

## Second Supplement to Memorandum 2001-18

### Mechanic's Lien's (Comment Letters)

The Commission has received a number of letters since the Fifth Supplement to Memorandum 2000-78. Most of them are in response to a letter-writing campaign — see Exhibit p. 10 (solicitation letter) and Exhibit p. 26 (reference to article by Sam K. Abdulaziz in local builders exchange bulletin). At least in part, this campaign is founded on some misconceptions: first, that the Commission has recommended some package of statutory revisions and, second, that “these changes would eliminate, YES ELIMINATE, the ability of sub-contractors, laborers and suppliers to effectively collect on their contracts or work through the lien law process.” See, e.g., Exhibit p. 10. Letters from the following persons are attached:

	<i>Exhibit p.</i>
1. Sue L. Kristensen, Kristensen Drywall, Winters (Dec. 12, 2000) . . . . .	1
2. James E. Miller, Garden Way, Pacific Grove (Dec. 15, 2000) . . . . .	2
3. Shirleen K. D’Amato, Watersaver Company, Inc., Denver, CO (Dec. 19, 2000) . . . . .	3
4. Paul R. Cooley Jr., Cooley Construction, Inc., Victorville (Dec. 21, 2000) . . .	4
5. Robert E. Poole, Redwood Engineering, Tiburon (Dec. 21, 2000) . . . . .	5
6. Diane Robinson, Robinson & Moretti, Gilroy (Dec. 21, 2000) . . . . .	6
7. Russell Conroy, E & R Construction, Inc., San Dimas (Dec. 22, 2000) . . . . .	7
8. Oswald J. Da Ros, Da Ros, Inc., Santa Barbara (Dec. 26 2000) . . . . .	8
9. J.H. Thompson, Jr., J.H. Thompson & Sons, Inc., Bermuda Dunes (Dec. 26 2000) & attachment from Mission Clay Products . . . . .	9
10. Michael Barrow, Camarillo Engineering Inc., Somis (Dec. 26 2000) . . . . .	11
11. Steve Stewart, Clearwater Pipeline, Inc., Perris (Dec. 27 2000) . . . . .	12
12. Paula M. Poss, Poss & Sons Pipeline, Riverside (Dec. 28 2000) . . . . .	13
13. Antonio M. Goncalves, A.M.G. Pipeline Inc., Fremont (Jan. 2, 2001) . . . . .	14
14. Gene Wood, Wood Construction, Alta Loma (Jan. 2, 2001) . . . . .	15
15. Jackie Minyard, Minyard Excavating, Byron (Jan. 4, 2001) . . . . .	16
16. Herman Chavez, C&H Fence & Patio, Inc., Delano (Jan. 9, 2001) . . . . .	17
17. Chet Todd, Hanes Floor Inc., Redding (Jan. 11, 2001) . . . . .	18
18. Lisa Swinyard, Swinyard Construction, Thornton (Jan. 11, 2001) . . . . .	19
19. Frank Collard, Catalina Pacific Concrete, Glendora (Jan. 11, 2001) . . . . .	21
20. Michael M. Ghilotti, Ghilotti Bros. Inc., San Rafael (Jan. 15, 2001) . . . . .	23
21. Jennifer Hess, Bova Contracting Corporation, Anaheim (Jan. 16, 2001) . . .	24
22. Bob Painter, Western Star Nurseries, Sunol (Jan. 17, 2001) . . . . .	25

23. Larry Goddard, Vice President, Robert S. Bryant, General Contractor, Inc., Redding (Jan. 19, 2001) . . . . .	26
24. William A. Murphy, Builders Disbursements, Inc., Glendale (Jan. 22, 2001) . . . . .	27
25. Sam K. Abdulaziz, Abdulaziz & Grossbart, North Hollywood (Jan. 29, 2001) (email version) . . . . .	29

The gist of these letters is to express concern and opposition to any move to alter or abolish subcontractors’ or suppliers’ mechanic’s lien rights. Very few of these letters, or the first 33 attached to earlier supplements, express any opinion on the alternatives under discussion. Many of these letters evidence problems in getting paid by general contractors — which suggests to the staff that they might be well-advised to support efforts to address the problems involving credit and payment practices in the construction industry. See, e.g., Exhibit pp. 1, 7, 9, 15, 17, 18, 19-20 (“General Contractors are simply ‘paper contractors.’ They produce nothing and supply nothing ....”), 23, 25 (“... exposing the material supplier to manipulations of unscrupulous general contractors ...”).

There is little if any sympathy expressed for homeowners who may be penalized by the same practices that victimize the small subcontractor. In fact, the writers usually do not distinguish between cases where the owner has paid the prime contractor and cases where the owner has not paid at all. But see Exhibit pp. 25, 26.

We can’t tell whether subcontractors or suppliers are aware of protective actions they could take — and that they expect the far less knowledgeable homeowner to take — or, if they are aware, that they should have any responsibility to protect their financial interests. See, e.g., Exhibit pp. 1, 7 (“only method to guarantee payment would be to demand cash up front”), 9, 13 (“only recourse of payment”), 14, 15, 16, 25 (“Why would we extend unsecured credit?”). Subcontractors would be forced to pay cash to suppliers. Exhibit p. 12. But see Exhibit p. 20 (joint checks).

There are a number of interesting and revealing comments in these letters. The staff does not intend to abstract them all here, but a few will give the flavor:

Some report CSLB inadequacies. One writer reports that the CSLB refuses to do anything when she has complained about prime contractors who don’t pay their subcontractors. Exhibit p. 1. See also Exhibit p. 19.

A number of writers point out how “disastrous it would be to go unpaid on even one job” for the small businessperson. See, e.g., Exhibit pp. 2, 13, 17, 18.

Subcontractors and suppliers prefer to keep their current advantageous credit position and do not want to “incur additional economic exposure” or suffer “tremendous inconvenience.” Exhibit pp. 3, 4, respectively. The lien law should not be changed, even where it is recognized that the owner may have paid the prime contractor. Exhibit p. 6.

