

NCS Securing Your Tomorrow®

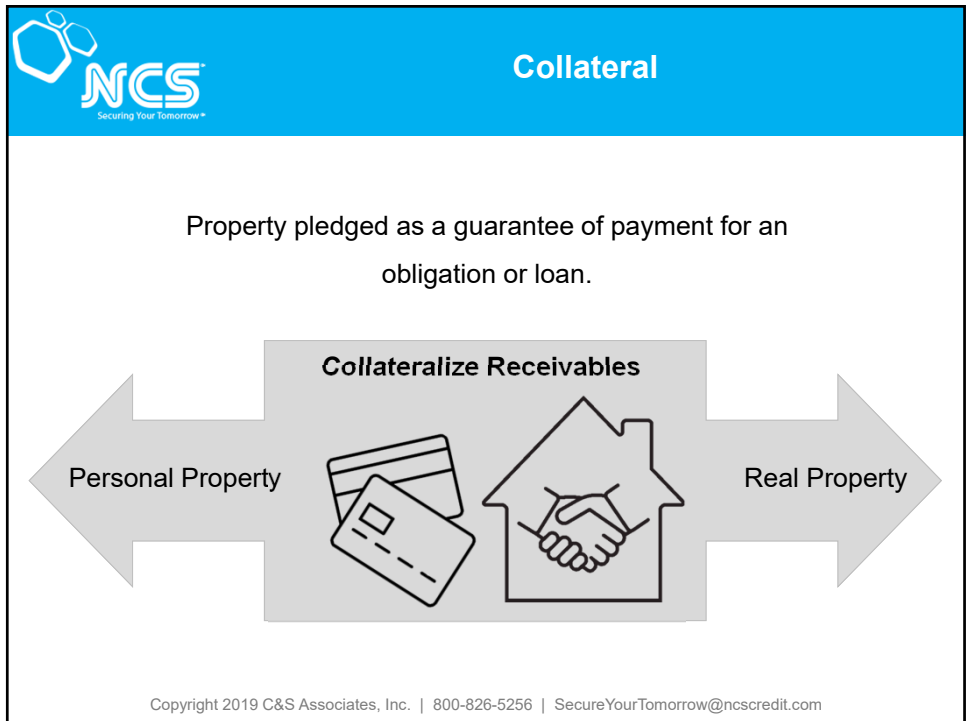
Secured Transactions State of the Union

October 15, 2019

Credit Research Foundation

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

1



NCS Securing Your Tomorrow®

Collateral

Property pledged as a guarantee of payment for an obligation or loan.

Collateralize Receivables

Personal Property Real Property

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

2

X
Warning!

Your customers are under an increased risk for bankruptcy

Prevent
Accept

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

3

UCC Filing - Two Required Elements

1. Security Agreement

2. Financing Statement or UCC-1

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

4

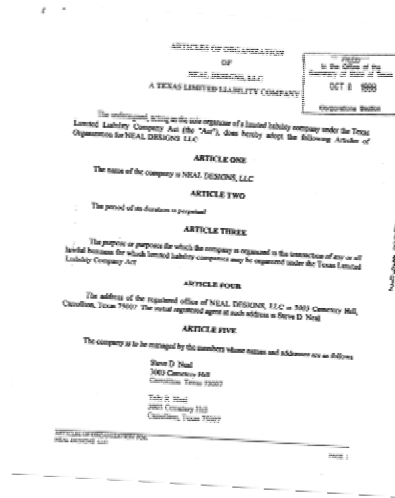


Articles of Incorporation

Should be performed with each filing.

Confirms:

1. State of incorporation
2. Corporate legal name of customer
3. State organizational ID number



Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

5



Financing Statement Miscues

Hastings State Bank v Thomas D. Stalaker

Debtor: EDM Corporation

- Three Secured Creditors: Hastings State Bank, Tier One Bank, Huntington National Bank
- Hastings State Bank filed a financing statement listing the debtor name as “EDM Corporation d/b/a EDM Equipment”

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

6



Financing Statement Miscues

Host America v Coastline Financial (UT)

Debtor: K.W.M. Electronics Corporation

- The secured party listed the debtor name on the financing statement without periods
- Court ruled seriously misleading

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

7



Financing Statement Miscues

United States SEC v. ISC, Inc.

