



CONTENTS

1.1

THE FSA - WHO ARE WE? WHERE ARE WE GOING?

What a year it has been ... and we are not done yet.

1.2

A SURETY ICON RETIRES

After nearly 40 years in the surety business, Medford Rockstroh retires from Safeco Surety.

1.3

A CONTRACTOR'S DO'S & DON'TS REGARDING PROFITABILITY

A Successful Florida contractor spells out their guide to profitability.

1.4

LEGISLATIVE RECAP

The Summer Legislative Report provides a summary of the FSA's success in the previous legislative session.

1.5

TAKE NOTICE ON PUBLIC BOND FORMS

A recent Florida Supreme Court ruling reminds us to check public bond forms for compliance.

1.6

ANNOUNCEMENTS

The Florida Surety Association - Who Are We? Where Are We Going?

We are closing out 2005 and what a year it has been. To date, we have had five companies leave the surety marketplace. We have seen bond producers change agencies. We have seen underwriters become bond producers and bond producers become underwriters. There have been losses and profits, good years and bad. Our little world has certainly been interesting.

Here we are - sureties, professional bond producers, CPAs, attorneys and consultants. And what has brought us together? ... The Florida Surety Association. We are an organization that is dedicated to the promotion of surety bonds and favorable underwriting terms through education and legislation. Ultimately, our purpose is for the benefit of our member companies - but, there is certainly an underlying emphasis on seeing our end-client, the contractor, succeed. Do we want to see our contractors sign a horrible contract? Do we want our contractors to be liable on a project for 15 years or more? Absolutely not. Through collaboration, legislation and commitment, we have all worked hard to make things better for our companies and contractors in the State of Florida. Our efforts have, once again, been recognized by the Surety Information Office with the 2005 Gold Award. This is something that we should all be proud of.

The FSA has had some great success in the past year. The highlight of which is Senate Bill 265 - which the Governor has signed. Amongst other things, this legislation excludes sureties from the insurance "bad faith" laws.

We were also successful in moving our first quarter meeting to Tallahassee to join up with the Construction Coalition for their legislative reception. Later that evening, Florida Speaker of the House, Allan Bense, was the guest speaker for the FSA meeting.



Florida Speaker of the House, Allan Bense, was the FSA guest speaker at our February '05 meeting.

While 2005 has had its share of bumps in the road, it is an exciting time for the surety industry. Now, more than ever, contractors are seeking out a team of a professional bond producer, stable surety, construction-oriented CPAs and attorneys. The hard work of everyone in the FSA has, and will continue, to benefit all of us.

The challenge for each of you is to stay involved and be active. Let us know when there is a bad bond form or contract; remind owners to bond projects; attend the meetings. As we work together, we will continue to succeed.



2005 - 2006 FSA OFFICERS

President

Mike Battenfield

Vice President

Paul Davis

Treasurer

Michael Dennis

Secretary

Sara Lindquist

Officers

Matt Curran

Monica Morgan

John Valoze

Jacob Fulmer

A Surety Icon Retires

After nearly 40 years in the surety business, Medford Rockstroh officially retired from Safeco Surety at the end of July. Safeco recently hosted a golf outing at Bloomingdale Golf Club in Brandon in Medford's honor. It was attended by agents, Home Office personnel, and many long-time friends.

A native of Baltimore, Medford served in the US Army for two years as a cryptographer during which time he was stationed in Japan. He later graduated from Presbyterian College (Class of '60) in Clinton, SC where he played football for the Blue Hose. After graduation, he worked as a chemist, State Farm Insurance agent, and also taught chemistry and physics. Always an avid baseball fan, Medford attended the Baltimore Orioles inaugural game in 1954.

Medford began his surety career with USF&G in Jacksonville in 1966. He was transferred to Sacramento where he became the Bond Superintendent. In 1970, he moved to Nashville to manage Safeco's surety department, then on to Memphis to work for Brown & Associates in '73. In 1985, he moved to Tampa to work for Poe & Associates, which later became Brown & Brown. In 1996, he opened the Florida office for Ulico Insurance and in '99 returned to Safeco to run their First National operation for the state of Florida.

Medford and Barbara, his wife of 43 years, have two sons, Murr (Nancy) and Dean (Damaris). His pride and joy is grandson Kyle, who is almost three years old. If you speak with Medford at any time, you are guaranteed at least one funny story about Kyle.

We all wish Medford a happy and healthy retirement.

A Contractor's Do's and Don'ts Regarding Profitability

- * Do not sacrifice your personal integrity or corporate integrity for the sake of profitability.
- * Do not screw subcontractors or owners for the sake of profitability.
- * Do not sacrifice safety for the sake of profitability.
- * Do not focus your limited recourses on projects outside of your geographic territory or traditional scope if it will impact the profitability or the customer service that you provide on traditional type projects.
- * Do not fall in love with any project until after you have signed the contract. Falling in love with a particular project during the bidding stage can cloud your thinking.
- * Do not lose track of the profitability during the construction phase.
- * Do not over-extend subcontractors.
- * Realize that your company has limited resources. There is no sense in giving away work.
- * Realize that on average things cost more than you expect. Cost is cost. There should be a contingency or a little fluff on every project.
- * Realize that things usually take more time than you expect. This impacts profitability and should be factored in when pricing projects.
- * Do get Change Orders in writing.
- * Do consider more than price when selecting subcontractors.
- * Do confirm financing in writing.

