



A.R.C.Q. SPRING 1982 QUARTERLY

Journal of the Associated Reforestation Contractors of the Western United States



**Can Stewardship Work?
The Perils of Plot Averaging.**



ARC is a non-profit association of reforestation contractors. Begun in 1974, ARC has served as an effective voice on a wide range of pertinent issues. Members of ARC are concerned about growing regulations, workers' compensation, safety, regional and seasonal volume of available work and illegal alien labor. This quarterly is published from our office in Newport, Oregon.

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Workers Compensation Update

by Bob Zybach

Corporate Officers and Premium Dollars

Due to the comparatively high cost of workers' compensation insurance in Oregon there is generally a greater effort made to avoid paying premiums in that state than in others. This is particularly true in the reforestation industry where an obvious bidding advantage is obtained by going through the legalities of forming a partnership or co-op or through the more profitable illegality of simply not reporting paid wages. Following payroll, compensation insurance premiums are generally the second or third largest budgeted cost for the legitimate contractor. In a period of recession, which our industry is currently experiencing, budgeting overhead items which are elective are usually some of the first to go when a contractor is forced to cut costs in order to get specific bids or even to stay in business.

For the last several years, there has existed a continuing controversy in several industries as to what constituted subject (as opposed to non-subject) wages. These controversies generally stemmed from contradictory interpretations of laws and definitions that were too general, hazy or complex to be consistently interpreted by the bureaucracy that created them, much less than by the layment required to abide by them. In the recent past, many steps have been taken to correct this problem. Most notable has been Governor Atiyeh's task force (appointed with business, rather than political, figures) to study the compensation insurance problem, and offer suggestions for reform. One positive result of the effort made by this task force was a movement towards a greater clarity in the language used to administer these laws.

Effective last November, the meaning of a non-subject corporate officer was legally redefined

as follows: All Workers Compensation Laws apply except to those non-subject workers described in the following subsections:

(8) A corporate officer who is also a director of the corporation and has a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officer.

The Worker's Compensation Department, correctly anticipating additional problems provided by a vaguely worded law, recently issued a ruling as to the definition of the words "substantial" and "director."

(1) "Director" means a person authorized to serve as a director by the incorporators in the Articles of Incorporation or elected and qualified as a director in accordance with the Articles of Incorporation or bylaws;

(2) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all stockholders or 10%, whichever is less.

Corporate officers who do not meet the above criteria cannot legally claim non-subject corporate officer's wages and are liable for insurance premiums as an employee of the corporation. However, a non-subject corporate officer can still file a personal election of coverage if they desire the benefits of the Workers Compensation Law. Of course, this "redefinition" is of primary importance to those incorporated contractors who find that not paying premiums on non-subject corporate officers gives them a competitive advantage and to those contractors just entering the business who are still investigating the most economical position for their particular situation.

Who Pays The Chiropractor?

Many ARC members regularly employ sub-contractors. This is rapidly becoming a hazardous practice due to the high rate of workers' compensation insurance in Oregon that may be assessed the prime contractor under default of the sub. Interpretation of legislative intent by the Work. Comp. Dept. has recently served to further cloud the issue. The problem of separating the legitimate sub-contractor from the legitimate subject worker has been approached by several trade organizations and by at least one insurance company with sample forms that can be filled out between the prime contractor and individuals (and, *maybe*, partnerships). Unfortunately, these "declaration(s) of status" (ORS 656.029(4)) do little, other than provide reference material for your insurance audit.

According to Monte Montgomery, president of the Associated Oregon Loggers and one of the state's most influential men in the area of Workers Compensation legislation, several industrial groups have banded together in an attempt to, once and for all, **define** a "contractor." In the interim, we are still left with a large gray area of bureaucratic English in which a contractor is defined in a vague manner through a process of tentative elimination (and a form letter).

It will probably be at least a year before anyone can state with any certainty the difference between a subject and non-subject sub-contractor. An April 1 newsletter from John Karlan of Employee Benefits Insurance Co., concerning this subject states "The general contractor's only protection when working with subcontractors who are corporations is to require a certificate of insurance." Noting the word "only" and assuming the certificate

Workmans Comp Update (cont. from pg. 15)

is valid and the premiums are current, we are left with John's final advice: "We would also strongly recommend that you discuss this area with your attorney."

It would seem to be in the best interests of the ARC to join with the AOL in an attempt to clarify this point. It would probably also be a good time for some expert legal advice.

The keys to this "redefinition" are the "substantial ownership" qualifiers and the phrase "regardless of the nature of the work performed." Theoretically, it would be possible to set up a corporation in which the articles of incorporation or bylaws allowed for extreme flexibility in establishing an employee as a director and with a stock plan such as an ESOP (Employee Stock Ownership Plan) that allowed (or provided) current employees with a greater than average amount of ownership. The two most obvious disadvantages to doing something of that nature are the resulting dilution of ownership, lessening the control of the corporate principle(s) and the potential for liability should ("when") an employee becomes injured on the job. Practically speaking, this approach would only appeal to the foolhardy or the adventurous. However, the potential is there to legally remove a significant portion of the payroll from the subject worker area.

The real significance to this legislation and ruling is the very specific language used. For the first time the underwriter, the auditor and the contractor are all playing with the same rules when it comes time to determine the status of a corporate officer. This can only be viewed as a good step in the right direction.

Safety Tip

When an ambulance is called, the crew supervisors should specify a good rendezvous point and send a reliable vehicle to guide the ambulance back to the landing most convenient to the eventual rescue operation. Any traffic commonly sharing the road should be notified about the approaching ambulance if it's possible to do without leaving the route to the designated meeting place.

The ARC and EBI Companies are pleased to announce our association with:

**David O'Donnell, of Fred S.
James and Company of Oregon
our new managing general
agent for the ARC - EBI group
Workers Compensation pro-
gram.**

