

LAP&FCA Member Pay's it Forward

I'm sure you've seen the movie, or at least know the concept, "Pay It Forward". The idea is to give kindness without expectation, rather than re-paying kindness. When we pay it forward, not only do we bless those who receive, but the giver is also blessed through their unselfish act of charity. An example of this recently happened in Bakersfield and LAP&FCA member Terry Osburn of Wm. B. Saleh Company was the one who paid it forward. Except if you know Terry like I do, you'd know he wasn't just paying it forward. This was just another example of loving generosity performed by a genuinely faithful man.

The back story involves Marine Corporal Jeremiah Thein, a 2009 graduate of Bakersfield High School, who married his high school sweetheart, Ashley, in 2011. But before getting married he enlisted in the United States Marine Corps, dedicated to serving his country. In 2012, while on patrol with his Marine unit in Afghanistan, he became aware of an improvised explosive device that was endangering a fellow Marine. Without hesitation, he pushed aside his comrade but the IED detonated and Corporal Thein lost both legs. Following a long rehabilitation process in Germany and Washington DC, he returned to his hometown of Bakersfield.

A vacant lot was available and a local construction company, Northwest Builders, who also embraces the pay it forward philosophy, willingly led the effort of building a permanent home for Corporal Thein and Ashley, and the



Marine Corps and community gather to honor Corporal Jeremiah Thein during the completion of his new home.

Don't Miss Our Next LAP&FCA Meeting!

Tuesday November 11, 2014



11:30am — 1:00pm

Beckham Grill
77 W. Walnut Street,
Pasadena, CA 91103

Associates Meeting 10:50am — 11:30am

Social: 11:30am — 12 Noon

Lunch served 12 Noon followed by Program



Continued on Page 6





Rob Stewart - Chapter President

As I approach the final few months of my LAP&FCA Presidential term I wonder where has the time gone? It seems not long ago that I, along with a great group of gentlemen, was installed in a ceremony in Pasadena. I can truly say it has been an honor and a privilege to serve this fine association, but I've also benefited as a businessman due to my involvement in LAP&FCA. I've learned and grown so much during the past decade in ways I didn't even think were possible. So what got me into all this in the first place?

My daughter became aware of this painting contractors association and urged me to learn what it was all about. Reluctantly, I followed her lead and started attending the general membership meetings, finding things in the industry I should be aware of: a regulation to follow, legal advice, employment practices and the list goes on. In hindsight, I wonder why didn't I get involved sooner rather than later, but back then I felt there was nothing to be gained and couldn't afford the time it would take. My question about involvement back then was "Why?" And now it's "Why not?"

My message to you is this, the more you give the more you get. It's like depositing money in an interest bearing account, and before you know

it, you have more than you started with. I always doubted what benefit I could gain, and now I kick myself for not doing it sooner, and I'd like to take just a moment to address one of the ways membership in LAPFCA has improved my business.

Do you know how many licensed painting contractors there are in California? Over 17,000!!! That number is astounding, and when you consider competition of that magnitude you need something that separates you from the crowd. For me, an emphasis on safety is one of the best ways to achieve that separation. Sure, your insurance company provides you with tailgate topics and wall posters, but that is only a beginning. When it comes to preparing a fully comprehensive safety program it takes professional help. I know of a competitor who lost a prevailing wage project to a higher bidder because minor safety incidents led to a high experience modifier, and when this company could only provide a "smoke and mirror" type of safety program, they were disqualified by the awarding agency.

Do you know that as a member of LAP&FCA you have access to the Finishing Contractors Association's safety manual? A great deal of professional time and effort has already been expended to aid members in providing and promoting a safe working environment. We all know the "ounce of prevention" cliché. Cindi Spangler, FCA's Director of Environmental Health and Safety has also prepared an 11 point safety program to provide guidance for FCA contractors. She is available to help you raise the safety bar within

your company, so don't be shy about contacting her office: cspangler@finishingcontractors.org or 314-667-9946.

Another way to elevate your safety status is to apply and hopefully win one of FCA's CREST (Contractors Recognizing Excellence in Safety Training) awards for 2014. The registration process begins January 05, 2015 and closes on March 6th. The registration form is available at <http://esafetyline.net/FCAAward/>. Of course, Cindi Spangler's office is there to help if needed. You can't win if you don't enter.

And while I'm talking about entering to win, our Associates Committee wants to encourage contractor members to attend our General Membership meetings. They have come up with an incentive plan to do just that. Attend a meeting and earn one ticket to a year end drawing to win an APPLE I-PAD!!! Starting on January 13th, each time a contractor attends a General Membership meeting they will earn one attendance ticket for

the drawing, and if you make it to all six meetings you will be granted two (2) bonus tickets. Then at the 2015 Holiday party one lucky contractor will win the I-Pad.

