

In the Circuit Court of the State of Oregon  
For the County of Lincoln

KITTELSON & ASSOCIATES, INC., an Oregon corporation,

Plaintiff,

vs.

DEPOE BAY, LLC, a Washington limited liability company, et al.,

Defendants.

Case No. 090728

SUMMONS

To Ted W. Arman  
17829 Ranchera Road  
Shasta Lake City, CA 96019 Defendant

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

Kenneth P. Childs  
SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF  
Kenneth P. Childs OSB No. 831690  
ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED) BAR NO. (IF ANY)  
900 SW Fifth Avenue, Suite 2600  
ADDRESS  
Portland, OR 97204-1268 (503) 224-3380  
CITY STATE ZIP PHONE  
Kenneth P. Childs OSB No. 831690  
REAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED) BAR NO.

STATE OF OREGON, County of Multnomah ) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

Kenneth P. Childs  
ATTORNEY OF RECORD FOR PLAINTIFF(S)

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Kenneth P. Childs  
ATTORNEY(S) FOR PLAINTIFF(S)

STOEL RIVES LLP  
ATTORNEYS

900 SW FIFTH AVENUE, SUITE 2600 PORTLAND, OREGON 97204-1268  
(503) 224-3380

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

KITTELSON & ASSOCIATES, INC., an Oregon corporation,

Plaintiff,

v.

DEPOE BAY, LLC, a Washington limited liability company; FORTRESS CAPITAL PARTNERS, LLC, a California limited liability company; CBS OUTDOOR INC. fka NATIONAL ADVERTISING COMPANY, a Delaware corporation; SECURED FUNDING GROUP, LLC, a California limited liability company; SHYAM CHETAL, an individual; OKSENHOLT CORPORATION, an Oregon corporation; VDV PROPERTIES, LLC, an Oregon limited liability company; OMNI FINANCIAL, LLC, a California limited liability company; ORBIS FINANCIAL, LLC, a California limited liability company; TEDD W. ARMAN, an individual; IRON MOUNTAIN MINES, INC., a California corporation; CHASE, JONES & ASSOCIATES INC., an Oregon corporation; and LANE POWELL P.C., an Oregon professional corporation,

Defendants.

Plaintiff alleges,

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No. 090728

COMPLAINT  
(Foreclosure of Construction Lien; Breach of Contract; Quantum Meruit)

NOT SUBJECT TO MANDATORY ARBITRATION

JURY TRIAL REQUESTED

STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204  
Main (503) 224-3380 Fax (503) 220-2480

**FIRST CLAIM FOR RELIEF**  
**(Foreclosure of Construction Lien)**  
**(Against All Defendants)**

1.

Plaintiff Kittelson & Associates, Inc. ("Kittelson") is an Oregon corporation.

2.

Defendant Depoe Bay, LLC is a Washington limited liability company ("Depoe Bay") and the owner in fee, or the reputed owner in fee, of the certain real property located at 1032 N. Hwy. 101, Depoe Bay, Oregon 97341, and legally described in Exhibit 1 attached hereto and incorporated herein by reference (the "Land").

3.

Defendant Fortress Capital Partners, LLC ("Fortress") is a California limited liability company.

4.

Defendant CBS Outdoor Inc. formerly known as National Advertising Company ("CBS") is a Delaware corporation.

5.

Defendant Secured Funding Group, LLC ("Secured Funding") is a California limited liability company.

6.

Defendant Shyam Chetal ("Chetal") is an individual.

7.

Defendant Oksenholt Corporation ("Oksenholt") is an Oregon corporation.

8.

Defendant VDV Properties, LLC ("VDV") is an Oregon limited liability company.

26

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1 17.

2 Pursuant to the Contract, Kittelson commenced performance of the Contract on  
 3 January 8, 2008, and ceased performance of the Contract on August 13, 2008. The total  
 4 amount due under the Contract totaled \$37,819.34, together with interest from the date each  
 5 separate billing was due until paid at the Contract rate or as provided by law. Kittelson has  
 6 been paid sums totaling \$22,579.89, leaving a balance due of \$15,239.45, including a \$36.00  
 7 recording fee, together with interest from the date each separate billing was due until paid at  
 8 the Contract rate or as provided by law. However, despite demand, Fortress has failed to pay  
 9 Kittelson the balance due.

10 18.

11 Kittelson provided the Services necessary for performing the transportation  
 12 engineering services on the project and has otherwise performed all conditions precedent  
 13 required of it under the Contract.

14 19.