Debtor: ISC, Inc.

- Federal district court appointed a receiver for ISC
- Double Bubble, LTD took a secured interest and filed a financing statement listing the debtor name as "ISC, Inc ."
- The receiver challenged the secured interest
- A search using standard search logic would not have disclosed the record

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

8

Fishback Nursery, Inc. v. PNC Bank, NA, Dist. Court, ND Texas 2017

Debtor: BFN Operations LLC

- Secured Creditors: PNC Bank, Fishback Nursery, Inc. and Surface Nursery, Inc.
- The nurseries identified BFN as “**BFN Operations, LLC dba Zelenka Farms.**” Unfortunately, the addition of “dba Zelenka Farms” rendered their security interests unperfected
- BFN’s name, in the public organic record, is “**BFN Operations, LLC**” and does not include “dba Zelenka Farms

9

LEXOLOGY

Blog · Events · Popular · Awards · About

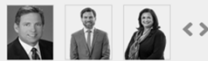
Search Lexology

Newsfeed GTDT Hubs Webinars Learn Store Insights

Back Save & file View original Forward Print Share Follow Like

Pennsylvania Bureau Notifies Filers of the Loss of Attachments Submitted with UCC Records

Greenberg Traurig LLP



GT GreenbergTraurig

USA | April 29 2019

Secured creditors that recently filed UCC records in Pennsylvania may need to act to ensure the proper documentation of their security interests.

The Pennsylvania Department of State's Bureau of Corporations and Charitable Organizations (the Bureau) has notified filers that it mistakenly discarded attachments to filings submitted by mail during the period beginning on March 1, 2019, and extending through April 3, 2019. These attachments will not be included in the filing record or in UCC search results conducted against affected debtors absent corrective action on the part of filers.

Attachments to UCC filings can include detailed descriptions of collateral and are often vital to the perfection of a secured party's security interest. Attachments are especially significant when a complex collateral package is at stake or when a secured party itemizes equipment or other assets subject to its security interest.

10



Collateral Description Errors

180 Equipment LLC, v First Midwest Bank

- 180 Equipment obtained a loan from First Midwest Bank
- Midwest bank's claim was for \$7,600,000
- Bank's financing statement described the collateral as "All Collateral described in First Amended and Restated Security Agreement dated March 9, 2015 between debtor and secured party"

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

11



Consignment

IPC (U.S.), Inc. v. Ellis (In re Pettit Oil Co.)

- IPC provided fuel to Pettit on consignment
- Customers would remit directly to IPC instead of Pettit
- Pettit filed bankruptcy
- IPC hadn't perfect their interest by filing a UCC-1
- Trustee claimed fuel and proceeds were part of the bankruptcy estate, court agreed

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

12

Section 9-307 has a three-part test for the jurisdictions:

1. The debtor's country has a filing system;
2. Filing, recording, or registering a secured interest in that system must be generally required to establish priority over a lien creditor such as a bankruptcy trustee or a judgement creditor, and
3. The information in that system must be "generally available" in that system for prospective lenders (you can search)

Jurisdictions are placed into 4 categories:

- A. Jurisdictions that clearly satisfy the three-part test (particularly those that have adopted current or former versions of Article 9)
- B. Jurisdictions with limited purpose filing systems that satisfy the three-part test. (perfection by filing in these jurisdictions is limited to certain types of debtors or creditors, certain types of collateral, or certain types of secured transactions)
- C. "Gray area" jurisdictions that do not satisfy the three-part criteria.
- D. Jurisdictions that clearly fail the 9-307 three-part test, either because they don't recognize security interests at all, or do not have a public registry system



Change to Debtor's Name and Location

- All changes must be filed within four months
 - If late... the security interest will become unperfected in assets the debtor acquired after that four-month period
- The only exception to the **four-month** rule is for changes to state of incorporation.
- The Secured Party has **one year** to correct the filing.

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

15



Virtual Currency and Digital Assets



Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

16



Virtual Currency and Digital Assets

What Collateral Category?

