

HOUSE COMMERCE COMMITTEE  
PUBLIC HEARING  
THE CONTRACTOR AND SUBCONTRACTOR PAYMENT ACT

Public Hearing held at Community College of Philadelphia, Northeast Regional Center, 12901 Townsend Road, Philadelphia, Pennsylvania, on Wednesday, March 1, 2017, commencing at 10:06 a.m., before Suzanne Walinsky, a Court Reporter and Notary Public, pursuant to notice.

1 APPEARANCES:

2 Brian L. Ellis, Chairman

3 Honorable W. Curtis Thomas, Chairman

4 Representative Margo L. Davidson

5 Representative Christopher M. Rabb

6 Representative Michael J. Driscoll

7 Beth Horne-Beachy, Executive Director

8 Representative Martina A. White

9 Representative Christopher B. Quinn

10 Representative Michael N. Corr

11 Representative Tommy Sankey

12 Representative Doyle Heffley

13 Representative Jonathan Fritz

14 Representative Frank Burns

15 Representative Marc J. Gergely

16

TESTIMONY INDEX

17

MR. JAMES GAFFNEY 7

18

MR. JEFF SCARPELLO 18

19

MS. KATE McCASLIN 48

20

MR. JIM STEPHENS 52

21

MS. TAMMI SCHAIBLE 57

22

MR. HANK BUTLER 65

23

24

25

1                   CHAIRMAN ELLIS: Good morning. I want to  
2 thank all the members and folks in the audience today for  
3 coming.

4                   And especially thank Martina White, the  
5 representative from this area inviting us down to have  
6 this hearing on a very important issue in her district.

7                   I am State Representative Brian Ellis. I'm  
8 the chairman of the Commerce Committee. Representative  
9 Curtis Thomas is my co-chair on the Democratic side, and  
10 he just informed us he's running a little late because of  
11 traffic, but he should be here any minute.

12                  And I'm from completely on the other side  
13 of the state, Butler County. But my wife was from  
14 Bensalem; she went to Bensalem High School. And so this  
15 is our old stomping grounds from back in the day whenever  
16 we were dating.

17                  If we could, starting from my right,  
18 Representative Driscoll, and everybody introduce  
19 themselves for the record.

20                  REPRESENTATIVE DRISCOLL: Mike Driscoll,  
21 representing the 173rd, right down the road here in  
22 Philadelphia.

23                  MS. HORNE-BEACHY: Beth Horne-Beachy,  
24 executive director, Democrats.

25                  CHAIRMAN ELLIS: Pass the mike.

1 REPRESENTATIVE WHITE: Good morning,  
2 everyone. I'm State Representative Martina White. I  
3 represent the 170th Legislative District, which you are  
4 currently sitting in. So thank you all for being here.

5 REPRESENTATIVE QUINN: Good morning. I'm  
6 Chris Quinn, 168th, Delaware County.

7 REPRESENTATIVE CORR: I'm Michael Corr. I  
8 represent the 150th Legislative District located in  
9 Montgomery County.

10 REPRESENTATIVE SANKEY: Thomas Sankey, 73rd  
11 District, Clearfield and Cambria Counties.

12 REPRESENTATIVE HEFFLEY: Doyle Heffley,  
13 122nd District, Carbon County.

14 REPRESENTATIVE FRITZ: Good morning,  
15 friends. Jonathan Fritz, 111th District, Wayne and  
16 Susquehanna Counties.

17 CHAIRMAN ELLIS: Again, thank you all for  
18 coming.

19 We're here today to talk about the  
20 Contractor Subcontractor Prompt Payment. There is an  
21 act, this Contractor Subcontractor Prompt Payment Act,  
22 which gets somewhat overlooked, and a lot of times we  
23 rely on the mechanic lien legislation to handle some of  
24 the issues that are facing our contractors and  
25 subcontractors.

1           But this is also very important to what we  
2 hope to accomplish. There is not a -- so we're very  
3 clear on this -- there's not an us versus them on this  
4 issue.

5           This isn't a Republican/Democratic issue.  
6 This isn't a contractor/subcontractor issue. It's not a  
7 union/anti-union issue.

8           This is an issue that is basically about  
9 fairness, making sure that people get paid for the work  
10 that they do.

11           And what we hope to accomplish through this  
12 hearing and through the deliberations of the Committee  
13 over the next few months is a consensus.

14           We need Republicans and Democrats alike to  
15 come to a consensus on how we can clear this issue up and  
16 move Pennsylvania forward, keep people working, keep  
17 people getting paid.

18           There is a draft legislation, it hasn't  
19 officially been introduced, but it's very similar to a  
20 legislation from last year.

21           Representative Dave Maloney, who couldn't  
22 join us today, is going to introduce that legislation in  
23 the near future. In the packets that we provided, there  
24 were copies of the draft legislation.

25           What this legislation does, it provides --

1 the provisions of the act cannot be waived in a contract  
2 to make sure that all those involved in a construction  
3 project from the owners, to the GCs, to the subs are not  
4 waiving the law.

5 The draft also requires written explanation  
6 and a good faith reason be provided when payment is  
7 withheld for deficiency.

8 And, finally, it will allow contractor,  
9 subcontractors to propose a maintenance bond to  
10 facilitate the release of retainage. Did I say that  
11 right? Is it retainage or is it retainage?

12 AUDIENCE MEMBER: Retainage.

13 CHAIRMAN ELLIS: Retainage. Okay. I just  
14 want to make sure.

15 It's very similar, like I said, to House  
16 Bill last year 726. And then also this year,  
17 Representative Jamie Santora from Delaware County, who is  
18 not here today, is introducing language that would allow  
19 for a work stoppage if payment wasn't made.

20 What we think we're going to be able to  
21 accomplish over the next few months is consensus amongst  
22 the Committee of merging these two concepts together and  
23 moving Pennsylvania forward.

24 Specifically, the contractor and the  
25 subcontractor will be given rules to live by. And that's

1 all we're going to ask people to do is live by the rules,  
2 make sure that we are operating in Pennsylvania in a fair  
3 manner, and people are getting paid when they deserve to  
4 be paid.

5 It is hoped the Committee -- we come to  
6 consensus with these two pieces of legislation.

7 We have several testifiers here today.  
8 Thank you very much for coming.

9 We are joined by Representative Frank  
10 Burns, Cambria County; is that correct?

11 REPRESENTATIVE BURNS: Correct.

12 CHAIRMAN ELLIS: Correct. And at this  
13 point, I'd like to call up the first panel.

14 And for those of you who know you're on the  
15 panel, it's James Gaffney, Jeff Scarpello. Yeah, those  
16 two.

17 And, you guys, I assume you flipped a coin  
18 somewhere to see who goes first.

19 MR. GAFFNEY: Yes.

20 CHAIRMAN ELLIS: Thank you very much for  
21 being here. Feel free to start.

22 MR. GAFFNEY: Thanks for hearing me.

23 Good morning, Chairman Ellis, Minority  
24 Chairman Curtis, and the members of the Committee.

25 Thank you for the opportunity to testify

1 before you this morning regarding the February 17, 1994  
2 Contractor and Subcontractor Payment Act, CASPA, as it  
3 relates to the subcontractors within the construction  
4 industry.

5 More importantly, it is my opinion that  
6 this hearing is critical for the proper review of the  
7 prompt pay aspects related to CASPA, and I strongly  
8 request your support as Representatives Santora and  
9 Driscoll recently introduced the prompt pay bill.

10 I'm here today as an owner and operator of  
11 Goshen Mechanical, located in West Chester, Pennsylvania,  
12 as a subcontractor, and as a member of the Mechanical &  
13 Service Contractors of Eastern Pennsylvania.

14 In all of these capacities, I witness  
15 firsthand the impact our poorly-crafted prompt pay law  
16 has on subcontractors within the Pennsylvania  
17 construction industry.

18 In the last legislative session on  
19 September 20, 2016, Representatives Santora and Driscoll  
20 took bold legislative action in introducing House Bill  
21 2354, which would amend CASPA by requiring timely  
22 payments to contractors and subcontractors.

23 More specifically, it includes suspension  
24 of performance language which states that if payment is  
25 not received by a contractor in accordance with the



1 owners's payment obligation, then the contractor may  
2 suspend performance of work without penalty until payment  
3 is received.

4 Any term in the construction contract that  
5 is contrary to this subsection shall be unenforceable as  
6 a matter of public policy.

7 I'm delighted that they reintroduced  
8 similar legislation this legislative session in advance  
9 of this hearing; however, I would be disappointed yet  
10 again if this Committee and the PA General Assembly does  
11 not vote in favor of this important legislation.

12 The following outlines what this prompt  
13 payment legislation would attempt to do on my behalf  
14 along with our entire construction community.

15 First, the stop work provision applies to  
16 both prime contractors, GCs, and subcontractors. The  
17 provision would be added to Section 5 of CASPA, which  
18 delineates the payment obligation of owners with respect  
19 to prime contractors, and to Section 7, which addresses  
20 the payment obligation of prime contractors and  
21 subcontractors.

22 The stop work provision in Section 5 and 7,  
23 respectfully, mirror each other. The Section 5 language  
24 would allow prime contractors to suspend performance in  
25 the event of non-payment by the owner.

1                   And Section 7 language would allow  
2 subcontractors to stop work if payment is not provided by  
3 the GCs or the prime contractors.

4                   Point 2. During construction projects in  
5 Pennsylvania, subcontractors generally must wait at least  
6 two months before receiving any payment for their labor  
7 and materials.

8                   When considering the proposed stop work  
9 provision, one must remember the logistics of the how and  
10 when payments are remitted to contractors and  
11 subcontractors.

12                  The payment due dates are nearly always  
13 dictated by the pertinent construction contract whose  
14 terms are predictable and often the same.

15                  For example, under the forms promulgated by  
16 the American Institute of Architects, the AIA, which are  
17 commonly used, each payment application submitted by a  
18 contractor encompasses one month or a 30-day calendar  
19 period.

20                  The deadline for the owner to remit  
21 payments is 20 days at the end of each billing period.

22                  Regarding payments to subcontractors, the  
23 deadline is usually 14 days after the contractor, the  
24 prime contractor, has received payment from the owner.

25                  Again, this is a typical time frame for

1 payments from contractors and subcontractors in  
2 Pennsylvania.

3 Stop work provisions are not triggered  
4 until months after the performance of work.

5 Under the proposed stop work language, the  
6 GC would not be able to stop work until the following  
7 contingencies have occurred: The GC has performed in  
8 accordance with the construction contract and billed the  
9 work monthly billing; the GC has waited another 20 days  
10 after the end of the billing period until payment becomes  
11 due from the owner; and after the payment deadline has  
12 passed, that the GC may then send a written notice which  
13 itself triggers an additional seven-day waiting period.

14 In sum, the GC must have put in place work  
15 for at least 57 days before the stop work protection  
16 could be triggered.

17 Subcontractors, for their part, must wait  
18 even longer because their payments do not become due and  
19 owing until usually two weeks after the payment has been  
20 provided from the owner to the GC.

21 That means subcontractors would be  
22 obligated to perform work without payment for at least 71  
23 days before stop payment could become an option; 30 days  
24 for the billing period, 20 days for the payment to the  
25 GC, 14 days more for the payment to the sub, plus a

1 seven-day notice for stop of work.

2 Subcontractors shoulder nearly all credit  
3 burdens on construction projects and a proposed stop work  
4 relief is a reasonable option of the last resort.

5 The modest proposed changes help  
6 contractors and subcontractors who are regularly extended  
7 significant credit.

8 The stop work provision constitutes the  
9 last-resort type of option meant to keep contractors from  
10 being forced to choose between burning their remaining  
11 limited resources without any promise of payment or,  
12 alternatively, breaking their contract and risking  
13 damages as well as the loss of entitlement to future  
14 payment for work already performed.

15 The stop work protection would not override  
16 the ability of an owner or GC to withhold payment for  
17 good faith reasons, i.e., work that's in dispute.

18 In the construction industry,  
19 subcontractors possess every incentive to continue and  
20 perform work and cultivate and maintain positive  
21 relationships.

22 The notion that subcontractors would  
23 somehow take advantage of the seven-day notice period to  
24 force the hand of an owner or GC is simply wrong because  
25 the stop work protection is only available for

1 contractors who have performed in accordance with the  
2 contract documents and are entitled to the payments.

3 Stop work provisions already protect  
4 contractors in a number of states including New Jersey,  
5 New York, Illinois, Texas, and California.