15 On October 27, 2008, within 75 days after completing performance of its work under  
 16 the Contract, Kittelson filed with the Recording Officer of Lincoln County a claim of  
 17 construction lien ("the "Lien"), which contained (i) a true statement of Kittelson's demand,  
 18 after deducting all known offsets and credits; (ii) the name of the owner or reputed owner of  
 19 the Land and the Improvement; and (iii) a description of the property to be charged with the  
 20 Lien sufficient for identification. The Lien was duly verified and recorded on October 27,  
 21 2008, in the Lien Book of Lincoln County, Oregon, as Document No. 2008-12449. A copy  
 22 of the Lien is attached as Exhibit 2 and incorporated herein by reference.

23 20.

24 On November 14, 2008, within 20 days after the filing of the Lien, Kittelson  
 25 complied with ORS 87.039(1) by mailing a notice to Depoe Bay, Fortress, CBS, Secured  
 26 Funding, Chetal, Oksenholt, VDV, OMNI, ORBIS, Arman, Iron Mountain, CJA and Lane

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1 Powell with interests, or reputed interests, in the Improvement or in the Land, stating that the  
2 Claim of Lien had been filed.

3 21.

4 On November 14, 2008, more than 10 days prior to filing this lawsuit, Kittelson  
5 complied with ORS 87.057(1) by mailing a notice to Depoe Bay, Fortress, CBS, Secured  
6 Funding, Chetal, Oksenholt, VDV, OMNI, ORBIS, Arman, Iron Mountain, CJA, and Lane  
7 Powell with interests, or reputed interests, in the Improvement or in the Land, stating that  
8 unless the amount of the Lien was paid within 10 days, Kittelson would commence to  
9 foreclose the Lien.

10 22.

11 Depoe Bay, Fortress, CBS, Secured Funding, Chetal, Oksenholt, VDV, OMNI,  
12 ORBIS, Arman, Iron Mountain, CJA, and Lane Powell may claim some right, title, or  
13 interest in the Land and Improvement, but such interests are junior and subordinate to  
14 Kittelson's interest.

15 23.

16 Pursuant to ORS 87.060(5), Kittelson is entitled to (i) the sum of \$36.00 paid to the  
17 County Clerk of Lincoln County, Oregon for filing and recording the Lien, and (ii) the sum  
18 of \$400.00 for title reports for preparing and foreclosing the Lien.

19 24.

20 As and to the extend provided by the Contract or by law, Kittelson is entitled to  
21 interest on the amount due and owing and unpaid at the rate as required by the Contract or  
22 applicable law.

23 25.

24 Pursuant to ORS 87.057(3) and ORS 87.060(5), Kittelson is entitled to recover its  
25 reasonable attorneys' fees incurred in preparing and foreclosing the Lien.

26

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1 26.

2 Kittelson has no plain, adequate, or speedy remedy at law. It will be necessary to sell  
3 the Land and Improvement to satisfy the Lien.

4 **SECOND CLAIM FOR RELIEF**

5 (Breach of Contract)

6 (Against Defendant Fortress)

7 27.

8 Kittelson realleges paragraphs 1 through 26 above.

9 28.

10 Fortress breached the Contract by, among other things, failing to pay Kittelson  
11 amounts due for the performance of the work under the Contract.

12 29.

13 Kittelson has performed all of its obligations and all conditions precedent required of  
14 it under the Contract.

15 30.

16 As a result of the breach of the Contract by Fortress, Kittelson is entitled to recover  
17 from Fortress damages in the principal sum of \$15,239.45, including a 36.00 recording fee,  
18 together with interest as allowed under the Contract or applicable law from the date of each  
19 separate billing was due until paid, plus \$400.00 for title reports.

20 **THIRD CLAIM FOR RELIEF**

21 (Quantum Meruit)

22 (Against Defendants Depoe Bay and Fortress)

23 31.

24 Kittelson realleges paragraphs 1 through 26 above.

25 32.

26 Kittelson provided Services at the behest of Depoe Bay and Fortress.

1 33.

2 The Services provided by Kittelson benefited Depoe Bay and Fortress.

3 34.

4 The amounts for Services performed under the Contract by Kittelson, including the  
5 \$36.00 recording fee, were reasonable.

6 35.

7 Kittelson has demanded from Depoe Bay and Fortress payment of the sum of  
8 \$15,239.45 for the services it provided, which is a reasonable sum, including \$36.00 for  
9 recording fees. Therefore, Depoe Bay and Fortress owe Kittelson the sum of \$15,239.45,  
10 plus interest as allowed under the Contract or applicable law from the date each separate  
11 billing was due until paid, and title report fees of \$400.00.