Now, when will be your first time to attend a general membership meeting and find out what the "LAP&FCA" is

all about. It's never too late until it's too late, so don't get left behind! How about at the next lunch meeting at the Beckham Grille in Pasadena on November 11th, it's free to contractor members, so I'll see ya there.

Rob Stewart



LAP&FCA Chapter News

Editorial Committee
 President: Robert Stewart
 Executive Director: Don Vulich
 Edited by DS Publishing

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

While this newsletter is designed to provide accurate information and authoritative information on the subject covered, the Association is not engaged in rendering legal, accounting or other professional or technical services. Accordingly, the Association cannot warrant the accuracy of the information contained in the newsletter and disclaims any and all liability, which may result from publication of, or reliance on the information provided herein. If legal advice or other expert assistance or advice is required, the services of a competent professional person would be sought.

Website: LAPFCA.org

LAPFCA is a proud member of:



Calendar

2014

November 11 10:50am	Associates Committee	Beckham Grill Pasadena, CA
November 11 11:30am	LAP&FCA General Membership Meeting	Beckham Grille Pasadena, CA
December 7-10	Finishing Industry Forum	Mirage Las Vegas
December 13 Saturday evening	LAP&FCA Holiday Dinner Event	Embassy Suites Glendale, CA

2015

February 3-6	SSPC World of Concrete	Las Vegas, NV
February 5-7	PDCC California Council	Newport Beach, CA
March 4-7	PDCA EXPO & Convention	Charleston, South Carolina
May 6-9	FCA Leadership Conference	Chicago, IL



At the last Membership Meeting—



During the September 9th membership meeting, LAP&FCA members after their affiliate meeting awaiting the luncheon and presentation. Pictured left to right; Tom Parks-Vista Paint, Richard DeLaCruz-Vista Paint, Allie Corey-Colors In View, and Harold Gidish-H&E Equipment.



Ara Shabanian-Morgan Stanley, Jono Choi-PPG, and Roger Rivas-Pro-Mark Group.



Nick Weintraub-Levitt Pacific Insurance, contractor members Rob Stewart and Austin Vulich.

Visit: LAPFCA.org



STATE

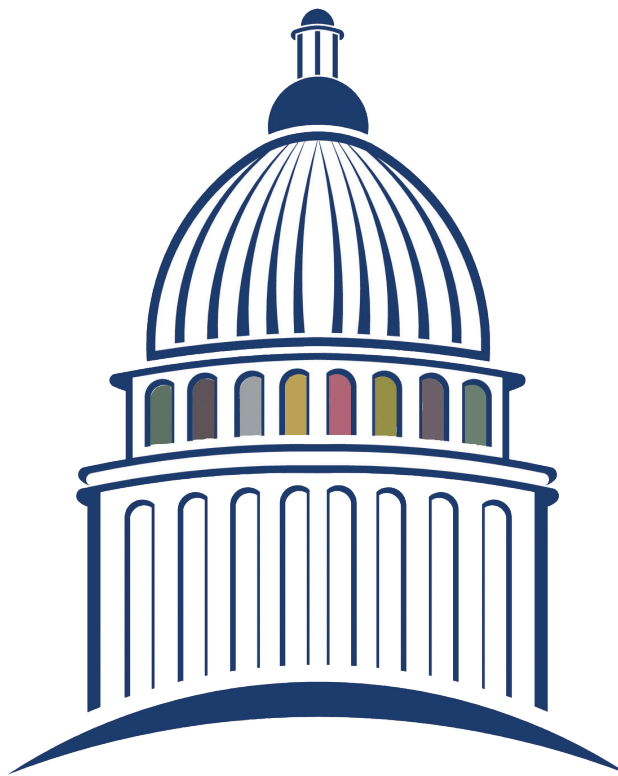
Along with our legislative review partnership with the American Subcontractors Association of California, we can report some wins and some losses this past legislative session. First a few of the “win” category.

AB 2416 (Stone)

This bill would have held employers personally responsible for under payment of wages through the placement of liens against personal and real property of employers. This bill was sponsored by the Conference of California Bar Associations and would have benefited trial lawyers far more than wronged employees. Fortunately for employers this bill died in the Senate and failed to reach the governor’s desk

AB 1705 (Williams)

A bill that was cosponsored by ASAC, we strongly supported this bill that maintained a 5% retention cap on specified public projects. Some awarding agencies wanted to label projects as “substantially complex” in order to withhold an additional 5% retention. Due to a united group of opposition to this practice, we were able to push this bill through both houses and Governor Brown signed the legislation maintaining the 5% retention cap.



