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SUPREME COURT
STATE OF WASHINGTON

No. 88080-8

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
BY RONALD N. BOHRER
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W.G. CLARK CONSTRUCTION CO., a Washington corporation,
Respondent,

v.

CARPENTERS HEALTH & SECURITY TRUST OF WESTERN
WASHINGTON; CARPENTERS RETIREMENT TRUST;
CARPENTERS-EMPLOYERS VACATION TRUST; CARPENTERS-
EMPLOYERS APPRENTICESHIP & TRAINING TRUST, Appellants,

and

PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS, a
Local Union, Appellant; PARAMOUNT SCAFFOLD, INC., a
Washington corporation, Respondent.

BRIEF OF THE APPELLANT CARPENTERS TRUSTS

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I. INTRODUCTION

Appellants Carpenters Health & Security Trust of Western Washington, Carpenters Retirement Trust, Carpenters-Employers Vacation Trust, Carpenters-Employers Apprenticeship & Training Trust (the “Carpenters Trusts”) seek review and reversal of the *Order Granting Plaintiff’s Motion for Summary Judgment* against the appellant Carpenters Trusts and the Pacific Northwest Regional Council of Carpenters (the “Union”) entered by the Honorable John Erlick, King County Superior Court Judge, on October 12, 2012 (CP 452-54).

II. ASSIGNMENTS OF ERROR

The central issue in this matter is whether this Court’s holding in *International Brotherhood of Electrical Workers, Local Union No. 46 v. Trig Electric Construction Co.*, 142 Wn.2d 431 (2000) reflects current federal ERISA preemption doctrine. Accordingly, the Appellant Carpenters Trusts make the following assignments of error:

Assignment of Error No. 1. The trial court erred in declaring that the appellant Carpenters Trusts’ claims under RCW 39.08 and 60.28 were preempted by the federal Employee Retirement Income Security Act (“ERISA”). The Carpenters Trusts contend this assignment of error raises the following legal issues for direct review by this Court:

- a. Whether RCW 39.08 is preempted by ERISA under current federal ERISA preemption doctrine?
- b. Whether RCW 60.28 is preempted by ERISA under current federal ERISA preemption doctrine?
- c. Whether granting declaratory relief to respondent W.G. Clark Construction Co. (“W.G. Clark”) was erroneous because the trial court failed to apply current federal ERISA preemption doctrine to this case?

Assignment of Error No. 2. The trial court erred by failing to consider the Carpenters Trusts’ constitutional arguments when applying the doctrine of *stare decisis* to respondent W.G. Clark’s claim for declaratory relief. The Carpenters Trusts contend this assignment of error raises the following legal issues for direct review by this Court:

- a. Whether continued adherence to *Trig* would bring substantial harm upon the Carpenters Trusts, their participants, beneficiaries, and other covered individuals?
- b. Whether the Carpenters Trusts, their participants, beneficiaries, and other covered individuals’ due process rights under the federal and Washington constitutions are being violated by the rule of law set forth in *Trig*?
- c. Whether the Carpenters Trusts, their participants, beneficiaries, and other covered individuals’ equal protection rights under the federal and Washington constitutions are violated by the rule of law set forth in *Trig*?

III. STATEMENT OF THE CASE

At its most fundamental level, this case is about whether this Court’s decision in *Trig* now accurately reflects current federal ERISA

preemption doctrine. The Carpenters Trusts contend that continued adherence to *Trig* would misapply federal law, turning ERISA on its head to eviscerate the rights ERISA participants and their fiduciaries have to bring claims under Washington's public works bond and retained percentage statutes.

The importance of this question cannot be understated, as the effects are far reaching, and the impacts to Washington citizens are substantial. From a practical standpoint, this case concerns the ability of citizens, including workers, participants, beneficiaries, and other covered individuals in the State of Washington to recover bargained-for fringe benefits that are part of their wages when their employer fails to pay after the worker has provided the labor. This case also concerns the inherent injustice in prohibiting workers, participants, beneficiaries, and other covered individuals in Washington from availing themselves of the strong protections against such an outcome that have existed in the State of Washington in one form or another for 100 years,¹ long before ERISA was enacted by Congress.

After decades of having protection under Washington law, workers – who seek payment of the benefits earned after labor has been provided

¹ Washington's contractor's bond statute, specifically RCW 39.08.030, dates back 104 years to 1909. Washington's public works lien statute, specifically RCW 60.28.030, has existed in one form or another for 92 years, since 1921.

as part of their wage package – are no longer permitted to use those very protections because of this Court’s holding in *Trig* that those protections are preempted by ERISA. As set forth below, the appellant Carpenters Trusts contend that the holding in *Trig* no longer represents current federal ERISA preemption doctrine,² and the affected workers are thus entitled to the long-standing protections available to them under Washington law.

A. Legal Background.

It is longstanding law in the State of Washington that the Carpenters Trusts – absent preemption issues – have standing to bring claims for payment of fringe benefit contributions against general contractor bonds under RCW 39.08 and against retained percentage under RCW 60.28. See *Crabtree v. Lewis*, 86 Wn.2d 282, 283-86 (1975)(Trust funds have standing to bring an action under RCW 39.08 and 60.28 to recover contributions owed to the benefit fund.). The United States Supreme Court has reached the same conclusion regarding bond claims under the federal Miller Act, a statutory construct similar to Washington’s RCW 39.08. See *United States for Benefit and on Behalf of Sherman v. Carter*, 353 U.S. 210, 220, 77 S.Ct. 793 (1957).

² The issue is not whether *Trig* was correctly decided. Rather, the Carpenters Trusts contend the issue is whether *Trig* continues to accurately state federal ERISA preemption doctrine.

This Court has also held the public works bond and the prevailing wage project's retained percentage are subject to trust funds' claims for payment of fringe benefit contributions. See *Crabtree*, 86 Wn.2d at 287-89. The *Crabtree* court specifically noted that the duty to ensure that laborers were paid in full lies with general contractors:

The defendant prime contractor paid the subcontractor but evidently did not see to it that the laborers were paid in full. These statutes make it incumbent upon him to so do or risk the loss of the retained percentage, as well as exposure of his surety to liability.

Crabtree, 86 Wn.2d at 288. The United States Supreme Court in *Carter* went further, including liquidated damages and other ancillary charges in amounts subject to a claim on a bond by trust funds. Under this statutory and case law construct, claimants such as the Carpenters Trusts routinely asserted claims in superior court against public works bonds under RCW 39.08 and against a project's retained percentage under RCW 60.28.

Then, in 1994, this Court in *Puget Sound Electrical Workers Health and Welfare Trust Fund v. Merit Company*, 123 Wn.2d 565, 573 (1994) unanimously held:

Washington's public works lien statutes expand liability to ensure the funding of ERISA plans. Although these statutes assist the ERISA funds and are not inconsistent with the policies of ERISA, their enforcement and collection mechanisms must

yield to the extent they supplement those provided by ERISA.

Thus, we hold that RCW 39.08 and RCW 60.28.010 relate to ERISA plans for the purposes of preemption under section 514(a) of ERISA.

Merit, 123 Wn.2d at 573. In reaching its decision, the *Merit* Court relied in part on the United States Supreme Court's test for ERISA preemption as set forth in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983). The *Shaw* court essentially held that preemption exists when a state law "relates to" an employee benefit plan or if it has a connection with or reference to such a plan. *Shaw*, 463 U.S. at 96-97.

One year after the *Merit* decision, the United States Supreme Court retreated from its holding in *Shaw*, and significantly narrowed the applicability of federal ERISA preemption doctrine to state law claims. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995).

Because of *Travelers*, this Court was asked in 2000 to revisit its holding in *Merit*. See *International Brotherhood of Electrical Workers, Local Union No. 46 v. Trig Electric Co.*, 142 Wn.2d 431, 13 P.3d 622 (2000), cert. den., 532 U.S. 1002 (April 23, 2001). The *Trig* Court, in a narrow 5-4 decision, declined to overrule *Merit*, and held that Washington's lien statute, RCW 39.08, was still preempted by ERISA as to claims by parties such as the Carpenters Trusts here. *Trig*, 142 Wn.2d

at 433. Notably, this Court, in upholding *Trig*, was concerned about “plaintiffs enforcing their rights against their employer’s bond as opposed to applying a state lien law to recover benefit contributions from a third party to the contract rather than enforce rights under a contract,” and based its decision in part on the appellant IBEW’s failure “to demonstrate a change in ERISA’s preemptive force over state statutes providing an alternative enforcement mechanism to 29 U.S.C. § 1132(a), IBEW has not met this substantial burden. Merit remains good law.” *Trig*, 142 Wn.2d at 442.

Since this Court’s decision in *Trig*, federal and state courts, including the Ninth Circuit Court of Appeals and the United States District Court of the Western District of Washington, have allowed parties such as the Carpenters Trusts here to bring public works bond and retained percentage claims against third parties, including general contractors and their sureties, as well as project owners, holding that under current federal law, there is no ERISA preemption for these types of claims.

B. Procedural History.

On June 14, 2012, the Carpenters Trusts and the Union issued their notice of claim of lien, pursuant to RCW 39.08 and 60.28, on the University of Washington, Student Housing Project, Phase 1, Site 32W Project No. 203105 (the “UW Housing Project”). (CP 196-227) The lien

claimed the Carpenters Trusts were owed \$64,905.48 in fringe benefit contributions arising from Paramount Scaffold's work on the UW Housing Project, plus liquidated damages, accrued interest due to non-payment, and attorney fees. (CP 196)

On July 2, 2012, rather than wait for the Carpenters Trusts or the Union to enforce their claim of lien, W.G. Clark filed a preemptory action in King County Superior Court seeking declaratory relief (the "Preemptory Action") that this Court's holding in *Trig* prevented the Union from asserting claims of lien pursuant to RCW 39.08 and 60.28. (CP 1-6) However, W.G. Clark's complaint in the Preemptory Action did not name the Carpenters Trusts as defendants, nor did it name the general contractor's surety, Safeco Insurance Company of America, and the project owner, the University of Washington. (CP 1)

On July 20, 2012, the Carpenters Trusts filed an action in the United States District Court for the Western District of Washington, alleging that respondent Paramount Scaffold, pursuant to the Employee Retirement Income Security Act ("ERISA"), the Labor Management Relations Act ("LMRA"), and pursuant to the terms of collective bargaining and trust agreements, owed the Carpenters Trusts at least \$761,881.79 in fringe benefit contributions, liquidated damages, accrued interest, and attorney fees for the period May 2011 through March 2012.

(CP 229-40) The Carpenters Trusts' ERISA/LMRA claims are federal question claims properly brought in the federal District Court under 29 U.S.C. §§ 185, 186, 502, and 1132. (CP 231).

In the federal District Court action, the Carpenters Trusts also alleged claims upon the public works bond and retained percentage against W.G. Clark, the Surety, and the University of Washington under the federal supplemental jurisdiction statute, 28 U.S.C. §1367(a). (CP 231) In doing so, the Carpenters Trusts sought to foreclose upon the public works bond under RCW 39.08 and to foreclose upon the UW Housing Project's retained percentage under RCW 60.28. (CP 238-39) The Carpenters Trusts alleged in the ERISA/LMRA complaint they are owed at least \$77,473.57 in fringe benefit contributions, liquidated damages, and accrued interest from work performed by laborers on the UW Housing Project. (CP 237, 238-40) These amounts are a subset of the larger \$761,881.79 amount claimed as owing to the Carpenters Trusts by Paramount Scaffold. (CP 237)

On August 3, 2012, only after being served with the Carpenters Trusts' ERISA/LMRA complaint in the federal District Court action, W.G. Clark amended its complaint in the superior court Preemptory Action to add the Carpenters Trusts as defendants. (CP 9-42)

Then, on August 13, 2012, W.G. Clark filed a motion to dismiss the Carpenters Trusts' federal District Court action, claiming that since the Carpenters Trusts were now named-parties in the superior court, the trust funds should be forced to bring their public works bond and retained percentage claims as counterclaims in superior court under CR 13 basing their argument on this Court's holding that RCW 39.08 is preempted by ERISA. (CP 277-334) The Carpenters Trusts opposed dismissal of their federal District Court action and on August 30, 2012, cross-moved for summary judgment on their public works bond and retained percentage claims.³ (CP 336-55, 357-86)

On August 31, 2012, W.G. Clark responded by filing a motion for summary judgment in its superior court Preemptory Action. (CP 64-76) On October 12, 2012, after full briefing and a hearing on the merits, the Honorable John Erlick, King County Superior Court Judge, granted in part W.G. Clark's motion for summary judgment. (CP 452-54) Judge Erlick also issued an oral ruling explaining his decision. (CP 458-68) In his oral ruling, Judge Erlick found that W.G. Clark was entitled to declaratory relief because of this Court's holding in *Trig*:

³ Since *Trig*, the Washington federal courts have allowed the Carpenters Trusts and other similarly situated trust fund plaintiffs to bring these types of state law claims using the federal court's supplemental jurisdiction statute, 28 U.S.C. §1367.

