

Second Supplement to Memorandum 2001-52

Mechanic's Liens: Double Payment Issue (Additional Commentary)

This supplement forwards some additional comments we have received on the staff draft tentative recommendation on *The Double Payment Problem in Home Improvement Contracts* attached to Memorandum 2001-52.

The following comments are attached:

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|--|-------------------|
| | <i>Exhibit p.</i> |
| 1. Andy Faust, American Contractors Indemnity Company (email, June 27, 2001) | 1 |
| 2. Carl and Jeanette Farnsworth, Santa Ana (June 24, 2001) | 2 |

Bonding

Andy Faust, President of American Contractors Indemnity Company, writes that his company would be able to issue the 50% payment bonds, particularly for smaller amounts, with an anticipated premium of 0.5-3%. See Exhibit p. 1. In a follow-up email, Mr. Faust clarifies how he thinks the blanket bond would work:

The term I used, i.e. "blanket bond" really did not mean blanket bond in the sense most might interpret it. I do not think a real "blanket bond" should be allowed, unless it is in a quite large amount. What I really meant and should have said is to set up a bordereau system where a contractor would be qualified for X \$ [in] bonding, bond forms could be given the contractor in the form of certificates of payment bond coverage and the contractor could use them by filling in minimal information "referring to old technology" on a triple padded bond certificate form. Original to owner-obligee, copy to surety company, copy for the contractor. The bonding company would get a copy of each bond and maybe monthly bill the contractor once for the bonds issued that month, or what have you. That said, should the proposed law allow a "blanket bond" to be utilized, we would also provide that type of bond where coverage would be afforded to unnamed obligees who would have rights under such a law. The size of such a bond would be an issue.

Homeowner Viewpoint

The letter from Carl and Jeanette Farnsworth reflects the viewpoint that homeowners should not have to pay twice for contractors who fail to pay their bills. See Exhibit p. 2.

SB 938 Submission

The Commission has also received a letter from Brian Swisher, on behalf of the American Subcontractors Association — California (dated June 25, 2001), concerning the notice of completion issues addressed in SB 938 (Margett), which is discussed briefly in Memorandum 2001-53. The staff has not reproduced this material because the Commission is not yet to the point of considering these issues. The ASAC materials will be forwarded to the Commission when the subject is considered.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

From: Andy Faust <andyf@acicbond.com>
To: "'sulrich@clrc.ca.gov'" <sulrich@clrc.ca.gov>
Subject: mechanics lien
Date: Wed, 27 Jun 2001 08:50:17 -0700
Organization: ACIC

Mr. Ulrich: I am President of American Contractors Indemnity Company. We are a mono-line surety company and one of the top five writers of surety in the state of California. We specialize in writing smaller contractors and artisan contractors. I have been asked by Sam Abdulaziz to make contact with you and advise you of the underwriting posture of our company should proposed mechanics lien laws be altered and in their place, in specific types of instances, payment bonds would be required on remodel-alteration or what have you type work on single family type dwellings and/or personal residences, etc. Our company currently writes the contractors license bonds for over 25,000 contractors in the state of California. As such, we are probably the second leading writer of this line in the state. Surety Company of the Pacific is the leading writer of the bond with, I am told, over 80,000. They have been writing the bond since early seventies. We have been writing the bond since 1995. My company would be willing to write a payment bond on a single family construction, remodel and/or alteration contract. Obviously the contractor, whom we are in effect co-signing for, would have to meet our underwriting requirements. In general, our underwriting requirements are so liberal, on small projects, that most anybody reasonably responsible person or entity could qualify at some level, and under various conditions. Our company would likely market this product on both a single bond basis and on a blanket basis. The rate we would charge would vary and be dependent on the type of financial and technical competence presentation was made by the applicant (contractor).

I believe the rate structure would be no less than one half of one percent of cost of total work performed and no more than 3%. The rate our company would charge would reflect what we considered the actuarial risk presented by each contractor as well as how streamlined we could make the entire bonding process, i.e. underwriting process for level of acceptability as well as issuing the bond to the specific obligees along with the cost of doing the necessary follow up to be sure that the contractor is properly dispersing the funds being paid to them by the obligee(s) under the bonds, i.e. the owner(s) of the properties under construction. Should you have any questions of me, I would be happy to respond. You can reach me by E response or by phone @ 310-649-0990 or Fax at 310-649-0416. I am available as a resource of any sort in furtherance of your mission. Sincerely,

Andy Faust...

The California Law Review Commission
atten: Stan Ulrich
4000 Middlefield Road, Room D-1
Palo Alto, Ca 94303-4739

Law Revision Commission
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JUN 28 2001

File: _____

June 24, 2001

I am a homeowner and have had work done on my home several times. I expect to hire contractors for roofing and other types of work in the future.

I feel VERY STRONGLY that homeowners should NOT be held responsible for contractors who fail to pay their bills.

In all other financial transactions, if you pay your bill to the person who provided you with a service, that satisfies your obligation. Why should it be different for contractors? They need to be held responsible if they choose to work with unreliable subcontractors or vendors.

Sincerely,

Carl W. Farnsworth

Jeanette Farnsworth

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