



# The Tool Box

Serving the Electrical, HVAC & Plumbing Industries Since 1912

Volume I, Issue 53 December 6, 2004

## CONTROL YOUR WARRANTIES or THEY WILL CONTROL YOU

Suppose that a child was hurt one day because she slipped on the tile in the lobby of a new office building. Suppose also that the subcontractor that installed the tile did so exactly according to the specifications of the project provided by the owner. Could the subcontractor be drawn into the ensuing legal battle to pay the child's medical bills and damages, even if it followed the specifications to the letter?

If the subcontract agreement was not written specifically to clarify the limits of the subcontractor's warranty, the answer is almost certainly "Yes." On the other hand, if the incident occurred in a state where the courts consider tile installation a "service" rather than a "product," the answer could be "No." Welcome to the wild, often unpredictable, world of warranties.

This world is filled with perils, because exactly what a subcontractor is said to "warrant" depends on a number of different, and sometimes conflicting, factors, such as:

- The specific warranty language of the subcontract agreement.
- The legal interpretation of "implied warranties," such as the requirement to perform in a "workmanlike" manner or the "merchantability" and "fitness" of the subcontractor's work.
- Conflicting court and industry opinions regarding the nature of, and standards that apply to, the subcontractor's work.

These and other factors determine what a subcontractor "warrants," or doesn't.

To decrease its risk, the subcontractor therefore needs to look at which factors related to warranties it can influence. The American Subcontractors Association's (ASA) white paper, "Warranty: Implied and Express Warranties" explores and explains the factors that subcontractors can or cannot control, and the approaches they can use to reasonably limit their warranties. For example, the white paper cites model language from ASA's "Addendum to Subcontract" (2004) that might help the floor tile installer if the tile failed to meet local building codes, contributing to the child's fall and injury:

"4. Warranty. .... The Contractor expressly acknowledges and agrees that Subcontractor does not warrant the adequacy, sufficiency, suitability or building code compliance of the plans, specifications, or other Contract Documents including, without limitation, any specified sole source or brand-named products, equipment, or materials, and Contractor accepts the manufacturer's warranty as its sole recourse with regard to such items ...."

The disclaimer regarding building code compliance makes sense for most subcontractors, who generally do not make design or specification decisions on design-bid-build work.

For more information, visit ASA's Web site at [www.asaonline.com](http://www.asaonline.com) and click on "Stand Up! for Subcontractors," or call ASA at (703) 684-3450.

"Article Provided Courtesy of ASA"

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## **MAKE PLANS TO ATTEND THE WINTER RETREAT**

**MARCH 10-13, 2005**

**PINEHURST RESORT**

**PINEHURST, NC**

**HOME OF THE 2005 U. S. OPEN**

**REFER TO PAGES 5 & 6 FOR MCASC & HOTEL REGISTRATION FORMS**





# PROJECTS FOR BID & BID FORECAST

MECHANICAL CONTRACTORS ASSOCIATION OF SOUTH CAROLINA  
 P.O. Box 384, Columbia, South Carolina 29202 · 1504 Morninghill Drive, Columbia, South Carolina 29210  
 PHONE (803)772-7834 · FAX (803)731-0390 · E-MAIL: [mflowers@mcasc.com](mailto:mflowers@mcasc.com) WEBSITE: [www.mcasc.com](http://www.mcasc.com)

JOBS TO BE BID THROUGH THE MCASC BID PROCEDURE.  
 ALL MECHANICAL CONTRACTORS WHO ARE NOT MEMBERS OF THIS ASSOCIATION BIDDING ON THESE ADVERTISED JOBS ARE  
 INVITED AND URGED TO UTILIZE THE MCASC BID PROCEDURE PUBLISHED HEREIN.  
 INFORMATION PUBLISHED BY THE MECHANICAL CONTRACTORS ASSOCIATION OF SOUTH CAROLINA

## NOTES:

1. ALL JOBS LISTED WITHOUT REFERENCE TO THE MCASC FOUR-HOUR DESIGNATION ARE EITHER ZERO OR TWO-HOUR BID JOBS.
2. ALL ASPECTS OF THE MCASC FOUR-HOUR BID PLAN APPLY TO JOBS DESIGNATED AS EITHER ZERO OR TWO-HOUR JOBS WITH THE EXCEPTION OF TIME & BID PROCEDURE OFFICE/SIGNATORY GENERAL CONTRACTOR INTERFACING.

