

PHCC of Nevada Position on BDR Proposed by AGC

Over the last twelve years, the Subcontractor Legislative Coalition, an alliance made up of both union and non-union subcontractor trade organizations, has worked very hard to champion the interests of subcontractors before Nevada's Legislature and Supreme Court. Whether by amending Nevada's Mechanic's Lien statute, or by drafting and enacting Nevada's Right to Stop Work statute (for private projects) and the Prompt Pay statute (for public works), the Coalition has enjoyed significant success in obtain the passage of laws that assist subcontractors to be paid for work performed.

For example, the Right to Stop Work statute (passed in 2001 and amended in 2005) allows subcontractors to stop work on a given project if they are not timely paid or if they do not receive a timely response to a change order request. Not only does the statute minimize the financial impact to subcontractors by allowing them to stop work when they are not timely paid, it also shields subcontractors from liability to project owners and higher-tiered contractors as a result of having stopped work. The use of the statute encourages higher-tiered parties to timely pay for work furnished, or face the threat that work will be stopped.

The Coalition's efforts have not been limited to the Legislature. As a result of strong advocacy in the Venetian and Aladdin cases, the Nevada Supreme Court recently struck down the enforceability of pay-if-paid provisions in subcontracts entered into between contractors and subcontractors. In *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc., et al.*, 124 Nev. Adv.Op. 39 (June 2008), the Nevada Supreme Court found that pay-if-paid clauses are "unenforceable as a matter of public policy because [they] deprive people who work on construction projects of a statutory right to a mechanics lien." This decision will significantly help subcontractors get paid for work performed.

The Coalition knows that certain owner/developer and general contractor trade organizations intend to attack these statutes and the *Bullock* decision when the Legislature convenes in 2009. These groups have already prepared and are currently circulating proposed legislation that would eliminate the very rights provided to subcontractors under the Mechanic's Lien and the Right to Stop Work statutes, as well as the *Bullock* decision. While the total elimination of the statutory protections enjoyed by subcontractors is unlikely, these protections and rights will certainly be weakened—forcing subcontractors to spend substantial resources in time and money to obtain payment for work performed—if these owner/developer and general contractor groups are successful in 2009.

PHCC of Nevada Position: PHCC opposes this effort on the part of general contractors and owners to subvert the legal protections of subcontractors currently in state law.

Government Relations Committee Approval:

Board of Directors Approval: Feb. 2, 2009