

# Weyerhaeuser Co.

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## ASSESSMENTS

### Subcontractors

A landowner does not "let a contract" within the meaning of RCW 51.12.070 when selling downed timber for harvesting pursuant to a sales contract. The purchaser of the timber is not considered a subcontractor of the landowner/seller. ....*In re Weyerhaeuser Co.*, BIA Dec., 99 12028 (2000)

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1 **IN RE: WEYERHAEUSER CO.** ) **DOCKET NO. 99 12028**  
2 )  
3 **FIRM NO. 700,001-00** ) **DECISION AND ORDER**  
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5 **APPEARANCES:**

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7 Firm, Weyerhaeuser Co., by  
8 Helmut Wallenfels

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10 Department of Labor and Industries, by  
11 The Office of the Attorney General, per  
12 James S. Johnson, Assistant

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14 The firm, Weyerhaeuser Co., filed an appeal with the Board of Industrial Insurance Appeals  
15 on February 25, 1999, from an order of the Department of Labor and Industries dated February 10,  
16 1999. The order found that Martin S. Rodriguez owed the Department \$60,564 for the first quarter  
17 of 1997 through the second quarter of 1998, while working on a contract with Weyerhaeuser Co.,  
18 and per RCW 51.12.070, found that Weyerhaeuser Co. is responsible for paying these premiums to  
19 the state accident fund. **REVERSED AND REMANDED.**

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26 **DECISION**

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28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
29 and decision on a timely Petition for Review filed by the firm to a Proposed Decision and Order  
30 issued on December 27, 1999, in which the order of the Department dated February 10, 1999, was  
31 reversed and remanded to the Department with direction to find that Weyerhaeuser Co. is  
32 responsible for paying premiums in the amount of \$40,487.78 for the third quarter of 1997 through  
33 the second quarter of 1998 because of their contract with Martin S. Rodriguez.

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40 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
41 no prejudicial error was committed and the rulings are affirmed.

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44 We grant review of the Proposed Decision and Order because we disagree with the  
45 determination that the contract for sale of fallen cedar entered into between Weyerhaeuser Co. and  
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1 Martin S. Rodriguez is subject to the indemnity provisions of RCW 51.12.070. A brief review of the  
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3 facts will illustrate the basis for our conclusion.  
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5 In 1997 and 1998, Martin S. Rodriguez contracted with Weyerhaeuser Co. for the purchase  
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7 of downed cedar on Weyerhaeuser Co. land. Exhibit Nos. 1 and 2. Pursuant to the contracts,  
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9 Rodriguez paid Weyerhaeuser Co. a substantial deposit towards the sale price and a stumpage fee  
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11 per cord foot, taking title to the timber before it left the Weyerhaeuser Co. land. Rodriguez provided  
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13 his own laborers and bore the cost of transporting the timber by helicopter. Weyerhaeuser Co.  
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15 provided scaling service at a fee, which varied by the amount harvested per day and which was  
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17 waived if the daily harvest exceeded 40 cords. The sales contract required Rodriguez's operation to  
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19 be fully licensed and insured, but Weyerhaeuser Co. did not verify the existence of workers'  
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21 compensation coverage.  
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23 In the course of the salvage operation, one of Rodriguez's employees was killed. The fatality  
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25 led to an audit that revealed that Rodriguez had not secured workers' compensation coverage. The  
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27 Department assessed \$60,564 in premiums and assessments against Rodriguez and then billed  
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29 Weyerhaeuser Co. for that amount pursuant to the provisions of RCW 51.12.070, which states in  
30  
31 relevant part:  
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33 The provisions of this title shall apply to all work done by contract; the  
34 person, firm, or corporation who lets a contract for such work shall be  
35 responsible primarily and directly for all premiums upon the work. The  
36 contractor and any subcontractor shall be subject to the provisions of  
37 this title and the person, firm, or corporation letting the contract shall be  
38 entitled to collect from the contractor the full amount payable in  
39 premiums and the contractor in turn shall be entitled to collect from the  
40 subcontractor his proportionate amount of the payment.  
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42 The Department relies on this statute along with the decisions in *Littlejohn Construction v.*  
43 *Department of Labor & Indus.*, 74 Wn. App. 420 (1994) and *In re Sylvia Reforestation, Inc.*, BIIA  
44 Dec., 93 5150 (1999) as authority to assess Weyerhaeuser Co. for Mr. Rodriguez's debt. It is the  
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46 Department's position that, despite the sales language in Exhibit Nos. 1 and 2, Weyerhaeuser Co.  
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1 stood in the position of general contractor for the cedar harvesting operations performed by  
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3 Rodriguez.

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5 The hearing judge upheld the Department's assessment against Weyerhaeuser Co. on the  
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7 basis that the timber sales contract entered into between Rodriguez and Weyerhaeuser Co. was  
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9 essentially the same as a cedar salvage contract. While there is testimony from the Department's  
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11 witnesses that the sales contract resembles a cedar salvage contract, the Department did not  
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13 introduce such a contract into the record. Nor did the Department offer a persuasive explanation of  
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15 why a cedar salvage contract necessarily creates liability for the landowner under RCW 51.12.070.