This court declares that this is Washington state law in state court; grants summary judgment and dismisses this case. This ruling is without prejudice for Plaintiffs to pursue whatever claims they may have in federal court. That is the ruling of the court.

(CP 462, emphasis added) Moreover, in both his oral ruling and the order itself, Judge Erlick specifically preserved the Carpenters Trusts rights to advance their public works bond and retained percentage claims in the federal District Court action. (CP 453, 464-65)

Then, on January 31, 2013, after supplemental briefing from the parties on the effect, if any, of the Judge Erlick's decision on the federal District Court action, Judge Martinez dismissed the Carpenters Trusts' RCW 39.08 and 60.28 claims.⁴ Judge Martinez explained his decision, in part:

The conflicting state and federal precedents result in a quandary: the Trusts cannot foreclose the lien in state court, but can do so in federal court...

The situation is unfortunate, because diverging results in state and federal inevitably perpetuate the practice of forum shopping. As in the present case, [W.G. Clark, et al.] acknowledge they filed a 'preemptory declaratory judgment action' in Superior Court in order to receive a favorable ruling. ***Such action constitutes blatant forum shopping, which is highly discouraged.*** With this particular issue, the Court is cognizant that the parties have no choice but to seek relief in the

⁴ Appendix, Exh. 1: *Order on Defendants' Motion to Dismiss and Plaintiffs' Motion for Summary Judgment*, dated January 31, 2013.

forum that is favorable to its case. *Despite the Court's compelling interest in the correct application of ERISA preemption on this issue*, it is constrained by the Superior Court's summary judgment order and must award full faith and credit to the Defendants' compulsory counterclaim argument as a state court would.⁵

The Carpenters Trusts are now left without a remedy, despite the Washington statutes being specifically designed to ensure full payment to workers, beneficiaries, and other covered individuals represented by the appellants here. Judge Erlick recognized this problem:

THE COURT: ...Ultimately, this is going to have to get resolved one way or another. It's a -- from my perspective, it's broken.

MR. AHLERS: There are four people in this room that totally agree with you on that issue.⁶

THE COURT: Yeah.

(CP 465, at 8:8-12)

IV. ARGUMENT

This Court has twice before held that claims under RCW 39.08 and 60.28 are preempted by ERISA. See, *Puget Sound Electrical Workers Health and Welfare Trust Fund v. Merit Company*, 123 Wn.2d 565 (1994); *International Brotherhood of Electrical Workers, Local Union No. 46 v. Trig Electric Construction Co.*, 142 Wn.2d 431 (2000). Because of

⁵ Appendix, Exh. 1 (emphasis added, citations omitted).

⁶ The four counsel present for W.G. Clark and the Carpenters Trusts.

subsequent changes in federal case law as to the breadth of ERISA preemption, the Carpenters Trusts contend neither *Merit* nor *Trig* accurately apply that federal doctrine.

Because the declaratory relief granted to W.G. Clark was based solely on this Court's holding in *Trig*, the Carpenters Trusts contend that correctly applying federal ERISA preemption doctrine to this matter results in a denial of declaratory relief and restores to the Carpenters Trusts, and to similarly situated trust funds, workers, participants, beneficiaries, and other covered individuals, the decades-long protections codified under Washington law.

Whether *Merit* and *Trig* remain good law is a question of *stare decisis*. This Court long ago noted that *stare decisis* is not an absolute impediment to changing a rule of law:

Stare decisis is a doctrine developed by courts to accomplish the requisite element of stability in court-made law, but is not an absolute impediment to change. Without the stabilizing effect of this doctrine, law could become subject to incautious action or the whims of current holders of judicial office. ***But we also recognize that stability should not be confused with perpetuity. If the law is to have a current relevance, courts must have and exert the capacity to change a rule of law when reason so requires.*** The true doctrine of stare decisis is compatible with this function of the courts. The doctrine requires a clear showing that an established rule is incorrect and harmful before it is abandoned.

In re Stranger Creek and Tributaries of Stevens County, 77 Wn.2d 649, 653 (1970) (emphasis added). This “clear showing” is a substantial burden. *Waremart, Inc. v. Progressive Campaigns, Inc.*, 139 Wn.2d 623, 634 (1999). The challenge must show that “an established rule is incorrect and harmful before it is abandoned.” *Trig*, 142 Wn.2d at 442, citing *Waremart*, 139 Wn.2d at 634. The Carpenters Trusts contend they meet the *Waremont* burden, and accordingly contend this Court should revisit and abrogate the rule of law it set forth in *Merit* and upheld in *Trig*.

A. **For Decades, Public Works Bonds and Retained Percentage have been Subject to Claims for Fringe Benefit Contributions.**

W.G. Clark’s argument in the superior court seemed to question whether – ERISA preemption issues aside – the Carpenters Trusts could even bring claims against the public works bond and retained percentage. (CP 4, 13)

1. **The Carpenters Trusts have Standing to Bring Claims under RCW 39.08 and RCW 60.28.**

It is well-settled law in the State of Washington that the Carpenters Trusts – absent preemption issues – have standing to bring claims for payment of fringe benefit contributions against public works bonds under RCW 39.08 and against retained percentage under RCW 60.28. See *Crabtree v. Lewis*, 86 Wn.2d 282, 283-86 (1975) (Trust Funds have standing to bring an action under RCW 39.08 and 60.28 to recover

contributions owed to the benefit fund.). The United States Supreme Court has reached the same conclusion regarding a Miller Act bond in a case similar to the one before this Court:

[T]he trustees of the fund have an even better right to sue on the bond than does the usual assignee since they are not seeking to recover on their own account. The trustees are claiming recovery for the sole benefit of the beneficiaries of the fund, and those beneficiaries are the very ones who have performed the labor. The contributions are the means by which the fund is maintained for the benefit of the employees and of other construction workers. For purposes of the Miller Act, these contributions are in substance as much 'justly due' to the employees who have earned them as are the wages payable directly to them in cash.

United States for Benefit and on Behalf of Sherman v. Carter, 353 U.S. 210, 220, 77 S.Ct. 793 (1957).

2. **Public Works Bonds and Retained Percentage are Subject to the Carpenters Trusts' Claims for Contributions.**

This Court has long held that a public works bond and the prevailing wage project's retained percentage are subject to a trust fund's claims for payment of fringe benefit contributions. See *Crabtree*, 86 Wn.2d at 287-89. The *Crabtree* court specifically noted that the duty to ensure that laborers were paid in full lies with general contractors such as W.G. Clark:

The defendant prime contractor paid the subcontractor but evidently did not see to it that the

laborers were paid in full. These statutes make it incumbent upon him to so do or risk the loss of the retained percentage, as well as exposure of his surety to liability.

Crabtree, 86 Wn.2d at 288. The United States Supreme Court in *Carter* went further, including liquidated damages and other ancillary charges in amounts subject to a claim on a bond by a trust fund claimant:

The trustees' claim for liquidated damages, attorneys' fees, court costs and other related expenses of this litigation has equal merit. The contractor's obligation to pay these items is set forth in the trust agreement. It is stipulated that they form a part of the consideration which Carter agreed to pay for services performed by his employees. If the employees are to be 'paid in full' the 'sums justly due' to them, these items must be included.

Carter, 353 U.S. at 220 (emphasis added). Other jurisdictions agree. See e.g., *Bellemead Dev. Corp. v. New Jersey State Council of Carpenters Benefit Funds*, 11 F.Supp.2d 500, 516–17 & n. 25 (D.N.J. 1998) (ERISA trustees and union can assert lien claims against property on behalf of beneficiaries despite fact that owner was not a party to the contracts creating the fringe benefit obligations); *Performance Funding, LLC v. Arizona Pipe Trade Trust Funds*, 203 Ariz. 21, 49 P.3d 293, 297–98 (Az. Ct. App. 2002) (same holding); *Connecticut Carpenters Benefit Funds v. Burkhard Hotel Partners II, LLC*, 83 Conn. App. 352, 849 A.2d 922, 924, 927–28 (2004) (same holding); *Hawai'i Laborers' Trust Funds v. Maui Prince Hotel*, 81 Hawai'i 487, 918 P.2d 1143, 1146, 1153 (1996) (same

holding); *Divane v. Smith*, 332 Ill. App. 3d 548, 266 Ill. Dec. 255, 774 N.E.2d 361, 363, 368 (2002) (same holding applied to contractors' bond claim); *Omaha Construction Industry Pension Plan v. Children's Hospital*, 11 Neb. App. 35, 642 N.W.2d 849, 854–55 (2002) (same holding applied to mechanics' lien claim); and *International Brotherhood of Electrical Workers v. Oregon Steel Mills, Inc.*, 168 Or. App. 101, 5 P.3d 1122, 1125–26 (Or. Ct. App. 2000) (employee benefit fund had standing under the state's lien law, but union did not).

B. Merit and Trig no Longer State Current Federal ERISA Preemption Doctrine.

In 1994, the *Merit* court held Washington's lien statutes, RCW 39.08 and 60.28, preempted by ERISA as to claims by plaintiffs such as the Carpenters Trusts here. *Merit*, 123 Wn.2d at 573. This Court in *Trig*, in a narrow 5-4 decision, declined to overrule *Merit*. *Trig*, 142 Wn.2d at 433. "Nothing in substantive ERISA law has changed in the intervening years between *Merit* and this case that alters our conclusion." *Trig*, 142 Wn.2d at 440. The dissent in *Trig* strongly disagreed, stating the majority had erroneously relied upon the broad *Shaw* standard of preemption, rather than the narrower, and more recent, standard set forth by the United States Supreme Court in *Travelers*. *Trig*, 142 Wn.2d at 449. Regardless, in the years since *Trig* was decided, substantive ERISA law has changed and the

Carpenters Trusts thus contend this Court should accordingly reevaluate the holdings set forth in *Merit* and *Trig*.

1. **The United States Supreme Court has Narrowed the Application of ERISA Preemption.**

Federal law, not state law, governs questions of ERISA preemption. *Mackey v. Lanier Collection Agency*, 486 U.S. 825, 830-831 (1988) (“ERISA preemption is a matter of federal law.”). Section 514(a) of ERISA states, in part:

(a) Supersedure; effective date. – Except as provided in subsection (b) of this section, the provisions of this subsection and subsection III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b)...⁷

29 U.S.C. §1144(a). Whether a state statute is preempted depends on whether or how it relates to an ERISA employee benefit plan.

Historically, ERISA preemption was broadly read. See generally, *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983). In declaring Washington’s lien statutes to be preempted by ERISA, this Court in *Merit* relied on the preemption test set forth in *Shaw*, as well as two earlier Ninth Circuit cases at the time, *Trustees of the*

⁷ The exceptions listed in ERISA § 514(b) – 29 U.S.C. §1144(b) – do not apply in this matter.

Electrical Workers Health & Welfare Trust v. Marjo Corp., 988 F.2d 865 (9th Cir. 1993) and *Sturgis v. Herman Miller, Inc.*, 943 F.2d 1127 (9th Cir. 1991). See *Merit*, 123 Wn.2d at 571-73.