- Account?
- Deposit Account?
- General Intangible?
- Payment Intangible?

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

17

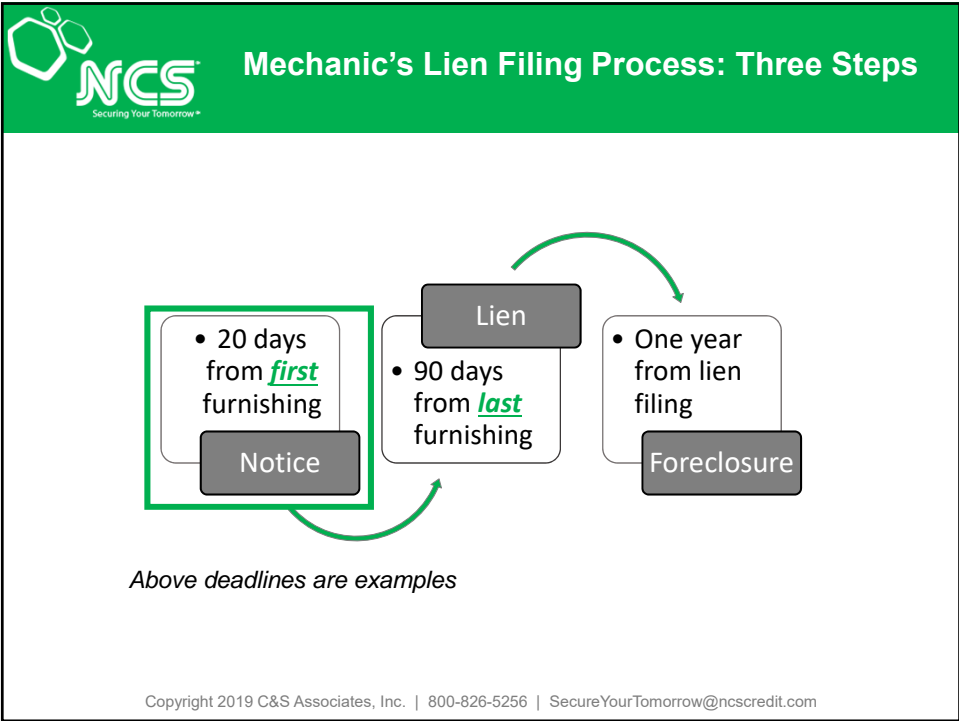


How do you justify the credit?