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17 Department auditor Sharon Stockton testified that cedar salvage contracts are purchases of  
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19 "the right to harvest." She testified that she determined Weyerhaeuser Co. was the primary  
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21 contractor relative to Rodriguez's salvage operation because the sales contract differed from a  
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23 typical cedar salvage contract only to the extent that Rodriguez paid a per cord price rather than a  
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25 flat fee for the downed timber. She did not comment on the fact that the Rodriguez contract  
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27 actually vested title to the timber in the purchaser. However, she did testify that even in a typical  
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29 cedar salvage operation **the salvager pays the landowner** rather than the landowner paying the  
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31 salvager. This arrangement is the reverse of that found in the ordinary contractor-subcontractor  
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33 relationship. This difference is significant in terms of how the language of RCW 51.12.070 has  
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35 been interpreted by the Washington Court of Appeals. In *Littlejohn Construction v. Department of*  
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37 *Labor & Indus.*, 74 Wn. App. 420, 426-427 (1994), the court referenced *Black's Law Dictionary* and  
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39 arrived at the following definition of "lets a contract":

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41 To award to one of several persons, who have submitted  
42 proposals (bids) therefor, the contract for erecting public works or doing  
43 some part of the work . . . , or rendering some other service . . . for a  
44 stipulated compensation.<sup>1</sup>

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<sup>1</sup> The court notes that the reference to "public works" is not determinative as to the scope of the definition in the context of RCW 51.

1 The court goes on to say in its own words, "Essentially, 'to let' means to select a contractor."  
2

3         Rodriguez's contract with Weyerhaeuser Co. is specifically a contract for the sale of goods  
4 (timber) in merchantable condition with compensation passing to Weyerhaeuser Co. as the seller  
5 **from** Rodriguez as the buyer. In a contract for services or work to be performed by a contractor,  
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7 the compensation flows to the contractor to whom the work has been awarded. We think the  
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9 analogy raised by the employer in its Petition for Review is apt. Although the hazard is  
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11 unquestionably greater, the sale of downed timber in this case is essentially the same as any "U-  
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13 Pick" berry operation. The purchaser agrees in advance to pay a fee to harvest merchantable  
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15 goods and pays for them on the way off the property. We would not consider the berry pickers  
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17 subcontractors of the landowner. No more is Rodriguez a subcontractor of Weyerhaeuser Co.  
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19 under the provisions of the sales contract.  
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23         Weyerhaeuser Co. met its burden of establishing that, with respect to the timber sales  
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25 contracts with Rodriguez, it was not a contractor in the sense of RCW 51.12.070. The Department  
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27 order of February 10, 1999, is incorrect and should be reversed.  
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### 29 **FINDINGS OF FACT**

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31 1. On August 27, 1998, the Department of Labor and Industries issued a  
32 Notice and Order of Assessment to Martin S. Rodriguez alleging taxes  
33 due and owing to the state accident fund in the amount of \$89,931.17  
34 for the second quarter of 1996 through the second quarter of 1998. On  
35 October 5, 1998, a judgment was rendered by the Grays Harbor  
36 Superior Court finding that the August 27, 1998 Notice and Order of  
37 Assessment became final, and the employer was ordered to pay  
38 \$94,048.99. This amount included penalties, interest, and fees. On  
39 February 10, 1999, the Department issued a notice to Weyerhaeuser  
40 Co. that found that Martin S. Rodriguez owed the Department \$60,564  
41 for the first quarter of 1997 through the second quarter of 1998 while  
42 working on a contract with Weyerhaeuser Co., and per RCW 51.12.070  
43 that Weyerhaeuser Co. was responsible for paying these premiums to  
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1 the state accident fund. On February 25, 1999, the Board of Industrial  
2 Insurance Appeals received the firm's appeal from the February 10,  
3 1999 order and it was assigned Docket No. 99 12028.

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- 5 2. On July 23, 1997 and again on January 1, 1998, Weyerhaeuser Co. as  
6 seller and Martin S. Rodriguez as purchaser entered into contracts for  
7 the sale of downed timber on Weyerhaeuser Co. land. Pursuant to the  
8 contract, Rodriguez paid Weyerhaeuser Co. a substantial deposit  
9 towards the sale price and a stumpage fee per cord foot, taking title to  
10 the timber before it left the Weyerhaeuser Co. land.
- 11
- 12 3. Rodriguez provided his own laborers and bore the cost of transporting  
13 the timber by helicopter. Weyerhaeuser Co. provided scaling service at  
14 a fee, which varied by the amount harvested per day and which was  
15 waived if the daily harvest exceeded 40 cords.
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- 17 4. Rodriguez harvested the timber that was the subject of the sales  
18 contracts beginning in the third quarter of 1997 and continuing through  
19 the second quarter of 1998.
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- 21 5. Rodriguez and Weyerhaeuser Co. had no business dealings in the first  
22 and second quarters of 1997.

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24 **CONCLUSIONS OF LAW**

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- 26 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
27 parties and the subject matter of this appeal.
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- 29 2. In selling downed timber to Martin Rodriguez, pursuant to the sales  
30 contracts entered into on July 23, 1997 and again on January 1, 1998,  
31 Weyerhaeuser Co. did not let a contract within the meaning of  
32 RCW 51.12.070. Therefore, Weyerhaeuser Co. is not responsible  
33 primarily and directly for all premiums upon the work performed by  
34 Martin Rodriguez.
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- 36 3. The February 10, 1999 order of the Department of Labor and Industries  
37 is incorrect and is reversed. This claim is remanded to the Department  
38 with direction to issue a further order absolving Weyerhaeuser Co. of  
39 any and all responsibility for paying premiums in the amount of  
40 \$40,487.78 assessed against Martin S. Rodriguez in connection with the  
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1 harvesting of downed timber Rodriguez purchased from  
2 Weyerhaeuser Co. pursuant to sales contracts executed on July 23,  
3 1997 and January 1, 1998 sales contracts with Martin S. Rodriguez.  
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5 It is so ORDERED.  
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7 Dated this 20th day of March, 2000.  
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9 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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11  
12 /s/ \_\_\_\_\_  
13 THOMAS E. EGAN Chairperson  
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16 /s/ \_\_\_\_\_  
17 FRANK E. FENNERTY, JR. Member  
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20 /s/ \_\_\_\_\_  
21 JUDITH E. SCHURKE Member  
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