

THE CHAIRMAN'S CORNER



A monthly column to inform ABC members about national and local issues impacting Maine's construction industry.

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ABC's 2010 Chairman - Doug Newman of Newman Concrete Services in Richmond.

went looking for crocodile food.

ABC recognized several years ago that issues surrounding independent contractors and misclassified employees were heating up at the Legislature. In response, we formed our Independent Contractor Task Force. The board of directors asked the task force to take on this issue with two fundamental goals: Ensure that rights and responsibilities of all parties are appropriate and clear, and protect an individual's right to go into business for him or herself.

When we arrived at the Legislature, we came face to face with organized labor and their allies on the Labor Committee who believed there was widespread abuse by unscrupulous employers who coerced their workers to sign on as independent contractors or 'subs' to avoid paying payroll taxes and insurance. ABC believed the problem had more to do with disjointed and outdated regulations than it did widespread abuse. We believed that, to the extent certain trades employed workers who were misclassified, the problem resulted primarily from workers who were traditionally treated as subs and wanted to keep it that way.

After a series of skirmishes where we successfully fought off attempts by organized labor to impose onerous new regulations on our entire industry, our opponents realized they were not going to win as easily as they had hoped. As the dust settled, both sides realized there was some common ground and others joined with ABC to address the issue in a balanced manner.

The result was last year's LD 1456, which created a new definition for a construction subcontractor. It was based on a 12-part test that did a pretty good job of separating a truly independent contractor from an individual who was really an employee regardless of how they were paid. While differences remained, there was broad agreement among the various groups that this was a step in the right direction.

As the bill moved forward however, certain parties wanted to take the bill in a new direction and some of our allies, fearing that we could not win the debate, switched sides. They joined organized labor in supporting a muddled form of mandatory workers comp whereby any independent contractor you hire

Churchill said, "An appeaser is someone who feeds the crocodile hoping it will eat him last." ABC is more likely to take our chances wrestling the crocodile than feeding him. This has never been truer than during our long battle to define the role of independent contractors in our industry and eliminate the misclassification of employees. We have achieved significant progress and remained true to our free enterprise principles even when our traditional allies

would be covered by your workers comp policy if they didn't have one of their own. Since few if any sole proprietors can afford workers comp, it exposed our members to significant new risk without doing much to solve the original problem.

ABC literally stood alone against a coalition made up of other construction associations, the unions, the workers comp board, MEMIC and others in opposing a policy we believed few understood. Despite the odds, we carried the day and the bill we supported received unanimous support from the committee and eventually passed the full Legislature.

Months later as the bill was implemented a new challenge appeared. As the workers comp board revised the system whereby an independent contractor applies for a predetermination of his or her status, there was yet another effort to undermine the bill's intent. A carefully selected group of stakeholders intentionally made the predetermination

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Winston Churchill

application so onerous as to be unworkable – requiring piles of unnecessary and duplicative paperwork including copies of past tax returns, client lists and copies of contracts to be attached to the application. The new process set off a firestorm among legitimate

independent contractors who feared it would make it impossible for them to work.

ABC again stepped into the fray. We created our own form and a more streamlined process for predetermination, both of which were eventually accepted by the Labor Committee. We built a consensus for special legislation making the predetermination good for a year and portable for every hiring agent. Believing that both sides of a transaction between a hiring agent and an independent contractor should understand their rights and responsibilities, we added specific language to the form to ensure they were informed.

Despite broad consensus, the legislation to implement our program is tied up in financial wrangling over unrelated funding for the Workers Compensation Board. We are hopeful that this will not stand in the way of hard fought reforms and will continue to push for passage.

Despite our significant success to date, ABC will not rest on our laurels. We believe more must be done to educate companies and individuals of their rights, risks and responsibilities. We will also work for improved enforcement against those who subvert the system for competitive gain and deny their workers the protections they are entitled to under the law.

As we move forward, you can be certain of one thing - ABC's efforts will always be grounded in our free enterprise principles. When you aren't guided by your principles, it is too easy to get off the path and that's where those big old crocodiles live.

**Doug Newman, Chairman - ABC Board of Directors
Newman Concrete Services, Inc.**