



## American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Subrogation of Workers' Compensation

### Sample Language

#### ASA Recommends:

"Subcontractor is not required to name additional insureds to its general liability insurance policy, nor to waive subrogation for claims covered by workers' compensation or commercial general liability insurance."

#### What You May See in the Wild:

"The Subcontractor's Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner and the Contractor."

### Impact on the Subcontractor

- The subcontractor could find that its insurance carrier is precluded from asserting a claim against the named parties (i.e., the owner or general contractor) to recover money paid by the subcontractor's insurance carrier.
- The subcontractor's insurance modifier may be negatively impacted, affecting its ability to obtain work.
- The subcontractor's insurance premiums could increase.
- The subcontractor's insurance policy could be canceled.

### Negotiating Tips

**When the GC Says:** "We require all of our subcontractors to waive subrogation for workers' compensation."

**The Sub Should Say:** "We do not agree to waive our rights, or our workers' compensation insurer's rights to subrogation. We included that in our bid proposal."

**When the GC Says:** "We need you to be completely responsible for any injuries to your employees."

**The Sub Should Say:** "Certainly, my company does everything it can to assure the safety of its employees. At the same time, we simply can't be responsible for injury to our employees merely because of someone else's negligence."

**When the GC Says:** "The owner insists that we get a waiver of subrogation."

**The Sub Should Say:** "Because this owner will have minimal presence on the jobsite, I don't have any problem listing it. However, your firm will have an active jobsite presence. I simply shouldn't have to pay for your negligence."

### Additional Resources:

*ASA Subcontract Addendum (2011)*, ¶ 14. Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*White Paper: Obligations to "Hold Harmless" and "Defend" (2009)*. Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*Risk Transfer: Frequently Asked Questions*. Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*ConsensusDocs Form 750, Standard Agreement Between Constructor and Subcontractor (2012)*, ¶ 9.1.2. Available at [www.ConsensusDocs.org](http://www.ConsensusDocs.org); ASA members can get a 20 percent discount by entering ASA100.

*American Institute of Architects Form A401, Standard Form of Agreement Between Contractor and Subcontractor (2007)*, ¶ 13.9. Available at [www.aia.org/contractdocs/](http://www.aia.org/contractdocs/).