Sometimes there is a disconnect between the operation of the lien and the goal achieved. Russell Conroy reports that the “existing law has allowed us to collect from inept or even dishonest general contractors,” although it is not explained how perfecting a lien on the owner’s property “prior to a ‘clean’ transfer or sale” of the property gets payment from bad contractors. Exhibit p. 7.

Frank Collard suggests that homeowners refusing to pay the bill is a much “more serious problem” than double payment. See Exhibit p. 21. He notes that as a material supplier he cannot afford to foreclose on a balance less than \$5,000. He concludes that creating a compensation fund would have the effect of encouraging people to go after small amounts that are ignored now, with the result that the fund will be “rapidly drained.” He gives capsule reviews of bonding, escrow, and privity approaches, and concludes that the law should be left as it is. See Exhibit p. 22. He believes the owner is favored on small balances, and on larger balances, “the owner should have the sophistication and the resources to monitor the work of improvement.” *Id.*

One contractor has written. See Exhibit p. 26. Larry Goddard writes that the owner should not be responsible where the subcontractor fails to pay the supplier and that suppliers shouldn’t do business with subcontractors who are not responsible.

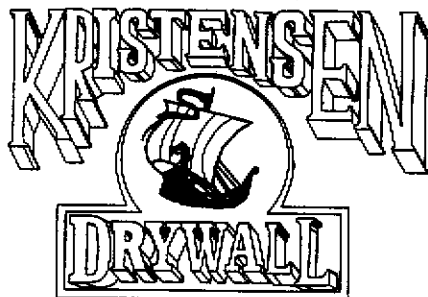
We have also received a letter from the president of a joint control company. See Exhibit pp. 27-28. William A. Murphy appears to support the status quo and concludes that joint control companies “cannot afford to assist the smaller projects, as our costs are just too high” due to “the many heavy-handed Government requirements we face.” Exhibit p. 28.

Sam Abdulaziz re-emphasizes his view that the Commission should seriously consider mandatory bonds and/or joint control, coupled with better notices. See Exhibit p. 29. These options are discussed in Memorandum 2001-18.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

December 12, 2000



Mr. Stan Ulrich  
California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Law Revision Commission  
RECEIVED

JAN 02 2001

File: 17-820

Re: Contractors Lien Rights

Dear Stan:

I am writing in response to contractor lien rights. By taking away a subcontractors lien rights it would make doing business extremely devastating.

As a subcontractor who has been in business 16 years, we have had many occasions where we have had to enforce our lien rights to get paid money that was due us. You can call a General Contractor fifteen times a week and ask them if they have been paid and they can tell you that they have not been paid, when infact they were. Your only recourse when a General Contractor will not pay you is to call the owner and let me know that you have not been paid. When you inform the owner that you will be forced to put a lien against their project, they will usually force the General Contractor to pay you.

Shouldn't Subcontractors have a right to collect their money for work that they performed in good faith. Having a lien placed against your residence or commercial property is only because you did not pay your debt for material and labor that has already been provided. It is infact the owners responsibility to make sure that there General Contractor is paying its subcontractors.

If a subcontractor does not have lien rights, then who will Govern the general contractors. Certainly not the Contractors State License Board. I have sent in numerous complaints with evidence regarding General Contractors who don't pay there subcontractors and they refuse to do anything.

Please do not allow our rights to be taken away.

Very truly yours,

  
Sue L. Kristensen  
Vice President



# GARDEN WAY

Award-Winning Landscape Design and Development

December 15, 2000

Law Revision Commission  
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DEC 20 2000

Stan Ulrich  
California Law Review Commission  
4000 Middlefield Road Room D-1  
Palo Alto CA 94303-4739

File: A-820

Dear Mr. Ulrich:

I am writing with concern regarding the mechanic's lien process in California..

Like most specialty contracting companies, Garden Way works as a sub-contractor to a general contractor on commercial or public works projects. As a sub-contractor, we have no relationship with the owner of a project. Our customer is the general contractor. Because of this, we rely heavily on the Mechanics Lien laws to insure that we will be paid for our work.

If the lien laws are softened, we would have very little recourse to get paid for our work. A dishonest general contractor or a general contractor going out of business could be devastating to a sub-contractor. In the contracting business, payment for work is typically very slow (60 days +). So, the majority of the costs for labor and materials are almost always paid in full by the sub-contractor before getting paid by the general contractor.

You can imagine how disastrous it would be to go unpaid on even one job! With all the workers having been paid and all the materials having been paid for, a sub-contractor would have a hard time surviving.

Please look to strengthen the existing mechanics lien laws to protect the small companies that perform the sub-contracting on these projects.

Thank you for your time with this.

Sincerely,

James E. Miller, owner  
Garden Way  
(831) 373-3898 - phone and FAX



Established 1953

# WATERSAVER COMPANY, INC.

P.O. BOX 16465 DENVER, COLORADO 80216-0465

Phone: 303-289-1818 Fax: 303-287-3136  
Plant and Office — 5870 E. 56th Avenue, Commerce City, Colorado 80022-3932

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JAN 12 2001

File: \_\_\_\_\_

December 19, 2000

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

To Whom It May Concern

I understand that the mechanics' lien process in California is under review. Please do not reduce the rights of a material/service provider to a Mechanics' Lien and to Bond protection.

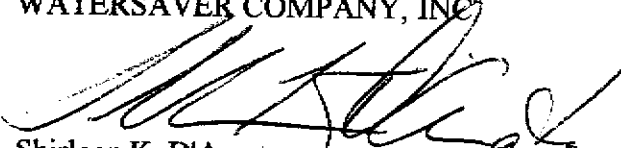
The current laws give protection to corporations like Watersaver Company Inc., who provide material and/or service, and to all parties involved in a contract by requiring communication when material/service is provided. The current law helps assure all parties that funds are properly flowing to all parties involved and provides a method of recourse when this does not happen.

The current laws allow us to deal with owners, general contractors and subcontractors without incurring additional economic exposure.

Please do not reduce our rights to fair and agreed compensation for work performed.

Sincerely,

WATERSAVER COMPANY, INC.