- Based on the "Do's and Don'ts Regarding Profitability" from a very successful Florida contractor.

Legislative Update

Governor Bush has acted on all the bills affecting surety in the last Legislative Session. Surety fared well. This Final Legislative Report provides a summary of the bills with their effective dates.

The most significant legislation is the language in SB 652 which exempts surety from the provisions of bad faith in the insurance code. The language addresses the Dadeland case which is currently pending before the Florida Supreme Court.

Thanks to Edward Gallagher of the Surety Association of America for his constant assistance in minimizing the impact to surety on other bills filed during the Session dealing with construction liens, prompt pay and retainage.

The priority bills are described in detail;

PRIORITY BILLS WHICH PASSED PUBLIC CONSTRUCTION BONDS CS/CS/SB 652 - Public Construction Bonds

By Judiciary; Governmental Oversight and Productivity; Sebesta Iden./Sim Bills; HB 487 CS Committee(s) of Reference: Governmental Oversight and Productivity; Judiciary

This bill amends the model bond form contained in s. 255.05(3), F.S., which is used for public construction projects, to add a space for entry of a bond number; and to include language on the face of the bond stating that any action instituted by a claimant under the bond for payment must be in accordance with the notice and time limitations provisions contained in s. 255.05(2), F.S. These provisions specify:

* A claimant no longer furnishing labor, services, or materials on a project, and who is provided with a notice of contest of claim against a payment bond, has 60 days to file suit.

* A claimant, except a laborer, must provide the contractor with a notice that he or she intends to use the bond either before commencing or no later than 45 days after commencing to provide services.

* A claimant, who is not in privity with the contractor and who has not received payment for his or her services, must deliver to the contractor and the surety written notice of the performance of services and of nonpayment either 45 or more days into the progress of the work, or no more than 90 days after the completion of the work.

* An action against the contractor or the surety on a payment and performance bond must be instituted within 1 year after the performance of services.

The bill provides that the statute of limitations is one year for filing a claim against any payment and performance bond for a public work. The bill specifies that, under no circumstances, may a statutory bond be converted into a common law bond. The bill also exempts causes of actions against a surety insurer when the insurer acts in bad faith. The effective date of this bill is upon becoming a law.

Effective Date: Upon Becoming Law
The bill was signed by the Governor on June 14, 2005
Chapter No. 2005-218

CONSTRUCTION LIEN LAW

HB 113 - Construction Contracting by Rep. Dean and others (CS/CS/SB 1016 by Government Oversight and Productivity Committee; Regulated Industries Committee; and Senator Argenziano)

The bill provides substantive and technical revisions to the state's construction lien law.

Specifically, the bill provides the following revisions:

* Makes a payment bond for a public works project unenforceable if it restricts the classes or persons as defined in s. 713.01, F.S., protected by a construction bond or restricts the venue of any proceeding related to the bond.

* Increases the maximum administrative fine for violations that the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board may assess a licensee from \$5,000 to \$10,000.

* Reduces the type size for new residential construction contract lien warnings from 18 to 14 point and clarifies the rights associated with the notice.

* Copies unlicensed contracting provisions under ch. 489, F.S., to ch. 713, F.S., to preserve the lien rights of suppliers and other properly licensed subcontractors on the same project.

* Extends a proper payment defense to owners who contract for subdivision improvements and addresses service of notice required for subcontractors and suppliers to preserve their lien rights.

Effective Date: October 1, 2005
 Approved by Governor: June 14, 2005
 Chapter No. 2005-227

PROMPT PAY & RETAINAGE

HB 509 - Prompt Payment for Construction Services
 By Reagan and others
 Iden./Sim Bills: CS/CS/SB 632
 Committee(s) of Reference: Governmental Operations; Local Government Council; State Administration Appropriations; State Administration Council

This bill re-designates the "Florida Prompt Payment Act," which currently applies to local governments, as the "Local Government Prompt Payment Act," and creates a new "Florida Prompt Payment Act" to apply to state projects.

The bill reduces time frames during which contractors and subcontractors must issue payments to their subcontractors and suppliers. It also restricts the percentage (retainage) state and local governments may withhold from each payment to contractors during construction. Upon substantial completion of construction projects, the bill requires state and local governments to develop a list of items (a punch list) for final acceptance of construction services purchased.

The bill, among other changes, creates prompt pay provisions for state projects that mirror existing prompt pay provisions for local governments; requires contractors to pay downstream within 10 days of receipt of payment and subcontractors to pay downstream within 7 days of receipt of payment; implements procedures for a "Final Punch List" and sets time periods for payment within a

reasonable time after completion of those items; and reduces the retainage by providing procedures for release of one-half the retainage that has been held when a project reaches 50% percent.

