

October 2011

Texas **MERIT** **SHOP** **Journal**

Defending the Rights of Merit Shop Contractors

**Texas Senator
Craig Estes Discusses
Construction Industry
Initiatives and His
Views About the
Texas Economy**

In This Issue:

**Backtracking on Construction
Defect Insurance Coverage in Texas**

**New Laws Effecting the
Construction Industry**

Chapter Updates



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Texas
MERIT SHOP
Journal

Defending the Rights of Merit Shop Contractors



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Letter From the Chairman



GREMILLION

Dear Reader,

I am honored to serve as your Chairman for the 2012 legislative cycle. I have been a State Board member for several years and am very proud of what ABC of Texas has become. We are truly recognized in Austin as a voice in the construction industry that has had an impact on legislation and elections. My commitment to you is to ensure we continue to grow the ABC State organization with the goal of continuing to be more effective and influential on construction industry and business issues in the State of Texas.

Some of the accomplishments from the past several years are: establishing a significant presence in Austin before both the Legislature and regulatory bodies; passing three bills with ABC of Texas as lead association (1 in 2009 and 2 in 2011); quadrupling the size of our state political action committee and participating more in elections; working cooperatively with other construction industry trade associations as a full partner; working cooperatively with other business groups on issues that affect the overall business climate of Texas; and achieving success on 6 of our 7 priority issues last session.

In November, we will host a planning session focusing on how to improve our processes and setting goals and guidelines for upcoming years. When we began this latest round of planning after having a President in place for a legislative session, we set 2-year and 4-year goals. Obviously, two years later, the 4-year goals will now be our 2-year goals if we stay with them. Those goals are to increase influence in the political arena; increase awareness of ABC of Texas to ABC members; be a leader in identifying issues and building coalitions; and increase influence with state agencies.

If you have any input on how the state organization can better serve your company, please get the information to the State Board members or President from your chapter. Remember, the primary focus of ABC of Texas is legislative and regulatory advocacy, not member services or events. Our local chapters remain the focal point for membership services and events.

I would like to thank the past Executive Committee and Board Members for the accomplishments during the past few legislative sessions and election cycles. As your Chairman, I look forward to working with the current Executive Committee and State Board members for the continued success of ABC of Texas.

Michael A. Gremillion
2011-2012 ABC of Texas Chairman
Vice President – Houston Office
Industrial Specialty Contractors LLC

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Letter From the President



FISHER

Dear Reader,

The campaign season has begun. Primaries will take place on March 6, 2012. Filing for offices does not begin until November 12, 2011, and the deadline is December 12th. In the past, the filing deadline was early January, but in order to conform to new federal law, the filing deadline had to move up to accommodate overseas ballots.

Election season is a good time to get better acquainted with your elected representatives because, on the state level, every member of the Texas Legislature will face election. As you may be aware, even though Senate seats are staggered (half facing election every 2 years for 4 year terms), following the decennial census, all Senate seats are up for grabs (they draw for 2 or 4 years terms after election). There are going to be a good number of House and Senate seats open with some choosing to run for higher office and several already announcing retirement.

For that reason, we have suggested that everyone keep their powder dry until after the filing deadlines and races get sorted out—believe me, contributions will be welcome in January!

ABC of Texas just came off of what some Board members have called our most successful legislative session in history. We need to maintain momentum through the elections in 2012 in order to build on that success. There are plenty of issues left unresolved or begging for a solution.

Among the issues we see on the horizon are State Breach of Contract, Construction Services through Purchasing Cooperatives, Bidding Procedures for Quasi-Governmental Entities, Lien Law Revision, Retainage/Trust Funds, Lender Notice, and, the big one, Statutory Employer. Of course, our friends in organized labor need to be watched closely since they seem to have free rein at the federal level—they know they can't compete when the competition is open!

Your State Board of Directors will be meeting on November 8th to plan strategically for the next two years. Each Chapter is also requested to bring another member with vision to help us with this effort.

Over the next two months I will be travelling to many of the Local Chapters to present Legislative Awards to your local legislators. We are recognizing nine legislators for outstanding efforts in promoting our legislative initiatives and recognizing the seven legislators that are ABC members. If an event is planned in your

area to recognize one of these public officials, please make every effort to attend and thank them for their service.

And, last, but not least, please consider advertising in Texas Merit Shop Journal. This is the means we use to communicate with every ABC of Texas member and with elected officials on the state level. This is a good way for us to stay in touch with each other and to communicate with elected officials on ABC of Texas issues. Help us help you!

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Ewing v. Amerisure:

Backtracking on Construction Defect Insurance Coverage in Texas



Contractors and subcontractors are usually successful in providing quality construction services, but inadvertent mistakes occasionally occur, including mistakes that may result in defective construction. For that reason, construction participants pay substantial premiums for liability insurance to protect them from property damage arising out of construction defects. Unfortunately, recent case law in the state of Texas has significantly reduced the certainty and predictability of insurance coverage for Texas insureds for damages arising out of construction defects.