AB 1939 (Daly)

This bill, also strongly supported by ASAC, allows contractors and sub-contractors to seek contract increases that result from any decisions by the Department of Industrial Relations, the Labor and Workforce Development Agency or other workplace regulations that add costs to a project. This expands the abilities of contractors and sub-contractors to collect on contractual changes that occur after the award of an original contract.

And now for some measures we lost on:

AB 2471 (Frazier)

This bill would have required awarding agencies to issue a written change order within 60 days of authorizing additional work to be performed. Often the actual

written change order, which is required to initiate an invoice, is purposely withheld by an awarding body simply to aid in delaying payment. This bill would have placed a limit on this practice but it died in the Senate. We have hopes to revive this bill in the 2015-2016 legislative session.

SB 502 (Block)

As I reported in our last edition, current law requires the Regents of the University of California to utilize a more stringent bidding qualification process for projects in excess of \$100,000. This bill extends the dollar threshold amount to \$640,000, and thereby opens the door for non-competitive bidding and unqualified contractors doing a greater number of University projects. This bill did pass both houses and was signed by Governor Brown over the objections of many. The full impact of this change to the bidding process at the University of California campuses remains to be seen.

FEDERAL

The current congressional session has been nicknamed the “do nothing Congress”, and it seems they are truly earning this moniker. There are very few bills that have a major effect on the construction industry, however, there are some

Continued Next Page



national level issues that contractors need to be aware of.

OSHA has issued new regulations regarding severe injury record keeping. Effective on January 1, 2015, all employers must report all work related fatalities (heaven forbid) within 8 hours of the incident. Also, all work related inpatient hospitalizations, amputations, or losses of an eye must be reported within 24 hours. All construction industry employers are covered by this regulation, and no companies are exempt from this rule regardless of their company's size. Should something like this occur, contact your local OSHA office or call the 24-hour hotline 800-321-6742.



The Bloomberg Construction Labor Report has announced that the Department of Labor will be awarding \$10.2 million in grants to aid individual state efforts in preventing worker misclassification. The monies are primarily to be used to promote and improve detection abilities by state agencies. The most common abuse are employers that declare workers as independent contractors rather than employees, and thereby avoiding workers compensation, minimum wage, and other related employment costs. The intent of these efforts hopefully filter down to help level the playing field of legitimate employers.

IRS Phone Scam **WARNING!**

You may have already received this call, or you might soon, so it's time to be warned and prepared. The Treasury Inspector General for Tax Administration (TIGTA) has labeled this the largest scam of its kind, with over 20,000 contacts, thousands of victims, and more than \$1 million lost to fraudsters claiming to be IRS agents.

Protect yourself by never paying anything without written proof from the IRS.

This is how it goes down. A thief calls posing as an IRS agent, claiming that the victim owes taxes to the IRS. Further, they then demand immediate payment via a pre-loaded debit card or a wire transfer. Often these calls also result in the threat of arrest, deportation or the suspension of a drivers license or business license. The caller

will often turn hostile and insulting.

The fraudulent caller identifies themselves with common names and fake IRS badge numbers, have a caller ID that has the appearance of IRS, will send bogus e-mails demanding payment, and will call multiple times. Sometimes the subsequent calls will appear to be from police, DMV agents or other officials to increase the scare tactic used by these criminals.

Protect yourself by never paying anything without written proof from the IRS. Never give up PIN's, or passwords, or other confidential information about yourself or any of your accounts. Never pay with a wire transfer, or with a credit card over the phone. All of these things are something an actual IRS agent will never ask you to do. Stay vigilant and protect yourself from fraud.

Story Correction

In the last LAP&FCA newsletter issue, within the "PaintCare" article, the correct surcharge is \$.75 per gallon, not for 5 gallons as reported.

Mandatory Contractor Registration for Bidding On Public Works Projects

The Department of Industrial Relations (DIR) has announced the launch of a new registration program that contractors will need to comply with in order to be eligible to bid on public works projects. This program will replace the Compliance Monitoring Unit and Labor Compliance Program requirements for bond-funded and other public works programs. Contractors will now be required to be registered with the DIR before bidding on or entering into contracts for state or local public works projects. Additionally, awarding agencies will be required to give notice of such requirements on form PWC-100 for all projects within the state.