Effective Date: October 1, 2005
 Approved by Governor: June 14, 2005
 Chapter No: 2005-230

HB 1167 (JACKSONVILLE LOCAL BILL FOR PERMISSIVE LANGUAGE TO RAISE PUBLIC CONSTRUCTION BOND LIMITS) OPPOSITION WITHDRAWN

After consultation with surety agents, general contractors and subcontractors in Jacksonville, we determined that the language of the local bill read in conjunction with the language of the local ordinance addressed FSA's concerns. In order to qualify for consideration of waiving of the bond, a contractor must complete a strenuous vetting procedure. The program is race and gender neutral, and mentoring of contractors in the program includes accounting oversight and issuance of joint checks. The consensus of the majority contractors in Duval County is that the ordinance will allow small, emerging contractors to grow sensibly. Requirements are imposed on contractors in the program which will act as safeguards. Although the graduation trigger is different between Hillsborough and Duval programs, the Duval program appears to be more comprehensive at this time. Both programs require the Counties to be responsible for payment to subcontractors and suppliers for projects up to \$500,000 when the bond is waived.

Effective Date; Upon Becoming Law

The bill was signed by the Governor on June 1, 2005

TRANSPORTATION

HB 1681-Transportation
 By Transportation; Sansom and others
 Committee(s) of Reference: Transportation & Economic Development
 Appropriations: State Infrastructure Council

The bill contains a number of changes in the law related to transportation. The major provision in the bill affecting surety clarifies current law to conform to FDOT practice on work-order changes, supplemental agreements, and surety bonds.

The changes in bonded transportation projects were agreed to by FTBA and FSA. The language provides:

Any surety issuing a bond under 337.18 shall be fully liable under such surety bond to the full extent of any modified contract amount up to and including 25 percent over the original contract amount and without regard to the fact that the surety was not aware of or did not approve such modifications. However, if modifications of the original contract amount cumulatively result in modifications of the contract amount in excess of 25 percent of the original contract amount, the surety's approval shall be required to bind the surety under the bond on that portion in excess of 25 percent of the original contract amount.

Special Thanks to Rick Watson for putting together the legislative update.

Take Notice On Public Bond Forms

In *American Home Assurance Co. v. Plaza Materials Corp.*, 2005 WL 1575877 (Fla. July 7, 2005) the Florida Supreme Court held that if the bond form used on a public project does not comply with subsection 255.05(6) and the payment bond claimant did not have actual knowledge of the notice and suit limitations of subsection 255.05(2), the prime contractor and surety are estopped to assert the notice and suit limitations provisions of subsection 255.05(2) as a defense to the claimant's suit.

In SB 652 signed by Governor Bush on June 14, 2005, the Legislature amended subsection 255.05(6) to require that bond forms used by public entities refer to the notice and time limitations requirements of subsection 255.05(2).

Many bond forms in use prior to the amendment of Section 255.05(6) would, if continued in use, put both the public entity letting the contract and the contractor's surety in violation of the revised subsection 255.05(6) and expose the contractor and surety to liability for payment bond claims that would be barred by Section 255.05(2).

Make sure that all public payment bonds comply with the amended Section 255.05(6). We suggest that you urge that the public owner use the model bond form set out by the Legislature in Section 255.05(3) or, at least, add an additional paragraph to its standard payment bond form as follows:

"This bond is given to comply with section 255.05 Florida Statutes, and

any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes."

Senate Bill 652 also amended the model bond form in Section 255.05(3), and this suggestion is taken from the amended Section 255.05(3).

The FSA and our members hope that Florida local government entities will immediately examine their standard contract bond forms for compliance with the new requirement. A contractor's increased exposure to payment bond claims that should be barred by subsection 255.05(2) will lead to increased bid prices and make it harder for potential bidders to qualify for bonds. Competition will be reduced, and small and emerging contractors will find it harder to bid on public projects. It is both required by Section 255.05 and to the public entity's advantage to use a bond form that complies with the law.

This is provided for informational purposes only.

Announcements

- The next Florida Surety Association meeting will be on February 7th, 2006 in Tallahassee, FL. Once again, we will be part of the Construction Coalition's Legislative Reception. An update with specifics will be e-mailed to you in the near future.
- Get on the list! If you are not on the e-mail list or have not updated your information on the FSA Roster, please e-mail your information to slindquist@chubb.com

- Old News ... but, it should be noted that FSA member Kathie Grimsley shoots 2 hole-in-ones in the same round - http://www.sptimes.com/2005/02/22/Tampabay/Duffer_s_round_come_s_shtml
- Don Bramlage has joined Florida Surety Bonds as Vice President. He is working in their Daytona Beach office.
- Matt Bevins (Dawson Companies) and his wife are pleased to announce the birth of their son, Michael John Bevins. He was born on June 20th, 2005.
- Mike Battenfield (The Hartford) and his wife are pleased to announce the birth of their son, Alexander Michael Battenfield. He was born on August 31, 2005.
- Have an announcement for the next FSA newsletter? E-mail us at mike.battenfield@thehartford.com.

Industry Links

Florida Surety Association
www.floridasurety.com

Surety Information Office
www.sio.org

Surety Association of America
www.surety.org

National Association of Surety Bond Producers
www.nasbp.org