Previous Case Law

Under prior case law, notably *Lamar Homes, Inc. v. Mid-Continent Casualty Co.*, the Texas Supreme Court upheld coverage for construction defects involving unexpected and unintended physical injury to tangible property as constituting an “occurrence” and “property damage” as defined in the standard form commercial general liability (CGL) insurance policy. Such property damage is covered unless subject to an exclusion in the policy.

Little more than three years after *Lamar Homes*, the Texas Supreme Court relied on such an exclusion in *Gilbert Texas Construction v. Underwriters at Lloyds*, denying coverage to a Texas contractor that had entered into a contract with DART to construct a commuter railway project. Heavy rains damaged neighboring properties, the owners of which filed suit against DART and Gilbert. The contract between Gilbert and DART obligated Gilbert to protect all existing improvements on adjacent property of a third party and to repair any damage. Since DART was a public entity, both DART and Gilbert had sovereign immunity from tort claims, including negligence. Thus, the claim amounted to a breach of contract claim with the neighboring property owners claiming third party beneficiary status due to the performance obligation that Gilbert had undertaken to them.

Faced with these facts, the Texas Supreme Court applied an exclusion in the CGL policy that states that the insurance does not apply to property damage “for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.” The court’s application of this exclusion to Gilbert’s direct liability to DART under its contract is contrary to the overwhelming interpretation that the exclusion is intended to apply to liability of a third party assumed by the insured under

an agreement, unless it meets the requirements of the definition of “insured contract” as set out in the policy. While the court acknowledged that interpretation, it nevertheless appeared to determine that the novel clause before it in which Gilbert assumed a performance duty not only to DART, the owner, but also to neighboring landowners, brought it within the terms of the exclusion. Unfortunately, the court’s opinion on that point is less than clear.

Case of Ewing Construction Versus Amerisure

This lack of clarity has been demonstrated in the subsequent case of *Ewing Construction v. Amerisure Insurance Company*. In that case, Ewing contracted with a school district to construct a tennis facility which was later alleged to be defective. Amerisure, Ewing’s insurer, denied coverage, even though the cracking and flaking throughout the project was an occurrence involving property damage under the policy.

Unfortunately for Texas insureds, the federal district court agreed with Amerisure and broadly applied *Gilbert*, as standing for the proposition that the contractual liability exclusion applies when an insured has entered into a contract and, by doing so, has assumed the liability for its own performance under that contract. Again, this holding ignores the standard interpretation of the clause (until *Gilbert*) that holds that the contractual liability exclusion does not apply to direct contractual liability, but rather only where the insured assumes the tort liability of a third party as in the standard hold harmless agreement. As such, the court in *Ewing* ignored what appeared to be the limitation on the Texas Supreme Court’s ruling in *Gilbert*, that it applies only to the type of third party performance obligation before the court in that case.

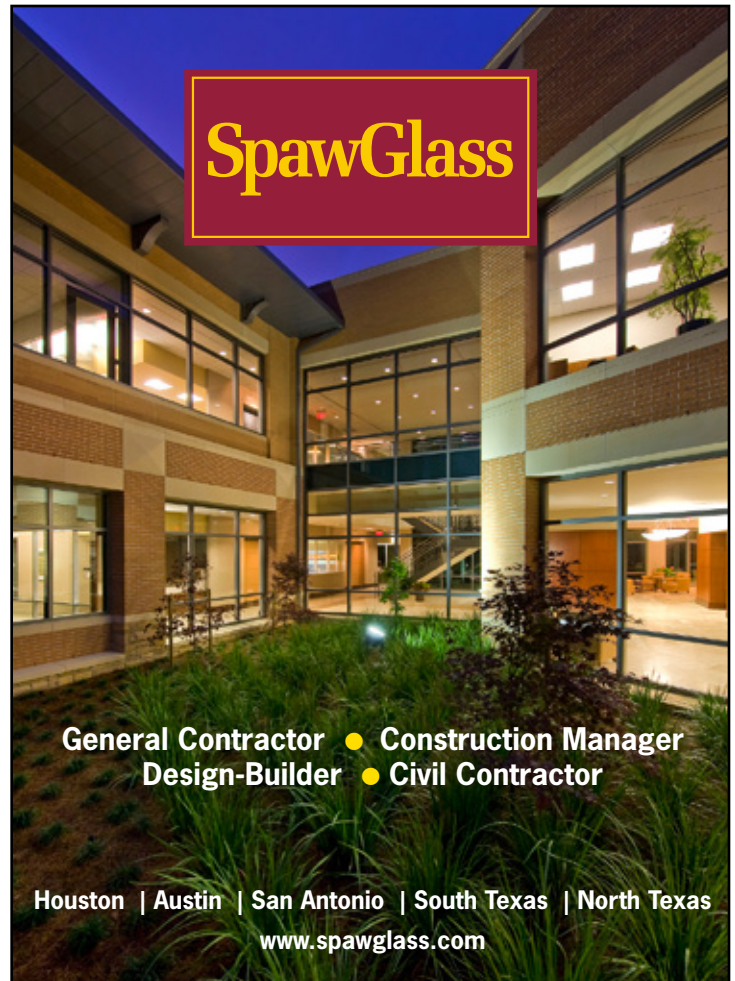
A lesson from the Ewing and Gilbert cases is that the presence of a negligence allegation in a claim or lawsuit against an insured contractor has regained importance due to the potential application of the contractual liability exclusion which applies only to breach of contract claims and does not exclude a negligence claim. Nevertheless, in cases like Ewing, it is uncertain whether that negligence claim can survive a challenge based on the economic loss rule.