To implement the program, the DIR has established an online registration system that is live as of July 01, 2014. Beginning in March, 2015 this registration will be required to execute any public works contract. The new

Continued on Back Page





Who says the head man doesn't get his fingernails dirty?

baby they were expecting. Terry said "When this opportunity was presented, how could I say anything but yes". Northwest Builders was progressing with the construction and had arranged for the preliminary priming and "production" painting, but Terry went all in to provide the final finishes. He also recruited one of our Associate Members, Sherwin-Williams Company, to donate over 90 gallons of finish paint to insure a successful project.

On the first Saturday of June, and those of you who know the weather patterns in Bakersfield in June can imagine how hot it was that day, Terry and his crew of District Council #36 painters went to work. They applied finish paint to the walls, and accents, trim, moldings and exterior woodwork. Following this, the builder completed all the final touches, and the home

was ready for occupancy. America has no more patriotic of days than July 4th, so it was only fitting that the Their family be honored that day with the keys to their new home.

In a ceremony befitting a combat veteran, House Majority Leader-elect, Kevin McCarthy of Bakersfield, welcomed Jeremiah and Ashley with a moving and heartfelt speech. Over 200 persons from the community attended the open house, along with seventy US veterans on motorcycles supporting their fellow comrade in arms. All-in-all it was a very moving day, made possible by the most unselfish act of



Corporal Their receives the keys to his new home.

pay it forward by Corporal Their that day in Afghanistan. Do you want to pay it forward? Here is what you can do. Wounded Warrior Project, and/ or the Wounded Heroes Fund of Kern County, would love to hear from you. What else can you say but "Yes!"

New Guidelines for Stop Notices

In a recent action, the California Supreme Court upheld a Court of Appeals ruling that has a significant effect on California construction contractors. The standard practice and expectation by contractors has been to serve a Stop Notice as soon as a payment due has not

"protect your collection rights by automatically filing a Stop Notice"

been paid. However, the Court of Appeals decision concludes that a Stop Payment Notice has to be served after (but not more than 30 days following) a Notice of Completion or Notice of Acceptance has been issued by the public entity. Prior practice established that a stop notice can be filed anytime up to 30 days following the filing of the Notice of Completion or Notice of Acceptance.

Contractors typically serve Stop Notices upon the completion of their work, or at the latest, 30 days after the issuance of their final invoice. Now, according to the new court ruling, contractors would best protect their collection rights by filing a Stop Notice at both the initial submission of invoices, and again after the Notice of Completion or Notice of Acceptance. As a construction employer, you may want to protect your collection rights by automatically filing a Stop Notice each 30 days following the submittal of an invoice, and then again at the end of the project, following (but no later than 30 days after) the Notice of Completion or Notice of Acceptance.

The Supreme Court has been asked by the American Subcontractors of California, and others, to review this recent affirmation of the lower court, or at a minimum, re-publish the decision to insure the proper enforcement and payment protect intended behind the public policy for Stop Payment Notice for construction industry businesses.



Terry Osburn and crew of William B. Saleh pose for a photo after lending their expertise to the Bakersfield Wounded Warrior project.



Employment Practices Liability Insurance: Why you need it.

By Nick Weintraub, Leavitt Pacific Insurance Brokers

There is a fire raging in California employment law and the insurance industry, and that is Employment Practices Liability. This is defined by lawsuits being brought against employers, by current or former employees, alleging any or all of the following: wrongful termination, harassment of all sorts, discrimination, invasion of privacy, emotional distress, wage & hour law violations on any level (subject to a sub limit of \$150K in defense costs), and hostile work environment, among others. These types of claims are not covered by Workers Compensation or by an agreement with a union. However, there is an insurance policy that can cover you against these types of claims called Employment Practices Liability Insurance (EPLI). Unfortunately, because of the vast growth in these types of claims over the past five years, the cost and deductibles for these policies continue to rise. But when you consider that one of these lawsuits can put you out of business, an EPLI policy is money well spent.

Here are three examples of claims and the settlements/awards in recent years.

1) A general contractor gets into a bitter dispute with one of his subs.

After the dispute, the brother of the sub who is an employee of the GC is fired. The employee alleges that the only reason for his termination was in retaliation for the business dispute the company had with his brother. Settlement and defense costs exceeded \$200,000.

2) Plaintiff alleges that his employment was wrongly terminated while he was out on a workers compensation claim. His employer asserts that due to economic conditions, they had to lay-off numerous employees as the economy and their business continued to sink. Plaintiff alleges that he had seniority over most employees who were retained and that the only reason he was fired was in retaliation for taking workers compensation leave, and also for violations of the American with Disabilities Act. This is also known as a 132-a claim. Settlement and defense costs exceeded \$150,000.