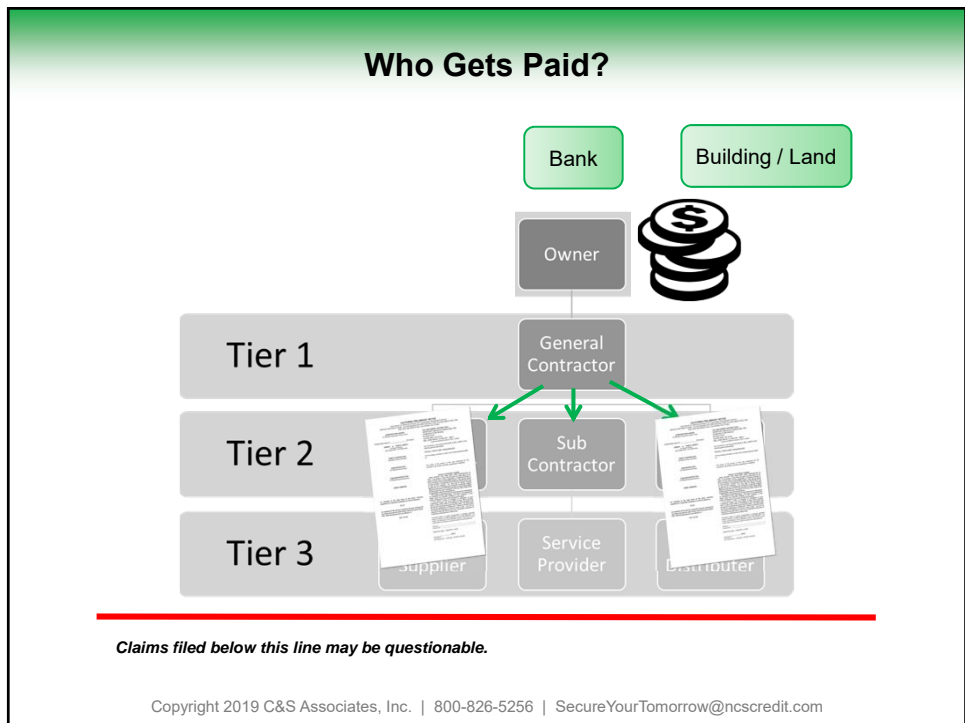


Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

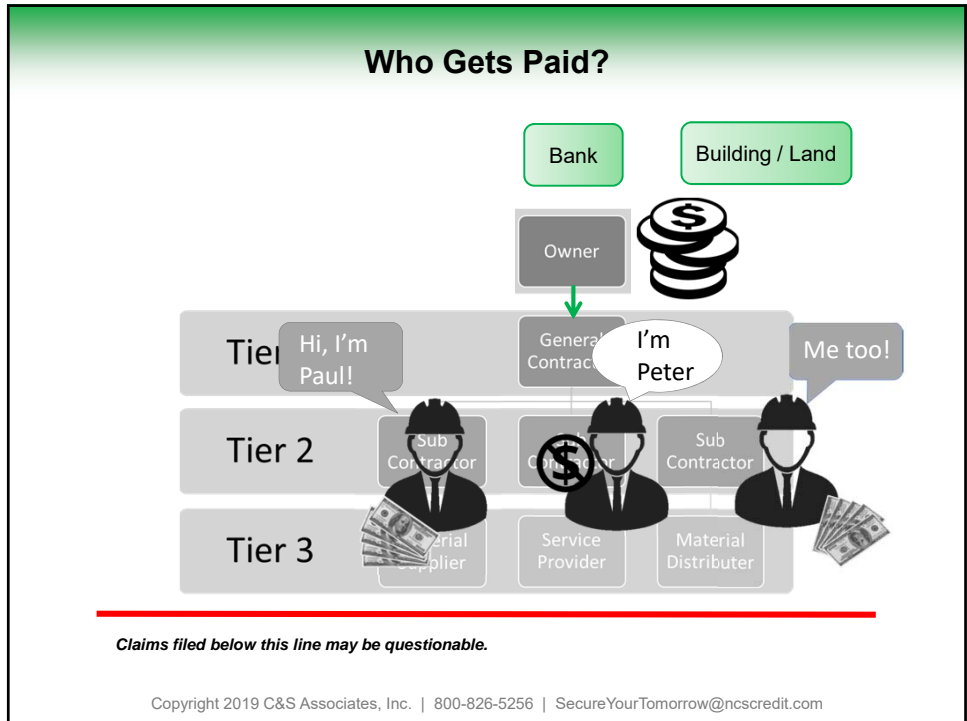
18



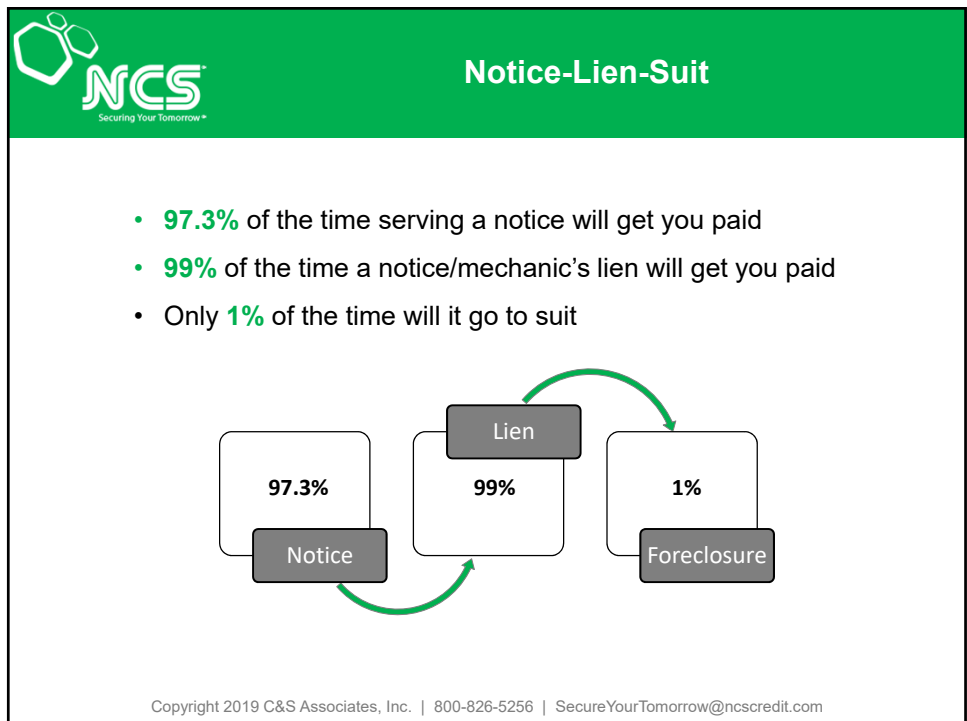
19



20



21



22



Factors in Serving Notices



- Prepared in the Correct Format
- Served in a Timely Manner
- Contains Accurate Information
- Served on all Required Parties
- Served Using the Correct Method of Service

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

23



Niewind v. Carlson

- Chuck Niewind dba C&N Construction filed lien for work which he was unpaid
- ***“must be in at least 10-point bold type”***
- Niewind’s prelien notice was in 11-point font, complying with the first requirement, but it was not in bold or capital letters



Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

24



NCS
Securing Your Tomorrow™

IGA Aluminum Products v. Manufacturer's Bank

- IGA sent Welch a Preliminary Notice via first class mail
- California Statute says notice must be delivered by personal service, certified, or registered mail
- Court found that the statute was unambiguously clear, and that IGA's notice was fatally defective



Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

25



NCS
Securing Your Tomorrow™

Kansas Case Law

Madison v Western Plains Regional Hospital

- Madison contracted with Sanderling Healthcare
- Madison files a lien for \$287,212.28
- Attached itemized statement reflecting \$6,574.69



Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

26



Legislative Updates—Pennsylvania



- Created a Construction Notices Directory
- Added notice of commencement for projects over \$1.5M
- Added notice of furnishing – within 45 days after first furnishing
- Also adds a notice of completion
- Residential goes unpaid balance

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

27



Legislative Updates—Pennsylvania



- Subcontracts must contain notice that failure by a the subcontractor to timely file their Notice of Furnishing may result in forfeiture of their lien rights
