

ASSOCIATED BUILDERS & CONTRACTORS TESTIMONY

Before the House Commerce Committee on the Contractor and Subcontractor Payment Act March 1, 2017

Testimony by Kate McCaslin, President-CEO Keystone Chapter, Associated Builders & Contractors

Good morning Chairman Ellis, Chairman Thomas, and members of the House Commerce Committee. My name is Kate McCaslin and I am the President and CEO of the Keystone Chapter of the Associated Builders & Contractors. With over 20,000 member companies across the nation, ABC is construction trade association dedicated to promoting, protecting, and defending free enterprise and open and fair competition in the construction industry. Based in Manheim, the Keystone chapter is one of 70 chapters in the country and has nearly 600 member companies.

Pennsylvania's Contractor and Subcontractor Payment Act (CASPA) was signed into law in 1994 and was originally intended to provide legal protections to entities involved in construction projects to resolve nonpayment, late payments, disputes over invoicing and completed work, and other issues.

While the law was well intended in 1994, it only applies to projects in which there is no contract language covering payment terms. Since most often payment terms are in the contract, and therefore not subject to the law, the reality is CASPA has little effect in today's world.

Unfortunately, since CASPA was first passed, over the past three decades the Industry has experienced a major shift in the payment practices of project *owners*. As little as 10 years ago most project owners, whether large national chains or regional companies, had a corporate value system that required judicious payment of their bills for completed, non-disputed work, in 30 days. Sadly, many owners have now adopted payment policies that that are commonly 90 days, and stretch as far as 120 days or more. While this might help the owner reap the benefits of positive cash flow and investment income, those benefits are at the expense of the businesses who have completed the work, and paid for materials and labor in advance. As you might imagine this is incredibly onerous for any business, but especially for small businesses who simply do not have the wherewithal to essentially float the owner a loan for 120 days.

Although existing laws outline rights of construction parties and ascribe mild penalties for violating those rights, frequently these laws do not do enough to affect project owners or do not enforce the same penalties exponentially on owners. While the law addresses other parties involved, those parties, such as subcontractors and suppliers, frequently have very little direct interaction or a contractual relationship with the project owner, severely limiting their ability to represent their own interests in disputes. These parties are at the mercy of the general contractor, whose own payment policies most often dictate that subcontractors will get paid when the general contractor is paid. So, while some general contractors have the ability and values to pay subs within reasonable time frames regardless of when they are paid by the owner, many do not. Consequently, most often it is the subcontractors and suppliers down the chain who end up bearing the brunt and the costs of these increasingly common, damaging practices.

Encouraging small subcontractors and suppliers with a handful of employees to accept predatory payment terms from a global retailer just to sustain their business does not encourage Pennsylvania's business growth, nor does it provide for a fair negotiation on an even playing field.

ABC is uniquely positioned in this debate as the only entity that equally represents the interests of our general contractor members, our subcontractor members, suppliers and associates. While it may seem that our membership could struggle to find consensus on an issue such as this, our association is focused on ensuring a fair, level playing field for all parties involved. ABC members are vocal advocates for equal representation in every aspect of the construction process and for the work to be awarded and performed based on merit, with payment made promptly for completed, undisputed work.