3) A female employee working for a construction company alleges that several fellow male employees made inappropriate sexual comments toward her, including suggestions she was having a sexual relationship with another employee. In addition, she also alleges that her boss and

co-workers asked inappropriate questions regarding her private life. The parties participated in non-binding arbitration and consented to a settlement of \$250,000.

The bottom line is, we never know when or where these claims are going to come from, and the ambulance chasing attorneys are everywhere looking for potential claimants because they know (and tell these potential clients) there is money to be had by simply alleging something. All business owners are on the defensive because the potential for a claim is so widespread and it simply is not possible to watch your employees at all times. Even if the allegations are completely false and untrue, the burden is on the employers to defend themselves. EPLI will pay the defense costs, and you can sleep better at night. As I always ask my clients who do not have EPL insurance: Do you like playing Russian Roulette?

Nick Weintraub and Leavitt/Pacific Insurance Brokers are the endorsed insurance consultants for the PDCC office in Sacramento. He can be contacted at 408-364-8108 or nick-weintraub@leavitt.com.



Blue Day!



The LAP&FCA held its annual Dodger Day on August 16th and experienced a sensational turnout! Hopefully you will join us next season.

Visit: LAPFCA.org



FROM OUR EXECUTIVE DIRECTOR

I'm so grateful for the wealth of assistance I get in doing this job. First and foremost, I can call upon our board of directors and all the knowledge and talent they contribute. And then there is the state and national offices of the Painting & Decorating Contractors of America, and especially the talented staff of the Finishing Contractors Association. It's comforting to know I'm part of such an experienced team of professionals.

I've just returned from Milwaukee

"Everything you do won't be successful, but do you want to be the person who tried and failed, or just the person who didn't just try."

where the FCA held their annual Affiliates Executives Council meeting and I feel strengthened by the collective efforts being made to promote the union segment of finishing trades in construction. The International Union of Painters and Allied Trades have recently been funding a marketing effort, the Finishing Solutions Network, and we heard a progress report from eastern region vice president Russell Sexton regarding this program. The emphasis seems to be centered on the pre-planning stages of construction projects and building relationships with developers, construction managers and general contractors. And whereas the west coast has been lacking in this effort, we are on the cusp of developing a local effort to get FCA contractors recognition among the "movers and shakers" of construction projects close to home.

The LAP&FCA will also continue to be represented at state and national legislative conferences

to stand tall for issues that affect our industry. Myself and contractor members will be at the American Subcontractors Association of California Conference as well as the Quality Construction Alliance National Issues Conference in Washington, DC next year. We are particularly interested in promoting certified applicator status on prevailing wage projects, such as Senate Bill 792 here in California.

While in Milwaukee we also heard an overview from Tony Darkangelo, CEO of FCA, regarding future FCA activities. They continue website improvement and development, with the eventual offering of free websites to contractor members. Additionally, negotiations continue with PDCA over partnering their standards. FCA wants participation in standard creation, co-branding on the standards and a right-of-first refusal in sole ownership should PDCA wish to end their branding relationship. Tony also gave a quick overview of FCA's strategic plan to enhance their position as **THE** contractor association in North America. Finally, we discussed the possibility of becoming more involved with the association CURT, or Construction Users Roundtable. A relationship with CURT could aid in introducing FCA members to influential construction projects.

Finally, I'm looking forward to the following upcoming events: Finishing Industry Forum in Las Vegas in December, and next year the World of Concrete/SSPC convention, PDCC State and National PDCA conventions. We continue to work hard in being on the front lines defending painting contractors.

Don Vulich



Beautiful Downtown Milwaukee, Wisconsin

Bidding public works Continued

program will be funded by an annual registration fee of \$300, and the DIR is under pressure from many civic and contractor associations to keep the yearly fee at a reasonable level.

As with all legitimate contractors, many business requirements must be met by contractors seeking DIR registration. Among the minimum requirements are the following: sufficient workers compensation insurance, valid California Contractors State License, no pending delinquent wage or other penalty assessments, and no current debarment from public works due to prior violations.

The new program will also replace the existing "MyLCM" certified payroll submission system with a new DIR electronic Certified Payroll Records program, identified as eCPR.

For additional information contact the Department of Industrial Relations or visit their website at www.dir.ca.gov.

CUTTING TO THE QUICK

SAVE THE DATE

December 13, 2014

Holiday Party and installation of officers dinner. Come enjoy an evening with industry leaders, live music and dancing.

SAVE THE DATE

December 7-10, 2014

Finishing Industry Forum

Join leaders in workshops and receptions, and learn the direction of our industry at the Mirage in Las Vegas.