  
Shirleen K. D'Amato  
Executive Vice President/CFO

SKD:sfy



Law Revision Commission  
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DEC 27 2000

File: A-820

GRADING ■ PAVING ■ SEALCOATING ■ UNDERGROUND  
(CA LIC. #348038)

December 21, 2000

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

RE: PROPOSED CHANGES IN THE CALIFORNIA MECHANICS LIEN LAWS

To Whom It May Concern:

It has come to our attention that the Mechanics Lien Laws are to be reviewed for possible changes. Cooley Construction, Inc. has been incorporated since 1976 and employs approximately 84 employees at one time. Changes to this law will cause a tremendous inconvenience and strain to our company. Cooley Construction, Inc. requests that you consider the burdens that changes to the Mechanics Lien Law will impose on all business.

Cooley Construction, Inc. thanks you for your time and understanding to this matter.

Sincerely,

Paul R. Cooley JR.

EXCAVATION



TRUCKING

Law Revision Commission  
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DEC 26 2000

File: H-820

DECEMBER 21, 00

COMMISSIONERS :

I IMPLORE YOU NOT TO IMPOSE ANY CHANGES IN THE LIEN RIGHTS CURRENTLY AVAILABLE TO SUB-CONTRACTORS + MATERIALS SUPPLIERS.

THE SYSTEM AS IT IS NOW WORKS. LIEN RELEASES, SCHEDULED AT EVERY PROGRESS PAYMENT, KEEPS EVERYONE AWARE OF PAYMENT STATUS TO ALL. I BELIEVE IF LIEN LAWS ARE WEAKENED OR ABOLISHED, WITH NEITHER THE PRIME CONTRACTOR OR HOME OWNER RESPONSIBLE TO THE SUBCONTRACTOR/SUPPLIER, THE SUB AND SUPPLIER WILL BE THE LOSER.

COLLECTIONS WOULD BE MORE DIFFICULT, COMPLICATED, COSTLY + THE RESULTS, MORE THAN LIKELY, <sup>MORE</sup> UNFAVORABLE THAN AT THE PRESENT TIME.

SINCERELY

5

Robert E. Poole



ESTABLISHED 1969



# Robinson & Moretti, Inc.

GENERAL ENGINEERING CONTRACTOR

7780 HOLSCLAW ROAD  
GILROY, CALIFORNIA 95020  
(408) 842-5593  
FAX (408) 842-7763

LICENSE #418843-A



December 21, 2000

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Law Revision Commission  
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JAN 02 2001

File: H-820

Dear California Law Review Commission,

We are writing to you in response to the proposed change in the current Mechanics Lien Law for California. We are a small company that fortunately has been in business for the past 30 years. We do grading, excavating, site preparation, road building, and demolition.

The current Mechanics Lien Law is very important to a small company like us. The current Mechanics Lien Law gives us security for payment if the General Contractor does not pay us for our supplies and work performed, even though he has been paid by the owner. Through our experience, we have found the current Mechanics Lien Law to work very effectively. We ask that the current laws are not changed.

Sincerely,

Robinson & Moretti



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**E&R CONSTRUCTION INC.**

---

General Engineering Contractor  
945 Wellington Rd., San Dimas, CA 91773  
Lic. No. 449476

---

(626)338-8405 • Fax (626)960-7206

December 22, 2000

Law Revision Commission  
RECEIVED

DEC 27 2000

File: H-820

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Dear Sir or Madam:

E&R Construction Inc. has been in business since the middle seventies. E&R Construction is very concerned about the pending changes in the current mechanics lien laws. There have been many times in our history where the existing law has allowed us to collect from inept or even dishonest general contractors. If the law in the past were equivalent to what is being proposed E&R Construction, and many small and large contractors like us, would not have received moneys owed and this would have severely damaged our business. The ability for E&R to perfect a lien against an owners physical asset, and be paid for our labor and materials which improved that asset prior to "clean" transfer or sale of that asset, is an all important point for E&R to stay in business. This is even more important due to E&R's ability as a sub-contractor with no direct connection to the owner, to directly increase the owners property value. If the law were to change to that which is being proposed, E&R's only method to guarantee payment would be to demand cash up front for our labor and materials. I also feel that our materials suppliers would demand to be paid by E&R Construction on a C. O. D. basis. This would be a completely unacceptable way of doing our business.

Sincerely,

Russell Conroy

President E&R Construction, Inc.

# OSWALD J. DA ROS, INC.

• FOUNDED 1920 •

74425 - LICENSED MASONRY CONTRACTORS - 216916

MARBLE - GRANITE - STONE

976 CARRILLO ROAD • SANTA BARBARA, CALIFORNIA 93103-2452

TELEPHONE (805) 962-6406 • OFFICE • FAX (805) 962-6588

TELEPHONE (805) 965-1926 • SHOP • FAX (805) 963-6071

26 December 2000

Stan Ulrich  
California Law Review Commission  
4000 Middlefield Road, Room D-A  
Palo Alto, CA 94303-4739

Law Revision Commission  
RECEIVED

DEC 28 2000

Ref: Mechanic's Liens

File: A-820

Dear Mr. Ulrich;

We believe that the process that has been in place for many years works well.

As a subcontractor, when we file the notices required to protect our rights it is just to owners, lenders as well as the subs, suppliers and general contractors.

Subs need to be prudent and perform as per specs and codes. The general must be prudent also, protecting his client and contracting out to reliable, competent subs. Their practice must respect the subs also who have talented workers performing service faithfully and timely, enhancing their position with their clients.

The owners-lenders are protected by notices required, eliminating collusion by "crafty people". Legislation as it is written has kept the unscrupulous operator from harming the industry, therefore benefitting everyone involved, including the State of California.

The legislation as written is self-policing construction at the least cost. Simply put, the process is not broken. There is nothing to fix.

Sincerely,

*Oswald J. Da Ros, Inc.*

Oswald J. Da Ros, Inc.

