



**Los Angeles Painting & Finishing Contractors Association**

December/January 2014

1106 Colorado Blvd., Los Angeles, California 90041 Phone: (323)258-8136 Fax: (323)258-2279 Website: www.lapfca.org

## LAP&FCA MEMBERSHIP MEETING

TUESDAY JANUARY 14, 2014

11:30 A.M. to 1:00 P.M.

### INSURANCE - WHAT YOU NEED TO KNOW!

All the latest information on what is happening in the insurance marketplace

Learn how to shop your insurance

Learn the nuances of what insurance underwriters want to hear

Learn what coverage (s) you really need, but probably don't have

### Workers Comp Insurance is in turmoil again

Why the turmoil and what's behind it?

When/how this will impact your business, for better or worse

What you can do to get better rates on renewal

**Nick Weintraub of Barlocker Insurance And**

**Jim Matyas of Weaver & Associates**

### Beckham Grill

77 W. Walnut Street in Pasadena, CA 91103

Associates Meeting 10:50 A.M. to 11:30 A.M.

Social: 11:30 A.M. to 12 Noon : Lunch at 12 Noon followed by Program



Emad Aziz (Contract Compliance), Guest Speaker David Wimmer, and Harold Gidish (H&E Equipment Svc's) at the informative November 12 LAP&FCA Membership Meeting at the Beckham Grill.

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# *President's Corner*

Our 22nd annual LAP&FCA Holiday-Charity Event was satisfying in more ways than one. It gave everyone the opportunity to have a great time in a great setting at a wonderful location. The spectacular Journey's End restaurant was LAP&FCA's for the evening and everyone I talked to had an enjoyable time. It was also heartwarming to see our attendees bring in so many unwrapped gifts which will be distributed to well deserving children by El Santo Nino Community Center in Los Angeles. Special thanks to IUPAT and General President Ken Rigmaiden for not forgetting the kids by sending in a check in the amount of \$500 made payable to El Santo Nino.

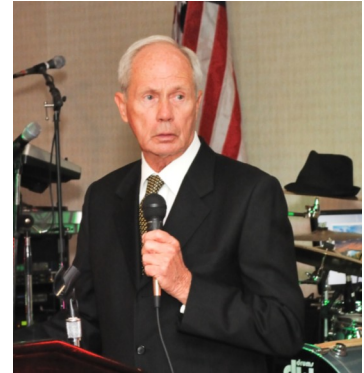
Everything was really outstanding, as the buffet was amazing, the music provided by Generation 3 was great, and we had a professional photographer, Nils Vidstrand back for the second year taking photograph's that many will cherish. It was also good seeing Nick Carillo, Vice-President FCA International, Alex Lopez and Jim Irwin of DC#36, Wiley Zagajeski of LMCC, Emad Aziz from compliance, Mr. & Mrs. AJ Fistes, strong support from the Trust Fund office, our many Associate members (Colors In View, Sherwin-Williams, Dunn-Edwards, Morgan Stanley, Pro-Mark Group - Jim Matyas of Oxford Insurance couldn't make it but donated a lot of gifts) and the many others from the industry all having a good time together.

LAP&FCA has also been very active

in the community coordinating a labor-management effort in painting the historic Adobe building situated on the grounds of the national historical site, known as Rancho Camulos Museum in Piru, just off HWY 126. Apprentices from the DC#36 Apprenticeship School volunteered their time on the weekends of October 26 and November 23 painting the historic building which will serve as the welcoming center for the sprawling historic site. Volunteers worked under the expert tutelage of School Director Jesus Fernandez and instructor David Lopez who insured they do a job worthy of the outstanding school in which they attend.

LAP&FCA Associate member companies who donated supplies were Sherwin-Williams, PPG Industries, Dunn-Edwards, 3M and Vista Paint. Allie Corey of Colors In View insured that the necessary supplies were donated and the volunteer apprentices were well fed. H&E Equipment Services also bought lunch for the apprentices on October 26. Don Vulich of Endurance Painting lent his expertise throughout the charity project making things run just that more smoothly.

