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CASE BACKGROUND:

In July of 2003 I relocated my family from Las Vegas, Nevada to Carlton, Oregon shortly after purchasing an 82 acre farm. Having just retired from a career in the insurance business I had hoped to move to what we believed was an idyllic area of the nation to pursue a special project. It was my goal to recreate a sustainable family farm by incorporating some truly creative elements that would all fit within the framework of an agri-tourism related venture. It was my belief that Oregon would embrace and be especially supportive of such undertaking given its agrarian outlook. The farm would foster a symbiotic mix of enterprises; a variety of field crops, animals (a goat dairy) and a Bed & Breakfast uniquely housed in converted grain silos.

The intent was further to create a viable economic enterprise which would employ a variety of local talent including those with dairy backgrounds, hospitality services and general farm labor. In a nutshell, we would bring our hard earned money, energy and initiative to add to opportunity in the area.

Before arrival, I carefully laid plans to meet with and enlist the aid of the local planning and development department. I also elected to utilize an Oregon based builder and access local insurance services. Of these seemingly well thought out plans, only the first of them resulted in any satisfaction. The Yamhill County Building and Planning Department was, and has remained a pleasure to deal with and has consistently provided us with a high level of assistance and guidance. The builder and the insurance services, sadly, have been quite another story.

THE CONTRACTOR:

Six months into our project we fired the contractor (February of 2004). In his short five month tenure on the job he collected some \$270,000 and left us with liens amounting to an additional \$70,000 along with the gift of a \$75,000 mold remediation problem. Moreover, we were left with more than 50 structural defects and a damaged shell of a home that took us nine more months to finish. Altogether, it took sixteen months to build; he'd originally contracted it to be built in seven and all under the auspices of an AIA Stipulated Sum/Stipulated Time contract.

We sued him at the time of his dismissal and, while it took us fully 18 months to wind through the rigors of the contract (which he himself had proffered) and the judicial system, we finally were awarded a court ordered judgment of some \$365,000 plus attorney's fees. As it stands today, however, his counsel advises that he cannot pay, his bonding company is in receivership and his insurance carrier tells us he has no coverage. They did, however, supply him with \$25,000 for his legal defense.

Through the process of discovery leading to the judgment we also found out that our case was not his "maiden flight" at bilking innocent homeowners. In fact, it became apparent that he'd utilized the same modus operandi many times over more than a decade as a "*licensed, bonded and insured*" general contractor in Oregon. Our story is essentially the same as that of several others but I will relate only our own in this example. Please be assured that I do not exaggerate when I say there are others that will attest to the same pattern; other victim's names are available upon request. [Ref. "Builder burns wrong guy" article, McMinnville News-Register, September 20, 2005].

The deceit started when we were initially guided specifically to the Construction Contractor's Board by our contractor to verify that he had zero complaints on record. Moreover, he used the CCB website to print off and provide us with evidence that he was duly licensed, had liability insurance coverage with a known carrier and that he was fully bonded. He proudly advised that his license status was active and proceeded to regale us with his portfolio including photographs and representations of his multi-talented background. He advised that he'd built high end residences, had extensive remodel experience, had built commercial projects (including hotels) and had experience with dairy facilities.

Needless to say he played us like a violin with the knowledge that we were building an expensive home (\$750,000 as contracted originally), anticipated remodeling the existing farm house, planned to build our B&B in the grain silos and would be building a goat dairy facility. To our amazement, he even noted that he had plans of his own for the conversion of grain silos into apartments...what a coincidence!

When I inquired about his insurance coverage he glibly said "no problem" and promised to supply a copy of his actual policy together with his assertion that he had coverage for "all acts, intentional or unintentional." You might say he lied. What's more, we submit that his insurance agent had knowledge of his checkered history and was in complicity inasmuch as he would never produce a policy and he took an inordinately long time just to provide us with a certificate. In the end, of course, we finally found out that the State of Oregon and its statutes governing contractor coverage (notably ORS701.105) provide no consumer protection whatsoever. In fact, it seems to me that it shamefully makes a mockery of the CCB requirement to even have insurance at all for the purpose of contractor licensure. The only thing it accomplishes is to mislead the consuming public while providing the insurance industry with millions of premium dollars all the while allowing it to sidestep any significant risk.

THE INSURANCE NIGHTMARE:

In addition to the fact that the contractor's insurer provided no coverage for their client's misdeeds, we were additionally saddled with yet another surprise; this time from our own insurance carrier.

Harkening back to the preamble to this saga, I'd noted that we took care ourselves to engage local insurance services. In fact, for the sake of continuity we elected to utilize the agent that was already in place with the farm we purchased. Shortly after closing on the property and before we actually moved to Oregon I made a special trip to meet with the agent in question to go over the plans for the property and to serve notice of the variety of coverage that we would need as well as query the man on what he thought would be necessary. After all, I had never been a farmer and he'd farmed for twenty years before engaging his insurance career. At that time, he advised, he'd been an insurance agent for twenty years having retired from farming. Given this, we thought we had all bases covered.

As it turned out, we were wrong again. At the time of property assumption, we asked for and he bound a multitude of coverages. Within the succeeding two months thereafter, he was asked to add crop insurance for our cherry orchard along with course of construction coverage for the new home we had just contracted. We were advised that both requests were bound in September of 2003 and added to the array of coverage that we'd already engaged effective July 1, 2003 when we assumed the farm.