“A lesson from the Ewing and Gilbert cases is that the presence of a negligence allegation in a claim or lawsuit against an insured contractor has regained importance due to the potential application of the contractual liability exclusion which applies only to breach of contract claims and does not exclude a negligence claim.”

Because of the importance of these issues, ABC of Texas joined other industry groups in filing an amicus curiae brief to the United States Fifth Circuit Court of Appeals where the Ewing v. Amerisure case is now on appeal. As a friend of the court, ABC of Texas points out the negative effects on the construction industry of the uncertainty caused by cases such as Ewing and Gilbert, and urges the Fifth Circuit to request the Texas Supreme Court to reconsider the Gilbert rationale as a whole, or at least to clarify and limit the scope of the opinion to contract clauses involving performance of obligations to third parties. The court has not yet set oral argument in Ewing v. Amerisure, and it may not be until next spring before the Fifth Circuit determines whether to certify these questions to the Texas Supreme Court.

ABOUT THE AUTHOR:

Patrick J. Wielinski is a principal in the law firm of Cokinos, Bosien & Young in its Dallas-Fort Worth office in Irving, Texas. Pat practices in the areas of construction, insurance coverage and risk management. He is Past Chair of the Insurance Law Section of the State Bar of Texas and files amicus curiae briefs for construction industry organizations in courts throughout the United States on construction-related insurance issues.



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One on One With...

TEXAS SENATOR CRAIG ESTES

Senator Estes was first elected to the State Senate in a 2001 Special Election, and then re-elected in 2002, 2004 and 2008. He is the Chairman of the Senate Committee on Agriculture and Rural Affairs as well as Vice Chairman on the Senate Natural Resources Committee. Senator Estes also serves as a member of the Senate Finance, Business and Commerce and Veterans Affairs and Military Installations Committees.

The Senator was appointed by Governor Rick Perry to serve on the Southern States Biobased Alliance and the Western States Water Council, and by Lieutenant Governor David Dewhurst to serve on the Agriculture and Rural Development Committee of the Southern Legislative Conference of the Council for State Governments, and Agriculture and Energy Committee for the National Conference for State Legislators.

He serves on the Bioenergy Policy Council, which was created through his legislative efforts to expand research and development of domestically produced alternative fuels to promote economic growth, and reduce dependence on foreign energy.

Q: What is your view of the free enterprise system?

A: I think that the free enterprise system is the backbone of this country. It made us the greatest nation on Earth, and I think it is no accident that the farther we move away from it— the more Washington forces us to abandon it with rules and regulations, the weaker we become.

I think it is clear that Texas is doing so well compared to the rest of the country because our state government generally tries to stay out of the way. We have minimal regulation here, which reduces uncertainty and allows businesses to thrive. As a State Senator, I try to keep things that way.

Q: How do you believe the Legislature did last session in addressing our state's needs?

A: I think it did a great job, all things considered. Last session was very difficult. We had a large budget deficit, but conservatives like me knew that the best way to destroy our economy was to fill the gap by increasing taxes. So we went through the very difficult process of trimming the fat off of a state budget that was, to be perfectly honest, already pretty lean.

We got the job done, and I think we did it in such a way that essential state programs will continue to serve Texans well.

Q: You carried a bill for the construction industry this session. In fact, it was the #1 priority of ABC of Texas. In addition, you were very supportive of construction industry initiatives. How do you believe the construction industry and ABC of Texas did overall?

A: I was a proud supporter of ABC, as I always am. In a state that is growing as quickly as Texas is, we need our construction industry to be strong and healthy. I think the rest of the Legislature generally feels the same way and votes accordingly. This session was no exception.

