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## NEWSWORTHY LEGISLATION

The Legislative session is finally over. The Governor had until September 30, 2010, to either veto or sign hundreds of legislative bills. Following are a few of the interesting ones with respect to the construction industry.

With the passage of SB 392, the CSLB is now authorized to issue a contractor's license to a limited liability company. The LLC licensees will have many, if not more, of the same requirements that other licensees have. Hopefully the CSLB will not get too backlogged with an overflow of new license applications for LLC's.

SB 189 has passed and brings to an end the decade long review of the Mechanic's Lien process by the California Law Revision Commission. This will renumber and recast every statute pertaining to Mechanic's Liens, Stop Notices, and payment bonds, among other statutes relating to recovery by contractors. Those changes do not become effective until July 1, 2012 and once effective, all of the references to specific statutes that pertain to the enforcement of Mechanic's Liens, Stop Notices and payment bonds will be obsolete. While most of the changes in SB 189 are not substantive (they do not change the substance of most of the statues) the law will be contained in different statutes and the current references will not be correct.

SB 1254 dealing with workers' compensation authorizes the Registrar of Contractors to issue a Stop Work Order to any licensee or unlicensed contractor who, as an employer, has failed to secure workers' compensation insurance coverage for his or her employees and makes a failure to comply with the order a misdemeanor. It also sets forth procedures for the payment of employees pursuant to issuance of a Stop Work Order, and allows an employer to request a hearing to protest a Stop Work Order. Lastly, it would authorize an increase in the number of CSLB peace officer positions from three to 12.

There are also legislative bills that were vetoed and one warrants special attention. AB 2419, that made it through both arms of the Legislature and found itself on the Governor's desk. Following is the Governor's veto message:

To the Members of the California State Assembly:

I am returning AB 2419 without my signature.

This bill removes the apostrophe in the specified references in Contractors' State License Law.

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- Number of legislative committees that took time hearing this bill: 3
- Number of pages in this bill needed to remove an apostrophe: 184
- Taxpayer dollars used to pass this bill through the Legislature: \$ thousands and thousands
- The outrage the public should have that the Legislature is spending its time “working” on bills like this instead of focusing on California’s real problems: PRICELESS.

Sincerely,

Arnold Schwarzenegger



## PASSWORD PROTECTION

During a recent password audit, it was found that a blonde was using the following password:

"MickeyMinniePlutoHueyDeweyLeweyDonaldGoofySacramento"

When asked why she had such a long password, she said she was told that it had to be at least 8 characters long and include at least one capital.

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## THE LAW AND DISCOVERY

Whenever there is any dispute of a relatively material manner, the parties may become involved in litigation. As part of the litigation process, the parties will usually get involved in “discovery.”

The parties can, and usually do, seek to determine what the other party’s position is – to “discover.” The term usually used to discover what the other side has or does not have, is called “discovery.”

SLICO, a California limited partnership, served Antonio Pimentel, a nonparty witness to this particular dispute, with a subpoena. The subpoena required Pimentel to testify and produce documents at a deposition. You should



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understand that Pimentel was a witness and not a party in the lawsuit. One might think that since Pimentel was not a party, he would not have to appear at a deposition. This is untrue.

The discovery process will usually include nonparty witnesses due to the fact that a nonparty witness, such as Pimentel, might have some information that would be beneficial to one of the parties. The law has allowed the person seeking the discovery to actually require the witness to appear and, many times, bring documentation with them.

Pimentel did not appear at the deposition. One of the parties tried to reschedule, yet Pimentel failed to respond. As a result, SLICO filed a Motion with the court to compel Pimentel's attendance and asked for sanctions (a monetary penalty) against him.

Pimentel opposed the Motion, arguing that the subpoena that was served on him was invalid because it was not accompanied by an Affidavit or Declaration of Good Cause.

The trial court disagreed and granted SLICO's Motion and ordered Pimentel to pay sanctions.