\*MCASC BID PROCEDURE SIGNATORY GC'S INDICATED WITH "O"

## PIEDMONT AREA

CHAIRMAN DESIGNATING COMMITTEE  
 DAVID BISHOP  
 TEL: (864) 578-7252 FAX: 578-341

NO JOBS LISTED

## MIDLANDS AREA

CHAIRMAN DESIGNATING COMMITTEE

### NOTE DATE CHANGE

1. **LEXINGTON** (Lexington Co.) Educ. Bldg. & Worship Ctr. First Baptist Church, Owner. L.T.C. Associates, Inc., Columbia, Archts.  
 December 10 BIDS DUE MCASC: 2:00 PM GENRL OPEN: 2:00 PM  
 Bidders Invited:  
 Hood Construction Company, Inc., Columbia McCrory Construction Co., Columbia  
 Fitts and Goodwin, Inc., Columbia John S. Clark Company, Mount Airy, NC

## PEE DEE AREA

CHAIRMAN DESIGN. COMMITTEE	PAUL PREVATTE	JIMMY LEE
WILLIAM L. SELF	G'TOWN, HORRY & MARION	FLO, DAR, DIL, C'FLD & M'BORO
TEL: (803) 432-8519 FAX: 432-3845	TEL: (843) 272-4915 FAX: 272-6071	TEL:(843) 669-8243 FAX: 673-0826

1. **CAMDEN** (Kershaw Co.) Co. Community Medical Clinic, Kershaw County, Owner. Drakeford Architects, Sumter, Archts.  
 December 7 BIDS DUE MCASC: 2:00 PM GENRL OPEN: 2:00 PM  
 Bidders Include:  
 o MAR Construction Co., Inc., Lexington  
 Carolina Construction, Inc., Cheraw  
 Billy Jackson Constr. Co., Inc., Lugoff  
 Penn Contracting, LLC, Ballentine  
 Hawkins & Kolb Constr. Co., Sumter  
 P. F. & Perry L. Mungo, Inc., Pageland  
 A. A. Ramsey & Son, Inc., Shelby, NC  
 Sun Contractors, Sumter  
 o Gilbert Construction Company, Florence  
 Blackmon Realty & Constr. Co., Lancaster  
 Hunter Builders, Inc., Sumter  
 Branham Brothers Builders, Inc., Lugoff  
 Noble Construction, West Columbia  
 Sharon Builders, Inc., Matthews, NC  
 Robert William Askins Construction, Effingham  
 FENCON Corp., Summerville

## COASTAL AREA

CHAIRMAN DESIGNATING COMMITTEE  
 RON RUNYON  
 TEL: (843) 556-5636 FAX: 763-3091

NO JOBS LISTED

## Congratulations to Dan Brailsford

of **Robinson, McFadden & Moore, P.C.** for being listed in the latest edition of **Best Lawyers in America** in the specialty area of construction law. Widely regarded as the preeminent attorney referral source, **Best Lawyers** compiles its lists based upon confidential peer-review surveys.

WEEK OF DECEMBER 6, 2004-DECEMBER 10, 2004

DAY	JOB NO. 4/HR	LOCATION	NAME	BID DATE	TIME
Tuesday	3-2706	Camden	Co. Community Medical Clinic	12/07/04	2:00 PM
Friday	2-4056	Lexington	Educ. Bldg. & Worship Ctr. First Baptist Church	12/10/04	2:00 PM

GET YOUR CALENDARS OUT AND MARK IT FOR THE 14th ANNUAL  
SWATTER—SNAGGER—SHAGGER  
GOLF AND FISHING SCHOLARSHIP TOURNAMENT  
JUNE 3, 4, 5, 2005

WELCOME NEW MEMBERS

FIRST CAROLINA FINANCIAL SERVICES, LLC— JOYCE McDONALD— COLUMBIA  
MADDUX SUPPLY — JEFF ROGERS — GREENVILLE  
UNITED RENTALS—RICH MULLINS—N. CHARLESTON

SYMPATHY

MCASC would like to extend sympathy to the following family:  
Donald Martin Lemen, Jr. (Mt. Pleasant), Metro Electric Co., Charleston

CONCERNS

MCASC would like to extend thoughts and prayers to the following families:  
Sam Williams, Sr., Gateway Supply, Columbia  
Ronnie Douglas, Cayce Company, Florence, Home  
Mildred George, mother of Robbie Stephens, Temporary Services, Spartanburg

CONGRATULATIONS

Donny Phipps, Director of Inspection Department for the City of Columbia ,  
announced his retirement for November 30th!