- They must also say that it is unlawful for an owner or general contractor to request or encourage a subcontractor not to file his Notice of Furnishing

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

28



Pennsylvania Contractor and Subcontractor Payment Act (CASPA)



- CASPA's provisions cannot be waived by contract
- Contractors can suspend work if:
 - They haven't received payment within **20 days** after the end of a billing period or the delivery of the invoice, whichever is later
 - It's been **30 days** since the end of the billing period, the contractor has not been paid and has notified the owner of non-payment via e-mail or mail, and
 - **30 days** have passed since the written notice, the contractor has provided an additional 10 days notice via certified mail of it's intention to suspend work

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

29



Pennsylvania Contractor and Subcontractor Payment Act (CASPA)



Retainage

- A contractor or subcontractor may post a maintenance bond to facilitate release of retainage before final completion of the project
- The bond must be for 120% of the amount of the retainage withheld

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

30



Tennessee Changes



- Owner could recover up to \$100K in attorneys fees, costs, and damages for invalid liens
- April 5, 2019
- Deferred a bill that would extend lien time frame from 90 days to 12 months
- The bill also decreases time frame to release retainage from 90 days after completion to 30 days.
- Would prohibit “pay-if-paid”

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

31



The Latest in Lien Laws

Missouri

- Whoever is contracting directly with the owner will now have to furnish bonds (including developers)
- General Contractors could possibly be claimants now
- Remote suppliers at any tier will be able to claim against the bonds now
- Must give notice within 90 days of last furnishing
- Went into effect August 28, 2019