As you pointed out, I was honored to carry the Senate version of the Retainage Lien Bill, your number one priority this session. It basically sought to reduce the number of subcontractors who act in good faith but lose their rights to retained funds in construction projects. The law already provided for the owner of a construction project to retain 10% of each payment to the general contractor for the benefit of the subcontractors and suppliers working on

the project. When the project is completed, these funds are released to the general contractor, who distributes them to the subcontractors and suppliers. A lot of subcontractors were losing their rights to these funds because some of the notice and filing deadlines were very tight. My bill altered the old notice and filing requirements for perfecting a lien on retained funds to make those requirements more flexible without unduly burdening the owners. We had to work with a lot of different stakeholders to produce the final product, but I think everyone involved was pleased with the result.

Q: The national economy has been faltering, what is your view of our state's economy?

A: I don't think it's any accident that a lot of people have started calling our economy the "Texas Miracle." As I said earlier, there's a reason our national economy is faltering: the federal government is choking it to death. It seems like not a day goes by that Washington doesn't hand down some new regulation that makes it harder to do business in this country. And when they're not regulating us to death, they're spending us to death. Businessmen and investors (the people who actually create real jobs, not fake jobs funded by taxpayers) don't just worry about regulations—they also worry about the taxes that are going to have to be levied at some point in the future to pay for all the wasteful spending that's been going on. What's even worse to me is the number of people who have been completely fooled into thinking that all of this is "necessary" for recovery. All you have to do is look at the history books. President Franklin Roosevelt's administration spent eight years trying to regulate and spend the country out of the Great Depression, without any measurable success. I have no idea why we're trying the same failed policies again.

In this kind of climate, it's no wonder that businesses (and the jobs that they create) are fleeing to Texas. We're as stable as it gets in this country. A lot of other states have poisoned their business climates with the same types of policies the federal government is pursuing, but we've done the opposite.

I suppose it boils down to this: we're doing exceptionally well, all things considered. But we could be doing much, much better if the federal government would just get out of our way.

Q: What were your personal priorities last session and how did they fare?

My biggest priority was Senate Bill 18, the eminent domain reform bill I had tried to pass for the last few sessions. We finally got it passed and signed by the Governor last session, meaning landowners in Texas now have new protections against the abuse of eminent domain authority by corporations and governmental entities.

My other priorities were the Retainage Lien Bill, which we've already discussed, and balancing our state budget without raising taxes. I wish balancing the budget had been as easy as the Retainage Lien Bill. I serve on the Senate Finance Committee, so I know firsthand how many competing concerns we had to reconcile. We had to fund a public education system that is growing quickly as more and more people move to Texas in search of work, we had to fund law enforcement as it struggles against the wave of crime spilling over into our state from the drug wars in Mexico, we had to fund our health services, and we had to save the majority of our Rainy Day Fund so that we will be able to meet the massive unfunded obligations that ObamaCare will impose next biennium. All things considered, I think we did an outstanding job. We managed to cut \$15.2 billion in expenditures while increasing state funding for public schools by almost \$4 billion, saving \$6.5 billion in the Rainy Day Fund, extending the small business tax exemption for 2 years, and nearly doubling budget spending on border security.

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It's A Horse Race, And The Winner Is ...

A Summary of New Bills Effecting the Construction Industry

Your legislators were quite active this session and a number of bills effecting the construction industry (some supported by ABC of Texas) passed and either became law on September 1, or will become law on January 1 of next year. Jon Fisher, ABC Texas board members, the local chapters and their many members, along with lobbyist Mike Toomey, all worked tirelessly with other trade organizations and legislators during the session to insure the best results possible.

For a more detailed outline of the bills, please go to my Firm's website, www.gardner.sa.com/lawpoints. To review the actual bills, go to Texas Legislature Online, www.capitol.state.tx.us. Search legislature: 82(R) – 2011, and type in the Bill number, for example, (HB 1390 or SB 1048). When the bill comes up, click on the "text" tab to view the bill. You should look at the "enrolled" bill for its final version.

The Following Bills Became Effective on September 1, 2011

Contractual Retainage (HB 1390 - Deshotel): for claims related to contracts between the owner and general contractor (i.e. subcontracts and purchase orders related to general contracts) dated on or after September 1 the new law relaxes the time when notice of contractual retainage must be sent and when affidavits claiming a lien for retainage must be filed.

Prompt Pay Interest (HB 345 Kleinschmidt): for adjudications filed on or after September 1, prompt pay interest against a local government entity is recoverable.

Attorney's Fees (SB 539 Corona): for actions brought on or after September 1, 2011 to foreclose mechanic's liens, recovery of attorney's fees by the prevailing party is mandatory, except for a loosing homeowner, where the judge still has discretion.

Alternative Delivery (HB 628 Callegari): for all projects which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications or makes similar solicitations on or after September 1, the net proceeds of any settlement or award against a contractor for defective work not used to repair or replace the defective work must be returned to the State in many circumstances.



The bill also consolidates alternative project delivery processes for construction services for most governmental entities into a single chapter of the Government Code (Chapter 2267).