Publicity for this labor-management effort was provided by John Tenorio (LAP&FCA Marketing) who took several photo's and wrote a press-release to get as much wide-spread publicity as possible. Chapter Executive Director Greg Quinn, also actively involved in the project, declared "the project is a win-win situation for all involved. The museum receives most needed paint and



Rob Stewart

texturing, and our expert finishers are able to give back to their community."

Another area in which LAP&FCA has been coordinating is the Union Contractor Program at the PDCA Expo being held in Reno on March 13. Our chapter has been coordinating this program nearly every year with the intent of insuring that PDCA's union contractor membership has a program addressing issues of importance to them. Focus for this years' meeting will be on marketing and training. Featured speakers are Steve Havens, Industry Liaison LMCI, Nick Carillo, Vice President Western Region for FCA International, and Jesus Fernandez Director DC#36 Apprenticeship School. Don Vulich will once again be emceeing the program. All 2014 Expo attendees are welcome to attend and learn about many of the good things offered through labor-management programs.

Wishing everyone a happy, healthful and prosperous 2014!

# CALENDAR

## WHEN

## WHAT

## WHERE

January 14 11:30 a.m.	LAP&FCA Member Meeting	Beckham Grill Pasadena
January 14 10:45 a.m.	Associates Meeting	Beckham Grill
January 14 1:30 p.m.	Board of Directors Meeting	Beckham Grill
January 26-28	PDCC Convention	DoubleTree Hotel Rohnert Park
March 12-15 March 13 (9:15 - 11:30 a.m.)	PDCA Expo 2014 Union Contractor Program	Grand Resort & Casino Reno, NV
April 2	Day At Capitol	Sacramento Hyatt Regency
April 5	Day At Races	Santa Anita Park
April 23-26	FCA International Leadership Council	Phoenix AZ
April 29-May 1	QCA National Issues Conference	Washington DC



# LEGISLATIVE NEWS



## STATE

The American Subcontractors Association of California (ASAC) in which LAP&FCA is a member, sponsored and secured the passage of Assembly bill 164 (Wieckowski) which requires performance and payment bonding on public-private-partnership project (P3's).

Governor Brown signed AB164 into law on August 13, 2013 with the effective date of January 1, 2014. In growing numbers, public agencies are turning to Public Private Partnership construction projects. P3's can make public construction possible, especially for financially strapped cities. However, unlike traditional public projects, P3s have no bond protection requirements to ensure contractors and suppliers will be paid for their work. The private entity could run out of money midway through a project and walk away, leaving the municipality with an only partially completed structure and subcontractors and laborers without a paycheck.

Under AB164, the performance bond protects the Government's financial interest in the P3, while the payment bond assures that subcontractors and suppliers get paid for the labor and materials they supply.

### AB164 Q&A

**Q.** What projects have been P3s in California?

Some examples are:  
Levi Stadium (49ers)  
California Fuel Cell Partnership,

I missed more than 9,000 shots in my career. I've failed over and over and over again in my life. And that is why I succeed

*Michael Jordan  
Former NBA Chicago Bulls super star*

Sacramento, Riverside County Library System, Riverside LA Metro & Chevron, Long Beach Regional Court House, State Route 125, San Diego

**Q.** How much additional cost would these bonds be?

The amount would vary based on the magnitude and cost of the project. The typical bond rate for payment bonds and performance bonds is between 5% - 3.5% of the contracted amount.

**Q.** Can all projects receive bonds? What if a proposed P3 isn't bondable?

Any project that is incapable of being bonded is a project that should not be completed as proposed. The fact that a project cannot be bonded would indicate that there are significant problems with that project.

*Source: ASA California, October 27, 2013*

## FEDERAL

### Secretary of Labor Speaks at FIF

"Investing in technical education and training and apprenticeship programs is the key to the nation's success in a global economy," said U.S. Secretary of Labor Thomas Perez to attendees of the 2013 Finishing Industries Forum (FIF) on December 9. Secretary

Perez commended FCA International (FCA) members and members and leaders of the International Union of Painters and Allied Trades (IUPAT) for working together to create a highly skilled workforce.

