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Featured Attorneys: Brian Irvine

Subcontractors, suppliers file more claims

BY ROB SABO

A sharp rise in claims from subcontractors who say they've been stiffed by general contractors has shifted the workload for investigators at the Nevada State Contractors Board.

Money-owing claims brought before the board totaled 1,013 for the state's fiscal year ending June 30 — up 55 percent from 564 two years ago.

Art Nadler, public information officer for the contractors board, says the agency has not

hired any additional investigators to handle the increase.

That's because they're investigating fewer complaints about substandard workmanship as construction stalls in most areas of the state. The number of complaints about substandard work fell by 18 percent in the most recent year and are 45 percent below their level of two years ago.

The sharp rise in money-owing complaints arises as subcontractors struggle to get paid by general contractors, as general contractors wait

to get paid by project owners, and as suppliers wait to get paid by contractors and subcontractors alike.

General contractors say it's difficult to pay subcontractors and suppliers if the project's owner won't pay up first.

The pay-if-paid problem recently went before the Nevada Supreme Court, which ruled general contractors are contractually obligated to pay their subcontractors regardless of whether a project owner pays them.

See **CONTRACTORS**, page 25

CONTRACTORS, from page 1

Cindy Creighton, executive director of the Nevada Subcontractors Association, says the potential headaches faced by subcontractors can vary widely.

"It is a case-by-case basis that depends on project financing, the owners — there are a lot of variables," she says. "For any small business owner right now it is a challenge to try to keep business thriving and keep making payroll. When the industry slows down all things are affected downstream."

Jim Dickey, credit manager for Western Nevada Supply, says it's easily the toughest market he's seen in his 12 years on the job. Dickey says financial difficulties for customers translate into longer wait times for bills to be paid and a higher volume of write-offs.

"When the residential market contracted, the contractors doing residential work all of a sudden had considerably less work, and adjusting the size of their business to less work took some time. Homebuilders also were having a difficult time paying subs because

they weren't selling houses, and that caused problems for subs. It also makes it difficult to pay their suppliers," he says.

Dickey says filing of a money-owing claim with the State Contractors Board usually is a last resort for a subcontractor or supplier.

"When you file a claim, there is a possibility that the end result is that somebody is going to be out of business, and that is not very appealing," he says. "We usually attempt to work with customers and collect what is owed to us. We have to be sensitive to the difficulty our customers face and try to work with them to help them make it through these tough times."

Paul Georgeson, partner with McDonald Carano Wilson and chairman of the firm's construction law practice group, says he's seen an uptick in litigation from construction clients. Georgeson says the construction group's workload has shifted from mostly contract review to resolving litigation and bid disputes.

"With the collapse of the residential hous-

ing market and the building of subdivisions, a lot of people who did work on those houses didn't get paid as houses didn't get sold or finished," Georgeson says. "We have seen it both with subdivisions and with spec houses such as in Somerset and Arrowcreek."

Georgeson says as construction jobs dwindled, builders began worrying about every past-due account on their books, which in turn has led to the sharp rise in money-owing complaints.

"In the past maybe they would make it up on the next 10 jobs and not worry about it. But the next 10 jobs may not exist, so they are

fighting over every penny."

Brian Irvine, associate attorney with the Reno office of Jones Vargas, says the rise in claims by both subcontractors and general contractors waiting for payment isn't unexpected.

"With the downturn in the real estate market in this area, combined with the recent problems with the national and local economies, it is not surprising that developers and general contractors are struggling and that some projects are failing or delayed, which would result in delayed or missed construction progress payments," Irvine says.