State Senate Currently Operating Under Rules Dating Back to 1895

Governor Sanford and Senator McConnell are asking for our Assistance to push forward changes in the Senate Rules for the upcoming session. In order to do so, it will take a concerted effort for **EVERYONE** to contact their State Senators and let them know that you are **EXPECTING** the Senate Rules to be revised for the 21st Century. Remember the key to getting Legislature passed this upcoming year will be dependent on changing the Senate Rules.

**Don't delay...Call your Senator Today!**

# MCASC WINTER RETREAT REGISTRATION

MARCH 10 - 13, 2005 - Pinehurst Resort, Pinehurst, NC

**PLEASE COMPLETE AND FAX THIS PAGE TO THE MCASC STATE OFFICE  
AT (803) 731-0390 BY NO LATER THAN FRIDAY, FEB. 11<sup>TH</sup>, 2005**

COMPANY NAME \_\_\_\_\_

I AM REGISTERING \_\_\_\_\_ PEOPLE FROM MY COMPANY FOR THE WINTER RETREAT SCHEDULED MARCH 10-13, 2005. PLEASE LIST ALL NAMES OF THOSE ATTENDING BELOW.

**\*REGISTRATION FEE IS ONLY \$250.00 PER PERSON - MCASC WILL BILL YOU LATER\***

*NOTE: A full refund of MCASC Winter Retreat Registration Fees will be made on cancellations received prior to Friday, January 28, 2005. After that date, only 50% will be refunded up until Friday, February 11, 2005. Substitutions will be allowed.*

PLEASE INDICATE IF YOU PLAN TO PLAY GOLF ON SATURDAY AT COURSE #1

	GOLF???		GOLF???
_____	Y N	_____	Y N
_____	Y N	_____	Y N
_____	Y N	_____	Y N
_____	Y N	_____	Y N

## TENTATIVE AGENDA

### Thursday, March 10<sup>th</sup>, 2005

4:00 PM - Until	Hotel Check In	Pinehurst Resort
4:00 PM - Until	Hospitality Suite Open (Heavy Hors D'oeuvres)	Villa 510

### Friday, March 11<sup>th</sup>, 2005

6:30 AM - 10:00 AM	Buffet Breakfast	Carolina Dining Room
9:00 AM - 12:00 Noon	Workshop "Identify, Meet, & Exceed Customer Needs" By: Rod Tripp	Azalea Room
	Afternoon Free On Your Own!!	
4:00 PM - 6:30 PM	Hospitality Suite Open	Villa 510
6:00 PM - 6:30 PM	Past Presidents' Meeting	Villa 510
7:00 PM	Dinner & A Movie "Everyone's A Star"	Donald Ross Grill
After Dinner-Until	Hospitality Suite Open	Villa 510

### Saturday, March 12<sup>th</sup>, 2005

6:30 AM - 10:00 AM	Buffet Breakfast	Carolina Dining Room
9:00 AM - 9:45 AM	Workshop "Recent Developments In Employment Law: Handbooks, Harassment, Hiring & Firing" By: Chuck McDonald, Esquire	Azalea Room
9:45 AM - 10:30 AM	Workshop "Employee Voluntary Supplemental Benefits" By: Kelly Farley	Azalea Room
10:30 AM - 11:30 AM	Open Business Meeting	Azalea Room
12:00 Noon	Golf Tournament: \$70.00 Per Person	Course No. 1
	All Others Afternoon Free On Your Own!!	
4:00 PM - 6:30 PM	Hospitality Suite Open	Villa 510
7:00 PM	Dinner, Fun & Silent Auction	North Room
After Dinner-Until	Hospitality Suite Open	Villa 510

### Sunday, March 13<sup>th</sup>, 2005

6:30 AM - 10:00 AM	Farewell Buffet Breakfast	Carolina Dining Room
12:00 Noon	Hotel Check-Out	Have a Safe Trip Home



**MECHANICAL CONTRACTORS ASSOCIATION OF SOUTH CAROLINA  
WINTER RETREAT  
European Plan  
March 10-13, 2005**



Welcome to the beautiful, 4-Star/4-Diamond Pinehurst Resort - site of the 2005 United States Open Championship! We are honored to be your hosts and we look forward to serving you! Please take a moment to fill out this reservation form to ensure your accommodations for your upcoming visit.