There are a number of "carve outs" in this bill, too numerous to mention, you will need to look at the bill itself to see the entities which got the benefit of the carve out.

Frivolous Lawsuits (HB 274 Creighton): requires the Texas Supreme Court to adopt rules for early disposition of lawsuits no basis in law or fact, with attorney's fees to the prevailing party, and adopts rules for speedier disposition of lawsuits claiming \$100,000 or less.

Provides for the interlocutory appeal (appeal before trial) of some questions of law where courts differ as to what the law is, and allows the recovery of more fees and costs under certain circumstances where a party fails to settle.

Public/Private Partnership (SB 1048 Jackson): amends the Government Code by adding Chapters 2267 and 2268 authorizing private entities and other persons to develop or operate projects serving the public safety, benefit, and welfare of citizens in a more timely and lest costly manner. In essence, the bill allows, for example, a general contractor to enter into an agreement with a public school district to build and pay for a school and then recover its costs through periodic payments over a period of time. There are a number of "carve outs" in this bill also.

The Following Bills Become Effective on January 1, 2012

Waiver and Release of Liens and Bond Claims (HB 1456 Orr): for all contracts entered on or after January 1, 2012, this standardizes forms for the waiver or release of lien and payment bond claims (the forms are included in the text of the bill). Further, the bill prohibits the waiver of lien claims and payment bond claims in advance.

Consolidated Insurance Programs (CIP) /Indemnity (HB 2093 – Thompson): for all original contracts (and related subcontracts, purchase orders, etc.) between the owner and general contractor entered on or after January 1, 2012, the bill:

- Requires any CIP providing general liability coverage to provide three years of completed operations coverage.
- Prohibits as against public policy a provision requiring a person to indemnify, hold harmless, or defend another party to a construction contract or a third party against a claim for property damage, bodily injury, or death, caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnitee, its agent or employee, or any third party under the control or supervision of the indemnitee, except to the extent that a claim for bodily injury or death is made by an employee of the indemnitor, its agent, or its subcontractor of any tier.
- Prohibits a provision in a construction contract that requires the purchase of additional insured coverage, or any coverage endorsement, or provision within a insurance policy providing additional insured coverage to the extent that it requires or provides coverage prohibited by the bill (i.e. indemnity for

the indemnitee’s negligence causing bodily injury or death or property damage except for the negligence of the indemnitee causing bodily injury or death of the indemnitor’s employees, etc.)

There are a number of carve outs to this legislation as well which can be found listed in the actual bill itself.



JOHNSON

ABOUT THE AUTHOR:

R. Wes Johnson is the Managing Director for Gardner Law in San Antonio, Texas where he has practiced law for almost 30 years. He is Board Certified in Consumer and Commercial Law by the Texas Board of Legal Specialization, AV Peer Review Rated for ethical standards and legal ability by Martindale-Hubbell, and a Fellow of the Texas Bar Foundation. He is a Board Member of the Texas Associated Builders and Contractors and a Board Member of the Associated Builders and Contractors – South Texas Chapter where he was named Industry Professional Member of the Year for 2006 and 2009. He also sits on the Construction Industry Advisory Counsel at the University of Texas at San Antonio.

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Long Time ABC of Texas Board Member Shares Experiences with State Association

Chirstina Stone, with Gaughan, Stone & Thiagarajan, recently sat down with Texas Merit Shop Journal to discuss and reflect upon her experiences as an ABC of Texas Board Member. Christina will step down from the Board in 2012 after 18 years of involvement. Today, ABC of Texas is one of the most influential trade associations because of members like Christina Stone, who's dedication and service made many accomplishments possible.

.....

Having served on the ABC of Texas Board for 18 years, I'm honored to share a few of my memorable experiences as a Board Member. Over the almost two decades of serving ABC of Texas, I have experienced many highs and a few lows.

ABC of Texas has had many triumphs over the last 18 years. During my terms on the Board, Texas has become a very friendly state in which to do business. Many years ago, I attended a construction industry meeting with Dick Weekley during the formation of Texans for Lawsuit Reform. During that meeting, Dick challenged the contractor associations to:

1. Bond together with other industries to support each others' tort reform bills;
2. Tell our lobbyists we weren't satisfied with passing one tort reform bill per session; we needed all bills passed ASAP; and
3. Raise funds to support pro-business candidates.

ABC of Texas jumped on board with this effort and was instrumental in passing the best tort reform of any state in our country. Texans for Lawsuit Reform also greatly impacted the election process, which resulted in a majority of our elected officials being pro-business. Undoubtedly, these were our most important successes since I have served on the Board.

