Study H-820 September 19, 2001

First Supplement to Memorandum 2001-70

Mechanic's Liens: Double Payment Issue (Commentary)

This supplement forwards commentary on the staff draft Tentative Recommendation on *The Double Payment Problem in Home Improvement Contracts*., attached to Memorandum 2001-70. The following emailed letters are attached:

We will discuss these commentaries at the meeting. However, at least one correction should be made in connection with Mr. Abdulaziz's comment that the "staff suggested that the Commission's consultants agree with its position" in the most recent memorandum. (See Exhibit p. 8.) Assuming that Mr. Abdulaziz is referring to the draft tentative recommendation discussion of constitutional issues, it should be noted that the text only refers to "consultants" once, and that is in reference to them being on both sides of the issue. (See draft Tentative Recommendation, p. 33, line 10.) Footnote 5 lists consultants and others who have assisted the Commission in this study, but this is a completely neutral reference. At least one other part of the draft refers to differing opinions on the limits of legislative powers and specifically assigns Mr. Abdulaziz and Mr. Hunt to one camp, and Mr. Acret and Mr. Honda to another. (See *id.*, p. 22 & nn. 49-50.)

More to the point, if there is some error in characterizing the views of any of our expert commentators, the staff would like to know where it is so that it can be corrected.

Opposition to Mandatory Bond

James Stiepan, by email on September 18, 2001, writes to "reiterate for the record my objection to the double payment solution addressed in Memorandum 2001-70":

> I sympathize with the double payment problem and would love to see it addressed. However, requiring mandatory bonding as a quid pro quo is ill-advised. It will tend to raise costs across the board, it may make the smaller contractor noncompetitive, and there will be

a spate of creative attempts to circumvent the requirement (eg, by segregating one project into multiple projects). It is a shame that so much of the valuable time and resources of the staff has been wasted on this issue. We are probably better off with the disease than the cure.

Schedule

It may also be worth summarizing the anticipated schedule for the double payment proposal.

- September 28: The tentative recommendation should be distributed for comment, as revised to implement Commission decisions at the September meeting.
- November 15: Likely due date for comments on the tentative recommendation.
- November 30: Commission will review commentary, with the intent of approving a final recommendation on the double payment issue.
- January 2002: If the Commission does not approve a final recommendation at the November 30 meeting, it will need to be finalized at the January 2002 meeting to fit the legislative schedule.

This schedule provides a seven-week period for interested persons to review the material and submit formal comments. Of course, we have heard from many of our regular participants and they will be able to respond fairly quickly, but we also hope to get comments from a broader spectrum once there is a formal tentative recommendation.

(The general revision should be following a slightly different track, with the November 15 meeting set for the detailed review of the draft. Additional work can be done at the November 30 meeting, but the staff doubts a tentative recommendation will be approved until the January 2002 meeting.)

Corrections

The citations to Gordon Hunt's formal reports became garbled in footnote 5 of the draft and should be revised to read as follows:

> See, e.g., Hunt, *Report to Law Revision Commission Regarding Recommendations for Changes to the Mechanic's Lien Law — Part 1* (November 1999) (attached to Commission Staff Memorandum 99-85) [hereinafter Hunt Report Part 1]; Hunt, *Report to Law Revision Commission Regarding Recommendations for Changes to the Mechanic's Lien Law — Part 2* (February 2000) (attached to Commission Staff Memorandum 2000-9) [hereinafter Hunt Report Part 2]; Hunt,

Report to Law Revision Commission Regarding Current Proposals Pending Before the Commission Regarding Changes to the Mechanic's Lien Law (August 2000) (attached to First Supplement to Commission Staff Memorandum 2000-63) [hereinafter Hunt Report Part 3].

The penultimate paragraph (p. 33, lines 13-22) contain an artifact from an early memorandum, and should be stricken:

> The Commission's review of scores of cases has not led to any clear idea of what the governing standard might be. ~~Perhaps this is due to a lack of insight on the staff's part, but we have sought cases on point in the mechanic's lien area and have found little concrete guidance.~~ Most judicial discourse on the nature of the constitutional provision, the role of the Legislature in implementing it, and other affirmations of the sanctity of the mechanic's lien appear in cases involving technical issues or establishing the basis for a liberal, remedial interpretation of the statute. By and large, the cases are not concerned with limiting legislative power or rejecting legislative determinations of the proper balance of interests based on larger policy concerns.