Pinehurst is requiring a 30-day cut off period for your room reservations. Reservations received after this date will be processed on a "space-available basis." THE PINEHURST RESORT CONSISTS OF A VARIETY OF LODGING ACCOMMODATIONS INCLUDING THE CAROLINA HOTEL, VILLAS, MANOR INN, HOLLY INN, AND CONDOMINIUMS. THE RESORT WILL MAKE EVERY EFFORT TO HONOR SPECIFIC ROOM REQUESTS. IF NOT POSSIBLE, THE BEST SUBSTITUTION WILL BE MADE. Please be aware that forms must be completed and returned by **February 11, 2005.**

**DAILY RATES: European Plan: Carolina Accommodations**

**SINGLE OCCUPANCY: \_\_\_\_\_ \$90.00                      DOUBLE OCCUPANCY: \_\_\_\_\_ \$90.00**

Rates are per room, per night (European Plan) and include accommodations only daily.

**Covered in the Resort Service fee are the following amenities and services:**

- Unlimited access to the Fitness Center
- Beach Club
- Afternoon tea in the Carolina
- Pitching areas
- On-site transportation
- Outdoor pools
- Business Center
- Driving range
- Tennis courts
- Bicycles
- Practice putting greens
- In-coming faxes

**ROOM PREFERENCE (based on availability):                      \_\_\_\_\_NON-SMOKING                      \_\_\_\_\_SMOKING**

**ARRIVAL DATE: \_\_\_\_\_                      DEPARTURE DATE: \_\_\_\_\_**

**Check-In Time 4:00 PM - Check-Out Time 12:00 NOON**

**SERVICE CHARGE & STATE SALES TAX:** Rates are subject to 10% service charge, 7% state sales tax, and 3% occupancy tax on room portion only.

**DEPOSIT & CANCELLATION POLICY:** A deposit representing one night's rate per person is charged at the time the reservation is made. Pinehurst must receive notice of any cancellation at least 30 days prior to date of arrival in order to refund a deposit. The reservation deadline is **February 11, 2005.**

Please fill out and fax or mail with deposit to:  
\*Pinehurst cannot accept individual telephone reservations\*  
Convention Reservations                      FAX: 910-235-8240  
Pinehurst Resort                                      PHONE: 800-487-4653, option 2  
PO BOX 4000  
Pinehurst, NC 28374-4000

**ROOM(S) TO BE OCCUPIED BY: (Please print or type)                      (All guests will be charged a one-night room deposit)**

**Name: \_\_\_\_\_                      Address: \_\_\_\_\_**

**Email Address: \_\_\_\_\_**

**CREDIT CARD NAME & NUMBER \_\_\_\_\_**

**Expiration Date & Cardholder Name \_\_\_\_\_**

**Telephone Number: (Home) \_\_\_\_\_                      (Business) \_\_\_\_\_**

**\*\*\*\*ASSOCIATE CLUB MEMBERS\*\*\*\*                      WE LIKE TO RECOGNIZE ALL OF OUR ASSOCIATE CLUB MEMBERS.**

**PLEASE FILL OUT THE FOLLOWING INFORMATION:**

**CLUB WITH WHICH YOU ARE AFFILIATED: \_\_\_\_\_**

**YOUR MEMBER NUMBER: \_\_\_\_\_**

**Associate Member:  
Guy M. Beaty Co., Inc.**

Guy M. Beaty Company is a commercial and industrial insulation company. There are two locations, one in Travelers Rest, South Carolina and the other in Charlotte, North Carolina. Their coverage area is mainly in the southeast. They have done work in educational buildings, chemical plants and refrigeration, industrial and health-care facilities.

Company History: In 1914, Mr. Guy M. Beaty established the company in Charlotte, North Carolina. He operated the company until 1967. At that time, his son, Roy Beaty became president of the company. Roy Beaty operated the company until 1988. After 78 years, the family owned business was sold to Mr. Jim Mills of Wilmington, North Carolina in 1992.

Guy M. Beaty is, if not the oldest, one of the oldest insulation companies in the southeast. The company has been in business for 90 years and that says a lot.