# J.H. Thompson & Sons, Inc.

General Engineering Contractors

BERMUDA DUNES  
TELEPHONE: (760) 345-6003  
License No. 734478

79-607 COUNTRY CLUB DR., SUITE 2  
BERMUDA DUNES, CA 92201-1126  
FAX: (760) 345-0525

DECEMBER 26, 2000

CALIFORNIA LAW REVIEW COMMISSION  
4000 MIDDLE FIELD ROAD ROOM D-1  
PALO ALTO, CA 94303-4739

Law Revision Commission  
RECEIVED

JAN 03 2001

File: H820

ATTN: COMMISSIONER  
RE: CALIFORNIA LIEN LAWS

DEAR COMMISSIONER,

THIS LETTER IS IN REFERENCE TO THE CALIFORNIA MECHANICS LIEN LAWS AND POSSIBLE CHANGES.

WE HAVE BEEN IN BUSINESS OVER 25YRS AND HAVE EMPLOYED UP TO 100 PEOPLE.

AT THE PRESENT TIME WE ARE STILL HAVING DIFFICULTY COLLECTING MONEY THROUGH OUT OUR INDUSTRY WITH THE PRESENT LAWS. IF YOU ELIMINATE THE ABILITY OF SUB-CONTRACTORS, LABORERS, AND SUPPLIERS TO EFFECTIVELY COLLECTING ON THEIR CONTRACTS WHEN THE OWNER GETS PAID IT WILL STOP MANY FROM DOING BUSINESS.

PLEASE DO NOT CHANGE THE CURRENT LAW WE NEED MORE RIGHTS AS CONTRACTORS WHICH CURRENTLY ALLOW PEOPLE TO BOND AROUND LIENS TO AVOID PAYMENT. AT LEAST WE HAVE THE RIGHT TO LIEN.

SINCERELY,  
J.H. THOMPSON & SONS, INC.

  
J.H. THOMPSON JR.  
PRESIDENT

# MISSION CLAY PRODUCTS



**A DIVISION OF MCP INDUSTRIES, INC.**

**GENERAL OFFICES:** 1655 E. SIXTH ST. A5a • CORONA, CALIFORNIA 91719  
P.O. BOX 1839 • CORONA, CALIFORNIA 91718-1839  
(909) 736-1881 • FAX (909) 549-8280

**SOUTHERN SALES  
OFFICE - CORONA, CALIFORNIA  
(909) 277-4600**

**NORTHERN SALES  
OFFICE - OAKLAND, CALIFORNIA  
(510) 568-0800**

## URGENT - READ THIS

December 2000

To: All mission clay customers

From: David Kula, Credit Manager

**SUBJECT: PROPOSED CHANGES IN THE CALIFORNIA MECHANICS LIEN LAWS**

The California Law Review Commission is reviewing the current Mechanics Lien Laws for possible changes.

These changes would eliminate, YES ELIMINATE, the ability of sub-contractors, laborers and suppliers to effectively collect on their contracts or work through the lien law process. It would do-away with the ability of the contractor, laborer or supplier to look to the owner for payment if the in between contractor does not pay you when paid. This would cause you, and me, if not paid to sue under the contract in civil court or get paid up-front, prior to starting any work.

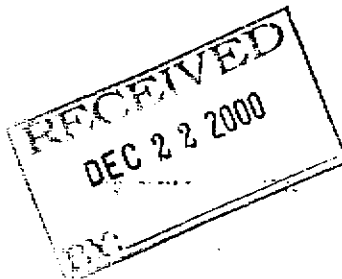
As you can see, this would be very cumbersome and costly process and probably cause many to stop doing business.

I urge you to write to the California Law Review Commission, 4000 Middlefield Road, Room D-1, Palo Alto, CA 94303-4739 asking them NOT to change the current laws. The letter should be in your own words, on your letterhead, stating how long you have been in business and the number of employees that you might employ at any one time.

The more letters the Commission receives the better the chances of not changing the current laws.

Thank you for your support and cooperation

10



CAMARILLO ENGINEERING INC.

*General Engineering Lic. No. 623944-A*

PO BOX 758 SOMIS, CA 93066

(805) 389-4655 FAX (805) 389-4650

Law Revision Commission  
RECEIVED

DEC 28 2000

File: 11-820

December 26, 2000

California Law Review Commission  
4000 Middlefield Rd., Room D-1  
Palo Alto, Ca. 94303-4739

Re: Proposed changes in the California Mechanics Lien Laws

Ladies/Gentlemen:

I am writing to ask that the current California Mechanics Lien Laws not be changed. If the California Mechanics Lien Laws were to be changed, and the changes were to eliminate our ability to effectively collect on our contracts, the alternatives to collect would at best be cumbersome and costly and could very well cause a small company, like ours, financial ruin.

This company has been in business for ten years and employs twenty-five people, of which forty percent have been with the company since it's inception.

Sincerely,



Michael Barrow  
President



3838 Brennan Ave., Perris, Ca. 92571 Phone 909-657-2829 Fax 909-657-1890  
From the desk of Steve Stewart

Law Revision Commission  
RECEIVED

JAN 03 2001

File: ADD

December 27, 2000

California Law Review Commission  
4000 Middlefield Rd. Room D-1  
Palo Alto, Ca. 94303-4739

TO WHOM IT MAY CONCERN:

Re: Proposed Mechanic's Lien Law Changes

We are writing to express our deep concern over the proposed changes in Mechanic's Lien Laws which may eliminate the ability of 2<sup>nd</sup> & 3<sup>rd</sup> Tier Suppliers & Subcontractors to obtain payment. We are certain the reasons for the change are necessary but the requirement of Subcontractors and Suppliers to seek judicial intervention is not the answer. In most cases, the Laws work well and protect many Companies like ours from unnecessary loss of payment.

It is our understanding that many of our Suppliers will demand payments up front. This type of business relationship will cripple many small businesses and mandate downsizing of operations to accommodate the creditor demands. Our business employs approximately 50 families and have been operating successfully using the current mechanic's lien laws, with minor changes.

We urge the Commission to leave the Mechanic's Lien Laws as they are and focus instead on the abolition of Prevailing Wages for Taxpayer funded projects. It is a considerable waste of taxpayer money paying double & triple regular wages for our Schools, Government Buildings, and Municipal Improvements. If there are any questions, please contact us.