If the Commission has any additional suggestions for improvements in wording, please give them to the staff for incorporation into the tentative recommendation.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

From: Gordon Hunt [Susan Goff <goff@hobpr.com>]
To: sulrich@clrc.ca.gov <sulrich@clrc.ca.gov>
Subject: California Law Revision Commission
Date: Tue, 18 Sep 2001 15:46:06 -0700

VIA E-MAIL

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

Re: Law Revision Commission
Meeting of September 21, 2001 and Memorandum 2001-70
Dated September 11, 2001

Dear Stan:

Please be advised that I will be unable to attend the meeting to be held on September 21, 2001. Hence, I am sending you this letter to provide you with my comments on Memorandum 2001-70, which I hope you will pass on to the Commissioners before the meeting so that these comments may be considered in their deliberations.

I did not receive your Memorandum until Thursday, September 13, 2001. Due to the press of other business, I was unable to even read the Memorandum until early Friday morning, September 14, 2001. I had no opportunity on Friday, September 14, 2001 to analyze the Memorandum and make a full and detailed response. I was out of the office on September 17, 2001, and hence, have not had an opportunity to either analyze the Memorandum or formulate a detailed response until the morning of September 18, 2001. Thus, this letter and the comments made herein should be considered to be "preliminary" and I reserve the right to provide more detailed comments at a later date when more time is available.

First, I would like to address the history of how we got to where we are today with regard to this "comprehensive" study of the Mechanic's Lien Law. As you recall, when I was first retained as a consultant, I submitted a report addressing the Honda Legislation and the so-called "double payment" issue. You requested that I remove the double payment discussion from the Memorandum, which I did. I am sure you recall that almost the entire discussion at the first meeting in November was directed to the alleged double payment problem, and that has been the primary focus of the Commission since then.

The Commission has looked at numerous ways to protect both the interests of the owner and the interests of the subcontractors and suppliers. The Commissioners have commented in open meetings that they intended to do both, that is, protect innocent homeowners from double payment and also provide relief to the subcontractors and suppliers. For the reasons hereinafter stated, I would respectfully suggest that the statute, which is attached to Memorandum 2001-70, does not adequately protect the interests of the subcontractors and suppliers.

The statute proposed would eliminate Mechanic's Lien and Stop Notice rights for the subs and suppliers for home improvement contracts under $10,000.00, and for contracts in excess of $10,000.00, where the payment bond has not been obtained either through negligence of the prime contractor

or with intent by the prime contractor. This was pointed out in my letter dated June 25, 2001 (a copy of which is attached hereto for your convenience and the convenience of the Commissioners). As noted in that letter, lien rights should remain where the project is not bonded. In addition, the penalty for the prime contractor who fails, neglects or refuses to comply with the mandatory requirements of the statute should be as set forth in my letter of June 25, 2001 (automatic suspension of the license by operation of law).

I pointed out to the Commissioners at the very first meeting that there are two types of Mechanic's Lien laws in the United States of America, to-wit, direct lien statutes and derivative lien statutes. There are a small number of states that provide for the derivative lien, that is, the subcontractors' and suppliers' liens being limited to the amount found due from the owner to the contractor. California is a direct lien state. As you know, the "contract" cases that you reference in your Memorandum were cases that were decided before the major revision of the Mechanic's Lien Law in 1911. Knowles v. Joost is an 1859 case. McAlpine v. Duncan is an 1860 case. The Legislature made it clear in 1911 that those who were not paid on construction projects had the right to record a Mechanic's Lien regardless of the status of the account between the owner and the contractor. As you know, 1911 Cal. Stat. Ch. 678 (cited, but not quoted, on Page 16 of your Memorandum) provides as follows:

"Section 14 of Chapter 681, Stats. 1911, enacting the sections relating to the Mechanics' Lien Law, provides: The provisions of this act shall be liberally construed with a view to effect its purpose. They are not intended as a re-enactment of the provisions of former statutes, with the policy heretofore impressed upon the same by the courts of this state, but are intended to reverse that policy to the extent of making the liens provides for, direct and independent of any account of indebtedness between the owner and the contractor, thereby making the policy of this state conform to that of Nevada and the other Pacific Coast states."