Their goal is to give customer service at a reasonable price. Please give them a call for estimates and your other insulation needs.

***Guy M. Beaty Co., Inc.***  
***Hwy. 276 North, PO Box 628***  
***Travelers Rest, SC***  
***Phone: (864) 233-4541 Fax: (864) 834-5420***  
***Charlotte, NC Phone: 704-329-0440 Fax: (704) 329-0407***

**Congratulations to our next Associate & Mechanical Members who will be highlighted in the upcoming issue of "The Tool Box":**

**Walker-White, Inc. — Columbia**  
**L. R. Gorrell Co., Inc. — Greenville**

**DECEMBER 2004-JANUARY 2005 MONTHLY AREA MEETINGS**

**COASTAL AREA**

Saturday, December 11, 2004 @ 7:00 PM  
 Location: Hibernian, 105 Meeting Street, Charleston

**JOINT CHRISTMAS PARTY**  
**Charleston Area Contractors**

**MIDLANDS AREA**

Thursday, January 6, 2005 @ 6:00 PM  
 Location: 1504 Morninghill Drive, MCASC State Office  
 Sponsored By: SIFCO Mechanical

**Topic:** Brian Smith, CPA  
 of Smith, Kesler & Company, P.A., C.P.A.  
 to Speak on  
 "The Changes in the Tax Law"

**PIEDMONT AREA**

Tuesday, January 11, 2005 @ 4:00 PM  
 Location: Plantation Hse. Rest. at River Falls, Duncan  
 Sponsored By: HAJOCA Corp.

**Topic:** Dan Brailsford, Chuck McDonald & Clay Robinson,  
 of Robinson, McFadden & Moore Law Firm of Columbia to  
 facilitate a "4 Segment Workshop"

**PEE DEE AREA**

Thursday, January 20, 2005 @ 6:30 PM  
 Location: 933 Santiago Drive, Florence  
 Sponsored By: City Plumbing Co. of Florence

**Topic: TBA**



P.O. Box 384, 29202  
1504 Morninghill Drive, 29210  
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Fax: (803) 731-0390  
E-mail: mflowers@mcasc.com  
www.mcasc.com

*Serving mechanical contractors in  
South Carolina since 1912.*

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**South Carolinians for Tort Reform Bill Summary**

Below you will find Talking Points for Tort Reform that will assist you when communicating with your State Legislators. It is important that you contact your Legislators before the General Assembly convenes in January 2005. "Let them know how important Tort Reform is to you."

**You Can Make A Difference – Let Your Voice Be Heard – Now Is The Time!**

Frivolous Proceedings. Would amend current law governing frivolous proceedings to require that the attorney or party have a reasonable belief that his claim or defense was warranted under existing law and the matter was not brought for delay. The following sanctions could be imposed: 1) reasonable costs and attorney's fees 2) reasonable fine to the court 3) non-monetary directive designed to deter a frivolous action. Also, requires SC Supreme Court to keep a public record of frivolous lawsuit sanctions.

\* Frivolous Lawsuits cost an average of \$25,000 to defend according to the US Dept. of Health and Human Services.

Real Property Improvement Statute of Limitation. Present law permits lawsuits against building contractors and design professionals as late as 13 years after completion of improvements to real property. This section reduces the period to six years.

\* Builders are having an extremely hard time finding insurance companies to write general liability coverage due to the extraordinary length of SC's statute of repose.

Venue. Present law permits a plaintiff to sue a defendant corporation virtually anywhere in the state, and permits lawsuits to be commenced in known "plaintiff friendly" counties." This section requires a lawsuit to generally be commenced in the county where the defendant resides, has its principal place of business, or the county where the injury or loss occurred.

\* Hampton County has been declared a judicial hellhole by the American Tort Reform Association. According to the Varnville town council Wal-Mart refused to locate there because of SC's outdated venue statute, which is 134 years old, permits excessive lawsuits in plaintiff friendly counties.

Joint and Several Liability. Present law permits a plaintiff to collect from one defendant the entire amount of a judgment rendered against several defendants, regardless of their fair share of the liability. This section requires the court to apportion liability between co-defendants, and renders each defendant liable for only his assigned percentage of fault.

\* 39 states have abolished, modified or never recognized joint and several liability. SC is out of the mainstream on this issue.