Sincerely,  
  
Steve Stewart  
Vice President

SS

**POSS & SONS PIPELINE**

P.O. Box 7621  
Riverside, CA 92513

Phone 909 657-9666  
Fax 909 657-1016  
St. Lic. #350510

December 28, 2000

California Law Review Commission  
4000 Middlefield Rd. Room D-1  
Palo Alto, CA 94303 - 4739

Law Revision Commission  
RECEIVED

JAN 03 2001

RE: Mechanics Lien Law

File: ASV

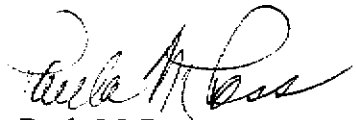
Gentlemen/Madam:

We have been in business for over thirty years, and employ from three to ten people. It is completely unacceptable that you would change our only recourse of payment by eliminating our lien rights in the event of non-payment.

Please consider our position of having NO recourse for payment. Small contractors, as we are, could face bankruptcy with one or two unpaid contracts. This will make it difficult to secure credit for materials, difficult to hire sub-contractors who may be unfamiliar with a contractor, difficult in every sense. It can not be fair to the small people who are out there working diligently survive.

**PLEASE DO NOT CHANGE THE LAW!**

Respectfully,



Paula M. Poss  
Co-Owner

PMP:pp



**A.M.G. Pipeline Inc.**  
**General Engineering Contractor**

42536 Osgood Road  
Fremont, CA 94539

(510) 490-4432  
Fax: (510) 490-2392

License No. 494741

January 2, 2001

Law Revision Commission  
RECEIVED

JAN 04 2001

File: 4-820

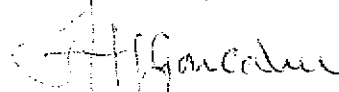
California Law Review Commission  
Room D-1  
4000 Middlefield Road  
Palo Alto, CA 94303-4739

Dear Sir:

SUBJECT: PROPOSED CHANGES IN THE CALIFORNIA MECHANICS LIEN LAWS

Please do not make any changes in the current Mechanics Lien Law. If you do make changes we would not be able to collect from the owner of a project when we are not paid by a subcontractor. Our only recourse would be to sue in civil court or get paid up-front.

Very truly yours,

  
Antonio M. Goncalves

AMG/gn

January 2, 2001

Law Revision Commission  
RECEIVED

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

JAN 05 2000

File: H-820

Dear Commission,

I am writing to express my concern regarding proposed changes to the current California Mechanics Lien Laws. It is my understanding that the proposed changes would eliminate my ability, as a subcontractor, to effectively collect on my contracts through the lien law process. This is of great concern to me, as I have been burned badly by general contractors prior to the current lien law being in effect.

I have over 20 years experience in the underground pipeline field. We employ anywhere from 7 to 18 people at a time depending on the job we are working on. From 1989 through 1991, I worked as a subcontractor for Novell Construction, a then General Contractor in Pasadena. I did about \$150,000.00 work for him. In the beginning he paid okay. Then he stopped paying. Being naive at the time, I continued to work for him based on his promises to pay. I had \$25,000.00 material bills on my accounts for materials that I had installed on his jobs. Even though he was not paying me, my suppliers were demanding payment from me - payment that I did not have because Mark Novell owed me over \$75,000.00.

This is not an isolated case. Many subcontractors can tell you similar stories. That is why I am so concerned that you are considering changing the current Mechanics Lien Laws. These laws protect my suppliers and myself. They guarantee payment to the people who supply material for the job, and the people that work so hard to accomplish the job. Please don't allow general contractors to get away with collecting money from owners and not paying their suppliers and subcontractors.

Thank you for your attention to this very important matter.

Sincerely,



Gene Wood  
Wood Construction

GW:cl

# MINYARD EXCAVATING

---

General Engineering Contractor License #724507 • WBE #CT-028658  
P.O. Box 1788 • Byron, CA 94514-7788  
(925) 513-6620 info@minyard.net Fax: (925) 513-6630

California Law Review Commission  
4000 Middlefield Rd. Room D-1  
Palo Alto, CA 94303-4739

Law Revision Commission  
RECEIVED

JAN 08 2001

File: A-820

Jan. 4, 2001

Subject: Proposed changes in the Ca. Mechanics lien laws

Please beware that the Ca. Preliminary notice and mechanics lien laws are often times the only way sub-contractors are able to get paid. Because it makes the owner aware you doing work on there property and the contractor will owe you money for the work done. It makes property owners aware and they make sure we get paid to protect their property. Seems like a good system all the way around. If you were to eliminate the lien process, I would hope you have a better system to install in its place, so we can have some guarantee of payment not just civil court.

I'm a small business owner of 9 employees and do approximately 1 million dollars of work a year. I think that removing the lien laws would make doing business much harder and flood the civil court system with contractors.

Thank you for your consideration.



Jackie Minyard  
Owner - Minyard Excavating



FENCE  
&  
PATIO  
INC.

1752 Girard Street  
P.O. Box 490  
Delano, CA 93216



Contractor Lic. #397784

Law Revision Commission  
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JAN 12 2001

File: \_\_\_\_\_

January 09, 2001

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Attn: Mr. Stan Ulrich

I am very concerned about the issue of the Mechanics Lien Rights.

As a Small Business Sub-Contractor I would be greatly harmed if our Lien Rights were lost.

Our profit margins are very small 5% to 6% a loss of a \$5,000.00 or \$6,000.00 could mean the possibility of going out of business since it would take many jobs to make up the loss.

Please let us keep our Lien Rights.

Sincerely,

Herman Chavez, President

17

DELANO  
725-3600

VISALIA  
651-0772

BAKERSFIELD  
327-4786

# Hanes Floor inc.

870 Commerce Street  
Redding, CA 96002.0685

530/221-6544

Fax 530/221-6547

January 11, 2001 of Hanes fifty forth year

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303.4739

Law Revision Commission  
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JAN 16 2001

File: \_\_\_\_\_

Att: Stan Ulrich

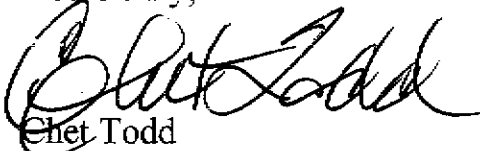
Dear Mr. Ulrich

I understand your commission is reviewing the existing California lien laws. We are specialty contractors and depend upon the mechanics' lien to protect us for payment for the work we have done.