However, in 1995, a unanimous U.S. Supreme Court departed from its holding in *Shaw* and narrowed the applicability of ERISA preemption of state laws. See *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995). The *Travelers* Court set forth a narrowed test for preemption and started with the presumption that Congress did not intend to supplant state law:

And yet, despite the variety of these opportunities for federal preeminence, we have never assumed lightly that Congress has derogated state regulation, but instead have addressed claims of pre-emption with the starting presumption that Congress does not intend to supplant state law.

Travelers, 514 U.S. at 654. The *Travelers* Court continued:

Indeed, in cases like this one, where federal law is said to bar state action in fields of traditional state regulation, we have worked on the “assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.

Travelers, 514 U.S. at 655 (citations omitted). That statutes at issue here fall directly within the Washington’s traditional police powers and under the *Travelers* analysis, as set forth below, are not preempted by ERISA.

2. **The Ninth Circuit Court of Appeals, Interpreting ERISA Preemption of State Law Claims, has Aligned Itself with the Position of the Dissent in Trig.**

In 2001, just after the *Trig* Court reached its decision, the Ninth Circuit addressed whether federal ERISA preemption doctrine acted to bar state law lien claims of trust funds. *Southern California IBEW-NECA Trust Funds v. Standard Industrial Electric Company*, 247 F.3d 920 (9th Cir. 2001). The *Standard Industrial* matter involved an action by trust funds to collect fringe benefit contributions owing by the signatory subcontractor from the general contractor's payment and performance bond under California's bond statute. The *Standard Industrial* Court considered whether California's payment bond statute was preempted by ERISA:

Since the Supreme Court narrowed the scope of ERISA preemption in *Travelers*, the "relates to" criterion has been analyzed by determining whether a state law (1) has a "connection with" or (2) a "reference to" employee benefit plans.

Standard Industrial, 247 F.3d at 924, citing *Geweke Ford v. St. Joseph's Omni Preferred Care, Inc.*, 130 F.3d 1355, 1357 (9th Cir. 1997); *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125, 113 S.Ct. 580, 121 L.Ed.2d 513 (1992).

To find an impermissible connection, we look 'both to the objectives of the ERISA statute as a guide to the scope of the state law that Congress

understood would survive, as well as to the nature of the effect of the state law on ERISA plans.’

Standard Industrial, 247 F.3d at 925, citing *Rutledge v. Seyfarth*, 201 F.3d 1212, 1216 (9th Cir. 2000), amended and superseded on other grounds in 208 F.3d 1170 (9th Cir. 2000).

A statute has an impermissible ‘reference to’ an employee benefit plan if it acts immediately and exclusively upon the plans or if the plans are essential to the law’s operation.

Standard Industrial, 247 F.3d at 925, citing *Egelhoff v. Egelhoff*, 532 U.S. 141, 121 S.Ct. 1322, 1324-25, 149 L.Ed.2d 264 (2001).

Using the standards set forth above, the Ninth Circuit in *Standard Industrial* concluded California’s bond statute did not impermissibly refer to an employee benefit plan because the statute operated “irrespective of an ERISA plan.” *Standard Industrial*, 247 F.3d at 926. Moreover, the *Standard Industrial* court held that the California statute:

...includes by reference mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, registered engineers, licensed land surveyors, machinists, builders, teamsters, draymen, and all other persons and laborers among those who may use the payment bond statute to guarantee payment for the value of their labor. California’s statute, like Arizona’s, allows employees on public-work projects to enforce payment bonds through sureties, regardless of the existence or nature of the ERISA benefit plans. The payment bond statute is not necessarily limited to ERISA plans; thus, its inclusion of employee benefit trusts among those

who may enforce a payment bond is not an impermissible reference to an ERISA plan.

Standard Industrial, 247 F.3d at 926. The *Standard Industrial* court also left no doubt that, under the post-*Travelers* preemption standard, the enforcement provisions contained in California's bond statute are not preempted by ERISA:

A state statute will not be preempted if it has a tenuous, remote or peripheral connection with ERISA plans. See District of Columbia, 506 U.S. at 130 n. 1, 113 S.Ct. 580. California's payment bond remedy does regulate the relationship between ERISA trust funds and an employer's surety, but the effect of this state regulated relationship on ERISA's domain is too tenuous to precipitate preemption under ERISA. See *JWJ*, 135 F.3d at 678–79 (finding the relationship between ERISA and a third party guarantor “too tenuous, remote, or peripheral” to trigger ERISA's preemption clause). Because the breadth of ERISA preemption is no longer indefinite, and pre-*Travelers* decisions must be re-evaluated in light of *Travelers* and *JWJ*, the decisions cited by *Sureties* and *KDB* are unpersuasive. Accordingly, we find ERISA does not preempt Trusts' and Employees' payment bond claims and AFFIRM the district court ruling as to the payment bond claims.

Standard Industrial, 247 F.3d at 927. The *Standard Industrial* court dismissed attempts to distinguish *JWJ*, a prior Ninth Circuit decision, from the case before it:

In sum, the payment bond remedy currently before this Court and the payment bond remedy examined in *JWJ* do not have any legally cognizable differences.

Standard Industrial, 247 F.3d at 926-27, citing *Operating Engineers Health and Welfare Trust Fund v. JWJ Contracting Co.*, 135 F.3d 671 (9th Cir. 1998).

3. **Other Federal Circuit Courts of Appeal have Refused to Find ERISA Preemption of State Law Claims Against Third Parties.**

In 1995, the Second Circuit Court of Appeals considered whether the plaintiff trust funds could enforce the payment of a subcontractor's delinquent fringe benefit contributions against a third party general contractor and its surety, using Connecticut's bond statute.⁸ *Bleiler v. Cristwood Constr. Inc.*, 72 F.3d 13 (2nd. Cir., 1995). The district court dismissed the plaintiffs' bond claim, holding it was preempted by ERISA. *Bleiler*, 72 F.3d at 14. However, the *Bleiler* court reversed, holding:

We turn now to the question of whether the Connecticut bond statute, Conn.Gen.Stat. § 49-42, is preempted by ERISA. Greenblatt disposes of this issue also because it held that a state contract claim on a surety bond was not preempted by ERISA and thus was not a ground for removal. In so holding, we noted that such a claim neither related to any employee benefit plan nor conflicted with any enforcement mechanism specified in ERISA.

Bleiler, 72 F.3d at 16.

In 1998, the Sixth Circuit Court of Appeals considered whether the plaintiff trust funds could collect delinquent fringe benefit contributions

⁸ Appendix, Exh. 2: C.G.S.A. §49-42.

owing by a signatory subcontractor, by asserting claims on a bond under Michigan's Public Works Act⁹ against the third party general contractor and its surety. *Trustees for Michigan Laborers' Health Care Fund v. Seaboard Sur. Co.*, 137 F.3d 427 (6th Cir., 1998). The *Seaboard* court affirmed the district court's holding that the bond claims asserted under Michigan's Public Works Act were not preempted by ERISA. *Seaboard*, 137 F.3d at 428-29 ("We agree with this assessment, particularly in light of the Supreme Court's recognition [in *Travelers*] that, although expansive, the ERISA pre-emption provision must be read to give meaning to its limiting language.").

In 2000, the First Circuit Court of Appeals, in considering whether the plaintiff Massachusetts Carpenters Central Collection Agency could enforce a claim for payment of a subcontractor's delinquent fringe benefit contributions against a general contractor's public works bond, and its surety. *Carpenters Local Union No. 26 v. U.S. Fidelity & Guar. Co.*, 215 F.3d 136 (1st. Cir., 2000). The First Circuit abrogated its prior holding of preemption of such statutes by ERISA, and after applying the narrower *Travelers* test for preemption, held:

ERISA preemption proscribes the type of alternative enforcement mechanism that purposes to provide a remedy for the violation of a right

⁹ Appendix, Exh. 3: M.C.L.A. 129.207.

expressly guaranteed and exclusively enforced by the ERISA statute. Those state laws which touch upon enforcement but have no real bearing on the intricate web of relationships among the principal players in the ERISA scenario (e.g., the plan, the administrators, the fiduciaries, the beneficiaries, and the employer) are not subject to preemption on this basis. It follows that a state statute which only creates claims against a surety does not constitute an impermissible alternative enforcement mechanism as that term is used in ERISA jurisprudence.

That ends this aspect of the matter. The Massachusetts bond statute does not constitute a proscribed alternate enforcement mechanism. By the same token, it has no other meaningful nexus with ERISA; it does not, for example, interfere with the administration of covered employee benefit plans, purport to regulate plan benefits, or impose additional reporting requirements. Last-but far from least-it regulates an area of the law traditionally thought to be the states' preserve: enforcing contracts under state law for the citizenry's protection. Consequently, we conclude that the Massachusetts bond statute does not have a sufficient "connection with" covered employee benefit plans to warrant ERISA preemption.

U.S. Fidelity & Guar. Co., 215 F.3d at 141 (citations omitted).

4. Washington's Federal Courts have Held RCW 39.08 and 60.28 not Preempted by ERISA.

Whether ERISA preempts Washington's bond statutes has also been considered by the United States District Court for the Western District of Washington. Since *Travelers, Trig*, and *Standard Industrial*, at least three decisions have issued from Washington's federal courts

concerning ERISA preemption of the Washington bond statutes at issue in this matter. Two of the decisions are factually on-point. The third reaches the same legal conclusion as the first two. All three cases address, from the federal point-of-view, the *Trig* court's application of federal ERISA preemption doctrine and the ability of the Carpenters Trusts to bring claims under Washington's public works bond and retained percentage statutes.

In the first case, *Ironworkers District Council of the Pacific Northwest v. George Sollit Corporation*, 2002 WL 31545972 (W.D. Wash. Sept. 4, 2002), the plaintiff Ironworkers Trust Funds alleged ERISA claims for contributions, liquidated damages, and other ancillary charges against defendant George Sollit Corporation. The Ironworkers Trust Funds also brought state law claims in the federal District Court against M.A. Mortenson, as the general contractor, against American Home Assurance Co. and Federal Insurance Co., as sureties, and against the Washington Department of General Administration, Engineering & Architectural Services as the project owner, seeking payment pursuant to RCW 39.08 and 60.28 on the public works bond and retained percentage. The state law claim defendants moved to dismiss federal case in part, alleging ERISA preemption. The federal District Court in George Sollit went through a detailed preemption analysis under controlling Ninth

Circuit precedent, and rejected the same preemption argument made by W.G. Clark here:

Under this analysis, it is clear that RCW 39.08 is not impermissibly ‘connected’ to ERISA benefit plans. Like the statute at issue in *Standard Industrial*, RCW 39.08 does not regulate ERISA benefits, require the establishment of a separate benefit plan or impose new requirements for ERISA plans. While it is possible that the statute could be relevant to the relationship between the ERISA trust funds and the Surety companies, the Ninth Circuit has ruled that such an incidental intrusion into ERISA territory is too ‘tenuous, remote, or peripheral’ to justify preemption. *Standard Industrial*, 247 F.3d at 927.

Moreover, it is clear that RCW 39.08 does not impermissibly make ‘reference to’ ERISA benefit plans. First, it does not refer to ERISA benefit plans on its face. Second, the Washington legislature could not have intended for it to refer to an ERISA plan because it was enacted in 1909, long before ERISA was enacted. Third, the statute applies whether or not the ironworkers participate in ERISA. Finally, the Washington statute regulates the enforcement of rights and obligations governed by state contract law and therefore concerns a subject area traditionally left to the states.

George Sollit, 2002 WL 31545972, at *5.

In the second action, *Board of Trustees of the Cement Masons & Plasterers Health and Welfare Trust v. GBC Northwest, LLC*, 2007 WL 1306545 (W.D. Wash., May 3, 2007), the plaintiff Cement Masons Trust filed an ERISA action in the federal District Court against GBC Northwest, LLC (“GBC Northwest”) for unpaid contributions, liquidated

damages, accrued interest, costs, and attorney fees. The plaintiff Cement Masons Trust also brought state law claims under RCW 39.08 and 60.28 against Summit Central Construction, as the general contractor, against Travelers Casualty & Surety Company of America, as the surety, and against the project owner, Skyway Water & Sewer District, seeking payment pursuant to RCW 39.08 and 60.28 on the public works bond and retained percentage. The state law defendants contended that the federal District Court had no jurisdiction over the plaintiff Cement Masons Trust's state law claims, in part due to *Trig*. The federal District Court again rejected the state law claim defendants' arguments, and again held that under controlling Ninth Circuit precedent, Washington's public works lien law is not preempted by ERISA:

Because this Court follows federal preemption law as determined by federal courts and under that law ERISA does not preempt, the union trustees do have recourse as a matter of law in federal court to collect on a state lien claim supplemental to an ERISA suit.