When the lien statutes were organized and placed in the Civil Code, Sections 9, 10, 11 of Chapter 1362 of the Statutes of California of 1969 relating to the California Lien Law provide:

"If any provision or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. It is the intent of the Legislature, in enacting this act, to revise and restate the laws of this state relating to mechanics' liens and work of improvement. This act shall not be construed to constitute a change in, but shall be construed as declaratory of, the preexisting law."

Thus, the statutory scheme that exists in California provides for a direct lien regardless of the status of the account between the owner and the contractor. That has been, and now is the legislative intent. As I pointed out long ago in a prior Memorandum discussing the leading case of Roystone v. Darling (which you have repeated in your Memorandum), the attempt to use a contract analysis did not work. Hence, the Legislature opted for a direct lien statute sine 1911. The law balances the interests of the owner and the lien claimants by virtue of optional bonding. I have pointed that out from the very first meeting and in numerous written statements. I do not believe the Commissioners want to propose a statute that is in direct conflict with the legislative intent as set forth above. The statute proposed makes the status of the account between the owner and

contractor the determining factor in contravention of the express legislative intent set forth in Section 14 of Chapter 681, Stats. 1911. As I have pointed out, the balancing of the interests of the owner and the lien claimants has always been in the lien law since 1911. Making bonding mandatory on home improvement contracts makes that balance complete. Legislation that removes the lien right altogether under the proposed statute would be in contravention of the legislative intent outlined above. I respectfully request that the Commissioners not do so for this "minor" problem of alleged double payment. The proposed statute, in effect, is in violation of the intent of the Legislature. I do not believe it is the intent of the Commission to revert back to a derivative lien statute. It would appear therefore that the proposed statute should be amended to provide that where the project is not bonded, the claimants will retain their lien and Stop Notice rights regardless of the status of the account between the owner and the contractor.

As you may recall, in my second Memorandum where the double payment issue was addressed, I recommended mandatory bonding. For the many months thereafter, various alternative schemes were explored. There did not appear to be any consensus as to "what to do" until the first meeting in San Diego at the University of San Diego. It is at that meeting that I introduced the idea of a more limited bonding proposal for private works of improvement, to-wit, a 50% payment bond on home improvement contracts of $25,000.00 or less. What has grown out of that is, of course, the current proposal.

With regard to the discussion concerning balancing of the interests, a true balancing of the interest and the method to properly protect both the homeowner and the unpaid subcontractors and suppliers is a mandatory bonding statute. To allow the full payment defense where the bond has not been obtained results in elimination of the lien right where the owner has paid the contractor in full. The cases that you cite with regard to the lien law requiring a balancing of the interest, the cases have, in fact, stated that. The Frank Curran Lumber Co. case was merely a question of whether or not a Preliminary Notice statute could be constitutional. Again, in balancing the interest, the court said that would be appropriate as it put the owner on notice of a potential claim. With regard to the other so-called limits on legislative power and the cases discussed therein, none of those cases (with the exception of the licence law) involves a statute which, by statute, eliminates the lien right. It merely balances the interests between the lien claimants and other parties such as the owner or the construction lender. None of those statutes, in fact, eliminates the Mechanic's Lien right. The proposed statute, as currently drafted, does eliminate the lien right where the owner has paid the contractor in full and the project is not bonded, which as noted above is directly in conflict with the legislative intent referred to above.

With regard to public works, of course, as I have noted in my prior Memorandums and correspondence, there is no Mechanic's Lien on public works of improvement. However, the substitute for the Mechanic's Lien is the mandatory bonding provision under the Civil Code. In addition subcontractors and suppliers have the Stop Notice right on public works, which Stop Notice they do not have to bond to make withholding mandatory.

Evidently, in an effort to try to give the subs and suppliers a little more protection, you have drafted Civil Code §3244.40, entitled "Good Faith Payments". You provide in Subdivision (b) that a claim of lien or Stop Notice is not timely within the meaning of Subdivision (a) unless it is given by a claimant after the payment is in default under applicable law. That should be eliminated by reason of the fact that the subs and suppliers should be allowed to give the owner a notice of claim as soon as they have rendered an invoice to their customer. The primary reason for the foregoing

is that in many instances, by the time the obligation becomes "due", the "cat will be out of the bag" in that the owner will have paid the contractor. This is true by reason of the fact that progress payments are typically made on a thirty-day basis, both to subcontractors and to material suppliers. There is a delay in payment from the owner to the prime contractor, a subsequent delay in payment by the prime contractor to the subcontractor, and finally, a further delay in the subcontractor paying the material supplier. If the subcontractors and material suppliers have to wait until the obligation becomes due, then, as noted above, the payment will have already been made by the owner to the prime contractor thereby eliminating the subcontractors' and material suppliers' lien rights.