Additionally, Secretary Perez said the DOL will work to elevate the stature of apprentice programs in the construction and manufacturing industries. He added that the painters union's partnership with the FCA acknowledges the importance of gaining the necessary skills for a career in construction through investments both groups have made in training workers. The DOL will keep working to ensure that people have the skills to compete for good-paying, middle-class jobs in construction and other industries. "We cannot allow our human capital to crumble and we need your help to make sure that those investments continue."

Finally, Secretary Perez noted the construction industry is making a comeback. He pointed out that the latest employment data shows that the construction industry unemployment rate fell to 8.6 percent in November, down from 9 percent in October, with employers adding 17,000 jobs.

*Source: Federal Connection, FCA International, Volume 13/Issue 6*

### Bipartisan On-the-Job Training Bills Introduced in House

Two lawmakers, a Democrat and a Republican, introduced a pair of bills (H.R. 3524, H.R. 3517) related to the expansion of on-the-job training programs in the House the week of Nov.

18, prior to Congress's Thanksgiving recess.

Representatives Brad Schneider (D-Ill) and David McKinley (R-WV) introduced H.R. 3524, the Economic Recovery On-the-Job Training Act, and H.R. 3617, the Learning, Educating, Achieving and Retraining for the Nation (LEARN) Act.

Both bills would amend the Workforce Investment Act. McKinley is the lead sponsor of the first bill, H.R. 3524, which would provide grants to state and local workforce boards in "economically disadvantaged areas." Such areas are defined in the measure as those "for which there is a single 5-digit postal zip code, and which includes any portion of a census tract in which the median household income is less than \$40,000 per year." The bill also defines an "extremely economically disadvantaged area" as one where the median household income is less than \$32,000 per year, and requires 25 percent more of the grants made under the bill to be made to workforce boards in such areas. The legislation, according to the bill text, also permits the secretary of labor to "allow for higher levels of reimbursement of wage rates" in awarding the grants than is ordinarily provided under WIA. The law as written reimbursed employers that provide on-the-job training with "up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training."

Higher reimbursement levels may be instituted under the bill based on employer size, to encourage participation of smaller employers; target populations, "in order to enhance job creation for persons with barriers to employment"; and other factors, according to text of H.R. 3524.

Meanwhile, Schneider is the lead sponsor of the LEARN Act, which

would expand the availability of on-the-job training programs more widely by authorizing the DOL to make competitive grants for such programs, according to a statement from Schneider's office. The provisions of the measure are similar to those of H.R. 3524, but do not specify that the use of grants must be in any particular area. Grants under the LEARN act may also be made to states and "federally recognized tribal organizations" in addition to local workforce boards.

"The LEARN Act expands on-the-job training programs to help businesses invest in people, hiring and training new employees to grow their business and provide quality jobs to those looking for work," Schneider said in a November 21 statement. "By expanding these public-private partnerships, businesses can train workers with the precise skills they need and our workforce can gain the experience necessary to be competitive in the 21st century economy. Far too many businesses, the cost of hiring new workers is prohibitive, and my bill will help to offset the cost of bringing on and training new workers."

*Both bills have been referred to the House Committee on Education and the Workforce.*

*Source: Bloomberg BNA, Construction Labor Report, 12-19-13*

**Bill aims to protect workers wrongly labeled as Independent Contractors**

*By Franco Ordóñez - McClatchy Washington Bureau, November 12, 2013 as appeared in PDCA Industry Briefs, 12-22-13*

The hunt for cheap labor has led to a rash of payroll fraud by companies scraping for any advantage in a sputtering economy, lawmakers say. As a result, American taxpayers are cheated out of millions, workers are underpaid and the injured are denied workers compensation. Lawmakers on Capitol Hill introduced legislation, in conjunction with a Senate hearing, in an effort to curtail what they say has become a widespread practice that hurts not only workers but also law-abiding companies that can't compete with the bad actors.