GBC Northwest, 2007 WL 1306545, at *2.

Moreover, the federal District Court in *GBC Northwest* not so subtly recognized that the holding in *Trig* no longer represented the correct application of federal ERISA preemption doctrine:

Given the Washington State Supreme Court's interpretation of federal ERISA preemption doctrine

to preclude recovery on public works liens in cases such as the instant one, the interest in correct application of federal law strongly favors this Court's exercise of supplemental jurisdiction over the state claim.

GBC Northwest, 2007 WL 1306545, at *3.

In the third action, and an action that is directly on point with this matter, *Carpenters Retirement Trust of Western Washington v. Healthy Homes NW, LLC*, 2008 WL 2230754 (W.D. Wash., May 29, 2008), the plaintiff Carpenters Trusts filed an ERISA action in federal District Court against defendant Healthy Homes NW, LLC ("Healthy Homes NW") alleging claims for unpaid employee benefit contribution claims and ancillary charges against Health Homes NW. The plaintiff Carpenter Trusts also brought state law claims against Safeco Insurance Company of America, the general contractor's surety, seeking payment on the public works bond. Safeco argued, in part, the plaintiff Carpenters Trusts' claims were preempted by ERISA. Similar to the *George Sollit* and *GBC Northwest* courts, the *Healthy Homes NW* court rejected that argument, holding:

Under the governing Ninth Circuit precedent, the Plaintiffs' state law claim is not preempted. In *Southern California IBEW-NECA Trust Funds v. Standard Industrial Electric Co.*, 247 F.3d 920 (9th Cir. 2001), the Ninth Circuit found that ERISA did not preempt the claims of ERISA trust funds against a public works bond under the California bond

statute. Applying Standard Industrial, this Court reached the same result under the Washington state statute. *Ironworkers Dist. Council of Pacific NW. v. George Sollit Corp.*, No. C01-1668C, 2002 WL 31545972 (W.D. Wash. Sept. 4, 2002).

Healthy Homes NW, 2008 WL 2230754, at *4.

Since *Travelers*, *Trig*, and *Standard Industrial*, the Washington federal courts have, on at least three occasions, held Washington's public works bond and retained percentage statutes not preempted by ERISA, that Washington's federal courts can (and will – in certain circumstances) exercise supplemental jurisdiction over those state law bond claims, especially in light of *Trig*, and plaintiffs such as the Carpenters Trusts here, can bring their state law claims on public works bonds and retained percentage in federal court under the federal supplemental jurisdiction statute.

Although the *George Sollit* and *Healthy Homes NW* decisions cited above dealt with Washington's public works bond statute, RCW 39.08, the same result is reached when applying federal ERISA preemption doctrine to RCW 60.28. That statute does not require the establishment of a separate benefit plan, nor does it impose new reporting, disclosure, funding, or vesting requirements for ERISA plans. *Standard Industrial*, 247 F.3d at 925. In addition, RCW 60.28 does not impermissibly refer to an employee benefit plan as defined by ERISA because the statute applies

regardless of the existence of an ERISA plan. *Standard Industrial*, 247 F.3d at 926. Most important, RCW 60.28, which originated more than ninety years ago, in 1921, does not refer to ERISA. It too is a statute of general applicability and an exercise of traditional state police power that provides a remedy to all persons, regardless of ERISA status.

5. **Other State Supreme and Appellate Courts have Declined to Follow the Majority's Holding in Trig.**

A number of state supreme and appellate courts have held that trust funds' claims against third parties for payment of delinquent fringe benefits, under state statutes of general applicability, are not preempted by ERISA. While the decisions of the state supreme and appellate courts in states other than Washington are not binding and amount to persuasive authority only, the Carpenters Trusts contend those decisions lend substantial weight to the first prong of the *Walmart* test, that an established rule is incorrect.

In 1989, before *Travelers*, the Wisconsin Court of Appeals held that the plaintiff trust funds could enforce payment of a subcontractor's delinquent fringe benefit contributions against the retained percentage held by the third party project owner and general contractor, using Wisconsin's construction lien law.¹⁰ *Plumber's Local 458 Holiday Vacation Fund v.*

¹⁰ Appendix, Exh. 4: W.S.A. 779.036.

Howard Immel, Inc., 151 Wis.2d 233, 445 N.W.2d 43 (1989). The

Howard Immel court held:

Wisconsin's construction lien law is a general statute without any specific reference to ERISA obligations. It is a remedy available to a certain class of creditors that transcends ERISA obligations and concerns. While one may readily understand court decisions holding that the collection of ERISA obligations may not be directed by state law, a decision holding that no general creditor's remedies may be utilized to collect judgments held by ERISA-regulated plans would be unfathomable. This holding would often leave funds without the means to enforce judgments.

Howard Immel, 151 Wis.2d at 240.

In 1995, the Indiana Court of Appeals held that the plaintiff trust funds could enforce payment of a subcontractor's delinquent fringe benefit contributions against a general contractor's public works bond, and its surety. *Seaboard Surety Co. v. Indiana State District Council of Laborers & Hod Carriers Health & Welfare Fund*, 645 N.E.2d 1121, 1127 (Ind. Ct. App. 1995). The *Seaboard* court concluded:

We do not see how a suit upon a bond, voluntarily written by Seaboard and for the benefit of the Plan, interferes with ERISA and do not find ERISA pre-emption of that suit.

Seaboard, 645 N.E.2d at 1126-27. The *Seaboard* court ultimately held:

Indiana's statutes requiring payment and performance bonds on public works projects do not refer to ERISA benefit plans, do not single them out for special treatment, and do not conflict with

ERISA. IC 36-1-12-13.1 and the common law right to recover on a bond written pursuant to that section affect employee benefit plans in too tenuous, remote, and peripheral a manner to warrant a finding that they relate to such a plan. Consequently, we hold that an action to collect on a bond written pursuant to IC 36-1-12-13.1 is not preempted by ERISA.

Seaboard, 645 N.E.2d at 1127-28.¹¹

In 1996, the Hawai'i Supreme Court, in an action brought by trust funds to enforce payment of fringe benefit contributions obligations of a subcontractor against the project owner's real property using the Hawai'i mechanic's and materialman's lien statute,¹² held that ERISA did not preempt the trust funds' state law lien claims against a third-party property owner. *Maui Prince Hotel*, 918 P.2d at 1154-57. The Hawai'i Supreme Court noted:

[T]he trustees [under ERISA] have an obligation to enforce the terms of the collective bargaining agreement regarding employee fund contributions against the employer 'for the sole benefit of the beneficiaries of the fund' ... ***A determination that the trustees of the Hawai'i Carpenters' Trust Funds may not seek the aid of our mechanic's lien law in discharging this obligation would ignore relevant federal policy and fly in the face of logic.***

Maui Prince Hotel, 918 P.2d at 1156 (emphasis added).

¹¹ Appendix, Exh. 5: IC 36-1-12-13.1.

¹² Appendix, Exh. 6: HRS §507-42.

In 2003, the California Supreme Court held California's mechanic's lien statute was not preempted by ERISA. *Betancourt v. Storke Housing Investors*, 31 Cal.4th 1157, 8 Cal. Rptr. 3d 259 (2003).

The Court reasoned:

Nor does section 3110 have a "connection with" ERISA plans. As a law of general applicability, section 3110 "does not bind ERISA plans to anything." This mechanic's lien law permits laborers and other persons, who may include participants in ERISA plans or the plans themselves, to obtain a lien to secure payment for their labor and materials. (§§ 3110, 3089.) Section 3110's effect on ERISA plans, however, is indirect at most because it does not compel plans to function in a certain way.

Betancourt, 31 Cal.4th at 1167 (citations omitted). Notably, the California Supreme Court also held:

We have long recognized that it is within the state's police power to provide for enforcement of liens for labor and materials. Storke fails to show that it was Congress's 'clear and manifest purpose' that ERISA preempt our state's long-standing mechanic's lien laws. As the high court explained, 'We could not hold pre-empted a state law in an area of traditional state regulation based on so tenuous a relation without doing grave violence to our presumption that Congress intended nothing of the sort.'

Betancourt, 31 Cal.4th at 1167-68 (citations omitted).

In 2004, the Minnesota Court of Appeals addressed, in a case of first impression, whether ERISA preempted the plaintiff trust funds from

enforcing payment of a subcontractor's delinquent fringe benefit contributions against the third party project owner, under Minnesota's mechanic's lien statute.¹³ *Twin City Pip Trades Service Ass'n, Inc. v. Peak Mechanical*, 689 N.W.2d 549 (Mn. Ct. App., 2004). While the central issue in the case was standing, the *Peak Mechanical* court briefly addressed ERISA preemption and found that the "Minnesota statute does not single out ERISA-benefits funds..." and held that trustees of employee-benefit trust funds could avail themselves of the Minnesota mechanic's lien statute. *Peak Mechanical*, 689 N.W.2d at 554-55.

Also in 2004, in another apparent case of first impression, a Maine Superior Court refused to find ERISA preemption on the plaintiff Ironworkers attempts to collect a subcontractor's delinquent fringe benefit contributions from the third party general contractor and project owner, using Maine's mechanic's lien statute.¹⁴ *Local No. 496 of the Intern. Ass'n v. Wal-Mart Real Estate Business Trust*, 2004 WL 3196788 (Me. Sup. Ct., 2004). The *Wal-Mart REB Trust* court aligned itself with the Hawai'i Supreme Court, and held:

Such a [preemption] holding would makes [sic] general lien statutes powerless to enforce obligations owed to laborers when some of those obligations happened to earmarked for a benefit

¹³ Appendix, Exh. 7: M.S.A. §514.01.

¹⁴ Appendix, Exh. 8: 10 M.R.S.A. §3251.

plan. Like the lien statutes in Hawaii and Wisconsin, Maine's mechanic's lien statute is too generic, tenuous, remote and peripheral from an ERISA benefit plan for this Court to find that it is being used as an “alternative enforcement mechanism.” The presumption that Congress does not intend to supplant state law has not been overcome.

Wal-Mart REB Trust, 2004 WL 3196788 at *4.

In 2008, the Utah Court of Appeals, in a detailed analysis of ERISA preemption of state bond statutes, held “Travelers sent a strong message to the lower courts that section 514(a) was subject to significant limitations and that any challenge to a state law of general application affecting an area of traditional state concern must overcome a strong presumption that Congress did not intend to preempt it.” *Forsberg v. Bovis Lend Lease, Inc.*, 184 P.3d 610, 620 (2008). The *Forsberg* court also noted, since *Travelers*, most courts have held that ERISA does not preempt mechanics’ lien laws or contractors’ bond statutes of general applicability. *Forsberg*, 184 P.3d at 610, citing a variety of decisions on the issue from the various states and circuit courts: *Standard Industrial* (Ninth Circuit/California; overruling pre-*Travelers* cases and holding that payment bond and stop notice statutes of general application are not preempted by ERISA); *Greenblatt v. Delta Plumbing & Heating Corp.*, 68 F.3d 561, 574–75 (2nd Cir. 1995) (Second Circuit/New York; citing

Travelers and concluding that the “surety law does not touch upon any rights or duties incident to the ERISA plan itself, nor does it conflict with any ERISA cause of action”); *Bellemead Dev. Co.*, 11 F.Supp.2d at 507–08, 516–17 (New Jersey; citing *Travelers* and following *Ragan* to hold that ERISA does not preempt construction lien law of general application); *Betancourt* (California; citing *Travelers* and holding that mechanics’ lien law of general application is not preempted by ERISA). The Utah court went further, finding that “in several of the most recent cases, the defendants have not even asserted ERISA preemption.” *Forsberg*, 184 P.3d at 610, citing *Burkhard Hotel Partners II*, 83 Conn. App. 352, 849 A.2d 922 (2002) (Connecticut; joining the “majority of jurisdictions that have addressed the issue” by holding that ERISA trustees had standing to file mechanics’ lien for unpaid fringe benefits); *Divane v. Smith*, 332 Ill.App.3d 548, 774 N.E.2d 361 (2002)(Illinois; addressing issues of notice and standing); among other. See also, *Ragan v. Tri-County Excavating, Inc.*, 62 F.3d 501, 512 (3d Cir., 1995) (Third Circuit; Pennsylvania; holding that bond statute of general application is not preempted by ERISA). “We agree with these decisions and hold that Utah’s mechanics’ lien and private bond statutes, which make no references to trust funds or ERISA itself, are not preempted.” *Forsberg*, 184 P.3d at 610.