We work on a very small margin of profit and of necessity are often dealing with general contractors who are somewhat unstable. There must be a method on place which will guarantee payment to us. Even the present method does not do that, but it is a help.

I ask that your commission not recommend any changes which would release our rights to lien the property. Thank you

Yours truly,



Chet Todd  
Secretary/Treasurer

# *Swinyard Construction*

**B-1 General Contractor  
C-21 Demolition Contractor  
License #752085**

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January 11, 2001

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JAN 16 2001

Mr. Stan Ulrich  
California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

File: \_\_\_\_\_

Dear Mr. Ulrich:

I understand that a review is taking place concerning lien rights for contractors.

As a small, husband and wife company, we depend greatly on our lien rights. The suppliers who allow us to charge supplies to an account expect to be paid for the materials we purchase for each job. If I was unable to pay these suppliers because the general contractor did not pay me, the suppliers would do at least two things: 1) close our account which would immediately jeopardize our future business and 2) contact D&B and virtually destroy my credit. This also would seriously impact our future business because we would be unable to obtain supplier accounts. In addition, some suppliers, depending on the amount of purchase, require a 2 party check as well as lien our jobs. This ensures that they get paid. However, if the lien rights were taken from the suppliers, more of them would require 2 party checks. As you may already know, the construction industry is notorious for slow payment. This 2 party check process increases the time it takes for me to get paid. This is detrimental to my business as it stands and would be worse with no lien rights.

If lien rights are taken from subcontractors, what is our avenue for collection? I have already personally experienced using the State Contractors Board and Bond Company to attempt to collect from a "dodging" contractor. I never was able to completely collect in that case and that contractor is still in business.

Lien rights should protect all contractors, subcontractors and material suppliers. In many cases, General Contractors are simply "paper contractors." They produce nothing and supply nothing, therefore, their out-of-pocket expenses are limited. If they choose not to pay, they are the winners. By changing these rights, the General contractors would be the only ones protected. This will erode the construction industry in the future.

lien rights.doc

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P.O. Box 840  
Thornton, CA 95686

1-209-794-0175 (Office)  
1-209-794-0176 (Fax)  
swinyardconst@citlink.net

# ***Swinyard Construction***

**B-1 General Contractor  
C-21 Demolition Contractor  
License #752085**

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The owners should have ultimate responsibility in ensuring that all contractors and material suppliers get paid for producing the final product. When an owner contracts with a General, parameters can be established so that the owner maintains some control over who is getting paid. For example, as in the case with some material suppliers, owners can use a 2 party check system. This might actually be beneficial to the subcontractors because we would be paid faster!! As it is now, many general contractors do not pay anything until the end of the job. However, they typically have received 50% of the total contract at the beginning of the job. Why should they use "our" money for the duration of the job instead of paying us progress payments as they receive their money? Lien rights will not affect this problem, but making owners more responsible may in fact help.

In conclusion, taking away our lien rights would be a devastating blow to our industry. There are many other ways to ensure that owners are protected as well. It may mean that owners must take a more active role in construction. Subcontractors and material suppliers are vital in the construction process. Competition is difficult enough without concern about being paid for a job completed.

Thank you for your consideration.

Sincerely,



Lisa Swinyard

lien rights.doc

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P.O. Box 840  
Thornton, CA 95686

1-209-794-0175 (Office)  
1-209-794-0176 (Fax)  
swinyardconst@citlink.net



**CATALINA  
PACIFIC  
CONCRETE**

2025 E. FINANCIAL WAY, P.O. BOX 5025, GLENDORA, CA 91741 • PHONE (626) 852-6200 • FAX (626) 963-7377

January 11, 2001

Stan Ulrich  
Assistant Executive Secretary  
California Law Revision Commission  
4000 Middlefield Rd., Room D-1  
Palo Alto, CA 94303-4739

Law Revision Comm:  
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JAN 18 2001

File: \_\_\_\_\_

Re: Mechanic's Lien Study

Dear Mr. Ulrich:

I have been following with great interest the information and correspondence regarding the Mechanic's Lien. This started in December of 1998 in a meeting with Keith Honda prior to the introduction of ACA5. At that time I explained to Keith the problem of the home owner paying twice and /or having to defend a Mechanic's Lien was very rare. A much more serious problem is the homeowner refusing to pay the total bill from the contractor. The contractor has almost no leverage to force the last few hundred dollars out of the owner.

As a material supplier I can not afford to foreclose on a balance less than \$5000. If I find the home owner is really taking advantage of the contractor I have as a matter of principal sued on a balance as low as \$3000. When this action is taken I fully realize I can not recover my expenses. This is not forcing the home owner to pay twice but requiring the owner to pay at least for the materials.

In my twenty-plus years as a credit manager in the construction industry, the only time I have seen a home owner have to pay over the contract is where his contractor filed for bankruptcy protection. This is not to say there are not occurrences where the owner is faced with paying twice. Only, to illustrate to you and the Commission how extraordinarily rare of an item this truly is. In many of these situations the owner never knows there was a problem as the balance due is too small to be pursued economically.

If however, there is a fund to recover from, the industry or the owners will then pursue these small dollars. At present we can not accept the cost of small dollar Mechanic's Lien actions and these losses become a cost of doing business to my company. If there is a recovery fund created (for the owner or the subcontractor/material supplier) it now becomes an education and paper processing activity to recover. The fund will be rapidly drained by the pursuit of monies the owners are now not having to pay. At this time there is no accurate method to determine the impact of these heretofore largely ignored claims against property owners.



A very similar situation will develop with bonding. The insurance companies will attempt to create procedural barriers to discourage the small claims. They will have to appear to fill this new need while not losing money. Again this will end up costing the home owners more. As we know, the cost of bonding will get passed on to the consumer.

The use of fund control agents or escrows will only end up pushing the owner outside the procedures to save the cost.

