancient once said: "Know thyself and to thine own self be true" and then, because this pithy little saying was easy to remember, catchy, and obviously an axiom by which to live because someone older than dirt and whose name we can't remember, said it probably while practicing a speech with pebbles in his mouth . . . well, that's all it takes for those of us who have blind faith in such matters to totally accept as gospel.

Is there a fallacy here? Let us assume that I know myself, that I really know myself. I know that I am a bit lazy, so amoral that I would swipe the nickels off my dead mother's eye lids, and loathe the idea of accepting any responsibility for anything. Let us assume that I am really like that, that I really know myself and that I have an excellent handle on the jerk I am.

Should I be true to that? Is this the logical extension of the axiom that has been mouthed at countless graduation ceremonies? Be true to who you are?

In construction, I *know* myself: I know that I do not like confrontations and I back off conflicts. I know that I do not like documentation or writing letters so I don't give timely notice as required by the contract. I know that scheduling or an in depth review of submittals is something I really don't like. See, I *know myself and I will be true to myself and give those submittals only a cursory review.*

Is that the standard: knowing yourself and being true to your strengths but also continually bound to your weaknesses and your shortfalls because you are being true to them?

Or should the standard be: Know who you can be, and work hard to be that person and when you get there, you found out who that person can be and worked hard to get there. Should the standard be: Know thyself and do NOT be true to the anemic side of that person, but be true to who that person can be.

I hear presidents of companies say: We have been the same company for the last twenty years. Is that statement a prophecy of impending failure? Or the person who says: I have twenty years of experience but he has really had one year experience twenty times. They know themselves and are true to themselves and all their warts, instead of knowing who they can be and busting tail to be that person.

The successful people I know are not true to themselves, but rather true to the vision they have of themselves, of what they can be. And generally they evolve into the vision.

As Bach said in Illusions, if you can dream it you can make it happen. But you have to work at it.

*Escape From Everything To An Island From Everything*

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NC, GA & AL APPROVED

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October 15, 2008 - Columbia  
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Member: \$175.00 Non-Member: \$225.00

NC, GA & AL APPROVED

Nuts & Bolts For A Profitable  
Service & Replacement Business  
NC License Types: P-I, P-II, H-1-I,  
H-1-II, H-2, H-3-I, H-3-II, FS, FP, IC  
November 12, 2008 - Columbia  
Time: 9:00 AM - 4:00 PM  
Member: \$ 175.00 Non-Member: \$ 225.00

NC, GA & AL APPROVED

Surviving An OSHA Inspection  
NC License Types: P-I, P-II, H-1-I,  
H-1-II, H-2, H-3-I, H-3-II, FS, FP  
December 10, 2008 - Columbia  
Time: 9:00 AM - 4:00 PM  
Member: \$175.00 Non-Member: \$225.00

NC, GA & AL APPROVED

9 Keys For Successful Service &  
Contracting Businesses  
NC License Types: P-I, P-II,  
H-1-I, H-1-II, H-2, H-3-I, H-3-II  
October 29, 2008 - Columbia  
Time: 9:00 AM - 4:00 PM  
Member: \$175.00 Non-Member: \$225.00

NC, GA & AL APPROVED

Gaining Life-Time Customers  
NC License Types: P-I, P-II, H-1-I,  
H-1-II, H-2, H-3-I, H-3-II, FS, FP, IC  
December 3, 2008 - Columbia  
Time: 9:00 AM - 4:00 PM  
Member: \$175.00 Non-Member: \$225.00

NC, GA & AL APPROVED

Collections In The  
Construction Industry  
NC License Types: P-I, P-II, H-1-I,  
H-1-II, H-2, H-3-I, H-3-II, FS, FP  
December 17, 2008 - Columbia  
Time: 9:00 AM - 4:00 PM  
Member: \$175.00 Non-Member: \$225.00

**Associate Member:  
BLUE EAGLE EQUIPMENT**

Blue Eagle Equipment is a locally owned and operated Construction Rental Equipment and Sales company that was established in 2004. Blue Eagle is headquartered out of Spartanburg, South Carolina. A second store has recently opened, located in Simpsonville, South Carolina, off of Interstate 385, on Frontage Road at Georgia Road.