6 Contractors and subcontractors bear  
7 significant financial risk on construction projects, so  
8 it is not surprising that a number of states, including  
9 two that share a border with Pennsylvania, have adopted  
10 stop work protections, namely, New Jersey, a seven-day  
11 written notice before suspension of work; Texas, ten-day  
12 written notice prior to suspension of work, which is  
13 served upon both the owner and the owner's lender;  
14 Illinois, seven-day written notice prior to any  
15 suspension of work; Oklahoma, ten-day written notice  
16 which applies to public and private construction  
17 projects; Arizona, seven-day written notice prior to  
18 suspension or potentially less time if the contract  
19 allows; New York, ten-day written notice of intent to  
20 stop work; California, ten-day's written notice but only  
21 applicable to prime contractors; Kansas, seven-day grace  
22 period followed by a seven-day written notice period  
23 prior to work stoppage.

24 Stop work helps small business and saves  
25 cost on all tiers on construction projects.

1                   The proposed seven-day written notice  
2 requirement prior to suspension of work has precedent in  
3 the above-mentioned states, but a longer waiting period  
4 would create an undue burden.

5                   A longer waiting period would make stop  
6 work an impractical remedy because those subcontractors  
7 who truly need the protection to maintain financial  
8 sustainability would be unable to continue working on  
9 projects for several months without getting paid.

10                  A written notice period of longer than  
11 seven or ten days would lead to bankruptcies, increase  
12 cost for replacement contractors, and delays on projects  
13 that already face significant problems.

14                  Stop work saves cost and makes good  
15 economic sense for all actors on construction projects by  
16 providing necessary relief for small business in  
17 difficult times.

18                  This suspension of performance language  
19 will eliminate contractor and subcontractor reliance on  
20 the mechanic's lien law to resolve payment disputes.

21                  Without question, I firmly believe this  
22 language will resolve the systematic outstanding payment  
23 issue that I and other contractors like myself encounter  
24 on a daily basis.

25                  Additionally, on October 28, 2014, the

1     Finishing Trades Institute of the Mid-Atlantic Region,  
2     FTI, received a letter from then majority leader Mike  
3     Turzai after his visit to the apprenticeship training  
4     center stating his appreciation for being enlightened  
5     with respects to our prompt payment legislation  
6     initiative and his willingness to give it significant  
7     consideration in this legislative session.

8                 That letter is testament to a commitment  
9     that he made to the review and consideration of this  
10    important legislative issue. I'd like to submit that  
11    letter for today's hearing.

12                On a personal note: Small-business guy,  
13    started my business 30 years ago with my dad in our  
14    basement in Delaware County.

15                We worked by day, we bid by night. Today,  
16    in the last 30 years, we've done over three hundred  
17    million dollars worth of work.

18                This issue is so key for me for many  
19    reasons. A lot of the work that we do is done in a  
20    three- or four-month window.

21                The contractors that we work for, 90  
22    percent of them pay on time. I have no problem with  
23    them. When they pay me, I can pay my subs. When they  
24    don't pay me, I can't pay my subs.

25                Realize, I pay my workers every week. The

1 average job that we have is about a million dollars.  
2 That's about \$250,000 in labor that I'm paying out over  
3 three or four months.

4 It gets paid weekly. My benefits get paid  
5 monthly. I have to pay the equipment vendors otherwise  
6 they go to Dun & Bradstreet and ding me. Then the  
7 project, when I go to them for a price, I'm in a  
8 different tier as far as pricing goes.

9 With today's economy, with the work being  
10 the way it is, when I'm not paying my subs because I'm  
11 not being paid, the subs don't bid to me.

12 This bill is going to help me in one  
13 sentence: It's going to give me leverage. Quite  
14 honestly, it's a leverage I think I'll never have to use.

15 Like I said, most of the contractors that  
16 we work for pay me. I'll tell you a quick story. We  
17 were working in a hospital, I wasn't getting paid. I was  
18 going to go bankrupt.

19 I was in the hole a million and a half  
20 dollars. I actually went to a board meeting of doctors  
21 and clinical people. As a mechanical guy, they want to  
22 know who I am at the meeting.

23 I stand up and say, I don't know if I can  
24 feed my family tomorrow. I have all these workers that  
25 are great people in the community: Boy Scout leaders,



1 Girl Scout leaders, church leaders. I don't know if I  
2 have to lay them off tomorrow because I haven't been  
3 paid.

4 The next day, I got a call from that same  
5 doctor on that board that said, The GC that you're  
6 working for has been paid every month.

7 This is the protection I need in this bill.  
8 I'm not out to hawk anybody. I'm not out to chase  
9 somebody who hasn't been paid. That's -- that's the  
10 business world we're in today.

11 But for the person that has been paid and  
12 isn't paying me, I don't care if it's five days, ten  
13 days, 60 days, that's too long for somebody to be sitting  
14 on my money in the bank when I could be using it to grow  
15 my business.

16 We're taking work for 10 percent. If I  
17 have a line of credit where I'm borrowing off of that  
18 line of credit for 5 percent, what's left?

19 And, again, in our market, for me  
20 personally, a lot of our projects are done short term, 30  
21 days to three months to four months, and this gives me  
22 the protection to at least talk to somebody before I get  
23 off the job because once I do it's over.

24 Thank you for your time. In conclusion,  
25 the suspension of performance language will ultimately

1 enhance CASPA to the betterment of Pennsylvania's  
2 construction industry.

3 I look forward to the continued dialogue on  
4 this important legislative issue. Please call upon me to  
5 be a resource to you and your staff.

6 Again, I want to thank the Chairman and the  
7 members of the Committee for the opportunity to testify  
8 on this very important issue in the Pennsylvania  
9 construction industry.

10 Thank you.

11 CHAIRMAN ELLIS: Thank you for your  
12 testimony. I think what we'll do is we'll let you go  
13 ahead and testify and then we'll take questions at that  
14 point.

15 MR. SCARPELLO: Thank you.

16 Good morning, Chairman Ellis, Minority  
17 Chairman Thomas, members of the Committee.

18 My name is Jeff Scarpello, and I am the  
19 executive director of NECA, Penn-Del-Jersey Chapter,  
20 which is the National Electrical Contractors Association,  
21 which represents about 150 members, electrical  
22 contractors, who do work in the Commonwealth of  
23 Pennsylvania.

24 It's an honor to be here before you today.  
25 And I too am here to support the bill that's been

1 introduced by Representative Driscoll and Santora. And I  
2 certainly echo and support the efforts made as stated by  
3 Mr. Gaffney.

4 Our contractors represent small businesses.  
5 They are people typically like Mr. Gaffney who start out  
6 in the trade, work their way up, become a foreman,  
7 superintendent, project manager, vice president, and then  
8 some day own a company.

9 They are at risk in the construction system  
10 that we have. And the number one issue that I've seen in  
11 16 years as the executive director of NECA and my 12  
12 years as a labor attorney at Fox Rothschild before that,  
13 is failure of our contractors to get paid, failure to get  
14 paid timely. And this bill addresses this issue.

15 And I don't want to repeat all the terrific  
16 points that Mr. Gaffney has made. I know there's been  
17 written testimony that's been submitted.

18 But I do want to point out that, you know,  
19 our contractors do good quality work. They provide the  
20 materials and equipment for the job. They have to pay  
21 their laborers and they have to do it monthly.

22 You know, our contractors -- our contracts  
23 with our labor partners, and there's 12 locals who we do  
24 work for in this State, require us to make payments,  
25 whether it's ten days after the end of the month, 15

1 days, or 30 days.

2 Certainly, we -- our contractors don't have  
3 the ability to wait 60 or 90 days to pay their benefits.

4 And it really is a risk to putting our  
5 contractors out of business. And over the years, I've  
6 seen a lot of contractors who've gone out of business,  
7 frankly, because they haven't been paid by the GC or the  
8 owner.

9 So at the risk of not repeating the great  
10 comments that were made by Mr. Gaffney, I really just  
11 want to say that I agree with the Chairman that it is an  
12 issue of fairness.

13 And to be fair, this is a weapon of last  
14 resort that can be used that is the suspension of work by  
15 our contractors.

16 If you look at the legal precedence, it's  
17 rarely been used in the states where it has been put in  
18 place, but it certainly gives an opportunity for our  
19 contractors to get paid fairly for the great work that  
20 they do.

21 So with that, I will conclude my testimony.  
22 And I appreciate the time to speak to you today.

23 CHAIRMAN ELLIS: And thank you both so much  
24 for your testimony today.

25 And at this point, we will open up to

1 questions. But I would like to acknowledge that my  
2 co-chairman, Representative Thomas, is here.

3 Do you have any initial comments?

4 CHAIRMAN THOMAS: Just to say good morning.  
5 Let me thank you for making this happen early in this  
6 term.

7 Let me thank you and thank my colleague  
8 Driscoll and Rep Tobash and a number of people who have  
9 been trying to bring this issue from darkness into light.

10 This is one of those issues that could be a  
11 win -- a win for everybody. And so I am glad that we're  
12 starting this conversation.

13 And I look for your support and leadership  
14 in bringing and making this happen this term as early as  
15 possible.

16 CHAIRMAN ELLIS: Thank you.

17 I'll just start off real quick generically,  
18 you had mentioned, you know, this is the last resort kind  
19 of thing. And you've been in business for how many  
20 years?

21 MR. GAFFNEY: 30 years.

22 CHAIRMAN ELLIS: Thirty years, which is a  
23 testament to you and your family and certainly the  
24 workers that you employ; obviously, you're doing good  
25 quality work and impressive numbers.

1                   What I was curious was, is there a trend on  
2 when this becomes more of an issue? Like in a down  
3 economy, is it even tougher? Or is just consistent  
4 through good times, bad times, you're facing kind of the  
5 same issues no matter what?

6                   MR. GAFFNEY: It's pretty much the same  
7 issue whether it's a good time or a bad time.

8                   In the down times, it's harder because it's  
9 harder for me to get a decent line of credit to cover the  
10 expenses that I have to get myself through the projects.

11                   But in our situation, we do a lot of work  
12 directly for owners. And what happens when projects come  
13 up and it's being awarded to the contractor, obviously,  
14 the owner will call us and say, We'd like for you to be  
15 part of the team of construction that's going to go on in  
16 our building because we know of you, we know of your  
17 workers, we want you to do the mechanical work. That's  
18 what we are, we're mechanical contractors.

19                   Again, the problem that I have is it's not  
20 the contractor that's not paid. It's the contractor that  
21 is paid.

22                   And in the areas that we really struggle,  
23 we know it's the -- in our case, the GC that has been  
24 paid already from the owner in a timely fashion that's  
25 just not paying us.

1                   What do we do? There's not -- quite  
2 honestly, I've been on projects where people have walked  
3 off the job.

4                   What they do, they say, Well, they walked  
5 off the project. They bring somebody else in to complete  
6 the work. And if you were owed \$500,000, they say, Well,  
7 it costs us \$600,000 to complete the project, we're  
8 paying you 350, 400,000.

9                   I see this as just realigning the people  
10 that do business in what I would call an unethical way.

11                   Most of the people that are in business  
12 that we work for aren't that way. But we are forced into  
13 some contracts because of our relationships with owners  
14 that we work for to work with certain people that I know  
15 that once this law is passed, I'll never have to go to  
16 them for a work stop issue, because they know that I have  
17 that in my back pocket.

18                   They know that they no longer can do  
19 business the way that they've been doing it and they'll  
20 be forced to do it the right way and the fair way.

21                   If he's not -- if a contractor's not paid,  
22 I understand that. Believe me, we know the problems with  
23 the projects.

24                   We're at job meetings every week. We know  
25 what the issues are with the project from the beginning

1 to the end.

2 That's not what this bill is about. This  
3 bill is primarily about the person that has been paid and  
4 is just not paying the subs below.

5 CHAIRMAN ELLIS: At this point, I'll open  
6 up to members with questions.

7 Anyone down that way?

8 Representative Heffley?

9 REPRESENTATIVE HEFFLEY: Thank you,  
10 Mr. Chairman.

11 Just, I guess, an inquiry. The  
12 contractors, the GCs, that are withholding this payment,  
13 what is their benefit? Obviously, their benefit is just  
14 having that cash in their account a little bit longer.

15 Is it just that they want to hold on to  
16 that money for longer or is it because of their own  
17 financial issues or is it some way of retribution on the  
18 subcontractor? I know this -- it's speculation. I'm  
19 just...

20 MR. GAFFNEY: It purely is speculation.  
21 But I will say that especially in the down times that  
22 we've all gone through over the last five, six years, a  
23 lot of people are bidding work for cheap and are trying  
24 to find ways to make up their bottom line.

25 And I feel that that may be a way to make



1 up the bottom line. A lot of companies that we're out  
2 there competing against, they just need the work to keep  
3 the cash flow going because cash flow in small business  
4 is huge; it's a necessity.