The issue is especially prevalent in the construction industry, where a company can save as much as 30 percent of its costs by wrongfully reporting its workers as independent contractors instead of employees.

**Continued on page 6**



California Subcontractors Legislative Conference in Sacramento on April 2, 2014. Pictured at last years conference in the Capitol Rotunda are LAP&FCA's Tom Unsell, J.R. Grzeskowiak, Don Vulich and Greg Quinn.

**Continued from page 5**

The practice is known as misclassification. In the most basic terms, if the employer is directing the workers, including setting his or her schedule, telling the workers what to do, when to do it and how to do it, the workers should be listed as an employee, according to federal rules. By listing workers as independent contractors, companies can avoid paying insurance, taxes and overtime. It also shields companies from responsibilities of having to protect those working for them.

Senator Bob Casey (D-PA) estimates the payroll theft has cost taxpayers tens of billions of dollars. He introduced legislation Tuesday November 12 that would make misclassification a violation of the Fair Labor Standards Act, would assign penalties for each case of payroll fraud and would create rights for employees to know what their status is and require employers tell workers their status.

Senator Johnny Isakson, R-GA, warned that "Congress must be careful to distinguish between those bad actors and the good guys using independent contractors properly." He said there are "unintentional consequences of depriving a lot of people of work that is legitimate."

**ACA Fees Will Cripple Union Health Funds - Lawyer Says**

On December 11, labor and employee benefits lawyer James Ray told attendees at an Association of Union Constructors Conference Multiemployer health plans that cover union construction workers and their families are not

part of the Obama Administration's long term goal of having a public option for health care as the main insurance carrier in the U.S..

During the State of the Union Construction Industry Forum held in Washington, Ray, principal at the Law Offices of James S. Ray PLLC, told an audience of contractors and union representatives that he is predicting health and welfare funds run by labor-management group will be too burdened by new taxes and regulations imposed on the plans by the Affordable Care Act to continue providing coverage in the future. Ray said the new cost burden will make it difficult for labor-management groups to maintain the funds. Employers will likely have to direct workers to the ACA health care exchanges, paving the way for a renewed debate on creating a government-run public health insurance option. "We made a strong effort to convince Congress to grandfather existing health and welfare funds from the costs imposed. Unfortunately, our pleas fell on deaf ears," Ray said. "I fear the health and welfare funds do not fit into the long-term vision of Obamacare. We are destined to be sacrificed in the name of the "greater good" of America.

In his presentation, Ray explained that the ACA prohibits health plans from putting an annual and lifetime dollar limit on the amount of services it will cover for those enrolled in the plan. The annual limit, Ray said, was a "key design feature" that health and welfare funds employed to avoid going bankrupt. In addition to the removal of the limit, Ray said multiemployer health plans will be required to pay a \$63 tax on each person covered by a health and welfare fund. The tax, he said, is called the ACA

reinsurance fee to subsidize insurance companies offering plans on the health exchanges. The tax is also referred to as the "belly button tax". Ray said the labor unions and management groups opposed this provision of the law during debate on the ACA. Reps. Pat Tiberi (R-Ohio) and Daniel Lipinski (D-Ill) in November introduced a bill to repeal the reinsurance fee. The bill awaits action in the House Energy and Commerce Committee.

According to Ray, nonunion contractors can avoid the same penalties that health and welfare funds will face as a result of the ACA. Ray said the law does not require employers to maintain health plans for their employees, therefore nonunion contractors can send their workers to the health care exchanges.

The bottom line is that nonunion contractors can avoid the same penalties. As you know, "union contractors are required by collective bargaining agreements to contribute to a health and welfare fund," Ray said. He said that nonunion companies may have to pay a "free rider penalty," required of companies who choose not to provide health coverage for their employees. However, he said the fee is a "modest penalty" and only applies to large employers, companies employing 50 or more full-time employees who obtain health coverage from the exchanges.