The courts have held that the time limit set forth in the Civil Code with regard to the filing of liens, Stop Notices and bond claims are statutory time periods that must be adhered to even though as a matter of contract, the money is not "due" to the claimant. For example, in the case of Central Industrial Engineering Co. v. Strauss Construction Co. (1979) 98 Cal.App.3d 460, the subcontract between the subcontractor and the prime contractor provided that final payment was to be made thirty days after completion and acceptance by the public body. The subcontractor completed its work on August 27, 1974, and the job was accepted by Los Angeles County on November 6, 1974. The Notice of Completion was recorded on November 6, 1974 and the subcontractor filed its Stop Notice on November 14, 1974, that is, within thirty days of the Notice of Completion and therefore within the time required by law. The contractor contended that the Stop Notice was invalid because it was filed before the money became "due" under the subcontract. The court specifically stated that the Stop Notice had to be filed within thirty days of November 6, 1974, under Civil Code §3184. The court further noted that there is nothing in Civil Code §3184 that prevents the filing of a Stop Notice prior to the due date of payment. The court further noted that the subcontractor had to file its Stop Notice before the thirty days expired and that the subcontractor had no control of when the County of Los Angeles would pay the contractor. The court further noted that the subcontractor did not act in bad faith by taking steps to insure the money to pay it would be available when payment became due. The court noted that had the subcontractor waited until payment was due it under the contract, the remedy of a Stop Notice would already have been barred.

In light of the fact that there may be tight time limits on these home improvement contracts, I would respectfully suggest that the more fair thing to do under these circumstances would be to allow the subcontractors and suppliers to send a notice to the owner whenever they had rendered an invoice so that the owner would have knowledge of the unpaid bill and could not claim a "good faith payment". This would truly protect both the owner and the subcontractors and suppliers. The owner could then pay the subs and suppliers and prevent liens on their project. It would also prevent the prime contractor from being paid and not passing on the funds to the subs and suppliers. If the Commissioners want to protect the interests of both the owners and the subs and suppliers, this would be a reasonable way to do so.

In light of the limited time available to me to comment upon your Memorandum, as indicated above, I will elaborate upon it at some subsequent date. I hope that these comments will be helpful to the Commissioners. Specifically, I would respectfully request that either mandatory bonding on home improvement contracts be adopted, either on all home improvement contracts or just those under $25,000.00. IN addition, if the current proposal is adopted, it should be modified as outlined herein, to-wit, lien rights should remain where the project is not bonded and the claimants should have the right to notify the owner immediately upon issuance of an invoice: Only these provisions will truly protect both owners, subs and

suppliers and be in conformance with the legislative intent set forth above.

If you have any questions or comments, please do not hesitate to call.

Very truly yours,

HUNT, ORTMANN, BLASCO,
PALFFY & ROSSELL, INC.

Gordon Hunt
Dictated But Not Read

GH:slg

Attachment

VIA E-MAIL

June 25, 2001

Stan Ulrich
California Law Revision Commission
4000 Middlefield Road, room D-1
Palo Alto, CA 94303-4739

Re: Law Revision Commission
Memorandum 2001-52

Dear Stan:

The following will constitute my comments upon your draft proposal.