In 2011, the Illinois Court of Appeals declined to prohibit the plaintiff trust funds from enforcing a judgment obtained against the signatory subcontractor by asserting a mechanic's lien claim against the third-party project owner. *Central Laborers' Pension Fund v. Nicholas and Associates, Inc.*, 2011 Il. App. 2d 100, 956 N.E.2d 609 (2011). The Illinois court tackled the alternate enforcement mechanism issue head on:

The issue of whether a state mechanic's lien claim qualifies as an alternative enforcement mechanism triggering ERISA preemption has resulted in a post-Travelers majority view and minority view, which are set forth in *Forsberg v. Bovis Lend Lease, Inc.*, 2008 UT App 146, 184 P.3d 610 (finding no preemption), and *International Brotherhood of Electrical Workers, Local Union No. 46 v. Trig Electric Construction Co.*, 142 Wash.2d 431, 13 P.3d 622 (2000) (finding preemption), respectively.

Nicholas and Associates, 353 Ill. Dec. at 755-56. The Illinois court analyzed both the *Forsberg* and *Trig* cases, and concluded that approach of the *Forsberg* court and that of the dissent in *Trig* were the “better-reasoned approach” and that the *Trig* majority failed to employ the narrower ERISA preemption test set forth in *Travelers*. *Nicholas and Associates*, 353 Ill. Dec. at 759-60.

6. The Cases Relied Upon by *Merit* have been Abrogated or Distinguished.

The *Merit* court relied primarily on five cases to support its holding that Washington's public works bond and retained percentage

statutes were preempted by ERISA.¹⁵ *Merit*, 123 Wn.2d at 572-73. Since this Court issued its decisions in *Merit* and *Trig*, the legal underpinnings of *Merit* (and *Trig* by implication) have collapsed.

The Ninth Circuit has abrogated its decisions in *Marjo* and *Sturgis* and the cases are no longer good law:

To the extent Tri Capital, Marjo, Sturgis, and their progeny decided before Travelers are inconsistent with this holding, they are hereby expressly overruled

Standard Industrial, 247 F.3d at 929.

The First Circuit did not abrogate its decision in *McCoy*. However, the First Circuit recognized that the Massachusetts legislature modified the mechanic's lien statute to remove the offending references that previously intruded on ERISA preemption:

[The McCoy rationale] likely endures. The mechanic's lien statute does not; the Massachusetts legislature amended it in 1996 to eliminate any mention of 'trustees' and 'section 302' of the Taft Hartley Act.

U.S. Fidelity & Guar. Co., 215 F.3d at 142, fn. 5. It's notable that in its former iteration, the Massachusetts mechanic's lien statute made specific

¹⁵ Those cases are: *Trustees of Electrical Workers Health & Welfare Trust v. Marjo Corp.*, 988 F.2d 865 (9th Cir.1993); *Sturgis v. Herman Miller, Inc.*, 943 F.2d 1127 (9th Cir.1991); *McCoy v. Massachusetts Inst. of Technology*, 950 F.2d 13 (1st Cir.1991); *Bricklayers & Allied Craftsmen Int'l Union Local 33 Benefit Funds v. America's Marble Source, Inc.*, 950 F.2d 114 (3d Cir.1991); and *Carpenters S. Cal. Admin. Corp. v. El Capitan Dev. Co.*, 53 Cal.3d 1041, 1051, 811 P.2d 296, 282 Cal.Rptr. 277 (1991).

reference to trustees and Taft Hartley plans, whereas the Washington statutes do not.

Like *McCoy*, the Third Circuit in *Bricklayers* held New Jersey's Fringe Benefit Act preempted by ERISA. *Bricklayers*, 950 F.2d at 118-19. However, the Third Circuit's opinion was pre-*Travelers* and applied the older, *Shaw* preemption standard. In addition, the New Jersey statute at issue, unlike Washington's, was specifically designed to affect employee benefit plans. *Bricklayers*, 950 F.2d at 118.

Finally, the California Supreme Court in *Betancourt* declined to follow its earlier decision in *El Capitan*:

We emphasized that unlike section 3110, “[s]ection 3111 is specifically for the use of express trust funds established pursuant to collective bargaining agreements.”

Betancourt, 31 Cal.4th at 1171, citing *El Capitan*, 53 Cal.3rd at 1049. The statute at issue in *Betancourt* was a statute of general applicability, while the statute at issue in *El Capitan* was specifically designed to assist trust funds. The *El Capitan* statute has since been repealed and replaced by subsequent legislation.

It is beyond dispute that RCW 39.08 and 60.28 are statutes of general applicability and represent a traditional area of state concern and

police power. Accordingly, under current federal ERISA preemption doctrine, as illustrated by opinions of the various federal circuit courts, federal district courts, state supreme courts, state appellate courts, and state trial courts cited above, there is now a strong presumption that Congress did not intend to preempt these types of state statutes. Accordingly, the Carpenters Trusts contend that *Merit* and *Trig* no longer accurately state current federal ERISA preemption doctrine, and thus contend those holdings should be abrogated by this Court.

C. **Holding that Washington's Lien Statutes are Preempted by ERISA Brings Harm upon the Carpenters Trusts.**

The test for disregarding *stare decisis*, as set forth in both *Trig* and *Waremart*, includes a showing of harm. The Carpenters Trusts contend, in light of the changes in federal ERISA preemption doctrine since this Court last visited the issue, prohibiting the Carpenters Trusts from enforcing their claim upon the public works bond and retained percentage would impose harm upon not just the Carpenters Trusts, but upon tens of thousands of Washington citizens.

1. **Trig Creates Substantial Conflict Between the Federal and State Courts.**

As set forth above, ERISA preemption doctrine is a matter of federal law. There is now direct conflict between the federal courts and the Washington Supreme Court as to whether ERISA preempts statutes of

general applicability such as RCW 39.08 and 60.28. Since at least 2000, Washington's federal courts, following binding Ninth Circuit precedent, have allowed trust funds such as the Carpenters Trusts to enforce and foreclose upon public works bonds and retained percentage under those state statutes:

Given the Washington State Supreme Court's interpretation of federal ERISA preemption doctrine to preclude recovery on public works liens in cases such as the instant one, the interest in correct application of federal law strongly favors this Court's exercise of supplemental jurisdiction over the state claim.

GBC Northwest, 2007 WL 1306545, at *3.

The *Healthy Homes NW* case and this case perfectly illustrate the conflict and the root of the problem: the interest in correct application of the federal ERISA preemption doctrine. In both this and the *Healthy Homes NW* actions, the trust funds filed notices of claim of lien upon a general contractor's public works bond under RCW 39.08, alleging that a subcontractor owed fringe benefit contributions and other ancillary charges. In both actions, the general contractor, Lydig in *Healthy Homes NW*, and W.G. Clark here, filed preemptory declaratory relief actions in Washington's superior courts. In both actions, the trust fund plaintiffs filed an ERISA/LMRA action in Washington's federal courts, and alleged supplemental state law bond claims under the federal supplemental

jurisdiction statute, 28 U.S.C. §1367. Lydig, in *Healthy Homes NW*, sought dismissal of the federal District Court action in light of the pending declaratory relief action in Snohomish County Superior Court. The federal District Court declined to dismiss, entered judgment for the trust funds on the state law claims, and characterized Lydig's preemptory state court declaratory relief action as forum shopping. *Healthy Homes NW*, 2008 WL 2230754, at *2.

Given the Washington federal court's view that RCW 39.08 and 60.28 are not preempted by ERISA under current federal doctrine, versus this Court's view that there is ERISA preemption, it is not difficult to recognize the potential for inconsistent results and jurisdictional conflict between the federal and state courts. Parties bringing an defending such claims have already shown a propensity for filing actions in both Washington federal and state courts on the same issues. Such duplicative litigation in both federal and state courts is wasteful and a needless use of judicial resources.

Moreover, there is a huge financial cost to all parties from litigating the same issue in two courts. Costs of litigation can be enormous and a tremendous burden on parties in a single matter, let alone in two arguably duplicative matters. Between the federal District Court action and this action, the duplicative costs of litigation for all of the

parties may very well exceed the total amount of the Carpenters Trusts' public works bond and retained percentage claims.

2. Thousands of Beneficiaries are Harmed.

The Carpenters Trusts, their participants, beneficiaries, and covered workers, will suffer substantial harm should this Court uphold ERISA preemption of RCW 39.08 and 60.28 under *Merit* and *Trig*. The Carpenters Trusts have a statutory duty under ERISA to ensure that fringe benefit contributions are paid and collected. Preemption of a remedial statute of general applicability, such as RCW 39.08 here, acts to hinder and prevent the Carpenters Trusts from discharging that duty.

But this is not just about harm to the Carpenters Trusts. The Carpenters Trusts stand in the shoes of their participants, beneficiaries, and other covered workers. Full payment of wages, which includes fringe benefits, to Washington workers has long been strong public and legislative policy of the State of Washington. It is one of the few circumstances in Washington in which punitive damages may be obtained. See RCW 49.52.070. It is one of the few circumstances in which a business owner may be held personally liable for failure to pay. See RCW 49.52.070. Moreover, the Washington legislature recognized this priority in RCW 60.28 itself, by giving workers' wage claims the top priority for payment of a claim upon retained percentage, even over tax liens asserted

by Washington's taxing authorities. "The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens." RCW 60.28.40.

The potential ramifications and harm to Washington workers is measureable and substantial. The Carpenters Trusts currently have 26,332 individuals eligible for or receiving benefits from the Trust Funds for the 2012 plan year. (CP 388) Each stands to suffer delayed coverage, payment of, or loss of benefits – or an outright denial of coverage – if the fringe benefits portion of their wage package is not paid. And the more than 26,000 participants, beneficiaries, and individuals covered by the Carpenters Trusts does not include similarly situated persons covered by the Puget Sound Electrical Workers, Cement Masons, Laborers, Operating Engineers, Construction/Finishing, Painters and Allied Trades, Drywall Finishers, Glaziers, Roofers, and other unionized trades. In short, a substantial number of workers and beneficiaries residing in and working in Washington are at risk of not being paid their full wages, left without an intended statutory remedy, loss/denial of health care eligibility and other benefits, and thus directly harmed by the inability of trust funds to recover fringe benefit contributions under RCW 39.08 and 60.28, which until *Merit* and *Trig*, they were entitled to do.

3. **A Blanket Preemption Holding Violates the Carpenters Trusts' Constitutional Rights.**

As set forth below, the Carpenters Trusts contend the inability of avail themselves of the public works bond and retained percentage statutory protections violates the constitutional rights to due process and equal protection of the Carpenters Trusts, their participants, beneficiaries, and other covered individuals.

a) **The Carpenters Trusts' Due Process Rights have been Violated.**

By enacting RCW 39.08, the statutory history of which dates to 1909, the Washington legislature created a fundamental right in property by creating an enforceable interest in the contractor's bonds required under the statute. This property right has been recognized since at least the 1970s. *Crabtree*, 86 Wn.2d 286, 288.

The Fourteenth Amendment to the United States Constitution applied due process protections to the various States:

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719, 117 S.Ct. 2258 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720, 117 S.Ct. 2258.

Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 2059-60 (2000). Since *Trig*, the landscape of ERISA preemption has narrowed, and a continued adherence to rule set forth in *Merit* and *Trig* would act to deprive the Carpenters Trusts, their participants, beneficiaries, and other covered individuals of a property right that long pre-dated ERISA itself. This violation of the Carpenters Trusts, their participants, beneficiaries, and other covered individuals' substantive due process rights is untenable.

Moreover, the procedural due process rights of the Carpenters Trusts, their participants, beneficiaries, and other covered individuals would be violated. Currently, the rule of law set forth in *Merit* and *Trig* acts to prevent the Carpenters Trusts (and any other similarly situated ERISA trust fund), and their participants, beneficiaries, and other covered individuals, from bringing claims under RCW 39.08 and 60.28 in state court. As a direct result, Washington's federal courts have acted to protect the procedural due process rights of the Carpenters Trusts, their participants, beneficiaries, and other covered individuals by hearing the claims under the federal supplemental jurisdiction statute, 28 U.S.C. §1367. Upholding the entry of declaratory relief that is not strictly limited to advancing public works bond and retained percentage claims in state court would purport to deny the Carpenters Trusts, their participants, beneficiaries, and other covered individuals the right to bring their claims

in federal court.¹⁶ Such a result certainly acts to deny the Carpenters Trusts, their participants, beneficiaries, and other covered individuals procedural due process.

b) **The Carpenters Trusts' Equal Protection Rights have also been Violated.**

The Fourteenth Amendment to the United States Constitution also prohibits the states from acting to “deny to any person within its jurisdiction the equal protection of the laws.” The amendment has been interpreted to provide equal application of laws to all persons.

The Washington Constitution has similar protections:

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Washington Const. art. 1, §12.

Continued adherence to the holding in *Merit* and *Trig* would act to deny equal protection to the Carpenters Trusts, their participants, beneficiaries, and other covered individuals under both the federal and state constitutions. The two statutes at issue here, RCW 39.08 and 60.28,

¹⁶ Even then, the Carpenters Trusts – and any other similarly situated trust fund – are not protected. The federal supplemental jurisdiction statute can only be invoked when there is an active, pending federal question before the Washington federal courts, or unless there is diversity amongst the parties. Absent those conditions, Washington’s federal courts likely lack jurisdiction to hear these types of claims.

are statutes of general applicability. They are remedial statutes, and the remedies in each apply irrespective of a claimant's ERISA status. They are statutes within the traditional scope of state police power. The statutes list a class of claimants, to which the Carpenters Trusts, their participants, beneficiaries, and other covered individuals belong, and set forth the method by which any claimant can assert a claim of lien upon a public works bond or retained percentage. Denying the Carpenters Trusts, their participants, beneficiaries, and other covered individuals access to the remedies contained in these statutes of general applicability under the rule announced in *Trig*, given the subsequent change in the application of federal ERISA preemption doctrine, unfortunately acts to unlawfully exclude the Carpenters Trusts, their participants, beneficiaries, and other covered individuals as a class of claimants and results in unequal application of the law.

V. CONCLUSION

The landscape relating to federal ERISA preemption doctrine has changed since this Court issued its decisions in *Merit* and *Trig*. In *Travelers*, the United States Supreme Court retreated from the broad preemption standard set forth in *Shaw*. In *Standard Industrial*, the Ninth Circuit applied the narrower *Travelers* standard to the very same types of claims at issue here and found no preemption under ERISA. Various state

courts, including but not limited to those in California, Hawai'i, Utah, Indiana, Illinois, and Wisconsin have likewise found no preemption under ERISA when considering claims against third parties asserted under statutes of general applicability similar to the Washington statutes at issue here. The very cases relied upon in *Merit* have been abrogated, distinguished, or superseded by changes to state statutes.

Accordingly, the Carpenters Trusts contend that *Merit* and *Trig* are no longer good law, and no longer accurately state federal ERISA preemption doctrine. The Carpenters Trusts respectfully request this Court abrogate those decisions and restore the long-held rights of the trusts, their participants, beneficiaries, and other covered individuals to avail themselves of the protections of Washington's public works bond and retained percentage statutes.

Dated the 20th day of March, 2013.



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EXHIBIT 1

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARPENTERS HEALTH AND
SECURITY TRUST OF WESTERN
WASHINGTON, et al.,

Plaintiffs,

v.

PARAMOUNT SCAFFOLD, INC., et al.,

Defendants.

CASE NO. 12-1252-RSM

ORDER ON DEFENDANTS'
MOTION TO DISMISS AND
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Defendants' Fed. R. Civ. P. 13(a) and 17(a) motion to dismiss Plaintiffs' state lien claim and federal claims respectively. Dkt. # 7. Plaintiffs have also filed a Fed. R. Civ. P. 56 motion for summary judgment on the lien. Dkt. # 17. For the reasons set forth below, Defendants' Rule 13(a) motion is GRANTED, Defendants' Rule 17(a) motion is DENIED, and Plaintiffs' Rule 56 motion is DENIED.

II. BACKGROUND

In July 2010, the University of Washington ("UW") entered into a contract with W.G. Clark to construct a UW Student Housing Project (the "Project"). W.G. Clark obtained a

1 payment bond from Safeco Insurance Company of America (“Safeco”) as required by
2 Washington law. In April 2011, W.G. Clark entered into a subcontract with Paramount Scaffold,
3 Inc. (“Paramount”) for scaffolding work on the Project. Paramount then entered into a collective
4 bargaining agreement with the Pacific Northwest Regional Council of Carpenters (the “Union”)
5 to provide laborers for its job sites, including the Project. As part of the labor agreement,
6 Paramount agreed to provide monthly reports and pay fringe benefit contributions to five trust
7 fund beneficiaries (collectively, the “Trusts”).

8 In June 2012, the Trusts issued a notice of claim on lien for unpaid fringe benefit
9 contributions and served the lien on W.G. Clark, UW, Safeco and Paramount (collectively, the
10 “Defendants”). On July 2, 2012, W.G. Clark filed for a declaratory judgment against the Union
11 and Paramount in King County Superior Court. It later renamed the Trusts as defendants in the
12 action, seeking to prevent foreclosure on the payment bond and lien pursuant to RCW § 39.08
13 and § 60.28.¹ On July 20, 2012, the Trusts filed the instant action in this Court to foreclose on
14 the lien and seek monetary damages against the Defendants. On October 12, 2012, the Superior
15 Court issued a summary judgment order in favor of W.G. Clark and dismissed the case. The
16 Trusts appealed the decision and the matter is pending direct review by the Washington Supreme
17 Court.

18 Pursuant to Rule 13(a), Defendants move to dismiss the Trusts’ lien foreclosure claim
19 under RCW § 39.08 and § 60.28, arguing it is barred as a compulsory counterclaim from the
20 Superior Court action. Additionally, Defendants argue that the complaint is defective, because
21 the Trusts are not real parties in interest as defined in Rule 17(a). The Trusts oppose the motion
22

23
24 ¹ RCW § 39.08 requires contractors to retain a payment bond on public works projects while RCW § 60.28 governs the retainage and foreclosure actions on liens.

1 as a misapplication of the Rules, arguing that they are proper parties under the Labor
 2 Management Relations Act (“LMRA”) and Employee Retirement Income Security Act
 3 (“ERISA”) claims. The Trusts also argue that the compulsory counterclaim rule is inapposite, as
 4 the federal court is the appropriate forum to rule on the lien claim. They rely on the Court’s
 5 precedent of invoking supplemental jurisdiction through ERISA, which allowed similar plaintiffs
 6 to recover unpaid contributions under the statute. In turn, the Trusts move for summary
 7 judgment to foreclose on the payment bond under RCW § 39.08 and the lien under RCW§ 60.28.

8 III. DISCUSSION

9 A. Defendants’ Motion to Dismiss

10 I. State Lien Claim

11 a. *Compulsory Counterclaim*

12 Pursuant to Rule 13(a), a compulsory counterclaim must be asserted if it “arises out of the
 13 same transaction or occurrence that is the subject matter of the opposing party’s claim.” Fed. R.
 14 Civ. P. 13(a). A defendant in a prior litigation who fails to bring a compulsory counterclaim
 15 cannot bring a second action asserting the counterclaim as an affirmative claim for relief.

16 *Mitchell v. CB Richard Ellis Long Term Disability Plan*, 611 F.3d 1192, 1201 (9th Cir. 2010);
 17 *see Local Union No. 11 v. G.P. Thompson Elec., Inc.*, 363 F.2d 181, 184 (9th Cir. 1966) (“If a
 18 party fails to plead a compulsory counterclaim. . . [it] is precluded by res judicata from ever
 19 suing upon it again.”). The Full Faith and Credit Act, 28 U.S.C. § 1738, requires that federal
 20 courts give the same preclusive effect to state court judgments as the state courts would.

21 *Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 525 (1986). Thus, whether a plaintiff’s
 22 claims are barred as compulsory counterclaims from the prior state action is a matter of state law.
 23 *Pochiro v. Prudential Ins. Co. of Am.*, 827 F.2d 1246, 1249 (9th Cir. 1987). Washington’s
 24

1 compulsory counterclaim rule is nearly identical to Rule 13(a) and is construed broadly to “avoid
2 a multiplicity of suits.” *Schoeman v. New York Life Ins. Co.*, 106 Wash.2d 855, 864 (1986).

3 The Trusts do not dispute that their lien claim is a compulsory counterclaim. It is clear
4 that both the state and federal claims are identical and arise from the same operative facts.
5 Instead, the Trusts allege that the compulsory counterclaim rule does not apply since the Trusts
6 were not named as defendants in the state action until *after* the federal action commenced. Dkt.
7 # 14, p. 16. The argument fails because an amendment changing a party “relates back” to the
8 original date of the pleading if the claim “arose out of the conduct, transaction, or occurrence set
9 forth” and (1) the party is not prejudiced in maintaining [its] defense on the merits and (2) the
10 party should have known that but for a mistake concerning the identity of the proper party, action
11 would have been brought against it. CR 15(c). The Trusts offer no argument as to why W.G.
12 Clark’s amendment should not relate back to the original pleading date, which was commenced
13 before the federal action. Second, the Trusts argue that they could not legally bring their claims
14 as counterclaims in the state action, as they are exclusively federal. Dkt. # 14, p. 16. The
15 argument fails because it blurs the distinction between the Trusts’ lien claim, which is a state law
16 issue, and the federal claims arising under LMRA and ERISA. Adjudication of only the lien
17 claim in state court does not require the Trusts to bring their federal claims as counterclaims.
18 Third, the Trusts maintain that bringing their lien claim as a compulsory counterclaim in the state
19 action would have likely resulted in Rule 11 sanctions for bringing a claim that is “not allowed
20 by Washington state precedent in state court.” Dkt. # 14, pp. 16-17. This is an incorrect
21 assertion. While it is true that the Trusts are certain to receive an adverse ruling in state court,
22 there is no authority to suggest that they are legally prohibited from bringing their lien claim
23 there. Finally, the Trusts contend that the compulsory counterclaim argument is now moot since
24

1 the Superior Court has dismissed its case. Dkt. # 45, p. 4. To the contrary, the compulsory
2 counterclaim rule applies to final judgments, precluding the Trusts from re-litigating the lien
3 claim in another forum.

4 Likewise, res judicata ensures the finality of judgments, in that a final judgment on the
5 merits bars the parties from re-litigating claims that could have been raised in that action. *Mellor*
6 *v. Chamberlin*, 100 Wash.2d 643, 645 (1983). The Superior Court's summary judgment order is
7 equivalent to a final judgment on the merits and a valid basis for applying res judicata. *See*
8 *Vanderpol v. Swinger*, No. 12-0773, 2012 WL 6590864, at *3 (W.D. Wash. Dec. 17, 2012)
9 (citing *Ensley v. Pitcher*, 152 Wash.App. 891, 899 (2009)). Res judicata applies when a prior
10 judgment has a concurrence of identity in four respects: (1) subject matter, (2) cause of action,
11 (3), persons and parties, and (4) the quality of the persons for or against whom the claim is made.
12 *Id.* It operates similarly to an unasserted compulsory counterclaim, preventing a party from
13 asserting an adjudicated claim in a separate action. *See Krikava v. Webber*, 43 Wash.App. 217,
14 219 (1986) (citing *Moritzky v. Heberlein*, 40 Wash.App. 181 (1985)). Res judicata applies in this
15 case, because the mirroring state and federal lien actions are nearly identical in regards to the
16 four factors. Central to the state action was a judgment on the payment bond and lien pursuant to
17 RCW § 39.08 and § 60.28, which is the same determination the Trusts seek here. W.G. Clark
18 was the only named plaintiff in the first action, however the judgment carries over to the rest of
19 the Defendants who are named as parties in interest to the payment bond and lien. Thus, res
20 judicata bars the Trusts from asserting the lien claim here.