Our second biggest success has been the hiring of a state president. This was a long, difficult process. Our chapters had to take a leap of faith and make a large financial commitment to make this happen. The results have greatly exceeded our expectations. We were particularly lucky to find Jon Fisher to serve as our president. ABC of Texas is now one of the go-to associations on construction industry legislation. I want to especially commend Roger Berry, Mike Gremillion, and Bob Parker for their determination to see this happen. All the chapters, except for Southeast Texas, showed great foresight and commitment in this effort.



Around 1990, we were looking for a lobbyist and heard about Mike Toomey, who had just retired as Governor Clement's Chief of Staff, and was looking for clients. We were the first association to hire him. Mike is now considered the top lobbyist in Austin. Although he now has many clients much larger than ABC of Texas, he remains very loyal to us and is an extremely valuable and trusted ally for us.

"One of our better decisions was to support George W. Bush for governor in the 1993 gubernatorial race that the pundits said Ann Richards would win. We were the first association to endorse George W. Bush in that race and he won the race and never forgot that we were his earliest endorser."

One of our better decisions was to support George W. Bush for governor in the 1993 gubernatorial race that the pundits said Ann Richards would win. We were the first association to endorse George W. Bush in that race and he won the race and never forgot that we were his earliest endorser. The legislatures during Governor Bush's time in office were particularly good for pro-business legislation. Governor Bush was very adept at working both sides of the aisle, and Democrat Lieutenant Governor Bob Bullock's willingness to support pro-business legislation certainly helped.

Of course, as the adage goes, “you can’t win them all”. There have been a few disappointments during my tenure. My biggest disappointments have been:

1. The failure of the legislature to repeal the prevailing wage law.
2. The failure of the legislature to pass a ban on “third party liability” lawsuits.
3. The resignation of the Southeast Texas Chapter from membership in ABC of Texas.

Much of the problem with third party liability suits has been ameliorated by the passage of a bill allowing the consideration of the negligence of all parties in accident cases and the recent passage of a bill outlawing indemnity clauses in personal injury and property damage suits.

The aspect I enjoyed most about working with ABC at chapter, state and national levels, are the wonderful industry leaders I met. These are all people who believe in hard work, an ethical code, fairness and, above all, the importance of supporting and leading the construction industry. All of the ABC of Texas Board members I have worked with have earned my respect and friendship. The ABC of Texas Board members have all been able to disagree in an agreeable manner with respect for each others’ views. Some of the excellent leaders that have served you over the years are Roger Berry, Donald Day, Mike Weaver, Phil Hoppman, Andy Koebel, and Mike Gremillion. I especially want to honor Bob Parker of Coastal Bend chapter. Bob has spent many years on the Board. He has worked tirelessly and has helped in every way to make the business climate in Texas better for all of us. Bob is a good friend and a great spokesman for the industry.

ABC of Texas and its member chapters have the qualities that exemplify Texas and the construction industry—personal and corporate responsibility for one’s actions, good citizenship, honesty and fairness. We all certainly believe that what is good for business is good for our cities, state, and nation. It has been an honor to serve on the ABC of Texas Board. I look forward to seeing you at the next ABC Day in Austin!



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ABC INITIATIVES AROUND THE STATE



The 10th ABC Texas Coastal Bend Annual Skeet & Trap Shoot took place September 9 -10. Committee volunteers worked to make this shoot the best in the area.



On August 4th, the ABC Central Texas Chapter hosted a PAC Casino Party to raise over \$5,100 for the Chapter's PAC.

ABC TEXAS COASTAL BEND

The Texas Coastal Bend Chapter presented the July Management Education Lunch Break about “Construction Workforce Issues of the Coastal Bend.” Dr. Ann Matula of the Craft Training Center, discussed the impact of new area projects and industry concerns about the future demand of an already depleted construction workforce. She also discussed the Craft Training Center’s preparation for a shortage and what employers can do. August’s Management Education Lunch Break featured Caitlin Espinosa of KILL ,TV and Albert Saenz with Barcom who covered “Hurricane Preparedness - What you should do to prepare at home and in the work place”. The program discussed how the local weather forecasters communicate and work with NOAA and the local Emergency Management Center.

At the July General Membership Luncheon State Representative Todd Hunter was the guest speaker and presented a recap of the 82nd Texas Legislature. US Congressman Blake Farenthold discussed the state of the 112th Legislative Session at the August General Membership Luncheon.

The 10th Annual Skeet & Trap Shoot took place September 9th and 10th. Curtis Miller with TICO Insulation has been the committee chair since the event’s inception. Each year, the event’s anticipation heightens to see which teams will be competing for the coveted winner’s bragging rights. Curtis along with committee volunteers, worked to make this shoot the best in the area; with plenty of food, beverages, outstanding live and silent auctions, and outrageous fun.