*Source: Bloomberg BNA Construction Labor Report, 12-19-13*

**Editorial Committee**

President: Robert Stewart  
Executive Director: Greg Quinn  
Edited by J.Q. Printing

LAP FCA Chapter News is printed bi-monthly by the Los Angeles Painting and Finishing Contractors Association Inc., 1106 Colorado Blvd. Los Angeles, CA 90041 (323)258-8136

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## Step Ladder Safety

Safety tips to follow when using a Stepladder:

- Inspect the stepladder to see if it is in good condition before using it. Ensure the rungs are solid and securely fitted in the stiles. Also check that the spreaders are in good shape and able to lock into place. Look for any twisting or distortions in the shape of the ladder.
- Place the ladder on a solid, even surface. If you must position the ladder in a doorway or another traffic area, make sure the route is adequately barricaded to prevent collisions.
- Lock the spreaders into place before ascending the ladder, and be sure the stepladder legs are fully open.
- A stepladder is designed to be used in the open position. Never lean it against a wall to use it as a straight ladder.
- Never climb onto the top two rungs of a stepladder. If you need to climb higher, get a taller ladder.
- Always face the ladder when climbing up or down, and keep both hands on the side rails while climbing.
- Do not carry tools or materials up or

down a ladder with your hands. Instead, carry them on a tool belt, or move them with rope or a basket. Never overload a ladder with heavy materials, and do not allow more than one person on any ladder at one time.

- Do not reach out too far from the ladder in any direction. If you must reach away from the ladder to work, climb down and move the ladder to a new position.

*Source: Panel board, LA NECA, December 2013*

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## Calvert getting more clout in House

Ken Calvert (R-Corona) will head a subcommittee dealing with energy and environmental issues. In his new role, Calvert said his top priorities include evaluating EPA regulations. The agency "just pumps out new regulations...A lot of those regulations are not well thought-out, are unnecessary and hurt the economy...Hopefully, I can relieve some of that."

*Source: The Press-Enterprise, December 2, 2013*

## IRS Announces Standard Mileage Rates for 2014

The Internal Revenue Service has issued the 2014 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes. Beginning January 1, 2014 the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be 56 cents per mile for business miles driven. Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rate.

## LAP&FCA Holiday-Charity Event - Kids Real Winners

The 22nd annual LAP&FCA Holiday-Charity Event was truly a memorable one for all who attended. A magnificent Christmas tree dominated the foyer with life size Nutcrackers and holiday scenes adorned throughout the spacious event space. The lively and talented Generation 3 band entertained everyone throughout the evening, setting the mood early with Christmas carols progressing to hits of the 60's, 70's, 80's and even some contemporary hits to please just about everyone. But the real winners were the kids, as hundreds of gifts were brought by attendees to be donated to El Santo Community Center which distributes the gifts to very deserving children in the Los Angeles area.

## State PDCA (PDCC) Convention

The 110th Annual Convention will be held in Rohnert Park (60 miles north of San Francisco) at the DoubleTree Hotel January 26-28. A full array of educational programs, Trade Show, and exciting social events are planned.

## PDCA EXPO 2014

Reno and the Grand Sierra Resort & Casino will host this years' PDCA Expo March 12-15. The Union Contractor Program is slated for Thursday March 13. The focus is on key issues to help your business prosper. Help is on the way with information on the new LMCI National Marketing Program (Finishing Solutions Network) along with what a local marketing program can do for you. Getting qualified employees and insuring that your current employees received the finest training available will also be discussed. Legislative issues may not excite you but they will if they directly affect your pocket book - these issues will be addressed. All PDCA Contractors attending the 2014 Expo who would like to learn about these exciting benefits offered to signatory contractors are welcome to attend.