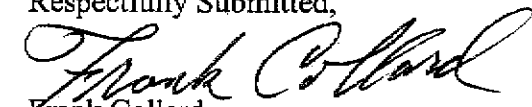
If the decision is reached to eliminate the Mechanic's Lien to only the contractor dealing directly with the home owner it will greatly reduce the competition for this work. First, it will increase the difficulty to enter this market. The less efficient operator will have his or her purchasing power reduced to a credit card or cash on hand. The owners will be required to front load the cost of their work as material suppliers will demand cash in advance, as the home centers do now. The owner will lose leverage, as the money will already be paid out. The owner can only hold out the labor expense and possibly retention, if there is a problem. If a supplier finds a contractor getting into trouble they will refuse delivery of items a home owner may have paid the contractor for. The owner then is put in the position of having to bail out the contractor or find another contractor, in order to have his work completed.

I hope the Commission can see that the problem of a home owner paying twice is not only quite rare, but fraught with many other delicately intertwined issues. Any adjustment to favor one party in this intricate balance creates many more problems for all the others and an increase in the cost for having work performed. This intricate balance has worked itself out over a very long period. I can not think of a situation where the home owner paid twice if they followed the advice they are given in selecting a contractor. In my fourteen years working for the largest retail lumber yard in Orange County, I found the home owners having problems were only looking at the price the contractor will charge. They ignored the qualifications and reputation and hired the contractor with the lowest bid they can find.

**Please leave the lien law as it is.** On small balances it favors the owner and on large balances the owner should have the sophistication and the resources to monitor the work of improvement. Legitimate contractors work hard to keep their reputations and licenses unblemished.

If the commission feels it must make some form of recommendation look at: 1) Increasing the license bond, 2) Strengthening the license law, 3) More clearly defining unlicensed contractor and the penalty for operating as an unlicensed contractor, 4) Giving more authority and funding to the Contractors State License Board and 5) Limiting Mechanic's Lien rights on home improvement contracts under \$2,500. I give number five as a possibility, only in that on small jobs, the work is performed and the contractor is looking for payment before the notices can be given. But, I speak with great concern at opening the door to any change in the rights of any class of lien claimant.

Respectfully Submitted,



Frank Collard  
Credit Manager

**GHILOTTI BROS. INC.**

525 Jacoby Street  
San Rafael, CA 94901  
(415) 454-7011  
Fax(415) 454-6237  
Lic. No. 132128

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**JAN 17 2001**

January 15, 2001

California Law Review Commission  
4000 Middlefield Rd, Room D-1  
Palo Alto, CA 94303

File: \_\_\_\_\_

To Whom It May Concern:


We understand that the current California Mechanics Lien Laws are being reviewed for possible changes. We are writing to urge you not to change the current laws in any way that would hinder the ability of contractors and material suppliers to get paid for their work.

We have been in business since 1914 and currently employ 250 people and it is already a struggle to get our money even with the threat of a mechanics lien hanging over the head of owners and lenders. If the laws were weakened in any way to eliminate that threat, it would be even more difficult to collect our money. Many private developers already balk at paying for the full value of our work. Without lien laws to protect us, they would simply hold our payments hostage and force us to give them large discounts so that we could get paid just to maintain some level of cash flow.

The lien laws were designed to give contractors, laborers and material suppliers some degree of leverage with owners and lenders to make sure that those putting in an honest day's work can count on receiving an honest day's pay. If lien laws are weakened or eliminated, the owners and lenders would have all of the leverage and many good, honest contractors and suppliers could be forced out of business.

If you have any questions or would like additional information, please call me.

Very Truly Yours,

  
Michael M. Ghilotti, Owner



*Creative Layers of Pipe*

Law Revision Commission  
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JAN 24 2001

January 16, 2001

File: \_\_\_\_\_

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

To Whom It May Concern:

We at Bova Contracting Corporation have been in business since December 1990 and we currently employ 35 employees. As a pipeline contractor, we rely on the current Mechanics Lien Laws to assist us as well as our suppliers in the pay process by our customers. We have been informed that there are plans for changing the current Lien Laws that would do away with the ability of the contractor, laborer or supplier to look to the owner for payment if the general or the sub-contractor does not pay you when paid. We strongly disagree with the implementation of this law, as this could be extremely costly to us as well as our subcontractors and suppliers forcing us to sue under the contract in civil court or force us to demand payment prior to the starting of any work.

Thank you,

A handwritten signature in cursive script, appearing to read "Jennifer Hess", is written over a printed name and title.

**Jennifer Hess**  
**Bova Contracting Corporation**

# WESTERN ★ STAR NURSERIES LLC

3255 NILES CANYON ROAD, P.O. BOX 567 ★ SUNOL, CA 94586

PHONE: (925) 862-2411 ★ FAX: (925) 862-9008

January 17, 2001

Stan Ulrich, Assistant Executive Secretary  
Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, California 94303-4739

Law Revision Commission  
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JAN 18 2001

RE: California Mechanics' Lien Rights

File: \_\_\_\_\_

Dear Mr. Ulrich,

Western Star Nurseries, LLC, must express our opposition to any proposed constitutional amendment(s) and trust that you can agree with us that this could be so potentially damaging to small (and large!) privately owned businesses in the construction and construction related industry.

Loosing our mechanics' lien rights would remove valid and legitimate protection of payment to material suppliers of goods (us!) delivered. Any measure could go beyond its intended purpose by exposing the material supplier to manipulations of unscrupulous general contractors who, although having received payment from the homeowner, refuse to properly pay for goods delivered. (When we file Preliminary Notice Information, we include a letter to the homeowner that explains what it is and in it we suggest that the homeowner requests from the contractor a full and final release from us. This way they know that we've been paid and the notice is no longer valid. *This is the protection for the homeowner!*) This measure also sets up the real potential for collusion by the owner and general contractor against the supplier.

Not having our mechanics' lien rights would deprive the suppliers of their claims against the owner's property as protection against non-payment of legitimate bills. The current mechanics lien laws provided important payment protection for subcontractors and suppliers who properly use its process.