21 Nonetheless, the Trusts point to the language of the Superior Court's summary judgment
22 order, which emphasizes that the ruling is based on "Washington state law in state court" and
23 that the case is dismissed "without prejudice for the plaintiffs to pursue whatever claims they
24

1 may have in federal court.” Dkt. # 40-1, p. 6. The ruling acknowledges the state and federal
2 court’s conflicting application of ERISA preemption, which is central in determining whether the
3 Trusts can seek contributions on the payment bond and lien pursuant to RCW § 39.08 and §
4 60.28. The Trusts contend that the Superior Court tacitly acknowledged that the Trusts may still
5 pursue the lien claim in federal court and deliberately fashioned its order to reflect this, despite
6 the finality of its own judgment. Dkt. # 45, p. 4. The assertion is speculative at best, but even if
7 it were the Superior Court’s intent, the summary judgment and dismissal was a final
8 determination based on the applicable state precedent it was bound to uphold. The Trusts offer
9 no legal basis for an exception otherwise. This Court is obligated to award full faith and credit to
10 the state judgment as a state court would, and apply the compulsory counterclaim rule in the
11 manner it is intended, preventing duplicative litigation on the same claim. Based on the
12 complexities of the ERISA preemption issue, however, the topic is further discussed below.

13 *b. ERISA Preemption*

14 According to the Washington Supreme Court, ERISA preempts Washington’s public
15 works statutes RCW § 39.08 and § 60.28. *Int’l Brotherhood of Elec. Workers v. Trig Electric*
16 *Constr. Co.*, 142 Wn.2d 431, 443 (2000), *cert. denied*, 532 U.S. 1002 (2001). In effect, a
17 plaintiff is preempted from foreclosing on a retainage lien and is barred from seeking delinquent
18 contributions on the bond in state court. Following Ninth Circuit precedent, however, this Court
19 conversely found that ERISA does not preempt statutes like RCW § 39.08. *Ironworkers Dist.*
20 *Council of Pac. Nw. v. George Sollit Corp.*, No. 01-1668, 2002 WL 3154972, at *5 (W.D. Wash.
21 Sep. 4, 2002). The Court further specified that since ERISA does not preempt, there is recourse
22 as a matter of law in federal court to collect on a state lien claim supplemental to an ERISA suit.
23 *Bd. of Trustees of Cement Masons & Plasterers Health and Welfare Trust v. GBC Nw., L.L.C.*,

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1 No. 06-1715, 2007 WL 1306545, at *2 (W.D. Wash. May 3, 2007). The conflicting state and
2 federal precedents result in a quandary: the Trusts cannot foreclose on the lien in state court, but
3 can do so in federal court.

4 It is clear that the Court has jurisdiction over the Trusts' lien claim, which is
5 supplemental to the ERISA action. However, this authority is not absolute as the Trusts might
6 suggest. This case is factually distinguished from previous situations, because a parallel state
7 proceeding came to judgment on the same claim first. In prior cases, there were no respective
8 state court judgments, so no compulsory counterclaim and res judicata defenses were alleged.
9 *Cf. Carpenters Ret. Trust of W. Wash. v. Healthy Homes Nw. L.L.C.*, No. 08-0289, 2008 WL
10 2230754 (W.D. Wash. May 29, 2008) (granting summary judgment on the payment bond in
11 favor of plaintiff trusts where the parties instituted only the federal action), *Sollit*, 2002 WL
12 3154972 (denying the defendants' motion to dismiss the union trustees' lien claim where the
13 parties only instituted the federal action). In one similar circumstance, the Court exercised
14 jurisdiction over a pending state declaratory judgment action. *GBC*, 2007 WL 1306545, at *3
15 (granting summary judgment in favor of the union trustee plaintiffs to enforce the lien). In that
16 situation, the Court was entitled to adjudicate the lien claim since the state court had yet to issue
17 a judgment.² Here, the Trusts relied on the prior line of cases to rightfully assert the Court's
18 jurisdiction on the matter, but failed to properly address the compulsory counterclaim argument.

19 The situation is unfortunate, because diverging results in state and federal court
20 inevitably perpetuate the practice of forum shopping. As in the present case, Defendants
21 acknowledge they filed a "preemptive declaratory judgment action" (Dkt. # 22, p. 5) in Superior
22

23 ² A federal court may in its discretion dismiss its case due to a pending state proceeding
24 only in exceptional circumstances warranted by the "clearest of justifications." *Colorado River
Water Conservation Dist. v. United States*, 424 U.S. 800, 818-19 (1976).

1 Court in order to receive a favorable ruling. Such action constitutes blatant forum shopping,
2 which is highly discouraged. *Sollit*, 2002 WL 3154972, at *3. With this particular issue, the
3 Court is cognizant that the parties have no choice but to seek relief in the forum that is favorable
4 to its case. Despite the Court's compelling interest in the correct application of ERISA
5 preemption on this issue, it is constrained by the Superior Court's summary judgment order and
6 must award full faith and credit to the Defendants' compulsory counterclaim argument as a state
7 court would. Thus, the Court has no choice but to GRANT the Defendants' motion to dismiss
8 the Trusts' claim on the lien under RCW § 39.08 and § 60.28. The claim is dismissed with
9 prejudice as it is barred by the application of Rule 13(a) and res judicata.

10 **II. Federal Claims**

11 *a. Subject Matter Jurisdiction*

12 This Court has subject matter jurisdiction over the Trusts' LMRA and ERISA claims
13 against Defendants. 29 U.S.C. §§ 185(c), 1132(a)(1)(B), (g)(2).

14 *b. Parties in Interest*

15 Pursuant to Rule 17(a), Defendants argue that only a trustee may properly bring suit in
16 this action, therefore the Trusts are not real parties in interest. Dkt. # 7, p. 14. Rule 17(a)
17 provides that a trustee of an express trust may sue in its own name without joining the person for
18 whose benefit the action is brought. Fed. R. Civ. P. 17(a)(1)(E). Alternatively, under LMRA §
19 301, trust funds constitute ERISA plans which may sue in their individual capacities. *Local 159*
20 *v. Nor-Cal Plumbing, Inc.*, 185 F.3d 978, 983-84 (9th Cir. 1999). The provision extends to "suits
21 for violation of contracts between an employer and labor organization representing employees in
22 an industry affecting interstate commerce. . ." 29 U.S.C. § 185(a). This section does not limit
23 the parties who may bring suit so long as the object of the suit is an enforcement of rights

1 guaranteed by an agreement between an employer and labor organization. *See Associated*
2 *Builders & Contractors, Inc. v. Local 302 IBEW*, 109 F.3d 1353, 1357 n.6 (9th Cir. 1997).
3 Further, this grant of jurisdiction covers actions to recover fringe benefits from collective
4 bargaining agreements. *See, e.g., Laborers Clean-Up Contract Admin. Trust Fund v. Uriarte*
5 *Clean-Up Serv., Inc.*, 736 F.2d 516, 518 (9th Cir. 1984). The Trusts correctly identify
6 themselves as ERISA plans under LMRA, seeking to recover fringe benefits stemming from the
7 Union's collective bargaining agreements. Dkt. # 14, p. 17. Thus, the Trusts are proper parties
8 in this suit and Defendants' Rule 17(a) motion to dismiss the Trusts' ERISA and LMRA claims
9 is DENIED.

10 **B. The Trusts' Motion for Summary Judgment**

11 As discussed above, the Court dismisses the Trusts' lien claim, thereby rendering its Rule
12 56 motion for summary judgment as moot. Accordingly, the Trusts' motion is DENIED.

13 **IV. CONCLUSION**

14 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
15 and the remainder of the record, the Court hereby finds and ORDERS:

16 (1) Defendants' Rule 13(a) motion to dismiss (Dkt. # 7) is GRANTED. Plaintiffs'
17 claim to foreclose on the lien is thereby dismissed with prejudice.

18 (2) Defendants' Rule 17(a) motion to dismiss (Dkt. # 7) is DENIED. Plaintiffs' may
19 pursue their remaining LMRA and ERISA claims.

20 (3) Plaintiffs' Rule 56 motion for summary judgment on the lien claim (Dkt. #17) is
21 now moot and the motion is DENIED.

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1 (4) The Clerk is directed to forward a copy of this Order to plaintiffs and to all counsel
2 of record.

3 Dated this 31st day of January 2013.

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5 RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT JUDGE
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EXHIBIT 2

Connecticut General Statutes Annotated
Title 49. Mortgages and Liens
Chapter 847. Liens (Refs & Annos)

C.G.S.A. § 49-42

§ 49-42. Enforcement of right to payment on bond. Suit on bond, procedure and judgment

Effective: July 1, 2009
Currentness

(a) Any person who performed work or supplied materials for which a requisition was submitted to, or for which an estimate was prepared by, the awarding authority and who does not receive full payment for such work or materials within sixty days of the applicable payment date provided for in subsection (a) of section 49-41a, or any person who supplied materials or performed subcontracting work not included on a requisition or estimate who has not received full payment for such materials or work within sixty days after the date such materials were supplied or such work was performed, may enforce such person's right to payment under the bond by serving a notice of claim on the surety that issued the bond and a copy of such notice to the contractor named as principal in the bond not later than one hundred eighty days after the last date any such materials were supplied or any such work was performed by the claimant. For the payment of retainage, as defined in section 42-158i, such notice shall be served not later than one hundred eighty days after the applicable payment date provided for in subsection (a) of section 49-41a. The notice of claim shall state with substantial accuracy the amount claimed and the name of the party for whom the work was performed or to whom the materials were supplied, and shall provide a detailed description of the bonded project for which the work or materials were provided. If the content of a notice prepared in accordance with subsection (c) of section 49-41a complies with the requirements of this section, a copy of such notice, served not later than one hundred eighty days after the date provided for in this section upon the surety that issued the bond and upon the contractor named as principal in the bond, shall satisfy the notice requirements of this section. Not later than ninety days after service of the notice of claim, the surety shall make payment under the bond and satisfy the claim, or any portion of the claim which is not subject to a good faith dispute, and shall serve a notice on the claimant denying liability for any unpaid portion of the claim. The notices required under this section shall be served by registered or certified mail, postage prepaid in envelopes addressed to any office at which the surety, principal or claimant conducts business, or in any manner in which civil process may be served. If the surety denies liability on the claim, or any portion thereof, the claimant may bring action upon the payment bond in the Superior Court for such sums and prosecute the action to final execution and judgment. An action to recover on a payment bond under this section shall be privileged with respect to assignment for trial. The court shall not consolidate for trial any action brought under this section with any other action brought on the same bond unless the court finds that a substantial portion of the evidence to be adduced, other than the fact that the claims sought to be consolidated arise under the same general contract, is common to such actions and that consolidation will not result in excessive delays to any claimant whose action was instituted at a time significantly prior to the motion to consolidate. In any such proceeding, the court judgment shall award the prevailing party the costs for bringing such proceeding and allow interest at the rate of interest specified in the labor or materials contract under which the claim arises or, if no such interest rate is specified, at the rate of interest as provided in section 37-3a upon the amount recovered, computed from the date of service of the notice of claim, provided, for any portion of the claim which the court finds was due and payable after the date of service of the notice of claim, such interest shall be computed from the date such portion became due and payable. The court judgment may award reasonable attorneys fees to either party if upon reviewing the entire record, it appears that either the original claim, the surety's denial of liability, or the defense interposed to the claim is without substantial basis in fact or law. Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice of claim as provided in this section.