Making our way into our fourth year of business, we recognize the main reason for our success is through the help and support of our customers. Our customers are our number one priority. We appreciate every single customer that walks in our door. Our employees are committed, enthusiastic and are there to serve you. We will go above and beyond to provide you with the best customer service, products, and knowledge you need to get your job done safe and successfully.

We offer the most recognized products the market has to offer. We stock Genie and JLG aerial lifts, Bomag and Wacker compaction equipment, Bobcat skid steers, IHI mini excavators, Ditch Witch walk behind and ride on trenchers, and Magnum light towers. We also carry Honda and Yamaha generators and pumps.

While renting equipment, we also stock a large variety of Merchandise. We carry a full line of Industrial and Construction Supplies. We offer hand tools, power tools, high speed drill bits, abrasive and diamond blades, grinding wheels, anchors, Knaack and Weatherguard job boxes, safety supplies, ladders, extension cords and several other useful products. Our partnerships with the finest manufacturers make sure our customers are able to get their job done in a safe and timely manner.

***Blue Eagle Equipment***

***50 Fairview Church Road  
Spartanburg, SC 29303-5218***

***Phone: (864) 583-0700; Fax (864) 583-0011***

***2936 Grandview Drive  
Simpsonville, SC 29680-6218***

***Phone: (864) 963-4900, Fax: (864) 963-5600***

**Congratulations to our next Associate & Mechanical Members who will be  
highlighted in the upcoming issue of "The Tool Box":  
Turbeville Insurance Agency, Columbia - Associate Member  
Triad Mechanical Contractors, Inc., Charleston - Mechanical Member**

**SEPTEMBER 2008 MONTHLY AREA MEETINGS**

**MIDLANDS AREA**

Thursday, September 4, 2008 @ 6:00 PM  
Location: MCASC State Office, 1504 Morninghill Dr., Columbia  
Sponsor: John J. Kirilin Company, Inc.

**Topic:** New Technology For  
Automating Our Industry  
**Speaker:** Steve Maddox  
Sunrise Technology Group

**PIEDMONT AREA**

Tuesday, September 9, 2008 @ 6:00 PM  
Location: 8345 Taylor Colquitt Road, Spartanburg  
Sponsor: Waldrop, Inc.

**Topic:** Seismic Restraint  
**Speaker:** Mike Sturkie  
The Chapman Company

**PEE DEE AREA**

Thursday, September 18, 2008 6:30 PM  
Location: Red Bone Alley, Florence Mall  
Sponsor: Carolina Insulation Contractors

**Topic:** Construction Workforce Initiative  
**Speaker:** Steve R. Sanders, PhD, PMP  
Director CICA  
Clemson University

**COASTAL AREA**

Tuesday, September 23, 2008 6:00 PM  
Location: 4447 Dorchester Road, North Charleston  
Sponsor: ECK Supply Company

**Topic:** Apprenticeship Training  
**Speaker:** John Autry  
Director of Apprenticeship Programs  
Trident Technical College



P.O. Box 384, 29202  
1504 Morninghill Drive  
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Fax: (803) 731-0390  
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www.mcasc.com

*Serving mechanical contractors in  
South Carolina since 1912.*

**MCASC Executive Board & Staff**

Chris Cullum, President  
Richard Miller, Jr., Vice-President  
Jim Brewer, Treasurer  
Henry Poplin, Secretary  
Bob Jacques, Associate President  
Mona Flowers, Managing Director

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**MCASC Vision Statement**

The Mechanical Contractors Association of South Carolina (MCASC) will be the leading construction association in South Carolina for specialty contractors and suppliers in the electrical, mechanical (HVAC), and plumbing fields by serving its membership, the industry, and the Community in a vibrant and harmonious fashion.

**MCASC Mission Statement**

The Mechanical Contractors Association of South Carolina (MCASC) will provide its membership with:

- current business/technical information and support
  - a proactive political/legislative agenda
- a joint industry collaboration to improve relative business practices
- an ongoing effort to offer training opportunities for both professional and craft personnel
  - educational scholarships for deserving students
- the development of industry related career opportunities

The Association's objective for this mission is to enhance the future of the Construction Industry in South Carolina.