The Appellate Court affirmed the decision of the trial court. Code of Civil Procedure § 1987.5 provides that a subpoena requiring appearance and production of matters at a deposition is not valid unless an Affidavit is attached to the Notice of the Deposition. However, another section, Section 2020.510, which is also part of the Civil Discovery Act, provides that a subpoena served on a nonparty witness need not be accompanied by an Affidavit.

This might seem inconsistent. However, another section of the law gives some guidance, "Except as modified by" the Civil Discovery Act. Therefore, the Appellate Court held that section 2020.510 superceded the requirements of section 1987.5 and that service of a deposition on a nonparty witness is effective without requiring an Affidavit. Therefore, the subpoena served upon Pimentel was effective, despite any Affidavit.

If you are subpoenaed to appear as a witness and do not go, you too can be sanctioned by the court.



## MISTAKEN IDENTITY

their ways.

An old nun who was living in a convent next to a construction site noticed the foul language of the workers and decided to spend some time with them to correct

She decided she would take her lunch; sit with the workers; and talk with them. She put her sandwich in a brown bag and walked over to the spot

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where the men were eating.

Sporting a big smile, she walked up to the group and asked: "And do you men know Jesus Christ?"

They shook their heads and looked at each other... very confused.

One of the workers looked up into the steelworks and yelled out, "Anybody up there know Jesus Christ?"

One of the steelworkers yelled down, "Why?"

The worker yelled back, "Cause his wife's here with his lunch."

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### NEGOTIATING SETTLEMENTS IN GOOD FAITH WITH NONPARTY INSURER

Quite often, an argument comes about and one party or another, believes that they have insurance covering the risk.

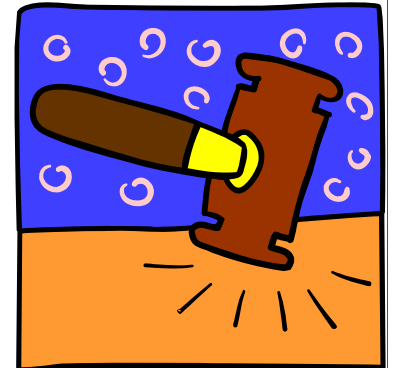
In December 2006, Miguel Vidrio, Jr. and Patricia Salinas sued Maria Hernandez for negligence dealing with a motor vehicle. Hernandez was insured by Mercury Insurance. Quite often, the courts will require the parties to try and settle. In this case, a Mandatory Settlement Conference was set up. Both parties were represented by counsel at the conference. Mercury Insurance's adjuster was there as well.

The plaintiffs (Vidrio & Salinas) demanded \$15,000.00 and the defendants offered \$1,000.00 to each of the plaintiffs. No counter offers were made and the parties did not settle at the Mandatory Settlement Conference.

Later, the court imposed sanctions against Mercury (the insurer) for failure to negotiate in good faith in accordance with California Rule of Court 2.30 and some other statutes.

The decision was reversed at the appellate level. California Rule of Court 2.30, permits a court to impose monetary sanctions against a person for failure to comply with "any rule of court relating to general civil cases..." unless there is a showing of good cause.

Previously, a section of law included language that made the "failure to participate in good faith in any conference" sanctionable conduct. Meaning one can be punished for failing to participate in a "conference." However, this language was removed in 2001. Thus, the sanctions imposed by the trial court against Mercury, a "nonparty insurer" for failure to negotiate in good faith during the Mandatory Settlement Conference, was not sanctioned by statute.



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Therefore, the appellate court reversed the finding stating that the rules cited by the trial court did not grant the authority to issue an order imposing sanctions.

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## TWO ENGINEERS

Two mechanical engineers were standing at the base of a flagpole, looking up. A woman walked by and asked what they were doing.

"We're supposed to find the height of the flagpole," said one, "But we don't have a ladder."

The woman took a wrench from her purse, loosened a few bolts, and laid the pole down. Then she took a tape measure from her pocketbook, took a measurement, announced, "Eighteen feet, six inches," and walked away.

The second mechanical engineer shook his head and laughed. "Ain't that just like a woman?! We ask for the height and she gives us the length!"



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