

**From:** "cybereaper" <cybereaper@bendcable.com>  
**To:** CCTF Dcbs <Dcbs.Cctf@state.or.us>  
**Date:** Tue, Sep 27, 2005 11:41 AM  
**Subject:** I am glad you are here

Thursday, September 27, 2005

att: 06086995.doc: letter appealing case to judge/outlining concerns over ORS laws contained within for the purpose of identifying laws in need of modification as it pertains to this Email/ cover letter.

att: Bill Amendment Proposal.doc: Letter outlining proposed ammendments to 701

To the Construction Claims Task Force:

As a framing sub/specialty contractor recently involved in a claim that has been turned over to the OAH for further processing and has caused a lot of lost time and heartache, I am PLEASED to see the CCB taking these measures. The basis for our situation (without using specific details or names of parties) is the status requirements for claim filing, licensure requirements, suspensions due to insurance issues, reinstatement versus 'lifts' of a suspension and so on. As your specific agency is now designed to review the laws to assist in the further reduction of claims needed to be made, I would like to assume that this will be based on better clarification of existing laws rather than making it more difficult for claims to be heard. It is always a concern, as a construction worker whose family business, like hundreds of others, has been forced to shut down due to unscrupulous contractors and conflicting laws to know whether or not anyone is taking a vested interest in this situation.

Further complications in our case (and others I have read about), include the fact that the insurance company renewed its insurance to a prior date, as it was in err, not the subs (us) and yet, our claim can still be dismissed because we were not 'properly' licensed as is defined under 701.055 'at the time' simply because the CCB only renews a license back to a previous date (the date according to the lapse in renewal), but their reinstatement, regardless of err on part of an insurance company or other party, does not reinstate back to the date of suspension. These are laws that need to be reviewed and clarified. It is a continuing problem in the State of Oregon with Insurance. Bend, Oregon is a perfect example of a city with construction growing in leaps and bounds, but a lack of subcontractors to fill the position due to the conflicting laws and lack of protection provided by the CCB.

The real problem came as a result of contradicting laws. Chapter 701 contains laws pertaining to a contractor being required to pay a subcontractor from a signed, binding and legal contract; laws dictating that a subcontractor will pay their subs, suppliers and labor from moneys owed to them by a general contractor; the Labor Department's laws that labor must be paid, regardless of quality of work or completeness, meaning that a subcontractor would have to pay their 'labor' on the appropriately designated dates dictated by their employment; and several other issues. The contradiction to ALL of these is 701.065 that requires special licensing terms to obtain legal remedies with the CCB. There are exceptions contained in here, but as with our case, we needed to go to the OAH with proof of documentation of our insurance to show we never had a lapse in insurance. Unfortunately, that fell beyond the '90' day requirement dictated by the CCB. Two main issues: if the court date falls after the 90 day time frame and our purpose was to prove that the case was within CCB jurisdiction by proving our license was unjustly suspended, then the 90 days SHOULD NOT apply. The second issue is that, as we had not been paid by the contractor yet, we had lost our business, our employees and our personal lives / finances were greatly injured to the extent that going out to obtain brand new insurance (especially when we had insurance), was neither a reasonable request nor financially feasible just to obtain a 'reinstatement' of our license.

I have taken it upon myself (being that I am involved with legal issues all of the time, even though I have no formal legal education, background, experience or licensing of any sort), representing myself, my family's business and as an advocate (operating with the boundaries defined to me by the OSB), to create a series of proposals regarding ORS 701. I am attaching these proposals in .doc / Microsoft Word format for ease of access. They have been scanned for viruses. They are presented as closely to a bill proposal as I could hope to get including title, reference, summary and new wording. I would hope, sincerely, that you take the time to review these laws. I feel, that after reviewing (literally) hundreds of claims that have gone through the CCB and the OAH/CCB, that these laws will help address a large number of issues your agency is and/or will be faced with. I am also attaching a letter that I included to the Administrative Law Judge in my company's case (this is attached solely for the purposes of clarification and definition of laws in question and concerns over laws that pertain to chapter 701 and an attorney's actions in such instances. It has been modified to remove the names of all parties involved as it is not to be used for legal purposes against any of the parties named. As it has been submitted into public evidence, it is a public document and can be used for public purposes). I am going to sum up my concerns here for you:

My concerns now are: The wording for a suspension needs to be adjusted according to types of suspension in which it can be 'lifted' once proof is provided, not reinstated, thereby keeping the license 'properly valid' throughout the entire period as it is fully paid for. The wordings in the ORS 701 chapter that in some locations designate 'sub' contractors versus other, general contractors, but not in others. This clarification will dramatically reduce the number of claims by simply creating a proper distinction throughout. The wordings in 701.010 that exempt a contractor (and is generalized sub contractor) from needing to be properly licensed for work for the owner of a home, but in 701.065 prevents them from obtaining remedies legally, through claims or liens, for moneys owed for services performed/rentals/materials provided.

The big one I am suggesting is a change in requirement of licensure status. I am suggesting that the Subcontractors in Oregon be required to obtain a specialty license with the CCB that would have completely different requirements than a general

contractor's/builder's or homeowner's in several areas. One of these is in the area of insurance. It is another issue of wording in 701.065 that makes it clear that a contractor should be insured. Additional wordings in 701.055 make it clear that a contractor have the responsibility to research their subcontractor for experience, licensing, etc. To hold the subcontractor liable in regards to insurance is ludicrous. There are other, more appropriate ways to handle this. And, by relieving the subcontractor of obligations that are financially unfeasible, it forces the general contractor to take a greater role of responsibility in the subcontractors they hire. It continues to enforce licensing rules, but has a greater allowance for time frames. It also opens up the area of claims to be more well defined and 'to the point'. This will create a law in which general contractors, are being held liable for their actions. Should they choose to hire somebody who is unskilled and not take action or interest until 'after' a project is completed is irresponsible on their part. It makes it more difficult for a subcontractor, who is unskilled or not properly licensed with the CCB to obtain work in general. It does clarify the issues surrounding claims, procedures, liens and better defines the underlying circumstances in each in such instances as these cases must be turned over to the OAH.

Another main concern I have is a finality on rulings. If the OAH chooses to rule that our case is not within jurisdiction, then it becomes final. The finality of rulings are functional only to the extent that the CCB or the OAH has reviewed a claim and has decided on which party is owed compensation, if any. The reasons for this are clear. However, in the event that a case is not even permitted to be heard, which in the United States of America, a country in which the founding and continuously updated laws say that all people have a right to be heard, all people deserve a right to a fair trial, is an absolute bastardization of the American Legal System.

-----  
The modifications I am proposing are obviously immature for a 'final' phase and would require the skilled analysis of a department such as yours. It is, obviously, additional reading on your part, and, as I have given them to your department, I would have no personal claims, fame, or allowances to be recognized in any way for my work. In the end, I am okay with this. Having been unjustly raped of years of hard work because the laws in place are not clear and concise, and without hope or chance of remedy thus far, it behooves me to work for the betterment of others that I may see justice done. There are 2 firms in all of Bend currently handling contractual disputes. It has become so bad here, that not only are the subcontractors leaving due to financial devastation and hurt from terrible contractors, but the lawyers have even given up any interest in cases that involve subcontractors. They will not take cases to court that are less than \$25,000 for subcontractors because they are already concerned for failure. They will not consult any more as a general business operation because the laws have become so horrible. And, with over 3000 homes already on the slate for production in the next couple of years, not counting any commercial construction, this should send a red flag to the CCB. With framers being desperately sought, but their pay scale being the lowest of any should send red flags to the CCB. However, the CCB cannot dictate pay scales. It does not have the time to research local trends and see the devastation happening. I would hope, that you do take the time to review these laws. I am in Bend, and without means to get to Eugene, but if you would like to, at any point discuss these issues and come to a clearer understanding of what I am trying to accomplish, in conjunction with your agency, I would be more than happy to make time in my schedule to meet.

Thank you for your time and review of this letter. I hope these documents/concerns assist you in some small way to making it an easier and smoother process for all.

-sincerely,

Daniel Carnahan  
(541) 419 - 4893 (also message phone)  
19719 Nugget Ave  
Bend, OR 97702