November 12 Membership Meeting proves popular. Left to right: Barbara Goshorn (Blakely Co.), Allie Corey (Chair Associates), Kim Quinn (LAP&FCA), Nancy Grzeskowiak (Blakely Co.), Rocio Moreno and Mary Ann Charley (ATPA)

## The Miller Act - Federal Project Bond Claims

By Bruce D. Rudman of Abdulaziz, Grossbart & Rudman Aug/Sep 2013

A recent case, *United States for the Use and Benefit of Air Control Technologies Inc. v. Pre Con Industries, Inc.* from the U.S. Court of Appeals addressed the statute of limitations with respect to the Miller Act. We thought it may be of interest to highlight some differences with Federal public works claims.

A short overview of the Miller Act is in order. Similar to California's bond scheme to protect subcontractors and material suppliers performing work on government-owned projects, the federal government has a bond requirement, set forth in what is known as the Miller Act. There are some very distinct differences between claims on the federal bonds, as compared to bonds that apply to California state or municipal government projects. One significant difference is the statute of limitations which was discussed in the recent case, but in the context of whether procedurally the court should have dismissed (thrown out the lawsuit). Under the Miller Act (again only governing federally owned projects) - similar to California - there are two bond requirements on federal projects where the contract amount is greater than \$100,000.00. One of the bonds is a performance bond - for the protection of the owner. The second bond is a payment bond - intended to protect those that supply labor and/or materials to the federal public works job.

Note that California requires these bonds on projects greater than \$25,000.

Different than California projects, a Preliminary Notice is not required within 20-days of commencing work; instead, to perfect a claim, a Miller Act notice must be served within 90 days after the date that labor or materials were last furnished under the contract. A lawsuit on a Miller Act payment bond must be initiated within one year of the last date that the claimant furnished material or labor to the project. While they may seem longer than the time to sue in California, it is timed from the last labor or material of the particular claimant, rather than the completion of the overall project by all contractors or suppliers. This can be a significant difference for someone who provided their labor or material early in the project.

There are differences in these types of claims, including the types of notices and who has bond rights - also, unlike California projects, there is no stop payment notice right. The most significant difference is that persons who do not have a contract with someone who does not have a contract with the prime contractor cannot bring a Miller Act bond claim. That means that third and lower-tiered subcontractors, and materials suppliers who sell to a second tier (or lower) subcontractor cannot sue on a Miller Act bond. Additionally, subcontractors and material suppliers have no legal right to sue the federal government directly but can only seek recovery from the prime contractor or the surety bond company.

While claims on the Miller Act bonds are brought in federal court, if for some reason the Miller Act bond remedies are not pursued, the person providing the materials or labor can file suit for breach of contract against their customer in state court, regardless of the fact that it performed work on a federal project.

The discussion in the U.S. Court of Appeals case was highly technical. It concerned whether the statute of limitations was "jurisdictional" - an integral part of the statute - or a "claims-processing rule" - for the purpose of seeking orderly progress of the litigation by requiring specific procedural steps by specific times. The difference is significant as in an attack on jurisdictional grounds in federal court, additional evidence can be used to throw out a claim at an early state of the litigation, but on other grounds the court can only dismiss the action if the action fails solely by reading the allegations of the lawsuit itself.

There was no dispute that the statute of limitations is one year from the last day the claimant provided labor more material to the project. What was at issue was whether a late claim took the jurisdiction to consider the claim away from the court. The U.S. Court of Appeals held that because the Miller Act does not clearly state that the one-year statute of limitations is jurisdictional, that the limitations period should be treated as a claim-processing rule. This particular case was sent back to the lower court for further proceedings to determine if the passage of the one-year limitations period could be ascertained simply from reading the allegations of the complaint.

While this case is very technical and not of much guidance on the presentation of construction claims, if you perform work on a federal public works project, make sure to file your Miller Act notice timely and bring your claim forward well before the statutory time frames in order to best protect your rights to collect.



When Cal/OSHA knocks - defending your company was the topic of November 12 LAP&FCA Membership Meeting. David Wimmer, an expert in the area of labor and employment law, can be reached at [310-288-3980 X8201](tel:310-288-3980).