Arizona

- Additional notice needs done if contract amount increase by 30% (used to be 20%) (Effective 12/31/2019)

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

32



The Latest in Bond Claim Statutes

- **Arkansas, Kentucky, Wyoming** – all made changes to bond thresholds
- Arkansas is now \$35K
- Kentucky is now \$100K, up from \$25K
- Wyoming is now \$50K

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

33



Changes to Retainage

- **Oklahoma** – HB 1114 effective 11/1/2019, retainage cannot be greater than 5%. Once construction is 50% completed, it drops to 2.5%
- **Illinois** – When a contract is 50% complete, no more than 5% of the amount of any subsequent payments made under the contract may be held as retainage
- **Minnesota** – Owners must release retainage no later than 60 days from substantial completion. GC must pay within 10 days of receipt from owner. (8/1/2019)

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

34



MBE Fraud

Missouri

- Kansas contractor pled guilty to defrauding the federal government on MBE set aside contracts
- Matthew McPherson formed sham companies – Zieson Construction, and Simon Corp., to bid on MBE, WBE, and DBE contracts
- Stephon Ziegler was hired as a figurehead but did not do any day to day operations or contribute significantly to the operation of the business.
- McPherson faces up to five years in prison, and \$5.5 Million in restitution

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

35



Questions and Some Answers

The National Lien Digest

www.ncscredit.com

AIA Architectural Billings Index

www.aia.org/resources/10046-the-architecture-billings-index

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

36



Architectural Billings Index

- August was 47.2, down from 50.1 in July (anything below 50 indicates a decrease in billings)
- Regional averages:
 - West (51.2)
 - Northeast (49.1)
 - South (48.2)
 - Midwest (46.4)

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

37



Architectural Billings Index

- Sector index breakdown:
 - Institutional (50.6)
 - Multi-family residential (50.5)
 - Commercial/industrial (46.9)
 - Mixed practice (46.3)

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

38



Questions and Some Answers

The National Lien Digest

www.ncscredit.com

AIA Architectural Billings Index

www.aia.org/resources/10046-the-architecture-billings-index

Dodge

www.construction.com/news

American Subcontractor's Association

<https://www.asaonline.com/>

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

39



Questions and Some Answers

Associated General Contractor's of America

www.agc.org

Lexology

www.lexology.com

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

40



U.S. v Shapat Ahdawan Nabaya aka Norman Abbott

- Nabaya failed to pay income tax
- IRS levied his pension
- IRS Officer Wally Starks issued a notice of intent to levy
- Nabaya threatens Stark
- He also files a mechanic's lien against Stark, and also an involuntary bankruptcy petition
- Nabaya is convicted of retaliating against a federal officer by false claim, and false statement in bankruptcy and sentenced to 71 months in prison

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

41



Questions and Some Answers

Associated General Contractor's of America

www.agc.org

Lexology

www.lexology.com

Construction Dive

<https://link.constructiondive.com>

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

42

Construction Dive's Top News

WHAT WE'RE READING

 THE SEATTLE TIMES

Seattle construction still booming and won't end anytime soon

 THE WASHINGTON POST

VP of Maryland construction firm acquitted in Metro bribery case

 CONSTRUCTION BUSINESS OWNER

How to Win Construction Bid Proposals

 BILLBOARD

The Live Music Building Boom in New and Renewed Venues

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

43



Questions and Some Answers

Visit us online: www.ncscredit.com

Jerry Bailey: jbailey@ncscredit.com

Call us: 800-826-5256 ext. 177

Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com

44



Education & Resources

Don't miss our upcoming webinars! View the schedule at:
www.ncscredit.com/education

NCS webinars are available OnDemand. Contact us to learn more.

View NCS Extra Credit videos on our YouTube channel:
<http://www.youtube.com/user/NCSCredit>

Follow us on Facebook, Twitter, YouTube, LinkedIn, and Instagram



Copyright 2019 C&S Associates, Inc. | 800-826-5256 | SecureYourTomorrow@ncscredit.com