5 And I just think that on some of the  
6 contractors, they're getting paid and they figure, hey,  
7 if I can hold on to the money for 60 days -- and they're  
8 not -- we're not talking small amounts -- if I'm on a  
9 project with five other primes and countless subs  
10 underneath the GC realm, you could be talking 2, 3  
11 million dollars in a billing cycle.

12 So if someone's sitting on 2 million, 4  
13 million, \$6 million over a 60-day period, it goes a long  
14 way. And, adversely, it goes a long way to hurting the  
15 people below them.

16 CHAIRMAN ELLIS: Represent Sankey?

17 REPRESENTATIVE SANKEY: Thanks for the  
18 testimony, guys.

19 My dad's a contractor, too. I mean,  
20 they're not dealing with as large amounts of money, but I  
21 completely understand that, you know, we're making  
22 legislation for the bad players, for trying to right the  
23 wrong for a small minority of people that are bad  
24 players.

25 And the simple question -- and I understand

1 you've been in business for 30 years and, you know, it  
2 takes one job could turn you belly up, you know, 30 years  
3 for nothing, your lines of credit are maxed out.

4 And as this is drafted now, and as we're  
5 all learning, simple question: Does this fix your issue?

6 MR. GAFFNEY: Yes.

7 REPRESENTATIVE SANKEY: Okay. That's what  
8 I want to know. Thank you.

9 CHAIRMAN ELLIS: Representative Corr?

10 REPRESENTATIVE CORR: Thank you.

11 Could you describe -- I think you gave a  
12 little bit of this in response to the question that the  
13 Chairman asked, but the current state of -- the current  
14 state of remedy that you have in contrast with what the  
15 bill offers.

16 MR. GAFFNEY: I really don't have a remedy.  
17 What I do -- and just because I don't know what else to  
18 do -- I try to get ahold of the owner.

19 I try to circumvent the person that I'm  
20 having an issue with and plead my case with an owner or a  
21 lender, the entity that the work's being done for, and  
22 just say to them, Have you been paid? And try to work it  
23 that way.

24 But, unfortunately, my remedy right now is  
25 to borrow more to pay off what I can until I get paid.

1                   REPRESENTATIVE CORR: And the work  
2                   stoppage, I mean, you touched on that a little bit. If  
3                   you weren't getting paid and you decide you had no other  
4                   choice but to stop work, I think you started to touch on  
5                   that in that answer before, but what would be the outcome  
6                   of that currently, in the current state?

7                   MR. GAFFNEY: Well, right now, on most  
8                   projects that we have, like I said, we have job meetings  
9                   once a week, that's also with the owner, the bank,  
10                  whoever's involved on the lending side, the entity that  
11                  the final product's being done for.

12                  They have a pretty good -- they have the  
13                  finger on the pulse of how the project's going, who's  
14                  doing what, when they're doing it.

15                  If it came to them that there was a  
16                  seven-day notice, if I put a seven-day notice and said,  
17                  Hey, this could happen and the contractor's being paid, I  
18                  think the remedy would probably be by the end of the job  
19                  meeting.

20                  I really do. I think that -- I think that  
21                  90 percent of the time, it's just misinformation and  
22                  people not knowing.

23                  When I go to an entity and say, Hey, I  
24                  haven't been paid. They say, Well -- first, like  
25                  everyone, let me look into it. You know, who knows if

1 maybe it was a problem on our -- our point, maybe  
2 something went wrong, maybe somebody's on vacation, maybe  
3 we missed a cycle.

4 But when they find out there's been a  
5 payment, I get a check within two or three days.

6 And I have a feeling that if I'm in a  
7 situation when I'm at a job meeting and it's been  
8 discussed, and obviously, it wouldn't just be myself, it  
9 would be other subs that were on the project, and they  
10 start to talk about the seven-day notice and the  
11 contractor's being paid, that conversation would probably  
12 be ugly, but it would probably be a quick and short  
13 conversation and the situation I feel would be remedied.

14 Again, if they're not paid, I understand.  
15 You know, that's something we have to work through and  
16 find out why.

17 But if they're paid and that's really what  
18 I'm looking at here, it gets remedied pretty quickly.

19 REPRESENTATIVE SANKEY: Thank you,  
20 Mr. Chairman.

21 CHAIRMAN ELLIS: Representative Driscoll?

22 REPRESENTATIVE DRISCOLL: Thank you,  
23 Mr. Chairman.

24 And thank you for your testimony. I know  
25 how important this is to your businesses and we

1 appreciate you being here.

2           Could you comment on the interest payments.  
3 So who absorbs that? Is that passed on if it's a delayed  
4 payment? Is that in the contract? Does that get eaten?  
5 I'm just curious to see how...

6           MR. GAFFNEY: I lose money.

7           REPRESENTATIVE DRISCOLL: So you eat that?

8           MR. GAFFNEY: I eat that. And, again, when  
9 times were really tough, I'm going to say five, six years  
10 ago, we were taking work at 6 percent just to keep our --  
11 our people going and cash flow.

12           For a small business like myself, cash flow  
13 is everything. If I don't have cash flow, I'm in  
14 trouble. Quite honestly, I'm mortgaging my home.

15           I got to do what I got to do to keep the  
16 cash in the business because things are coming and going  
17 so quickly.

18           We just do -- and what I would do,  
19 Representative Driscoll, I would try to stay away from  
20 that person in the future.

21           But my line of credit during those hard  
22 times was 7 percent. And when I'm tapping on that line  
23 of credit because I'm not being paid, I'm losing 7  
24 percent every month.

25           It doesn't take a rocket scientist when I'm

1 on a project for three months to realize what I came out  
2 at the end of the line.

3 The problem that I have is, again, we have  
4 relationships with a lot of contractors and the owners.

5 You know, we have a service department. We  
6 have 270 service customers that we take care of. A lot  
7 of times, because of our relationships, they like us to  
8 do the mechanical package.

9 So a lot of times I'm brought into projects  
10 with people that I normally don't work with.

11 And I think that hurts us too, because if I  
12 have a relationship with the person that I'm working for,  
13 I've worked for them in the past, I can at least sit down  
14 and talk to them and explain my plight.

15 But for someone that I'm kind of brought in  
16 through the owner to work with because they want the  
17 best -- they want not only the lowest, but responsible  
18 and they feel they can get that out of me, I'm forced to  
19 work with people. And I think a lot of the times, that's  
20 detrimental to us.

21 But that is a loss to me. When we get into  
22 a project like the project I was talking about earlier  
23 where I had to go to the board, when all was said and  
24 done, I lost 5 percent.

25 And I got to be honest with you, I was

1     probably a week and a half away from losing my business,  
2     you know, the project was bonded, my house was on the --  
3     on the line for my bond.

4                 I'm a small-town guy, born and raised in  
5     Delaware County. You know, I now live in Chester County.  
6     I have four daughters that I educated. I'm now paying  
7     for weddings.

8                 I'm not some wealthy white-shirt guy out  
9     there. I mean, I am the American story. You know, we  
10    just decided one day to take a chance. And by the grace  
11    of God, you know, the business has expanded, we've been  
12    able to go. But it's a fragile business.

13                Anyone who thinks that small businesses  
14    like ours are out there making a ton of money and we have  
15    a lot of cash and we can absorb a lot, please, grossly  
16    mistaken.

17                You can come in and look at my books any  
18    day and I can explain how it goes. But over 30 years,  
19    we've produced great workers and subs.

20                I mean, when we're busy, I could have 50 to  
21    a hundred people working for us that we're paying their  
22    benefits for, great benefits, if I can -- if I can say  
23    so.

24                I -- they think they own the business.  
25    We're a family business. Call my office, you'll talk to

1 my mother. If you don't get my mother, you'll get my  
2 daughter.

3 If you don't get my daughter, you'll get my  
4 sister. You want to talk to an estimator, it's my  
5 brother.

6 If you want to talk to the guy who smacked  
7 us all upside the head and made sure the business worked  
8 well, it's my 84-year-old father.

9 It's the true definition of what great  
10 things can come out of small business in Pennsylvania.

11 Just give us -- give us the opportunity to  
12 keep -- probably a bad word -- the deadbeats out of the  
13 market and let us be able to grow because there is no  
14 growth when we're in a situation like that. There's no  
15 growth.

16 CHAIRMAN ELLIS: Representative Davidson?

17 REPRESENTATIVE DAVIDSON: Thank you,  
18 gentlemen. Thank you for your testimony today. I  
19 understand you hail from Delaware County, my county, my  
20 home county.

21 Thank you to the two Chairmen for holding  
22 this Committee hearing today.

23 I really have more of a comment than a  
24 question. As an advocate for small businesses, running a  
25 non-profit and mentoring organizations for many years of



1 all the way through the '90s to the first decade of 2000  
2 and also as a small business consultant, I know that this  
3 was the number one problem for small businesses trying to  
4 do work with government, with general contractors.

5 Other than financing, this was it. You  
6 know, and if you're a disadvantaged business,  
7 particularly for women-owned business, businesses of  
8 color, veterans, you know, you are financing -- you have  
9 little access to financing so you're financing your  
10 business through the revenues from you last project, you  
11 know, financing the next project. And if you're not  
12 getting paid on one project, I mean, it's just a slippery  
13 slope.

14 And so have you seen this in the 30 years  
15 you've been in business or has it become more of a  
16 problem since you've come here today?

17 MR. GAFFNEY: I think it's become more of a  
18 problem. And the reason being is you find a lot of  
19 contractors out there today that are brokers.

20 Before, we used to deal with a contractor  
21 that had skin in the game. You know, they had their own  
22 workers on the job, they self-performed a lot of the work  
23 themselves.

24 But today you're finding more and more  
25 contractors out there that are basically brokers.

1 They're somebody that opens up an office, has a little  
2 line of credit, and they sub everything out.

3 And in that scenario, there's no skin in  
4 the game and they're basically just looking at monthly  
5 quotas, what they need to float through the business on  
6 that monthly cycle.

7 And there's more and more of them that come  
8 in as, what I would call smaller, good contractors are  
9 forced to go out.

10 They come in and they make their bottom  
11 line and they don't care how they make their bottom line.  
12 And, unfortunately, a lot of times that's not paying  
13 people for work.

14 REPRESENTATIVE DAVIDSON: I know some folks  
15 use that as their competitive advantage how long they can  
16 delay contractors.

17 And it's really unscrupulous and it's  
18 really putting a lot of our small businesses out of  
19 business.

20 So thank you so much for coming in and I  
21 definitely support the bill.

22 CHAIRMAN ELLIS: And next we'll hear from  
23 Representative Rabb, who I believe is at his first  
24 Committee hearing ever.

25 REPRESENTATIVE RABB: That's true.

1                   CHAIRMAN ELLIS: And he's going to ask a  
2 question, his first question ever asked as a  
3 representative. Congratulations on your election. But  
4 in any event, feel free to go.

5                   REPRESENTATIVE RABB: Thank you very much,  
6 Chairman, Chairman Thomas.

7                   Thank you for your testimonies.

8                   I taught at the Fox School of Business at  
9 Temple University, and so these issues are -- hit close  
10 to home for me on a number of reasons.

11                  I descend from a number of entrepreneurs on  
12 both sides of my family. And I'm basically someone who  
13 really believes in fairness.

14                  So the question I have to you is you said  
15 you've been doing this work for 30 years, 30-odd years,  
16 and you said the vast majority of GCs you work with are,  
17 you know, stellar folks.

18                  MR. GAFFNEY: Yes.

19                  REPRESENTATIVE RABB: Pay on time and such.  
20 But to use your word, which I think is fitting here,  
21 deadbeats, I want to know a little more about perhaps the  
22 motivations.

23                  And I think Representative Davidson  
24 referenced one potential motivation with regard to being  
25 able to maximize one's margin by delaying.

1 I'm not really asking you to get into the  
2 heart of another human being as to why they do things.

3 But from a business model, are there things  
4 that we need to know as state lawmakers as it relates to  
5 this deadbeat factor and how it really negatively impacts  
6 everyone, not just the contractors, the subs, but the  
7 people you employ, full-time and the folks who go on  
8 project to project.

9 I'm really curious about what are the  
10 dynamics at play with regard to that 10 percent. And is  
11 that really the percent that you put it at? Is that a  
12 fair...

13 MR. GAFFNEY: It is.

14 REPRESENTATIVE RABB: Okay.

15 MR. GAFFNEY: And anything over 10 percent,  
16 you're not being called back.

17 We also have -- not that it impacts this --  
18 but we have -- we do a lot of public works, you know, we  
19 do a lot of school work.

20 In the school market, anybody who's over 10  
21 percent, you're not even close. You're not even close.  
22 You really get on that side of the fence, is you're about  
23 5, 6 percent on bid day, you're lucky.