The 3rd Annual BBQ Cook Off will take place Oct. 14th & 15th at the Richard Borchard Fair Grounds in Robstown, Texas (IBCA Sanctioned Event). Committee chair, Randy Larson of Larson Plumbing, is joining forces with Tom Crossland with the Nueces County Football League. All proceeds will benefit the Craft Training Center scholarship fund, and the youth football league to provide scholarships, helmets, pads and safety equipment. Come join the fun with a host of live bands and entertainment, horseshoe tournament, team roping and family festivities.

CENTRAL TEXAS

August 4th, the ABC Central Texas Chapter hosted a PAC Casino Party to raise money for the Chapter’s PAC. Generous sponsors helped pay for all the expenses and the players paid with personal money or credit cards to play. Door prizes were given out by way of a drawing at the end of the evening. One member donated an iPad which was the grand prize. Over \$5,100 was raised for PAC.

On August 30th, the Chapter had another successful “Meet and Greet” at Abel’s on the Lake. It was a free networking event with a sponsor who provided hors d’oeuvres that everyone enjoyed.

The annual ABC Auction was on September 13th. It was held at the Texas Disposal Service Exotic Game Ranch just outside Austin. The event helped raise money for the ABC Chapter and LifeWorks - a charity the Chapter is partnering with this year. LifeWorks is Austin’s only non-profit organization to provide a continuum of services to youth and families, addressing critical needs to achieve lasting, positive change. They provide counseling, including crisis intervention, to youth and families. Each year, the Chapter gives back to the community and are proud to be working with LifeWorks.

TEXO

TEXO held their Annual Distinguished Awards Night, where 62 projects were judged resulting in 21 first place and 12 Merit Awards. The Chapter also presented four Construction Excellence Awards. It is important to note that 22 members received varying degrees of “STEP Awards” this year as well.

While on the subject of Safety, the Chapter held the Spring Construction Industry Stand-Down. This year, 66 projects participated, accounting for over \$6 billion of work being stopped to focus on safety. Seventy-five member superintendents were honored for submitting reports from their projects which were part of the Stand-Down.

Other summer events included TEXO’s Motorcycle Rally which raised over \$40,000 for two local charities — Scottish Rite Hospital and Happy Hills Farm. The Annual Golf Tournament was held on Stonebridge Country Club’s two courses in McKinney.

July was quiet, while August proved extremely busy. The Chapter held 8 Contractor Membership meetings across the Metroplex to communicate directly with members. These small gatherings proved invaluable in discussing Chapter programs and services, and in receiving feedback on member needs.

A joint meeting was held with CFMA and TEXO at which Congressman Pete Sessions outlined his ideas for job creation and economic recovery. The Annual Sporting Clay Tournament was held in September. The proceeds of the tournament benefits TEXO’s Education and Research Foundation.

Chapter leadership and staff have participated in both State and National ABC and AGC meetings during the period as well. Lastly,

ABC INITIATIVES AROUND THE STATE



Texas Gulf Coast leaders attended ABC Legislative Conference in June. L to R: Buck Blevins, ABC Chair – Infinity Construction Services, LTD.; Tx. Senator John Cornyn; Lisa Bundick Woods, Immediate Past Chair – Tri-Construction Co., Inc.



The TEXO Chapter held the Spring Construction Industry Stand-Down. This year, 66 projects participated, accounting for over \$6 billion of work being stopped to focus on safety.

the Chapter sponsored two members of the Young Constructors Council to attend the Legislative Conference in June. This helped to broaden their knowledge of ABC's role in National politics as well as help them understand the importance of communicating industry issues directly to our elected officials.

TEXAS GULF COAST

The Texas Gulf Coast Chapter has been active in leadership activities this summer, starting with representation at LegCon in June. Current and immediate past chairpersons Buck Blevins and Lisa Bundick Woods, along with Chapter President Terry McAlister, joined other chapters in Washington D.C., with their yellow safety vests in a show of solidarity for ABC. Blevins, Woods and McAlister had an opportunity to meet with Texas Representatives and Senators to share concerns and show support. In July, McAlister traveled to Chicago for the ABC President's Conference for an opportunity to meet with several peer groups and attend training and assessment on leadership styles. Finally, in August, ABC Board of Directors hosted ABC of Texas President, Jon Fisher for an update on the most recent Texas Legislative Session. Jon recapped the many successful initiatives from bills to elections backed by ABC Chapters across the state.

The chapter's Public Relations Committee and ABC Cares Subcommittee have made their presence known in the community this summer with food and clothing drives that helped children in our local school district. Several events helped raise money for donations to three local charities: ActionS, Inc. (supporting senior citizens with meals), the Women's Center, and True to Life Ministries' Operation Backpack Program which provides help to homeless students in the area.

Craft training continued in the summer months but started full force this fall with higher numbers than the last few years. Management and Safety classes are also in full swing for the fall semester. Likewise, contractors are focusing on more training and evaluation this summer and fall, with several companies sending craftsmen for instructor and performance evaluator training.

