

## STATEMENT FROM STUART S. ZISHOLTZ

Every public project over \$50,000 requires payment and performance bonds from the general contractor. The purpose of a payment bond is to ensure payment to all subcontractors and suppliers who have not been paid on the project and file a proper claim. The purpose of the performance bond is to ensure that the work is completed to the satisfaction of the Owner.

When addressing a payment bond, a valid claim would consist of a subcontractor or supplier who performed work and furnished materials that were consumed on the project. Equipment, unlike labor and materials, is defined as items that can be taken from one job to another. Most payment bonds will not cover equipment if the equipment can be used at another project.

In a recent project taken over by the surety, the equipment supplied by the subcontractor disappeared after the surety completed its work. The surety acknowledged an outstanding balance due for work performed to date but refused to remit payment for the equipment.

The court held that there were issues of fact that needed to be decided on whether or not the bonding company had to an obligation to pay for the lost equipment. The issue addressed by the court was whether the items that disappeared were reasonably expected to be consumed in the performance of the work.

The bottom line is that if you have equipment on the job and there is a payment bond, do not, in an ordinary course of events, expect the bonding company to reimburse you for the cost of the of equipment.

Never let your lien time run out!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me or the Association.