24 I'm sorry.

25 REPRESENTATIVE RABB: Thank you for --

1 MR. GAFFNEY: I'm sorry.

2 REPRESENTATIVE RABB: Really, I'm talking  
3 about the bad actors in your 30-year experience.

4 I'm really looking to get a better sense of  
5 what's going on there, given that you had to work with  
6 folks who you perhaps you knew of their reputation long  
7 before, and you say, Oh, gosh, I hope I don't have to  
8 work with these knuckleheads, right?

9 MR. GAFFNEY: Representative, you're right.  
10 And how I come across -- and there are people that we  
11 will not bid to.

12 We get requests every day that come into  
13 the office, we just won't because their business model  
14 and our business models don't line up. We'll leave it at  
15 that.

16 But, again, we have a lot of relationships  
17 that we have developed over the 30 years. We work with a  
18 lot developers.

19 We work with a lot of hospitals. And  
20 because we're in there doing the mechanical work, I would  
21 say under service-contract-type environments, they come  
22 to us and say, Hey, we have this project and we want you  
23 to do the work.

24 So I don't want to upset an owner, a  
25 developer, for someone that I may wind up doing a million

1 or a \$2 million a year worth of work over, by telling  
2 them, Hey, I'm not going to work for that person.

3 And it doesn't benefit me to go back and  
4 say, Hey, that's a deadbeat or that's a this and that's a  
5 that. It's a very delicate balance.

6 So I know who the contractors are today  
7 that I won't work for. But in a lot of situations, I'm  
8 kind of blended into contracts.

9 And, quite honestly, I feel a little  
10 comfortable in some of those contracts because of the  
11 relationships I have with the owner or the entities that  
12 I can go back to them and say, Hey, have they been paid  
13 or haven't they been paid?

14 But with a lot of our work being in such a  
15 short window, you know, three months, four-month window,  
16 by the time you get on the job, you're working day and  
17 night, you're working Saturdays and Sundays, trying to  
18 get this done, by the time you finish the project when  
19 you haven't been paid and you're off the project, it's  
20 too late.

21 And that contractor who's holding my money  
22 knows that. And they know I have no -- what am I going  
23 to do? Sue?

24 No disrespect to lawyers, I just don't have  
25 that money in my budget at the end of the year and I

1 don't have the time, nor when we fill out a lot of  
2 pre-qualifications for any contract that we're going on,  
3 whether it's public, private, whatever, they want to know  
4 if you've been involved in any lawsuits. And that's  
5 something that could be held against me.

6 So for what I would get out of a lawsuit  
7 compared to the damage that it could do to me on the  
8 other side, I'm just forced to wait it out.

9 REPRESENTATIVE RABB: On the public  
10 contracts if I may, I want to follow up. Is there  
11 anything that would identify what would be considered a  
12 bad actor by saying these are folks who have gotten paid  
13 timely but have not paid -- their contractors have not  
14 paid?

15 Is there anything that might be -- just  
16 like you said, you know, when you fill out these forms  
17 and they ask if you -- basically they want to know if  
18 you're litigious and if you're going to be suing all the  
19 time, is there something on the other end that says, you  
20 know, who are the folks who pay their folks on time or  
21 any kind of aggregated information to let folks know that  
22 on public contracts in particular, there is -- basically  
23 what I'm asking for is a level of transparency on both  
24 ends.

25 MR. GAFFNEY: If I could say, in the

1 situation that I talked earlier that I had to go to a  
2 board meeting, I've never had to work with that  
3 contractor again. And I'm still in the hospital doing  
4 work.

5 So in that situation, once the entity or  
6 the end user, I think, realizes some of the problems that  
7 are going on, they don't want the headache either. They  
8 just want the project done.

9 But on the other side of the fence, on the  
10 public works side, it's lowest responsible. And lowest  
11 responsible means that it's somebody who has a bid behind  
12 them and you haven't been able to throw them off a job.

13 So even in your end of the world where  
14 we're doing a lot of public works, some of the  
15 subcontractors -- and that's not impacted here -- but  
16 some of the subcontractors who work for some of the  
17 contractors in that world, oh, boy, the stories you would  
18 hear from them if they were able to testify would really  
19 make you angry.

20 REPRESENTATIVE RABB: Thank you for your  
21 testimony.

22 CHAIRMAN ELLIS: Representative Thomas?

23 CHAIRMAN THOMAS: Two things. One is a  
24 comment. You mentioned the issue of cash flow,  
25 performance and all of that.



1 But I think it's important for the record  
2 to show that over 60 percent of all jobs in Philadelphia  
3 and Commonwealth of Pennsylvania is for small businesses.

4                               Small businesses represent the anchor of  
5   business in our city, county, and across the  
6   Commonwealth.

7                   So to whatever extent we can support  
8   growth, stability, and expansion, I know that the  
9   Chairman and every member of the Committee is committed  
10 to that.

11 So I thank you for your delivery of your  
12 testimony.

13 MR. GAFFNEY: Thank you.

14 CHAIRMAN THOMAS: Let me also say thank you  
15 to the National Electrical Contractors Association, which  
16 I believe was part of Local 98's effort to respond to  
17 this tragic situation with the Jewish community. And so  
18 I want to thank you for stepping up to the plate.

19                   And I ask, you know, each of you to  
20   whatever extent we can develop a diversity component to  
21   the business that we do, Representative Davidson has  
22   spoken about women, of the disadvantaged workers, and so  
23   as long as there's an inclusiveness, then I think we can  
24   stay on this path to grow.

25 So let me thank you for your testimony.

1 And I guess from here, only thing we need to do is just  
2 make it happen. Thank you.

3 MR. GAFFNEY: Thank you.

4 CHAIRMAN ELLIS: And at this point, I  
5 believe Representative Quinn has a comment --

6 REPRESENTATIVE QUINN: Yes.

7 CHAIRMAN ELLIS: -- or question.

8 REPRESENTATIVE QUINN: Thank you,  
9 Mr. Chairman.

10 Thank you, Mr. Gaffney, for being here.  
11 You mentioned that other states already have similar laws  
12 in place. You mentioned Illinois. I think you said  
13 Texas has a law with ten days at this point.

14 Is seven days the optimal for this, what  
15 we're proposing? Would you recommend a shorter period?  
16 Longer period? What would you consider optimal?

17 MR. GAFFNEY: Seven days, I would love to  
18 see. If we could get it shorter, I'd love to have it.  
19 You know, that's being selfish.

20 I understand that this is a change, that  
21 not everyone's going to be happy with the change. And I  
22 think that the seven day is a fair number.

23 I mean, realize, we've been having this  
24 discussion for a long time. And it's always coming down  
25 to, well, how about if we extend it to 30 days, 45 days,

1 45 to 50, 50 to 60, and so forth and so on.

2 Every day that somebody's had their money  
3 and is not paying someone is one day too long.

4 The seven -- and I'll come back to the  
5 thought that once I would invoke that seven day, I think  
6 the whole game changes.

7 I think the person that has been paid calls  
8 the office and says, Hey, we got a problem. You know, A,  
9 we don't want this exposed, pay them, get them off the  
10 table.

11 And, ultimately, that's all I want. That's  
12 all I want.

13 REPRESENTATIVE QUINN: And as a follow-up  
14 to that: Why wouldn't this already be in your contract?  
15 Why wouldn't you give yourself this as part of your  
16 contract when you're entering into negotiations with that  
17 other contractor?

18 MR. GAFFNEY: Representative, you got to  
19 see the contracts that come to us. And I have to say,  
20 not only in the public sector, but there's been a  
21 mechanic's lien law that we all know about.

22 I was just awarded a contract with a school  
23 district in the State of Pennsylvania that, before they  
24 would send me my letter of intent that was approved at  
25 the board meeting, I had to sign a release of liens.

1 REPRESENTATIVE QUINN: Right.

2 MR. GAFFNEY: It's just the nature of the  
3 beast. I could try to write in whatever I want, but I've  
4 never hear -- I'll never work. I'll never work.

5 We have on -- I'm going to say all of the  
6 contracts that come in front of me, they're forcing me to  
7 sign a release of liens day one. Well, they can't, but  
8 they are.

9 And then if I come back and say, Hey, I  
10 have a problem, they'll come back to me and say, Well,  
11 you know what, Jim, we -- we're going in a different  
12 direction. We're going with another firm.

13 That's just how it works. If I don't abide  
14 by the contract that's given to me, I don't have a  
15 contract. And I don't care if that's on the public side  
16 or the private side. Unfortunately, it's just the way it  
17 is.

18 MR. OSCAR: And if I may, my name is Mike  
19 Oscar, I represent both of these associations, along with  
20 AGMA and IPCA.

21 But to be clear on that issue, this --  
22 previously in previous hearings, we have provided  
23 information to Jennifer and to Bruce on the staff level  
24 and then Chairman Harris where there was contracts where  
25 language such as that was actually put in there, not just

1 on stop of work, but what Jim's referring in terms of  
2 elimination of lien rights as well as ideas that were  
3 invoked that they thought CASPA said but they were  
4 unlawful.

5 So, you know, that's -- that's the  
6 question. And also, too, if I may, to your first point  
7 on these other states, we provided those states, we did a  
8 thorough review of all the states that have this.

9 No other states in the country offers what  
10 this legislation offers and that's that 60-day time  
11 period, that's the grace period.

12 That was a decision at that time that  
13 Chairman Harris wanted to work it out with us. And we  
14 had numerous calls with Bruce and Jennifer, working  
15 out -- I refer to Bruce Hanson, because at the end of the  
16 day, you know, he and I worked on this legislation with  
17 Representative Driscoll and Representative Santora on  
18 this and no other state offers it.

19 So to get back to your point, the seven-day  
20 notice, as this legislation outlines -- because I want to  
21 be very clear here because there is an extraordinary time  
22 line that no other state in the union would have except  
23 if this law was passed.

24 But I want that burden to be recognized  
25 that we are supportive of it, but with the understanding

1 that, you know, payment has not been made to the  
2 subcontractor within accordance to the schedule  
3 established under Subsection C.

4 What does that mean? You know what means,  
5 to be candid, in the CASPA law, what that means is  
6 whatever contract they signed, private contract they  
7 signed, so that's all, whatever, it's 30 days, it could  
8 be 50 days, whatever, standard operating procedure, as  
9 Jim identified with the AIA, is usually 30 days. Okay?  
10 And then you got your 14 days, you got a whole billing  
11 cycle in that. Okay?

12 So that's number one. And that's  
13 something -- number two is, the subcontracts provide at  
14 least seven days notice in addition to that.

15 And then the third point, which is C, is at  
16 least 60 calendar days. So that means whatever's going  
17 on in your private contract, plus 60 days, then the  
18 notice of intent, which is another seven.

19 REPRESENTATIVE QUINN: So this is still  
20 potentially 97 days?

21 MR. OSCAR: 97 days before you -- and to --  
22 and I really do appreciate the leniency of the hearing to  
23 allow me to speak on this. But I -- we've had eight  
24 years of this.

25 Our first hearing was in Philadelphia by

1 Representative Bill Keller down at the shipyard on this  
2 issue in the Labor and Industry Committee.

3 So eight years, we've been -- Hank Butler  
4 and I have been, you know, going in a great debate over  
5 this. But this is not -- you know, so again, a lot of  
6 passion involved in this discussion.

7 But to your point, 60 days plus 97 days.  
8 And to where Jim Gaffney's saying if they put in -- I'll  
9 keep it simple -- not even Jim Gaffney -- I'll identify  
10 the glaziers in that. They put that window -- that's  
11 a -- they're done.

12 Doesn't take a long time to put two doors  
13 in the glass. And now that glass hasn't been -- you  
14 know, that -- they haven't been paid for 97 days. And  
15 they don't have the ability to go after everybody on a  
16 legal basis, to fight that to get that.

17 So that's where we're at, you know, with  
18 this. That's what -- so I want to be clear, when we say  
19 the seven-day notice, that we're -- this is an extended  
20 period of time.

21 Thank you for that leniency.

22 CHAIRMAN ELLIS: Any other questions by the  
23 members for this group?

24 Gentlemen, thank you very much for your  
25 testimony. Thank you for being here today.

1                   At this point, we'd like to bring on the  
2 second panel, which would be Kate McCaslin, Jim Stephens,  
3 and Tammi Schaible.

4                   At this point, also, I'd like to point out  
5 that Representative Marc Gergely has joined us. Okay.

6                   At this point, Kate, feel free to start.

7                   MS. McCASLIN: Thank you. Good morning,  
8 Chairman Ellis, Chairman Thomas, and members of the House  
9 Committee.

10                  My name is Kate McCaslin. I am president  
11 and CEO of the Keystone Chapter of the Associated  
12 Builders and Contractors.

13                  For those of you who aren't familiar with  
14 ABC, we have 20,000 members nationwide. We're a  
15 commercial industrial contractors association.

