



Connecticut Construction Industries Association, Inc.

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House Bill 7236, An Act Concerning Apportionment of Liability in a Negligence Action and Attorney's Fees in an Action of Foreclosure or Upon a Bond Substituted for a Mechanic's Lien

Judiciary Committee
February 26, 2007

CCIA Position: Supports

Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in Connecticut and is committed to working together to advance and promote a better quality of life for all citizens in the state. CCIA is comprised of approximately 400 members, including contractors, subcontractors, suppliers and affiliated organizations representing all aspects of the construction industry. Associated General Contractors of Connecticut (AGC/CT), a division of CCIA, represents commercial, industrial and institutional construction contractors, subcontractors, material suppliers and professionals serving the construction industry in the state.

CCIA **supports** House Bill 7236 and thanks the Judiciary Committee for raising the concept for a public hearing. CCIA respectfully requests that the committee **favorably approve** the bill.

House Bill 7236 would allow a general contractor to claim that the negligence of another party was a substantial factor in causing injuries to a subcontractor's employee on a construction site to remedy a recent superior court decision. The bill would also require reasonable attorneys fees and costs be awarded to a plaintiff if a judgment is entered on his behalf whether the action is on the mechanic's lien or on a surety bond when substituted in lieu of a lien.

Section 1 of the bill would guide courts in making accurate evidentiary findings when determining liability for a general contractor defending a third-party claim filed by a subcontractor's injured employee. State superior courts are split on the issue of whether a general contractor can submit evidence of the subcontractor-employer's negligence in a third-party action under the Workers' Compensation Act.

In recent cases, courts have restricted general contractor-defendants from pleading or offering evidence that the subcontractor-employer's negligence contributed to an injury. As a result, general contractors are wholly liable for the injuries, even if they were not solely at fault. This puts the general contractor (GC) in a precarious position because even though the workers' compensation statutes prohibit an injured employee from suing his employer, they allow the employee to sue third parties, such as the GC, for his injuries. When the injured employee of a subcontractor sues a GC, the GC should be able to offer evidence that will allow the court to apportion fault on the proper parties, which many times includes the subcontractor-employer.



House Bill 7236 **should be approved to:**

- **Eliminate an unnecessary increase in construction costs.** Without HB 7236, general contractors will require subcontractors to provide higher limits of insurance coverage running to the general contractors to cover the risks associated with the current exposure to large, inequitable verdicts. Higher premiums associated with the increase in insurance will add to the cost of construction. Additionally, the verdicts against general contractors will create additional litigation between general contractors and subcontractors, and between their respective insurers to apportion the liability.
- **Allow subcontractors to participate in the construction process.** Without HB 7236, general contractors, facing the growing exposure to inequitable judgments, will likely respond by increasing the percentage of work they self-perform, and contract only with a small body of subcontractors who can meet stringent liability insurance requirements. Additionally, many subcontractors will not be able to afford the high limits of coverage required by general contractors to perform on construction projects.
- **Strengthen the relationship between general contractors and subcontractors.** The recent court decisions undermine traditional, well-established principles of tort law by effectively making the general contractor vicariously liable for the acts or omissions of its subcontractors, irrespective of fault.

House Bill 7236 would not affect the general rule of an exclusive remedy for workers' compensation injuries. An employer will still be immune from liability under a lawsuit by an employee and the employer will, in the event of a plaintiff's verdict, still recover his workers' compensation lien. HB 7236 simply clarifies a defendant's legal right to argue that some other party proximately caused the underlying accident and was responsible for the resulting injuries or damages.

Section 2 of the bill would correct a discrepancy in the mechanic's lien statute that was revealed in a recent Superior Court decision. Under the mechanic's lien statute, a claimant in a mechanic's lien action is entitled to attorneys fees when he successfully forecloses on the lien. However, a recent superior court decision found that under the statutes, there is no provision allowing attorneys fees when a bond is substituted for a lien and the claimant succeeds with a claim on the bond. Where the mechanic's lien statute allows for the substitution of a bond for a lien, it should also provide for the same remedy in an action on the bond, as it does in an action on the lien. Section 2 would correct the discrepancy in the statute to give the claimant the same remedy whether foreclosing on a lien or pursuing an action on a bond that was substituted for a lien.

Both CCIA and AGC/CT support section 2 of House Bill 7236.