As well, subcontractors may be prohibited from using credit to buy materials if suppliers' lien rights are questionable. (We extend credit on the basis of being supplied with preliminary notice information. Why would we extend unsecured credit?)

Finally, this thinking is supposed to protect homeowners. The majority of small business (such as ours) in this industry are owned by 'homeowners'. Family owned companies are prevalent in this industry and we need to have our lien rights protected!

Thank you for considering our comments.

Most sincerely,



Bob Painter

Owner

Western Star Nurseries, LLC



Lic. No. 175079  
5255 Eastside Road  
Redding, California 96001  
(530) 241-6262  
Fax (530) 241-6787

**ROBERT S.  
BRYANT**  
General Contractor Inc.

January 19, 2001

Law Revision Commission  
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JAN 22 2001

File: \_\_\_\_\_

Stan Ulrich  
California Law Review Commission  
4000 Middle Field Road, Room D-1  
Palo Alto, CA 94303-4739

Dear Stan:

This letter is to address the article that Sam K. Abdulaziz published in the Shasta Builders Exchange Weekly Bulletin.

1. Should owners who pay the prime contractor be responsible to pay the subcontractor? Answer – No Way.
2. I think if a supplier sells to a subcontractor they should collect their money from the subcontractor. If the subcontractor is not responsible enough to keep his credit satisfactory then the supplier should not sell to him.
3. The prime contractor is responsible for using a subcontractor that can complete the job. If they use subcontractors who do not pay the supplier it should not be the prime contractor or the owner who is at fault. It should be the suppliers responsibility to go back to C.O.D. or selling only to subcontractors who pay their bills and we will all be better off.

Sincerely,

Larry Goddard  
Vice President  
Robert S. Bryant, General Contractor, Inc.

RB/sn  
Cc Kent Dagg



**BUILDERS DISBURSEMENTS, INC.**

1101 NORTH PACIFIC AVENUE, SUITE 302, GLENDALE, CALIFORNIA 91202  
PHONE (818) 502-2100 • FAX (818) 409-9115

January 22, 2001

Mr. Stan Ulrich  
California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Law Revision Commission  
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JAN 26 2001

File: \_\_\_\_\_

Dear Mr. Ulrich:

For 42 years I have been President of Builders Disbursements, Inc., here in Southern California. We are licensed by the California Department of Corporations under the "Escrow Laws" as a "Joint Control Company".

All employees are finger printed and checked out by the FBI.  
Annual audits of corporate books and trust accounts.  
Our \$5,000,000.00 Bond (Fidelity) is soon to increase due to our trust account balances.

Our total function is to protect the Owner of property as borrower, the Lender as loaner of funds, to see that the General Contractor gets his profit, overhead, etc, but also that the subcontractor gets his rightly share as well as the supplier of materials.

99% of the time all parties leave the project paid in full, Owner, Lender know the Title Company will issue a new policy when the construction loan reverts to a permanent loan.

The system works.

If my memory is correct, when construction funds are paid to a General Contractor, he is simply a trustee of these funds. Statutes require him to pay those due funds within 10 days or pay interest of 2% per month. Why do we have such laws? To insure the parties providing services get paid for those services.

If one or your consultants, totally familiar with construction contracts, lien problems etc., wishes to terminate Mechanic's Liens, it is unbelievable. The turmoil would be staggering.

Electrical brownouts, a drop in the bucket, compared to the credit problems the construction industry would be faced with.

I'm sure you can see my frustration when a proven program is being considered in the light that it has.

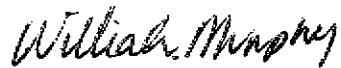
California has led the nation in the Subdivision Map Act, Subdivision Bonds, Title Insurance, Lien Laws and the like.

Due to the many heavy-handed Government requirements we face, we cannot afford to assist the smaller projects, as our costs are just too high.

If you should have any questions, please feel free to review the items outlined.

Very truly yours,

**BUILDERS DISBURSEMENTS, INC.**



William A. Murphy  
President

WAM/sla

Date: Mon, 29 Jan 2001 15:26:41 -0800  
To: sulrich@clrc.ca.gov  
From: Abdulaziz & Grossbart <aglaw@earthlink.net>  
Subject: Upcoming Law Review Commission Meeting

January 29, 2001

SENT VIA E-MAIL & US MAIL  
sulrich@clrc.ca.gov

Stan Ulrich,  
Assistant Executive Secretary  
CALIFORNIA LAW REVIEW COMMISSION  
4000 Middlefield Road Room D-1  
Palo Alto, CA 94303-4739

Re: Upcoming Law Review Commission Meeting

Dear Mr. Ulrich:

This is in response to the direction given to you by the Commissioners at the last meeting. It is my understanding that they will be looking at all of the alternatives that you have previously reviewed.

I wish to remind the Commissioners as well as the staff, that two alternatives have been given very little consideration even though those alternatives would not affect the constitutionality of the mechanic's lien nor would it reek havoc upon the construction community. Those two alternatives are a mandatory bond and/or a joint control.

I continually hear that both of these alternatives are presently available but not used. That is in fact true. However, the bond alternative is not used because of the wrong impression that bonds in the amounts that would be appropriate for single-family owner-occupied type contracts would be expensive. Indeed, a representative from American Contractors' Indemnity Company stated that it would write those bonds at a rate similar to the ones it is currently writing. It should be noted that under present law, these bonds would only have to be 50% of the contract amount. Once one of those companies writes the bonds, then all of the other bonding companies will have to step in so as not to lose the market share of those types of bonds as well as any other bonds.

With respect to the "joint control" alternative, as I stated before if the new entity (which would not be strictly a "joint control company" and would not be required to be bonded) would handle lien releases, preliminary notices, etc. and prepare checks including joint checks to the various potential lien claimants, that could be done at a nominal cost given today's age of computer technology.

Lastly, my original proposal of better notices is also still an option.

All of the above can be done without any change in the California Constitution. Given the fact that the problems described are not pervasive, I urge the Commissioners to suggest one of the above alternatives.

Respectfully submitted,

Very truly yours,  
ABDULAZIZ & GROSSBART

SAM K. ABDULAZIZ