16                  And we are dedicated to promoting,  
17 protecting, and defending free enterprise and open and  
18 fair competition in the industry.

19                  Our chapter, the Keystone Chapter, is based  
20 in Manheim and we are one of 70 chapters across the  
21 country. Our particular chapter has 600 members.

22                  As was discussed earlier, Pennsylvania's  
23 contractor and subcontractor payment act, or commonly  
24 referred just as CASPA, was signed into law in 1994 and  
25 was originally intended to provide legal protections to



1 entities involved in construction projects to resolve  
2 non-payment, late payments, and disputes over invoicing  
3 and complete work and other issues.

4 While the law was well intended in 1994, it  
5 only applies to projects in which there is no contract  
6 language covering the payment term.

7 Since most often payment terms are in the  
8 construction contract and, therefore, not subject to the  
9 law, the reality is that CASPA has little effect in  
10 today's world.

11 And, unfortunately, since CASPA was first  
12 passed, over the last three decades, the industry has  
13 indeed experienced a major shift in the payment practices  
14 of project owners.

15 As little as ten years ago, most project  
16 owners, whether large national chains or regional  
17 companies, had a corporate value system that required  
18 judicious payments of their bills for completed  
19 non-disputed work in 30 days or sometimes less.

20 Sadly, many owners have now adopted payment  
21 policies that are commonly 90 days and stretch as far as  
22 100 days -- 120 days or more.

23 Now, while this might help the owner reap  
24 the benefits of positive cash flow and investment income,  
25 those benefits are at the expense of the businesses who

1 have completed the work and paid for the materials and  
2 their labor in advance.

3 As you might imagine, this is incredibly  
4 onerous for any business, but especially for small  
5 businesses who simply do not have the wherewithal to  
6 essentially float a loan to owners for over 120 days.

7 Although existing laws outline rights of  
8 construction parties and ascribe mild penalties for  
9 violating those rights, frequently these laws do not  
10 affect project owners or do not enforce the same  
11 penalties exponentially on owners themselves.

12 While the law addresses other parties  
13 involved, those parties, such as subs and suppliers,  
14 frequently have very little interaction or contractual  
15 relationship with an owner, and that severely limits  
16 their ability to represent their own interests in these  
17 types of disputes.

18 These parties are at the mercy of the  
19 general contractor whose own payment terms most often  
20 dictate that subcontractors will get paid when they get  
21 paid.

22 So while many generals have the ability  
23 and, frankly, they have the values to pay subs within  
24 reasonable time frames, regardless of when they are paid  
25 by the owner, many do not.

1                   Consequently, most often it is the subs and  
2                   suppliers down the chain who end up bearing the brunt and  
3                   the cost of these increasingly common and damaging  
4                   practices.

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

11                  ABC is indeed uniquely positioned in this  
12                  debate because we equally represent the interests of  
13                  general contractors, subcontractors, supplier members and  
14                  associates down the line and sometimes our membership  
15                  does struggle to reach a consensus on some of these  
16                  issues.

17                  But one thing is for certain: Our  
18                  association is focused on ensuring a fair and level  
19                  playing field for all parties involved.

20                  We are local advocates for equal  
21                  representation in every aspect of the construction  
22                  process and for the work to be awarded and performed  
23                  based on merit with payment promptly for completed work.

24                  Thank you for this opportunity to testify,  
25                  and I'm going to pass it on.

1                   MR. STEPHENS: Good morning, Chairman Ellis  
2 and Chairman Thomas and the members of the House  
3 Committee. Thank you for this opportunity to address  
4 you.

5                   My name is Jim Stephens. I am currently  
6 president and managing partner of 11400, Inc. I have  
7 extensive 25 years of experience in the construction  
8 industry, working for general contractor, subcontractors,  
9 suppliers.

10                  I currently sit on the board of directors  
11 of ABC Keystone. I've held many different positions over  
12 the years and kind of come at this issue from a very  
13 unique perspective.

14                  I'm going to spare you reading my  
15 testimony; you have my written testimony. But I would  
16 like to summarize two primary key points.

17                  The first thing that you have to understand  
18 about payment in construction is the idea of retention.

19                  I have tried really hard, I probably have  
20 missed it, but I have not found another industry on the  
21 planet that has retention.

22                  You're not going to be able to walk into  
23 WalMart, take a TV off the shelf and tell them you'll pay  
24 them 90 percent now and 10 percent in 40 days. You're  
25 not going to walk out with that TV.

1                   So you have to understand that everything  
2                   that anybody testifies about, retention is automatically  
3                   in there.

4                   The amount of money being deducted off of  
5                   those payments, 10 percent, 5 percent, there's some  
6                   percentage point, the full payment, when they receive it,  
7                   isn't the full payment. They're still waiting.

8                   So when you hear testimony from contractors  
9                   saying they're bidding with 6 percent margin, if there's  
10                  10 percent retention, no matter what, they're already in  
11                  a negative cash flow position just because of the  
12                  retention.

13                  So when you pile on top of that the idea of  
14                  waiting 90 days, 120 days for just that 90 percent, you  
15                  really create a much more severe situation.

16                  And the other side of that is the idea of  
17                  the delayed payments in the construction industry.

18                  And as the industry has continued to add  
19                  tiers, i.e., construction managers that pay general  
20                  contractors that pay subcontractors, that pay  
21                  sub-subcontractors, that payment process drags out and  
22                  drags out.

23                  And so recently, in the last five to ten  
24                  years, a new phenomenon has come in. So while you have  
25                  been looking at this bill for what appears to be a

1 decade, a new thing has popped up.

2 And that I think is much more of an issue  
3 for our industry than anything else, and that is  
4 especially large, multi-national corporations requiring  
5 the payment cycle from the owner to the general  
6 contractor to be in excess of those 30 days that we've  
7 referenced.

8 There are now multi-national corporations  
9 coming into Pennsylvania that are requiring 120-day  
10 payment cycles to their general contractor.

11 So as a subcontractor, as a supplier, I  
12 have no legal ability to force my general contractor to  
13 pay because of a pay-when-paid or paid-if-paid clause.

14 If they haven't been paid, they don't have  
15 a legal obligation to pay me. So what normally was, as  
16 you've heard testimony, maybe a 45-day cycle, maybe a  
17 60-day cycle, now is stretching, in my testimony I  
18 reference 122 days, and that's if the payment cycle from  
19 the owner to the GC is 90 days.

20 Unfortunately, CASPA does very little to  
21 address this. And even in the language that is in CASPA,  
22 I represent when I talk to my staff what I refer to as  
23 the golden rule: He who has the gold makes the rules.

24 And it comes down to an unfortunate  
25 decision that you have to make as a business owner of how

1 much money do they owe you is worth suing them over or  
2 enforcing penalty clauses or enforcing similar other  
3 legal protection.

4 And so what happens is that you get into  
5 these constant battles. But the vast majority of the  
6 payment issues, the delay in the payment issues stems  
7 from the contract between the owner and the general  
8 contractor.

9 If that time frame was shortened, even to  
10 30 days, in the example I've provided in my written  
11 testimony, you would cut half of those 122 days out and  
12 60 days off that 90 right away. And that's happening  
13 over and over and over again.

14 And, you know, what happens -- I think  
15 there was a question earlier, what happens if you say no  
16 to that language? Well, yeah, they go find somebody else  
17 to do it. Eventually somebody somewhere will say yes.

18 And so what happens is, is -- you know, the  
19 unfortunate part -- the best part of construction, I  
20 should say, is, it is one of the few industries where  
21 there's no barrier, very little barriers.

22 You can be working at home, you can  
23 register with the State for home repairs, you have a  
24 truck and a toolbox, you can get started in the  
25 construction industry.

1           But when you start putting in place a  
2   financing requirement to float the cash flow that is  
3   here, you start to prevent those small businesses.

4           Almost every company in construction has  
5   started with a guy and a toolbox or a father and a son,  
6   as you heard in previous testimony.

7           By having the payment cycle and the cash  
8   requirements that are in place in the industry now, it  
9   prevents that start-up, it prevents that American dream  
10   from even getting started for many people because they're  
11   just not capable of getting the financing.

12           And so we're really creating the situation  
13   that is not necessarily even in the interest of the  
14   industry, but not in the interest of the Commonwealth.

15           We need to have a healthy construction  
16   industry to build schools, houses, hotels, all the other  
17   stuff that happens in the State.

18           And without, you know, this payment cycle  
19   being functional, you're never going to have those  
20   start-ups be able to come in and achieve those American  
21   dreams.

22           And it's going to really -- when interest  
23   rates start to rise -- you know, we've been lucky the  
24   last ten years, interests rates have been low.

25           Interest rates start to rise, it's going to



1 be -- this cash flow problem is going to put a  
2 significant strain on the contractors in Pennsylvania.

3 And the last point to that is, is that  
4 there was a question about timing of good and bad in the  
5 previous panel.

6 Ignoring the profit margins that come at  
7 boom and down times, 2017, I'm reading a lot of stuff  
8 right now where it's common for 2017 to be a year of a  
9 lot of failures.

10 The reason is cash flow. There's a lot of  
11 work out there, companies take a lot of work on, so they  
12 might be a little overextended because they're taking on  
13 a little more work than they normally could, you get one  
14 project, one bad actor withholds a little bit of money  
15 and all of the sudden you've got company failures.

16 And we don't -- you know, that's obviously  
17 in nobody's interest. You know, it hurts everybody. So  
18 cash flow is a significant problem.

19 And I'll pass my testimony on to you.

20 MS. SCHAIBLE: Thank you.

21 Good morning, Chairman Ellis and Chairman  
22 Thomas and everyone else on the Committee.

23 My name is Tammi Schaible. I'm the vice  
24 president of VTI Commercial Carpentry. We are a  
25 family-owned, multi-state commercial construction

1 provider based out of Bucks County, Pennsylvania.

2 I'm also a member of the Eastern  
3 Pennsylvania Chapter of Associated Builders and a board  
4 member as well.

5 While the previous example of the  
6 subcontractor waiting four months to receive payment for  
7 services rendered may seem staggering, it is  
8 unfortunately an all too accurate example of standard  
9 practices in the construction industry.

10 The construction industry, just like nearly  
11 every other industry nationwide, is mainly comprised of  
12 small businesses.

13 Payment terms that grow longer and longer  
14 and the perpetual chain of invoicing from supplier to  
15 subcontractor to general contractor to owner back again  
16 to provide an unsustainable business model for many  
17 construction providers.

18 While Pennsylvania currently has  
19 protections in place like CASPA and the mechanic's lien  
20 law which are meant to protect the rights of construction  
21 parties and ensure reasonable terms, they often do little  
22 to enforce the rights of the smaller party and ensure a  
23 level playing field during negotiations.

24 It's not uncommon for a small subcontractor  
25 or supplier to enter in a unreasonable construction

1 contract with absurdly long payment terms simply because  
2 he or she cannot afford to decline the size of the  
3 contract.

4 It is this practice by large-scale national  
5 retailers owners to provide significantly extended and  
6 burdensome payment terms with multi-million dollar  
7 contracts that falls into a legal loophole in  
8 Pennsylvania.

9 Because our unique role as a  
10 free-enterprise based construction trade association, ABC  
11 is particularly positioned to address this growing issue  
12 within the industry.

13 Our representation of general contractors,  
14 subcontractors, suppliers, and associates ensure that  
15 each party has an equal voice and is well represented as  
16 an integral part of the construction process.

17 The previous example not only exposes the  
18 difficulties of construction entities in the payment  
19 process, but also highlights the invaluable role that  
20 each entity plays in the successful construction process.

21 Each link in the chain is as vital as the  
22 next and any disruption in payment similarly caused  
23 exponential difficulty for each party.

24 I would just like to add something here. I  
25 currently have a contract that I have tried to negotiate

1 because it was completely one-sided. It basically said I  
2 could be fired for any reason, they could decide to  
3 replace my labor for any reason at any whim that they so  
4 wanted.

5 And it was -- and so I went back simply to  
6 ask for terms of, you know, notifying me, this and that,  
7 it's been four weeks, and I have not had any sort of  
8 contact back from that general contractor to discuss my  
9 proposed negotiations.

10 Oftentimes, what they'll do is not respond,  
11 get me on the job site working and then they'll just  
12 simply have me operate throughout the whole project and  
13 they'll sign the contract at the end and send it back to  
14 me and say, No alterations accepted, and they'll send it  
15 back to me.

16 Now, at that point, I've already probably  
17 have nearly finished the project and that's just how they  
18 handle it.

19 So I'm not sure how we can, you know, how  
20 we could, in this law, address some of that.

21 But we don't always have -- as we're  
22 saying, some of us try to negotiate those things or  
23 negotiate out those terms and be responsible in  
24 protecting their businesses.