AN OWNER WHO PAYS THE PRIME CONTRACTOR IN GOOD FAITH WOULD NOT BE SUBJECT TO FURTHER LIABILITY

The above concept is embodied in your proposed Section 3244.30(a), which states, in effect, that even where a home improvement contract is not bonded, the liability of the owner is limited to the contract price and that payments made to the original contractor, in good faith, discharge the owner's liability to all claimants to the extent of the payments. The net effect of this section is to eliminate lien rights even though the job is not bonded as required under Section 3244.10(a). On the one hand, the proposed statute mandates that home improvement contracts in excess of $5,000.00 must be bonded, but in Section 3244.30(a), even if the job is not bonded, the owner still maintains the full payment defense. The net effect of this is to eliminate lien rights where the owner has paid the contractor in full before the lien claimant has an opportunity to serve a stop notice or record a mechanic's lien. It is my opinion that the foregoing provision

will render the statute unconstitutional. If you are going to provide the full payment defense, and require mandatory bonding, then the statute must have a provision that states that where the job is not bonded (circumstances where the owner and contractor either negligently or intentionally failed to comply with Section 3244.10), lien and stop notice rights must not be eliminated even though the contractor has been paid in full.

MECHANIC'S LIENS WOULD APPLY ONLY TO THE EXTENT
THAT THE OWNER HAS NOT PAID THE PRIME
CONTRACTOR IN GOOD FAITH

The above concept finds it genesis in Section 3244(b). Said section provides, in effect, that a payment is not made in "good faith" by the owner to the original contractor, if the owner has received "notice of a claim" from a claimant "by way of a claim of lien or a stop notice". The effect of the foregoing section is that as long as the owner pays the original contractor before the owner receives notice from a claimant that it has recorded a lien or filed a stop notice, the owner will have no liability on account of mechanic's liens or stop notices. This section, I believe, is likewise unconstitutional for the reasons stated above and in prior memorandums. As a practical matter, if Section 3244.30(b) is enacted you will force the subcontractors and material suppliers to immediately record a mechanic's lien and serve a stop notice when they have completed the furnishing of labor or material on the project. You will create a "rush to judgment" scenario in that the original contractor will be pressing the owner to pay immediately upon completion of the job and the unpaid subs and suppliers will be rushing down to the County Recorder's office to record the liens and serving their stop notices immediately upon the completion of their work. This will create more problems in the industry than it will solve. It will likewise reward the very person who allegedly creates the alleged double payment problem, to-wit, the unscrupulous contractor. The contractor who decides not to pay the subcontractors and suppliers will encourage the owner to pay the retention immediately upon completion of the job before the subs and suppliers can file their liens and stop notices. It will likewise encourage subs and suppliers to assert their liens and stop notices before money is due pursuant to their contractual arrangement. Subs are not required to be paid until ten (10) days after the owner pays the contractor. The terms of payment of most suppliers is thirty (30) days from the date of their invoice. Please note my comments made above to the effect that where the job is not bonded, lien and stop notice rights must continue.

THE PENALTIES FOR NON-COMPLIANCE WITH THE
MANDATORY BONDING REQUIREMENT AS SET FORTH
IN THE PROPOSAL ARE INADEQUATE

The only penalty set forth in the statute for failure to bond the job in Section 3244.50 is disciplinary action against the contractor. That is an insufficient penalty. AS noted above, if the project is not bonded as mandated by Section 3244.10, then lien and stop notice remedies should remain in tact. In that connection, see my e-mail to you which I forwarded to you on June 15, 2001, and Page 3 which states the following:

"EFFECT OF FAILING TO BOND THE JOB

No matter what we say or do in the Legislation, there will be jobs where the bond is not obtained, either because or ignorance or intentional failure to get the bond either by the owner or the prime contractor. There has to be a penalty in the statute to cover that circumstance. Obviously, the basic penalty in the statute is the fact that where the bond is not obtained, the Legislation should provide that mechanic's lien and stop notice rights will not be impaired in any fashion. It could also be made a

grounds for disciplinary action for any original contractor who fails to either notify the owner of the requirement of the bond or fails to obtain the bond on a home improvement contract. The Legislation could be similar to Business & Professions Code §7125.2(a). Said section states that the failure of a licensee to obtain workers compensation insurance required pursuant to the license law shall result in the "automatic suspension of the license by operation of law". Similar statutory provisions could be put into the bonding sections, to-wit, a section that states that the failure of the prime contractor to obtain the bond on a home improvement contract shall result in the automatic suspension of a license by operation of law. This would really put some substantial teeth in the statute.

I hope that the foregoing comments will be helpful to you and the Commissioners when the proposal is discussed on June 29, 2001.

Very truly yours,

HUNT, ORTMANN, BLASCO,
PALFFY & ROSSELL, INC.