The month of September provided several opportunities for members, starting with the 27th Annual Golf Tournament that sold-out. The Human Resources Committee planned a Q & A Session for early September and later that month, members had the opportunity to hear guest speaker 'Termite' Watkins, a coach for a successful US Olympic team, at the September Membership Event and Luncheon, where members were also honored with STEP Awards and the membership elected officers for 2012.

ABC SOUTH TEXAS

The City of San Antonio has undertaken an initiative that has caused some concern with various construction trades associations. Their proposal to consolidate several appeals boards and combine the various construction related chapters in the city code has both some good - and not so good - points. The ABC-South Texas Chapter took the lead in bringing together the trade groups to review the proposal, discuss amendments and possible changes, and how to make the proposal more effective in addressing major concerns. The more contentious was the combining of the four boards into one. Major concerns were adequate sector representation (from the design side to the construction side, including residential, commercial and the various subcontractor categories), the role and duties of the board, shortening of the appeals process from 60 days to 5 days (this is still in the compromise stage), and interaction between the board and city staff. One of the main outcomes from this effort was the strengthening of the communication lines and relationships between the various trade groups and ABC. Participating groups included the local chapters for the Plumbing, Heating & Cooling Contractors Association, Independent Electrical Contractors, American Subcontractors Association, Air Conditioning Contractors Association, San Antonio Sign Association, and the National Electrical Contractors Association.

In July, the chapter hosted an ABC-PAC Appreciation Reception at the home of Ben & Michelle Davis (former national PAC chair). Freshmen State Representatives Lyle Larson, John Kuempel and John Garza met with all attendees and gave their thoughts on their first legislative session. Chapter representatives also met with Congressman Quico Canseco to discuss some of ABC's national issues in August. In late August, the chapter hosted a Texas Legislative Session Review seminar, featuring ABC-Texas Lobbyist Mike Toomey and ABC of Texas Board member Wes Johnson. This tag team did a great job in explaining how particular bills were going to impact the construction industry, the success of ABC of Texas during this past legislative session, and some interesting prognostications as to future statewide office holders.

The Future Leaders Task Force continues to help develop future industry leaders. Recent professional development topics included "Construction Law 101", "Legislation Impacts on Contractors", and "Getting Involved in the Political Process – The Role of ABC of Texas." The task force will start their 2012 strategic planning process later this year. On a related note, the Chapter's board of

(Continued on page 16)



ABC South Texas Chapter representatives met with Congressman Quico Canseco to discuss some of ABC's national issues in August.



Over 180 Members of ABC Greater Houston enjoyed casino styled gaming in a rock and roll setting at the 2011 Casino Night.

directors is in the process of preparing the 2012 Program of Work and strategic plan for the next few years. One of the key goals for 2012 will be the hiring of a Marketing/Membership Director.

GREATER HOUSTON

The year may be nearing an end, but that doesn't stop the Greater Houston Chapter from setting and accomplishing bigger goals. The Chapter held its July Membership Breakfast on Friday, July 8th at Brady's Landing, where twenty new members were welcomed. The Chapter also took this opportunity to recognize the 2011 ABC STEP (Safety Training Evaluation Program) Award winners, which included fourteen diamond level recipients, twenty-six platinum level recipients and eleven gold level recipients.

The Chapter and its members mixed and mingled among twenty-two teams who competed in the bowling tournament held on Friday, July 15th at 300 Bowling Alley. Of the three teams who competed in the finals, Foster Wheeler came out on top.

The Chapter also gambled and rocked the night away, Wednesday, August 10th at the Rock'n Casino Night held at DRINK Houston. There were 185 attendees who enjoyed several themed casino styled games.

In preparation for the November elections, PAC has started screening the Houston City Council members. Candidates screened thus far include Ellen Cohen, Eric Dick, Jack O'Connor, Laurie Robinson, and Criselda Romero. Screenings will continue at the next PAC meetings up until the elections. The PAC Clay Shoot, held on Thursday, August 25th, at the American Shooting Center, was a huge success. There were a total of seventeen teams who helped raise \$10,710 to send to the national ABC PAC in support of federal candidates. The winning team was comprised of Brent Abshire, Scott Kramer, Ken Sawyer, Tom Ward, and Lohn Zylicz of D. E. Harvey Builders, with a score of 209. The individual winner, Ken Sawyer of D. E. Harvey Builders, beat Scott Kramer in a shootout with a raw score of 46.

CTEP (Craft Training Evaluation Program) applications were due, Thursday, September 1st, and awards winners will be announced at the October Membership Breakfast on Friday, October 28th, at the Marriott Houston at Hobby Airport.

Lastly, the Greater Houston Chapter hopes to recruit 80 new members during the ABC 2011 Annual Membership Campaign with the help of current members who participate in the Membership Drive Contest for a chance to win one of three cash prizes ranging from \$500 to \$1000!