25 But like I said, they have the money,

1 they're holding the purse strings, and at the end of the  
2 day, I need my men to work.

3 So I hope that our testimony today has been  
4 helpful in your consideration of the Contractor  
5 Subcontractor Payment Act and that the practical  
6 application of payment in the modern construction  
7 environment.

8 I'd like to thank you for your time and  
9 your consideration on this vital issue.

10 CHAIRMAN ELLIS: Thank you very much,  
11 panel, for your comments today.

12 I'll start us off. Jim, you had talked a  
13 little bit about the changing environment as far as the  
14 multi-national corporations and their payment structure.

15 Is that uniquely Pennsylvanian because our  
16 laws just don't have any benefit, that they can get away  
17 with it, or is this something you're seeing nationwide?  
18 Can you speak to that?

19 MR. STEPHENS: I think the answer to that  
20 is nationwide. I mean, my company does work east of the  
21 Mississippi and we work in Texas and I do have some  
22 nationwide exposure.

23 And it's happening in a lot of places. The  
24 difference is, Pennsylvania's laws, as you've heard in  
25 previous testimony, don't necessarily give us the same

1     protections that we would have in other places and it  
2     allows them to do it.

3                 Even in other states where, say, the law  
4     would be against it, they still try.

5                 You know, without naming the name of the  
6     firm or the owner that I work for, not that long ago,  
7     they were doing a project near Scranton, and I marked  
8     their contract up.

9                 In fact, I took pages out of their  
10    contract, quite frankly, and sent it back to them. And  
11    their lawyer called me up and that lawyer was actually  
12    afraid to take my contract to her boss because nobody had  
13    actually ever told this company no before and she didn't  
14    know how to move forward.

15                You know, I had the privilege on that  
16    project of being able to say no. I didn't need that job  
17    to be able to keep the business going.

18                There are plenty of my colleagues and other  
19    members of the association and construction companies who  
20    couldn't have afforded to say no to a large project like  
21    that. And so they get -- they get hemmed into  
22    requirements.

23                And they just -- the multi-national, the  
24    home corporation, wherever it's based out of goes, you  
25    know, too bad.

1                   CHAIRMAN ELLIS: I think the legislation  
2 we're looking at today doesn't directly address that, but  
3 do you believe that they may change their attitude a bit  
4 if we pass the legislation that this Representative  
5 Driscoll and Santora are looking at or Representative  
6 Maloney packaging and getting, do you think that would  
7 have a benefit to that specific issue?

8                   MR. STEPHENS: My personal opinion? No.  
9 And I say that for two reasons. Yes, the threats of,  
10 say, a stop work order may change a couple of minds.

11                   But most of the time when you have bad  
12 actors, even on a corporation level, they have more  
13 lawyers, more money, and more time to throw at you than  
14 we have.

15                   So even when they're entirely in the wrong,  
16 you're still making a business decision on whether or not  
17 you would be able to prove you're right.

18                   And the other thing is, is that there's  
19 enough lawyers working on it -- and I apologize if  
20 anybody up there is a lawyer -- but there's enough  
21 lawyers working on it that the loophole will be found to  
22 work within the law but not.

23                   If they're intent on being bad actors,  
24 they're going to be bad actors. And so it becomes very  
25 difficult to say, yes, this will cure all the ills

1 because it might cure the ills for six months, 12 months.

2 I mean, look at how many times the  
3 mechanic's lien law has been revised, you know, and that  
4 kind of stuff. Because eventually the loopholes are  
5 found and things go back to where they were.

6 CHAIRMAN ELLIS: I appreciate your candor  
7 on that.

8 At this point, I'll ask Representative  
9 Thomas, do you have any comments for this panel?

10 CHAIRMAN THOMAS: No.

11 CHAIRMAN ELLIS: Members?

12 Well, your testimony obviously was so  
13 superb that we gathered everything that we can from that.

14 Before you leave, just as a side note,  
15 since you brought up the mechanic's lien and how many  
16 times we've reviewed that, have you had an opportunity to  
17 use the new website that's out there for mechanic's  
18 liens?

19 MR. STEPHENS: I have had an opportunity.

20 CHAIRMAN ELLIS: And what are your thoughts  
21 on it?

22 MR. STEPHENS: I think it's too early to  
23 tell, quite frankly.

24 CHAIRMAN ELLIS: Fair enough.

25 MR. STEPHENS: I think the implementation,



1 they took a lot of input from a number of different  
2 people and organizations to try and make it as friendly  
3 as possible in the launch. But I think we need more time  
4 to really get a feel for how it's actually going to come  
5 together.

6 CHAIRMAN ELLIS: Well, I appreciate that.  
7 And thank you so much for you input.

8 And we look forward to continue to work  
9 with you as we move this conversation forward.

10 MR. STEPHENS: Thank you.

11 CHAIRMAN ELLIS: At this point, our final  
12 panel, and by panel, I mean final testifier, a single  
13 man, Hank Butler, the executive director from the  
14 Pennsylvania Council of General Contractors.

15 Welcome.

16 MR. BUTLER: Thank you. Before we start, I  
17 just want to apologize to the Committee members.

18 I have many hats to wear, one of them had a  
19 very tough week and I didn't get the information on time,  
20 so I do apologize.

21 CHAIRMAN ELLIS: You can begin.

22 MR. BUTLER: You all can follow along with  
23 your packets. Okay.

24 Thank you, Chairman Ellis, Chairman Thomas,  
25 and members of the Pennsylvania House of Representatives

1 Commerce Committee, for the opportunity to continue our  
2 discussions on payment concerns between owners,  
3 contractors, and specialty contractors.

4 I'm speaking to you today on behalf of the  
5 Pennsylvania Council of General Contractors, an  
6 organization of general contractors who believe in  
7 principles of fair, efficient, and competitive  
8 construction, bidding, awarding, and building.

9 PennCGC members believe in the importance  
10 of working -- strong working relationships with all  
11 entities building or supplying materials on a  
12 construction job site: owners, general contractors,  
13 specialty contractor, employees, suppliers, et cetera.

14 Assuring that the construction project is  
15 on time, within budget, and with minimal change orders,  
16 from the construction end, is the best way to build  
17 quality construction and maintain strong and successful  
18 business relationships with owners and developers.

19 An integral part of striving for a quality  
20 and productive worksite is to ensure that all entities on  
21 a construction worksite are paid accordingly for work  
22 performed and paid promptly for their services.

23 PennCGC has already been proactive in this  
24 effort by assisting in the development, passage, and  
25 enactment of Act 142 of 2014 introduced by Representative

1 Killion, now Senator Killion, which performs -- which  
2 reforms Pennsylvania's current mechanic lien legislation  
3 to ensure that owners and general contractors are aware  
4 of all entities working on the construction project and  
5 make sure that everyone is paid for work performed or  
6 materials purchased.

7 Act 142 of 2014 enabled the owner to  
8 identify the entire field of specialty contractors. If  
9 the owner knows who all the specialty contractors are who  
10 work on his or her project, he or she can take positive  
11 steps to assure payment for work performed or address any  
12 lingering disputes.

13 The PennCGC believes this is a strong step  
14 towards assuring that companies and workers are paid for  
15 their successful completion of work performed or  
16 materials supplied.

17 As we continue to discuss the prompt pay  
18 reform with this Committee, the Pennsylvania Council of  
19 General Contractors would like to emphasize our desire to  
20 work with Representative Maloney to help develop  
21 legislation that can address concerns for assuring  
22 payment for work is rendered.

23 The PennCGC has members who have had and  
24 are currently experiencing challenges regarding their own  
25 respective payment for work performed.

1           The Council believes we can help the  
2     development of comprehensive legislation that examines  
3     and improves the entire payment process.

4           Regarding this issue of prompt pay reform,  
5     PennCGC supports the need for effective communication in  
6     payment procedures by having signed agreements before  
7     work commences on the worksite between the owners to  
8     general contractor and the general contractor to the  
9     specialty contractor, subcontractor.

10          Hopefully, there are signed agreements  
11     between the specialty contractors and their subspecialty  
12     contractors.

13          Entering into a contract creates an  
14     in-writing understanding as to the working logistics for  
15     the project, the work performed requirements, and the  
16     payments for completed work acceptable to both the  
17     contractor in charge and the owner.

18          As should be common practice, the contract  
19     spells out the payment schedule and allocated timelines  
20     for designated projects.

21          This signed agreed-to agreement assures  
22     that all parties have agreed on the work to be performed  
23     and the payment for the work performed on the project.

24          As stated in previous testimonies over the  
25     years, PennCGC has questions -- has questions that should

1 be addressed as discussions continue in prompt pay  
2 reform.

3 Since there are overlaps regarding the  
4 prompt pay and the mechanic's lien, the PennCGC believes  
5 that discussions are needed by the appropriate  
6 stakeholders regarding the recently passed Act 142 of  
7 2014 and the implications of this enacting law into the  
8 prompt pay reforms.

9 PennCGC believes that having notifications  
10 as to who is working on the job and should be paid for  
11 services rendered will help more companies be paid on  
12 time and in accordance to the work contract.

13 There have been discussions over the years  
14 on the prompt pay issues with general contractors and  
15 specialty contractors testifying, but there -- but has  
16 there been discussions with the entire stakeholder  
17 community on the prompt pay issue?

18 Many problems start when the general  
19 contractor is not paid in a timely manner from the owner  
20 or the financial institution assisting in the finance of  
21 the project.

22 The PennCGC believes that we should include  
23 the entire stakeholder community to accurately assess the  
24 current payment climate and look for a comprehensive  
25 solution to address this problem.

1                   To assure that non-payment of the  
2 subcontractor or a sub-subcontractor is not the result of  
3 communication errors, there should be an established  
4 process to inform the owners, general contractors and  
5 subcontractors, if they are paying the subcontractor, if  
6 they are paying another subcontractor, that payment  
7 established in the signed contract is past due, work has  
8 been performed to the quality established in the  
9 agreements and payment is needed.

10                   Finally, regarding the language previously  
11 in House Bill 726 from last session, the PennCGC would  
12 like to work with the author and the Commerce Committee  
13 to address language in the bill that could be interpreted  
14 in different ways and are open to potential  
15 misinterpretation.

16                   There are several definitions of  
17 questions -- several definition questions that the  
18 council would like to see addressed.

19                   What is the definition of "substantial  
20 completion" for payment of the project? Who determines  
21 the completion? Who determines the final acceptance of  
22 the completed work? What is the definition of "good  
23 faith?"

24                   The PennCGC once again wishes to commend  
25 Representative Maloney for carrying the baton and

1 reintroducing House Bill 726.

2 We look forward to working with him and  
3 members of the Commerce Committee to analyze the problems  
4 on prompt pay system in Pennsylvania and work together  
5 with the author and the Committee to find a solution that  
6 best helps owners, financial institutions, general  
7 contractors, and specialty contractors.

8 PennCGC wishes to thank the Commerce  
9 Committee for the opportunity to speak to you today and  
10 we look forward to working with you in the future.

11 CHAIRMAN ELLIS: Thank you, Mr. Butler, for  
12 your testimony.

13 I have just one thing that I wanted to  
14 point out briefly that you mentioned in your testimony,  
15 which I think -- I said this at the beginning, but I just  
16 want to reiterate that this isn't a -- and based on all  
17 the testimony, it's not a contractor/subcontractor issue,  
18 it's not a Republican/Democrat issue.

19 MR. BUTLER: No.

20 CHAIRMAN ELLIS: But what you pointed out  
21 is some good questions that we have to have answered.  
22 And I appreciate your input on those.

23 But we are talking about people that have  
24 signed a contract, done the work, there's no  
25 discrepancies.

1 MR. BUTLER: Right.

2 CHAIRMAN ELLIS: And they're not getting  
3 paid. That's the issue that we're facing.

4 You're not going to have any  
5 concerns with -- we're not talking about the good actors,  
6 we're not talking about people that do.

7 We're talking about an actual mistake  
8 somebody makes.

9 MR. BUTLER: Right. I mean --

10 CHAIRMAN ELLIS: So we want to clarify,  
11 make sure that we're not penalizing people who just make  
12 human errors. Is that --

13 MR. BUTLER: And that's --

14 CHAIRMAN ELLIS: -- your --

15 MR. BUTLER: That's quite frankly why I've  
16 been testifying on this issue with Mike for how many  
17 years? Hopefully not a decade, but we're almost there.

18 The issue is -- the organization I  
19 represent is large general contractors. Most of them  
20 have over a thousand employees.

21 Mistakes happen. It's not a question of  
22 payment. But I want to protect those contractors that do  
23 the right thing.

24 There's a contract written, the owner pays  
25 the GC, the GC pays the sub. And all I want to make sure



1 is that if that's done correctly, we're fine.

