



# The Subcontractor Advocate

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## Contracts Council Plots Course for Major Model Documents in 2007

Members of the Construction Industry Contracts Council (CICC), including ASA, continue to chart a new course for consensus model contract documents for the construction industry. Recent discussions point to the likelihood of CICC publishing model contract documents in the summer of 2007. The new CICC documents would reflect input from a wide range of associations, including ASA; the Associated Specialty Contractors Inc.; the Const. Industry Const. User Round Table; the Const. Owners Assoc. of America; the Design-Build Institute of America; ... ASA also continues to provide input into the development of the forthcoming 2007 editions of the American Institute of Architects' A201 and A401 documents. For more information, contact ASA Senior Director and Counsel, Bill Isokait at [bisokait@asa-hq.com](mailto:bisokait@asa-hq.com) or (703)684-3450 Ext. 1311

## ASA Argues...

### Wrap-up participation should not preclude Subcontractor Third-Party Claims.

On October 12, ASA filed a friend-of-the-court brief with an appeals court in New York in a case that is likely to have important implications concerning the kinds of damage claims that insured parties can make against the carriers of owner-controlled insurance programs (OCIPs). The primary issue in the appeal of the KSW Mechanical Services, Inc. vs. American Protection Insurance Co., is whether a subcontractor that is a named insured under an OCIP can also be a third-party claimant under the OCIP for the purposes of pursuing a claim against another subcontractor on the project that damaged its work. In its

brief, ASA argues that if subcontractors must rely on an OCIP carrier for relief when an insured's work is damaged, then they should be able to recover damages when the carrier ignores or mishandles claims. A trial court ruled that KSW Mechanical Services could not be both an insured and a claimant, and denied KSW's claim for damages against the insurance company for improper claim handling. ASA's involvement in this appeal was made possible by generous contributions to ASA's Subcontractors Legal Defense Fund. For more information, contact Bill Isokait @ [bisokait@asa-hq.com](mailto:bisokait@asa-hq.com) or call (703)648-3450 Ext. 1311

## Payment Provisions-Send the Worst of the Worst to ASA

ASA is collecting examples of the worst payment provisions seen in real construction subcontracts and invites ASA members to submit their own worst to ASA.

---60 day progress payment terms

---"Cost of the Work: the work of this subcontract is "lump sum". The amount to be paid is None."

---"Payment to subcontractor from Contractor under this Subcontract is contingent upon the Contractor's actual receipt of payment for the Subcontractor's work on the project, and Subcontractor stipulates conclusively that payment is uncertain. Subcontractor admits that Contractor has made no representation to Subcontractor or any other person regarding the ability of either the GC of the Owner to actually pay for the work performed under Contractor's Contract for this project and under the Subcontract."

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**WATCH FOR THE  
ANNOUNCEMENT OF  
OUR NEW CHAPTER  
WEBSITE TO LAUNCH  
THIS MONTH!**

**MARK YOUR  
CALENDAR ...**

**November 30, 2006**

Monthly Meeting

5:30pm

Speaker: Anne Swager

AIA Executive Director

Location: The

Shiloh Inn

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