In the ensuing months we repeatedly asked for evidence of the added coverage in the form of policies from our agent. His excuses over the course of the next several months for the non-appearance of the policies ran the gamut but finally produced written binders upon ultimate demand by late December of 2003. To cut to the chase, subsequently we learned that he had not properly put either coverage in place. The result was an E&O claim that was settled in November of 2004 for that year's failed cherry crop. Just yesterday, my attorney sent notice his E&O carrier that we will pursue him for failure to provide the Course of Construction coverage that he'd bound as well.

While we delayed as long as permissible awaiting the outcome of other possibilities, we are now forced to act. The ultimate need to file the E&O claim against the agent is the last resort and clearly the result of the contractor's inability to pay, his insurance company's denial of liability and our former insurance agent's company's refusal to accept any blame for the action of their agent. What a nightmare and what a process we've had to go through... and it's not over.

THE COST:

To date, the legal costs of our pursuit of a bona fide scoundrel contractor have reached beyond \$75,000 alone and they, too, are not over. The legal system is one that victimizes the victim by forcing them through a costly and arcane process that is fraught with

myriad opportunities for the bad guys to seek undue protection and evade all responsibility.

Conversely, the good contactors in this state are “painted with the same brush” as the bad ones and they find it ever harder to secure reasonable coverage in the insurance world. It is especially onerous for the small contractors, custom home builders and those true professionals that really qualified to build.

The process of licensure as administered by the CCB is fundamentally laughable. I’ve been told by certified building inspectors that you can “shave a monkey and have him licensed in a day” as a general contractor in Oregon. Securing insurance (which, may I comment, is a joke), a bond (a paltry \$15,000 is an even bigger joke and will not cover much more than a dog house) and passing the minimal testing requirement have seemingly made this state one of the great repositories for charlatans in the building community nationally. I submit that it isn’t about to lessen without serious overhaul.

Does this all mean that the CCB is inept, complacent or even “brain dead” as some accusers say? Well, perhaps, but not necessarily. Recalling my original phone call to the complaint division of the CCB in January of 2004, I remember having the representative I spoke with initially laugh at my concerns. To his credit the gentleman quickly caught himself and apologized offering that it was a laugh of futility given that, as he said at the time, “everyone ought to understand how emasculated we’ve become.” He further stated that “we neither have the power to curb applications of clearly incompetent contractors or serve up appropriate penalties once they have ripped off the unsuspecting.” So I discovered.

With that I said then, and I say again now, either empower or disassemble the CCB but do not continue to dupe the consuming public with the belief that they have the ability to guard the public interest. They simply cannot! Moreover, understand that no governing authority will ever adequately monitor those that fund their activities. If it is true that the CCB is funded by the building industry while they participate in the state’s PERS system, then I question who concocted such a ludicrous arrangement? Tell me that it’s not true.

In a similar vein, the state needs to give the Insurance Division the ability to properly regulate the carriers that file in Oregon and I mean by more than just allowing them the opportunity to review and comment. In very simple terms, insurance companies need to actually provide insurance and assume risk not just pilfer premium dollars and dodge all liabilities. The Division of Insurance needs the ability to enforce that requirement in an expedient fashion and levy serious penalties for non-compliance, not “hand slaps.”

As a final anecdote, the second contractor I eventually hired (an honest guy) gave me his then current policy to examine. It was fifty-five pages long comprised of ten pages of coverage and forty-five pages of exclusion language! After critical examination we could not find anything whatsoever that his carrier covered for him as a general contractor. We hired him nonetheless. Ironically, not long after my home was completed he lost his coverage. He’d had an unblemished record (never even one complaint) and his well

known national carrier dumped him flat without explanation after nine years of annually escalating premiums. Go figure!

IN CONCLUSION:

As if this hasn't been enough dialogue, know that there is a mountain of detail that I have paid for through legal fees that is supportive of all of my allegations. Much has been reduced to fact in the form of court order thus far and more will follow as we pursue the contractor until his license is removed as well as our own former insurance agent's E&O claim.

One sad reality is that the agent has now retired; a good thing in some respects but also unfortunate that his career has to end on such a sour note. It is shameful that his employer did not step in to accept any part of the problem but chose instead to "throw him under the bus." We gave them every chance to act honorably.

Finally, what is most galling is that during the past year and one half our original contractor has been allowed to continue his practice of deceit and malfeasance unabated. He now is in his final 30 day window to pay our judgment. Of course he will not pay and thus will lose his license as a general contractor but he will still be able to ply his trade as a foreman or any other position in the construction industry. The hundreds of thousands of dollars that he has stolen from homeowners, developers and even his own church will likely remain wherever he's hidden the funds. His pre-existing IRS lien of \$126,000 for non-payment of employee withholding taxes that the CCB had no record of will supersede my ability to collect as will his several other liens, judgments and garnishments that are in front of me; also not on his CCB record.

The only saving grace is that our crook will likely be one of the subjects of an upcoming media expose'. As I and others now monitor the effectiveness of the Construction Claims Task Force, I will remain hopeful that something beneficial comes of your efforts for the sake of the citizenry of Oregon. Many of us have been burned and some will never recover; I urge you to do something real to afford protection for the one who in the end pays for it all...the ordinary taxpayer and consumer.