2 Does some checks get lost in the mail? Of  
3 course. Do some things have, through different passing  
4 of large companies, misinformation is given? Of course.

5 There should be a process in place to make  
6 sure that everyone -- communication is there that they  
7 have not been paid. And if they have not been paid,  
8 they'll be paying immediately and correct the mistake  
9 that happens.

10 I don't want to see a contractor that has  
11 done everything that they have been told to do and then  
12 they sign the contract and they're still having problems  
13 that they've had.

14 And there have been cases where a specialty  
15 contractor doesn't pay a sub-sub. The sub-sub then  
16 files, in most cases, a lien against the owner.

17 And as a general contractor who wants to  
18 protect that relationship with the owner to keep doing  
19 other projects, they'll double pay. They'll pay the  
20 subcontractor twice basically, just to get it off the  
21 plate and make them -- they're not -- hinder reputation.

22 We want to stop that. So, yes, we do want  
23 to work with you to make sure that the good apples are  
24 still doing the good stuff.

25 CHAIRMAN ELLIS: And you think a

1 notification before work stop is vital?

2 MR. BUTLER: My personal opinion is --

3 CHAIRMAN ELLIS: And to cover the people  
4 that are just, it's not intentional and you think that if  
5 they get a notification that they'll be, Oh, wow, I  
6 didn't even realize that?

7 MR. BUTLER: I think there's been cases.  
8 And I think you all have even seen cases in your own work  
9 where some things get tied up, an e-mail gets lost, it  
10 goes into spam, miscommunication is there.

11 There should be a process, in my personal  
12 opinion, and working with this Committee, I'd personally  
13 like to see two correspondences.

14 One notification. And, again, we're  
15 talking in some cases very large companies -- to make  
16 sure that the money gets -- that the communication has  
17 been given, they've identified an error and they correct  
18 the miscommunication.

19 So, yes, I personally think there should be  
20 two letters before penalties happen.

21 CHAIRMAN ELLIS: Members, are there any  
22 questions?

23 Representative Driscoll?

24 REPRESENTATIVE DRISCOLL: So -- and I  
25 understand what you're saying, big companies, it can

1     happen.

2                     What we're trying to protect here is the  
3     big company and the little company so they have the  
4     language that they both enter into.

5                     As a former small business owner myself,  
6     after -- which when we added up the time frame here,  
7     we're looking at 97 days. I mean, that's going to put  
8     out most small businesses out of business.

9                     And so while this might be a minority that  
10    we're addressing today -- and we wouldn't be here talking  
11    about it if it wasn't a problem -- that small percentage,  
12    I think the time has come that we stop talking about it,  
13    and we really -- with the leadership of Chairman Ellis  
14    and Chairman Thomas and the input from the stakeholders,  
15    that we really look at this and get something on the  
16    books.

17                    MR. BUTLER: Yes. Which is why -- yes,  
18    which is why we've been proposing and will continue to  
19    propose ideas that we have to make this work.  
20    Absolutely.

21                    I think when you have certain companies --  
22    and, again, there are small -- small general -- or small,  
23    small companies, I agree and large ones.

24                    In my case, most of my members are large  
25    companies. I don't have suppliers. I don't have

1 speciality contractors. I don't have attorneys.

2 I have general contractors. And they have  
3 accounts receivable, accounts payable. They have their  
4 attorneys. They have their own different foremen,  
5 different project managers.

6 We just need to make sure the information  
7 gets there correctly. If an owner doesn't pay a GC, then  
8 that's a whole -- that is a problem. The GC can't pay  
9 the subcontractors and the sub can't pay the sub-sub. I  
10 agree.

11 But they should -- but if they're not  
12 getting paid, they should be notified -- the owner should  
13 be notified, Hey, you haven't paid this and it's past due  
14 in the contract.

15 There should be a notification, a -- how do  
16 you say -- a correct paper trail or a correct  
17 correspondence that every single stakeholder in this  
18 construction case is notified. It might be twice.

19 First time, hopefully, it will be agreed to  
20 immediately. Second time, you're just reaffirming that  
21 the first communication happened to make sure they're  
22 getting paid. Yes.

23 But there has to be a procedure in place  
24 that mistakes do happen. This is not a -- I mean, when I  
25 propose this every time to my members, they have a

1 payment schedule. They have a contract. They do pay.

2 But sometimes the owners don't pay them.

3 And sometimes they'll give a check to a subcontractor and  
4 they won't receive the check, but they have evidence that  
5 they sent the check.

6 I just want to make sure everything is  
7 correspondence so the people who are doing the good stuff  
8 doesn't get hit with a problem.

9 In the case of mechanic's lien, it was a  
10 lien. Mechanic's lien was -- forgive me -- 12 years ago  
11 when we passed it, for the first time included third-tier  
12 subs.

13 So basically what you would have is you  
14 have a project, you'd have a Home Depot that a painter  
15 bought paint from could file a lien against an owner or a  
16 general -- an owner or general contractor who would have  
17 no clue that Home Depot was even on the job or even a  
18 supplier.

19 The reforms we made in the law that we  
20 passed -- and, again, was Mike Oscar, ABC working  
21 together -- made sure that at least on this website  
22 that's just been introduced last month the owner and the  
23 general contractor can make sure everyone's that on the  
24 job who's on the job and before they do the final punch  
25 list, final payment, Hey, have you paid the

1 subcontractor?

2 Make sure everyone's gotten paid so we  
3 don't have -- yes, suppliers from China filing liens  
4 against owners who we had no idea they were on the job.  
5 So, yes, I agree.

6 REPRESENTATIVE DRISCOLL: Thank you. Thank  
7 you, Chairman.

8 CHAIRMAN ELLIS: Representative Davidson?

9 REPRESENTATIVE DAVIDSON: Thank you.

10 So you would agree that 90 percent of  
11 general contractors are paying their subcontractors on  
12 time and there's no problem?

13 MR. BUTLER: A percentage? I guarantee  
14 that, at least from my membership, that upon a contract  
15 that they sign, when the owner pays them, they pay within  
16 the contract guidelines, yes. That's what I'm talking  
17 about, yes.

18 REPRESENTATIVE DAVIDSON: What's the  
19 percentage?

20 MR. BUTLER: I don't have that information.  
21 I don't have the data.

22 REPRESENTATIVE DAVIDSON: What's the  
23 average time frame?

24 MR. BUTLER: It's contract by contract,  
25 each contract's different. I mean, some -- some owners

1 have contracts where they pay, yes, 120 days, others pay  
2 within -- I mean, owners to general contractor or general  
3 contractor to...

4 REPRESENTATIVE DAVIDSON: What is the  
5 general average payment time from the time the work is  
6 completed on most contracts?

7 Is it usually 60 days when the work is done  
8 or is it -- is the average time 30 days or is the average  
9 time 90 days or 120 days?

10 MR. BUTLER: I've seen many different  
11 contracts. And I've seen some cases 14 days.

12 REPRESENTATIVE DAVIDSON: What's the  
13 average?

14 MR. BUTLER: I haven't assessed. I haven't  
15 done a compiling of data. I'll look over it.

16 Mike, have you seen any data?

17 I mean, I don't know the actual data. I  
18 know each contract's different, each company's different  
19 on how they pay.

20 When the owner -- when the -- when the sub  
21 or the GC sign a contract, it's very clear.

22 I've seen language very clear that a  
23 general contractor will say, We will pay you within 14  
24 days of the receipt of payment from the owner, that I've  
25 seen.

1 But as for a dollar amount -- the  
2 percentage amount, I can't give you that answer.

3 REPRESENTATIVE DAVIDSON: How many general  
4 contractors does your --

5 MR. BUTLER: My organization has --

6 REPRESENTATIVE DAVIDSON: -- your agency --

7 MR. BUTLER: My organization has 13  
8 contractors. We --

9 REPRESENTATIVE DAVIDSON: That you  
10 represent?

11 MR. BUTLER: Yes. And we specifically have  
12 contractors who are basing over about 150 -- I mean, \$100  
13 million, \$150 million in sales a year.

14 REPRESENTATIVE DAVIDSON: Do you do  
15 business analytics on the contractors that you serve,  
16 your organization?

17 MR. BUTLER: No.

18 REPRESENTATIVE DAVIDSON: Okay.

19 MR. BUTLER: I mean, we -- we're --

20 REPRESENTATIVE DAVIDSON: Well, you don't  
21 know the average time and maybe there's other --

22 MR. BUTLER: I haven't done the  
23 assessment --

24 REPRESENTATIVE DAVIDSON: -- other metrics  
25 that you use.



1                   MR. BUTLER: I could do it. I could ask  
2 for all the contracts if they want. But, again, the  
3 contracts are pretty standard.

4                   I did show one standard contract that one  
5 of our members in Pittsburgh has. And it very clearly  
6 spelled out when we're going to pay you and everything  
7 else.

8                   But, you know what, I have no problem. I  
9 could ask for sample contracts if you wish.

10                  REPRESENTATIVE DAVIDSON: Yeah. I just  
11 want to know what the average is. And, you know, you  
12 have 13 member organizations member contractors?

13                  MR. BUTLER: Yes.

14                  REPRESENTATIVE DAVIDSON: I think from 13  
15 organizations, you could probably determine what the  
16 average payment time --

17                  MR. BUTLER: Yeah.

18                  REPRESENTATIVE DAVIDSON: -- frame is  
19 pretty easily.

20                  My other question, I know one of the things  
21 that you said you would like to work with the Committee  
22 on is a second notice or a second seven-day notice.

23                  Why would that be necessary after someone  
24 has not been paid for 97 days post work according to the  
25 contract terms?

1 MR. BUTLER: To reaffirm it's intentional.  
2 A second notice is just to --

3 REPRESENTATIVE DAVIDSON: After 97 days?

4 MR. BUTLER: No. I said -- no, I said the  
5 process -- we haven't talked about the dates yet.

6 But the process of when someone -- if the  
7 contract says we'll be paid on this day and then they  
8 haven't been paid, one letter and just to reaffirm --  
9 it's kind of like you guys having a second reading -- you  
10 know, first consideration, second consideration, final  
11 vote.

12 It's a second time to reaffirm that  
13 everyone has seen this, everyone's been notified, and  
14 there's nothing intentional happening.

15 And if it is intentional, yes, then we go  
16 with the next step.

17 REPRESENTATIVE DAVIDSON: So you think it's  
18 reasonable to have a second notice after a subcontractor  
19 has completed the work, there's been 30 days since the  
20 work has been completed?

21 I can't imagine a subcontractor not  
22 notifying someone that they haven't received payment in  
23 30 days and then another 60 days transpires and then you  
24 get the seven-day notice, I believe the language says.

25 So you think that's still an unreasonable

1 amount of time or notification within that window of  
2 time?

3 MR. BUTLER: I believe as much time to  
4 address the errors, if it's a mistake in error, yes.

5 But I think at what point do you say, okay,  
6 now it's intentional, now they're not paying us  
7 intentionally, which is what the accusation is, that it's  
8 not happening.

9 So, yeah, I think two times would be  
10 sufficient to make sure that you've exhausted every  
11 possibility of making sure that the error's corrected.

12 REPRESENTATIVE DAVIDSON: Okay. I  
13 appreciate that.

14 I would like to see -- I don't know if  
15 other members of the Committee would like to see -- but I  
16 would like to see what the average time frame is for  
17 payment to your subcontractors, how many of your 13  
18 organizations have had a problem paying their contractors  
19 on time and so we can determine, you know, what the  
20 percentage is of bad actors are.

21 MR. BUTLER: Yeah. I'll do that.

22 REPRESENTATIVE DAVIDSON: Thank you.

23 CHAIRMAN ELLIS: Representative Rabb?

24 REPRESENTATIVE RABB: Thank you, Chairman.

25 I'm not sure if you heard the testimony of

1 Mr. Gaffney who said he's in business for 30 years and  
2 that the vast majority of GCs he works with operate in  
3 good faith, but that there were bad actors consistently,  
4 and people in the industry knew who they were.

5 I don't know what percentage of them are  
6 within that 13 members that you represent. But he said  
7 that if he had this in his back pocket and he's at this  
8 weekly meeting and he says, We haven't been paid, that  
9 the meeting would be ugly but quick.

10 And when this has happened in the past,  
11 when he's brought it to the attention of the owner,  
12 there's a check in two days.

13 And so in light of an anecdotal reference  
14 point from someone who's been in the field saying that  
15 the efficacy of something like this would benefit an  
16 entity like his own, I'm curious what is your response to  
17 that and why the need for a second notice or for drawing  
18 this out because the matter will be addressed because  
19 nobody wants a work stoppage, nobody wants undue delays,  
20 and when everybody, all the stakeholders, to use your  
21 language, are in the same room in that moment, why the  
22 need for additional paperwork or notifications, if, you  
23 know...