Gordon Hunt

GH:slg

Date: Wed, 19 Sep 2001 08:48:35 -0700
From: "aglaw" <aglaw@earthlink.net>
To: commission@clrc.ca.gov
Subject: MECHANIC'S LIENS: DOUBLE PAYMENT ISSUE

September --19, 2001 **SENT VIA E-MAIL ONLY!**

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

RE: MECHANIC'S LIENS: DOUBLE PAYMENT ISSUE

We are sending this letter in response to your Memorandum #2001-70, dated September 11, 2001. This letter is not intended to be an exhaustive discussion of the Memorandum. As discussed further in this letter, we believe that the Commission is set in its position and any further comment would do nothing to sway that decision. However, we cannot keep from pointing out some problems in the "Study" requested by the Legislature.

As an active observer and participant of this particular study, I can't help but feel that the Commissioners were wittingly or unwittingly prejudiced as a result of the perceived double payment problem suffered by a single constituent of then-Assembly Member Honda and perhaps by the request of certain Legislators. I can't help but feel that the Commissioners set out to "fix" rather than "study" the problem. One of the bases for this feeling is that the Commission never conducted a "comprehensive study" of the perceived problem. Indeed, although we suggested that they do so, we don't believe they ever even asked the Contractors' Board to review their complaint files to give them some empirical evidence of the problem. Instead, the Commission admitted that the problem is not large, but it never tried to determine the extent of the perceived problem. In fact the Commission as of this day still does not know the extent of the perceived problem. As an example, the staffs report at page two, line 14 through line 16 states:

"The significance of this double payment problem is a matter of serious disagreement and the Commission does not have comprehensive statistics indicating the magnitude of the problem."

As another example of why we feel the "study" was not fairly conducted, when the Commission's staff was asked to give some history of the law in the area of the constitutionally protected mechanic's lien, the first major staff discussion was completely slanted and advocated the position that the right to mechanic's liens is not so constitutionally protected. That early Memorandum made little or no comment on the most recent cases and whenever the staff disagreed with a particular decision, the comment was that it was a four to three decision. To paraphrase the discussion at the last Commission meeting, a four to three decision by our Supreme Court is no less the law of the land than a seven to zero decision. The right to a mechanic's lien is not only four-sevenths constitutionally protected. It is 100% protected. In the most recent Memorandum, the staff has spent more time attempting to justify its prior preconceived position -- however their current argument is still flawed.

As an additional basis for our belief that the Commission has been attempting to justify its preconceived position, when the issue of the constitutionally protected mechanic's lien right was again brought up at the last Commission meeting, the staff was requested to mention that issue in the next Memorandum so that comments would be received from "constitutional scholars." Again, the Commission is seeking comments that will justify its preconceived position. We had previously pointed out that the Capital Steel Fabricators v. Mega Construction case, which has a fine overview of mechanic's lien rights in light of the Clarke v. Safeco case, thought more of the Clarke decision than does the Commission. We would submit that the judges in the Clarke, Connelly, and Capital Steel cases are far better equipped to address the constitutional issue of mechanic's liens because they are in fact, constitutional scholars and no further constitutional analysis needs to be made.

In the most recent Memorandum, the staff suggested that the Commission's consultants agree with its position. The Memorandum failed to mention that one of their consultants has continually disagreed. They also failed to mention that Keith Honda, the most recently named consultant, changed the Assembly Bill he had drafted to become a constitutional amendment when he was told by the Legislative Counsel that a constitutional amendment was necessary. Of course, the staff disagrees with Legislative Counsel.

Knowingly or unknowingly, instead of conducting a study with an open mind, we believe that the Commission listened to the comments of those that were in favor of the severe curtailment of the constitutional right to a mechanic's lien, and heard but did not listen to one of their own consultants as well as participants who had much better knowledge of the industry than those that opposed the lien. As an example, a great deal of weight was given to the representative of the Contractors' Board who made a number of misstatements, all without her Board's approval. Indeed, at least one of her suggestions was disavowed by one Contractor's Board member so that it never even got to the Board.

In summary, we believe that the manner in which credit is given in the construction industry has worked well for many, many

years. There are problems. No system is perfect. We would suggest a continuing attempt to work with the problems without the overhaul suggested by the Commission.

Respectfully submitted,
ABDULAZIZ & GROSSBART

SAM K. ABDULAZIZ

SKA: tmw

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