(b) Every suit instituted under this section shall be brought in the name of the person suing, in the superior court for the judicial district where the contract was to be performed, irrespective of the amount in controversy in the suit, but no such suit may be commenced after the expiration of one year after the last date that materials were supplied or any work was performed by the claimant, except that any such suit solely seeking payment for retainage, as defined in section 42-158i, shall be commenced not later than one year after the date payment of such retainage was due, pursuant to the provisions of subsection (a) of section 49-41a.

(c) The word “material” as used in sections 49-33 to 49-43, inclusive, shall include construction equipment and machinery that is rented or leased for use (1) in the prosecution of work provided for in the contract within the meaning of sections 49-33 to 49-43, inclusive, or (2) in the construction, raising or removal of any building or improvement of any lot or in the site development or subdivision of any plot of land within the meaning of sections 49-33 to 49-39, inclusive.

Credits

(1949 Rev., § 7215; 1961, P.A. 228; 1969, P.A. 192, § 1; 1978, P.A. 78-280, § 2, eff. July 1, 1978; 1979, P.A. 79-602, § 100; 1987, P.A. 87-345, § 2; 1994, P.A. 94-188, § 16, eff. Oct. 1, 1994; 2000, P.A. 00-36; 2001, P.A. 01-195, § 48, eff. July 11, 2001; 2006, P.A. 06-78, § 1, eff. May 30, 2006; 2009, P.A. 09-146, § 3, eff. July 1, 2009.)

Notes of Decisions (73)

C. G. S. A. § 49-42, CT ST § 49-42

Current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2013

End of Document

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EXHIBIT 3

Michigan Compiled Laws Annotated
Chapter 129. Public Funds (Refs & Annos)
Contractor's Bond for Public Buildings or Works (Refs & Annos)

M.C.L.A. 129.207

129.207. Enforcement of claims; notice of supplier to principal
contractor or governmental unit; payment to subcontractor

Currentness

Sec. 7. A claimant who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which payment bond is furnished under the provisions of section 3, and who has not been paid in full therefor before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which claim is made, may sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of the civil action, prosecute such action to final judgment for the sum justly due him and have execution thereon. A claimant not having a direct contractual relationship with the principal contractor shall not have a right of action upon the payment bond unless (a) he has within 30 days after furnishing the first of such material or performing the first of such labor, served on the principal contractor a written notice, which shall inform the principal of the nature of the materials being furnished or to be furnished, or labor being performed or to be performed and identifying the party contracting for such labor or materials and the site for the performance of such labor or the delivery of such materials, and (b) he has given written notice to the principal contractor and the governmental unit involved within 90 days from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by certified mail, postage prepaid, in an envelope addressed to the principal contractor, the governmental unit involved, at any place at which said parties maintain a business or residence. The principal contractor shall not be required to make payment to a subcontractor of sums due from the subcontractor to parties performing labor or furnishing materials or supplies, except upon the receipt of the written orders of such parties to pay to the subcontractor the sums due such parties.

Notes of Decisions (57)

M. C. L. A. 129.207, MI ST 129.207

The statutes are current through P.A.2012, No. 625, of the 2012 Regular Session, 96th Legislature.

End of Document

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EXHIBIT 4

West's Wisconsin Statutes Annotated
Actions and Proceedings in Special Cases (Ch. 775 to 788)
Chapter 779. Liens (Refs & Annos)
Subchapter I. Construction Liens (Refs & Annos)

W.S.A. 779.036

779.036. Contracts with payment bond; lien; notice; duty of owner and lender

Currentness

(1) In any case in which an improvement is constructed or to be constructed pursuant to a contract and payment bond under s. 779.035, any person performing, furnishing, or procuring labor, services, materials, plans, or specifications to be used or consumed in making the improvement, to any prime contractor or subcontractor shall have a lien on the money or other payment due or to become due the prime contractor or subcontractor therefor, if the lienor, before payment is made to the prime contractor or subcontractor, serves a written notice of the lienor's claim on the owner or authorized agent and on any mortgage lender furnishing funds for the construction of the improvement. Upon receipt of the notice, the owner and lender shall assure that a sufficient amount is withheld to pay the claim and, when it is admitted or not disputed by the prime contractor or subcontractor involved or established under sub. (3), shall pay the claim and charge it to the prime contractor or subcontractor as appropriate. Any owner or lender violating this duty shall be liable to the claimant for the damages resulting from the violation. There shall be no preference among lienors serving such notices.

(2) A copy of the notice provided in sub. (1) also shall be served by the lienor, within 7 days after service of the notice upon the owner and lender, upon the prime contractor or subcontractor.

(3) If the prime contractor or subcontractor does not dispute the claim by serving written notice on the owner and the lien claimant within 30 days after service of written notice under sub. (2), the amount claimed shall be paid over to the claimant on demand and charged to the prime contractor or subcontractor pursuant to sub. (1). If the prime contractor or subcontractor disputes the claim, the right to a lien and to the moneys in question shall be determined in an action brought by the claimant or the prime contractor or subcontractor. If the action is not brought within 3 months from the time the notice required by sub. (1) is served, the lien rights under this section are barred.

(4)(a) When the total lien claims exceed the sum due the prime contractor or subcontractor concerned and where the prime contractor or subcontractor has not disputed the amounts of the claims filed, the owner with the concurrence of the lender shall determine on a proportional basis who is entitled to the amount being withheld and shall serve a written notice of the determination on all claimants and the prime contractor or subcontractor. Unless an action is commenced by a claimant or by the prime contractor or subcontractor within 20 days after the service of said notice, the money shall be paid out in accordance with the determination and the liability of the owner and lender to any claimant shall cease.

(b) If an action is commenced, all claimants, the owner and the lender shall be made parties. Such action shall be brought within 6 months after completion of the work of improvement or within the time limit prescribed by par. (a), whichever is earlier.

(c) Within 10 days after the filing of a certified copy of the judgment in any such action with the owner and lender, the money due the prime contractor or subcontractor shall be paid to the clerk of court to be distributed in accordance with the judgment.

Credits

<<For credits, see Historical Note field.>>

Notes of Decisions (2)

W. S. A. 779.036, WI ST 779.036

Current through 2011 Act 286, published April 26, 2012

End of Document

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EXHIBIT 5

West's Annotated Indiana Code
Title 36. Local Government (Refs & Annos)
Article 1. General Provisions
Chapter 12. Public Work Projects

IC 36-1-12-13.1

36-1-12-13.1 Contractor's payment bond for public work projects

Effective: July 1, 2012
Currentness

Sec. 13.1. (a) Except as provided in subsection (e), the appropriate political subdivision or agency:

(1) shall require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be more than two hundred thousand dollars (\$200,000); and

(2) may require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be not more than two hundred thousand dollars (\$200,000).

The payment bond is binding on the contractor, the subcontractor, and their successors and assigns for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services.

(b) The payment bond shall be deposited with the board. The payment bond must specify that:

(1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;

(2) a defect in the public work contract; or

(3) a defect in the proceedings preliminary to the letting and awarding of the public work contract;

does not discharge the surety. The surety of the payment bond may not be released until one (1) year after the board's final settlement with the contractor.

(c) A person to whom money is due for labor performed, material furnished, or services provided must, not later than sixty (60) days after that person completed the labor or service or after that person furnished the last item of material:

(1) file with the board signed duplicate statements of the amount due; and

(2) deliver a copy of the statement to the contractor.

The board shall forward to the surety of the payment bond one (1) of the signed duplicate statements. However, failure of the board to forward a signed duplicate statement does not affect the rights of a person to whom money is due. In addition, a failure of the board to forward the statement does not operate as a defense for the surety.

(d) An action may not be brought against the surety before thirty (30) days after:

(1) the filing of the signed duplicate statements with the board; and

(2) delivery of a copy of the statement to the contractor.

If the indebtedness is not paid in full at the end of that thirty (30) day period the person may bring an action in court. The court action must be brought not later than sixty (60) days after the date of the final completion and acceptance of the public work.

(e) This subsection applies to contracts for a capital improvement entered into by, for, or on behalf of the Indiana stadium and convention building authority created by IC 5-1-17-6. The board awarding the contract for the capital improvement project may waive any payment bond requirement if the board, after public notice and hearing, determines:

(1) that:

(A) an otherwise responsive and responsible bidder is unable to provide the payment bond; or

(B) the cost or coverage of the payment bond is not in the best interest of the project; and

(2) that an adequate alternative is provided through a letter of credit, additional retainage of at least ten percent (10%) of the contract amount, a joint payable check system, or other sufficient protective mechanism.

Credits

As added by P.L.337-1987, SEC.4. Amended by P.L.82-1995, SEC.18; P.L.120-2006, SEC.4, eff. Mar. 21, 2006; P.L.133-2007, SEC.13; P.L.75-2012, SEC.10.

Notes of Decisions (149)

I.C. 36-1-12-13.1, IN ST 36-1-12-13.1

Current through 2012 Second Regular Session

EXHIBIT 6

West's Hawai'i Revised Statutes Annotated
Division 3. Property; Family
Title 28. Property
Chapter 507. Liens
Part II. Mechanic's and Materialman's Lien

HRS § 507-42

§ 507-42. When allowed; lessees, etc.

Currentness

Any person or association of persons furnishing labor or material in the improvement of real property shall have a lien upon the improvement as well as upon the interest of the owner of the improvement in the real property upon which the same is situated, or for the benefit of which the same was constructed, for the price agreed to be paid (if the price does not exceed the value of the labor and materials), or if the price exceeds the value thereof or if no price is agreed upon by the contracting parties, for the fair and reasonable value of all labor and materials covered by their contract, express or implied.

Where the terms of a lease, contract of sale, or instrument creating a life tenancy require the improvement of the real property, the interest of the lessor, vendor, or remainderman in the improvement and the land upon which the same is situated shall likewise be subject to the lien, and any provision for forfeiture or other penalty against the lessee, vendee, or life tenant in case of the filing of a mechanic's or materialman's lien or actions to enforce the same, shall not affect the rights of lienors.

Credits

Laws 1888, ch. 21, § 1; R.L. 1925, § 2891; Laws 1929, ch. 207, § 1; Laws 1933, ch. 143, § 1; R.L. 1935, § 4365; R.L. 1945, § 8769; Laws 1949, ch. 241, § 2; Laws 1949, Sp. Sess., ch. 28, § 1; R.L. 1955, § 193-41; H.R.S. § 507-42.

Notes of Decisions (74)

HRS § 507-42, HI ST § 507-42

Current with amendments through the 2012 Regular and Special Sessions.

End of Document

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EXHIBIT 7

Minnesota Statutes Annotated
Property Interests and Liens (Ch. 500-515B)
Chapter 514. Liens; Labor, Material
Improvement of Real Estate

M.S.A. § 514.01

514.01. Mechanics, laborers and material suppliers

Currentness

Whoever performs engineering or land surveying services with respect to real estate, or contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated, whether under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, that is to say, for the erection, alteration, repair, or removal of any building, fixture, bridge, wharf, fence, or other structure thereon, or for grading, filling in, or excavating the same, or for clearing, grubbing, or first breaking, or for furnishing and placing soil or sod, or for furnishing and planting of trees, shrubs, or plant materials, or for labor performed in placing soil or sod, or for labor performed in planting trees, shrubs, or plant materials, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street, or alley upon which the same abuts.

Credits

Amended by Laws 1973, c. 247, § 1; Laws 1974, c. 381, § 1; Laws 1986, c. 444.

Editors' Notes

RULES OF CIVIL PROCEDURE

<Sections 514.01 to 514.17 were excepted from the Rules of Civil Procedure governing the procedure in the district courts in all suits of a civil nature, insofar as they were inconsistent or in conflict with the procedure and practice provided by the Rules. See Rules Civ.Proc., Rule 81.01, and Rules Civ.Proc., Appendix A.>

Notes of Decisions (198)

M. S. A. § 514.01, MN ST § 514.01

Current with laws of the 2013 Regular Session through Chapter 3

End of Document

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EXHIBIT 8