24 MR. BUTLER: I guess the big question I  
25 have right now is, who hasn't paid him? Did the owner

1 not pay the general contractor, the general contractor  
2 not pay the sub, sub not pay the sub-sub? I think  
3 there's a lot of questions that have to be answered.

4 And in the case that you just mentioned,  
5 okay, I have a member, for example, that signed a  
6 contract a couple years ago to build like -- I think it  
7 was, like, maybe ten Chipotles, okay, around. That's a  
8 big contract. Okay?

9 And if there was a threat of a -- let's  
10 say -- well, we'll just use a basic example, a  
11 subcontractor didn't pay the sub-sub. Okay?

12 And all of the sudden, there's a threat of,  
13 yes, work stoppage or fines or embarrassing the owner  
14 that could deter the entire contract, my concern right  
15 now is the GC will pay, even though they already paid the  
16 sub, they'll double -- they'll pay the sub-sub just to  
17 get it off the books and just to protect the reputation  
18 of the company to continue working.

19 So, in essence, the general contractor  
20 double pays for a job that was done. And they have  
21 that -- and that is a case happened many, many times.

22 REPRESENTATIVE RABB: Is there data on  
23 that? I'd be interested to see how many times there's  
24 double payment for -- because I imagine you have all that  
25 data to see to what extent that is --

1 MR. BUTLER: Yes.

2 REPRESENTATIVE RABB: -- a phenomenon.

3 MR. BUTLER: I can actually give you -- I  
4 will get examples for you of cases that's happened where  
5 it's -- it's a problem that we have to protect -- yes, I  
6 don't -- I want to protect the good eggs.

7 I want to protect those who haven't done  
8 this and not have to, yes, double pay just to prohibit a  
9 bad reputation because the last thing you want to see is  
10 their reputation tarnished and then the contract's thrown  
11 away.

12 Or, yes, if this one contractor does a good  
13 job, does ten Chipotles, maybe he can do ten more and  
14 keep a good constituent services going and then get more  
15 money.

16 So, yes, I will get that.

17 CHAIRMAN THOMAS: The only thing I would  
18 ask that you send the information to the Chairs and --

19 MR. BUTLER: Yes.

20 CHAIRMAN THOMAS: -- we will get it out --

21 MR. BUTLER: Of course.

22 CHAIRMAN THOMAS: -- to the other members  
23 that might want to see that same information.

24 MR. BUTLER: Yes.

25 CHAIRMAN ELLIS: And Representative White?

1                   REPRESENTATIVE WHITE: So what is the  
2 process for a GC to request payment from the owners that  
3 you do work for?

4                   MR. BUTLER: Typically a contract. The  
5 contract is that they will be paid in X amount of days  
6 before the contract.

7                   REPRESENTATIVE WHITE: And if the owners  
8 don't pay you, what recourse do you have as GCs?

9                   MR. BUTLER: That's the problem. It's  
10 litigation.

11                  REPRESENTATIVE WHITE: So you guys pay  
12 top-end attorneys to go and fight the case, right?

13                  MR. BUTLER: Yes. Or in-house counsel,  
14 but, yes.

15                  REPRESENTATIVE WHITE: Okay. Or in-house  
16 counsel.

17                         It's my understanding that a lot of small  
18 businesses don't have the ability to afford counsel or  
19 any other such, you know, methodologies.

20                         And we heard testimony earlier that said  
21 that mechanic's liens, right, that could be an option for  
22 you, right?

23                  MR. BUTLER: Yes.

24                  REPRESENTATIVE WHITE: But you guys make  
25 the subcontractors or the other contractors that you

1 utilize sign off on things that don't allow them to put a  
2 mechanic's lien on, right?

3 MR. BUTLER: Well -- well, that's up to  
4 the -- yes. Well, subcontractor, some guys don't have  
5 it, some do.

6 And it's up to the owner, general  
7 contractors. Some of the owners will give the  
8 standard -- I mean, larger companies that have hundreds  
9 of thousands of different chains, they'll actually have  
10 language that says no mechanic's lien. It's up to the  
11 owners --

12 REPRESENTATIVE WHITE: Right.

13 MR. BUTLER: -- passing it on.

14 REPRESENTATIVE WHITE: The GCs that you're  
15 saying you represent, you know, they would be more  
16 inclined to do business with someone who is willing to  
17 sign a mechanic's lien waiver than someone who's not,  
18 right?

19 MR. BUTLER: I wouldn't say that. I would  
20 say, quite frankly -- and I hope -- nobody wants a lien.

21 Nobody ever wants to go that -- that's the  
22 nuclear option. No one wants to pull the trigger and  
23 file a lien. It's embarrassing to the contractor, the  
24 owner. They don't want to do that.

25 We're hoping that this legislation be



1 passed can hopefully soften. Because, again, a lot of  
2 the time the liens are file, they have no idea they're  
3 even on the job.

4 So -- so we want to avoid the lien. And,  
5 typically, you want to keep the relationships with the  
6 subcontractor or the GC, the GC's relationship with the  
7 owners. We want to make sure it's a smooth process.

8 REPRESENTATIVE WHITE: How many times does  
9 a GC notify an owner of non-payment currently on average?

10 MR. BUTLER: When they have a contract and  
11 they have -- it'd be immediate if they need the money.

12 REPRESENTATIVE WHITE: Right. So you  
13 notify immediately with an invoice, right? And you say,  
14 Hey --

15 MR. BUTLER: Not an invoice. But if the  
16 contract's expired, you may have to say, Hey, per the  
17 contract, you have not paid us in this amount of time,  
18 yes.

19 REPRESENTATIVE WHITE: And your GCs would  
20 be -- okay.

21 CHAIRMAN ELLIS: Representative Heffley?

22 REPRESENTATIVE HEFFLEY: Thank you.

23 Thank you for your testimony.

24 Just a couple of quick questions. You had  
25 mentioned earlier one question about the sites and your

1 recommendation to send out a second notice about a check  
2 being lost in the mail.

3 Do you still use checks in the mail? I  
4 mean, isn't everything electronic now? Wouldn't you  
5 know -- wouldn't you would know -- you would know  
6 immediately if it was paid or not paid, right?

7 MR. BUTLER: It was a figure of speech.  
8 Okay? But the -- the fact --

9 COURT REPORTER: Can you speak into the  
10 microphone.

11 REPRESENTATIVE HEFFLEY: The check's in the  
12 mail.

13 MR. BUTLER: The check's in the mail.  
14 You're right. And you're right. But if someone hasn't  
15 been paid --

16 CHAIRMAN ELLIS: Hank, can you speak into  
17 the microphone for the reporter.

18 MR. BUTLER: I'm sorry. I'm sorry.  
19 It was a figure of speech. But, yes, I --  
20 other ways of payments, absolutely, they're automatic  
21 like everything else.

22 REPRESENTATIVE HEFFLEY: In many of the  
23 contracts that you would negotiate with your subs and  
24 those subs that use subs, do you notify?

25 So you would know if a sub used a sub on

1 one of your jobs, you would know who that sub -- the  
2 third sub would be, right?

3 MR. BUTLER: No. Not until now.

4 REPRESENTATIVE HEFFLEY: But you could  
5 probably put that in there just to notify them that when  
6 that sub was paid as well because they would be billed in  
7 the same situation?

8 MR. BUTLER: With the legislation we just  
9 passed with mechanic's lien, yes, now there are ways to  
10 know who is on the job and who is not, yes.

11 REPRESENTATIVE HEFFLEY: If the third-party  
12 sub contacted and said, Look, I didn't get paid from the  
13 subcontractor, did the subcontractor get paid, you could  
14 let them know instantly pretty much?

15 MR. BUTLER: As a matter of fact, the  
16 website actually has in there if you're not paid by the  
17 time, the name goes, like, red and there's a way to know  
18 who's been paid as of this moment you haven't been paid.

19 REPRESENTATIVE HEFFLEY: Well, I guess I'm  
20 just trying to understand you're saying that a third  
21 party and they come to the general contractor and say,  
22 Look, I haven't been paid by the sub, then a lot of times  
23 the GC would then pay that third party?

24 MR. BUTLER: Yes.

25 REPRESENTATIVE HEFFLEY: But couldn't you

1 go to them and say, Look, the sub was already paid, you  
2 would know that right away, wouldn't you tell that  
3 third-party sub?

4 MR. BUTLER: Again, in a perfect world,  
5 yes, the sub would -- they notify the sub, Hey, pay this  
6 guy, pay this company, we have to get this done.

7 But, again, in some cases and a federal  
8 lien coming in -- which, again, having a lien filed is  
9 not a -- is not a happy-go-lucky skip down the lane.

10 So to have that notification right there on  
11 the job does help. But I have to remind you, the bill  
12 that we passed, the mechanic's liens that was enacted a  
13 month ago is only for projects of \$1.5 million or more.

14 So we're talking about small jobs it  
15 doesn't even apply. I'd love to have that number go down  
16 to a million or even a half a million dollars on those  
17 projects.

18 We can agree to that?

19 So I want to see that happen. But it's  
20 1.5. But, no, up until recently, we would not know that  
21 a sub was on it or a supplier was on the job and if they  
22 weren't paid by the subcontractor and they only way  
23 they'd be notified is, Hey, we're going to file a lien  
24 against you.

25 And that's not a lot of time, it's

1 embarrassing, it hurts reputations so, you know, what,  
2 I'll just pay it and get it over with and take the loss.  
3 That does happen.

4 And, hopefully, this new law will start to  
5 change. And no one wants to not pay for work rendered.  
6 We just want to make sure we do it right.

7 CHAIRMAN ELLIS: Representative Quinn?

8 REPRESENTATIVE QUINN: Thanks. Thank you,  
9 Chairman.

10 Mr. Butler, you mentioned during your  
11 testimony that you had some concern with some of the  
12 language. Specifically, you mentioned substantial  
13 completion and good faith.

14 MR. BUTLER: Just clean up -- this is from  
15 the previous bill. We saw the draft language of  
16 Representative Maloney's bill yesterday. I didn't have a  
17 chance to look at it.

18 I'm taking from previous testimonies over  
19 the past three sessions. Just to clean up the language,  
20 make it very clear what that means.

21 So just as we go through the process, what  
22 is the definition of good faith? What is the definition  
23 of the completion? Just to make sure that everything is  
24 done.

25 REPRESENTATIVE QUINN: Okay. So would you

1 like to offer some clarification --

2 MR. BUTLER: I'd love to offer some  
3 clarification.

4 REPRESENTATIVE QUINN: -- in the process?  
5 I don't think that's unreasonable.

6 MR. BUTLER: Once we have the language all  
7 set, I will sit down with our attorneys and counsels and  
8 ABC and we'll talk, yeah, definitely.

9 REPRESENTATIVE QUINN: Thank you.

10 MR. BUTLER: Any other members with  
11 questions?

12 CHAIRMAN THOMAS: Mr. Chair, just wanted to  
13 acknowledge a staff person from Councilwoman Cindy Bass'  
14 office who has been a long-time general contractor in  
15 Philadelphia County. That's Mr. Tyrone Barge. Just  
16 wanted to acknowledge his presence.

17 CHAIRMAN ELLIS: Well, I want to thank the  
18 members for coming today and certainly all the folks in  
19 attendance and especially the testifiers.

20 And I will say on a personal level that I'm  
21 excited about the conversations I've had from all parties  
22 so far.

23 The days of drawing lines in the sand and  
24 just hoping that we don't do anything have passed. And I  
25 think that's acknowledged by all parties.

1                   And I look forward to working with this  
2                   Committee and with the help of folks that testified today  
3                   and the organizations they represent to move this process  
4                   forward.

5                   And so, again, thank you very much for  
6                   coming.

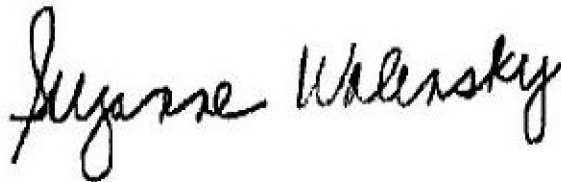
7                   (Hearing concluded at 11:51 a.m.)

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION

I, SUZANNE WALINSKY, a Court Reporter and Commissioner of Deeds, hereby certify that the foregoing is a true and accurate transcript of the deposition of said witness who was first duly sworn by me on the date and place herein before set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

A handwritten signature in black ink, reading "Suzanne Walinsky". The signature is written in a cursive, flowing style. The first name "Suzanne" is written in a larger, more prominent script, and "Walinsky" follows in a similar but slightly smaller script. The signature is positioned above a horizontal line.

SUZANNE WALINSKY  
Court Reporter and  
COMMISSIONER OF DEEDS