12 WHEREFORE, Kittelson prays for judgment of the Court as follows:

13 A. On Kittelson's First Claim for Relief:

14 1. A personal judgment against defendants Depoe Bay and Fortress:

- 15 a. For the sum of \$15,239.45 for unpaid amounts due under the  
16 Contract as reflected in the Lien, together with interest from  
17 the date of each separate billing was due until paid at the  
18 Contract rate or as provided by law;
- 19 b. For the further sum of \$400.00 for title reports for preparing  
20 and foreclosing the Lien;
- 21 c. For accrued interest on the above sums, as and to the extent  
22 provided by the Contract or by law;
- 23 d. For Kittelson's reasonable attorneys' fees incurred herein; and  
24 e. For Kittelson's other costs and disbursements incurred herein;

25 and

26 2. A judgment:

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STOEL RIVES LLP  
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- 1 a. Foreclosing the Lien for the above sums against all interests in  
 2 the Land and Improvement;  
 3 b. Declaring the Lien to be a first, valid, and subsisting Lien  
 4 against all interests in the Land and the Improvement, or any  
 5 part thereof, *except for the statutory right of redemption*;  
 6 c. Foreclosing forever any and all right, title, and interest, legal  
 7 and equitable, of all defendants, and all persons claiming by or  
 8 through them, in the Land and Improvement, or any part  
 9 thereof, *except for the statutory right of redemption*;  
 10 d. Directing the Sheriff of Lincoln County, Oregon to sell all  
 11 interest in the Land and Improvement in the manner provided  
 12 by law as an execution to satisfy the above sums;  
 13 e. Permitting Kittelson to purchase at the sale;  
 14 f. Directing that the proceeds of the sale be applied as follows:  
 15 (1) To the payment of the costs of the sale;  
 16 (2) To the payment of the above sums owed to Kittelson;  
 17 and  
 18 (3) The balance, if any, to the Clerk of Court for  
 19 application as provided by law;  
 20 g. Directing that if the proceeds of the sale are insufficient to  
 21 satisfy the judgment of Kittelson, then any such deficiency may  
 22 be enforced by execution against defendants Depoe Bay and  
 23 Fortress;  
 24 h. Directing that execution and order of execution issue to enforce  
 25 this decree; and  
 26 3. Such other relief as the Court deems just and equitable.

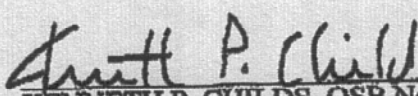
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- B. On Kittelson's Second Claim For Relief:
  - 1. A personal judgment against defendant Fortress;
    - a. For the sum of \$15,239.45 for the unpaid amount due under the Contract, plus \$36.00 for recording fees and \$400.00 for title reports;
    - b. For accrued interest on the above sum, as allowed under the Contract or applicable law;
    - c. For Kittelson's costs and disbursements incurred herein; and
  - 2. Such other relief as the Court deems just and equitable.
- C. On Kittelson's Third Claim For Relief:
  - 1. A personal judgment against defendants Depoe Bay and Fortress;
    - a. For the sum of \$15,239.45 or such other amount as defendants Depoe Bay and Fortress were benefited;
    - b. For interest as allowed under the Contract or applicable law from the date each separate billing was due until paid;
    - c. For Kittelson's costs and disbursements incurred herein; and
  - 2. Such other relief as the Court deems just and equitable.
- D. Such other relief as the Court deems just and equitable.

DATED: February 20 2009.

STOEL RIVES LLP

  
 KENNETH P. CHILDS, OSB No. 831690  
 kpchilds@stoel.com

Attorneys for Plaintiff

Trial Attorney: Kenneth P. Childs

### Exhibit 1

A tract of land in Government Lots 3 and 4, Section 5, Township 9 South, Range 11 West, of the Willamette Meridian, in Lincoln County, Oregon, more particularly described as follows:

Beginning at the intersection of the North line of said Lot 3 and the easterly right of way line of U.S. Highway 101; thence North  $85^{\circ} 23' 11''$  East 1398.19 feet to the North one-quarter corner of said Section 5; thence South  $0^{\circ} 28' 45''$  West along the North-South centerline of said Section 5, 2217.67 feet to the Northeast corner of the Chuck Wisniewski, et ux, Tract as conveyed by deed recorded May 6, 1969, in Book 9, page 160, Microfilm Records for Lincoln County, Oregon; thence North  $89^{\circ} 23'$  West along the North line of said Chuck Wisniewski Tract 546.26 feet to the most easterly corner of the Tony Wisniewski, et ux Tract as conveyed by deed recorded May 6, 1969 in Book 9, page 159, Microfilm Records for Lincoln County, Oregon; thence North  $62^{\circ} 53'$  west along the Northerly line of said Tony Wisniewski, et ux Tract, 217.09 feet; thence South  $61^{\circ} 29' 30''$  West along the Northerly line of said Tony Wisniewski, et ux Tract 180.62 feet to a point on the East line of U.S. Highway 101; thence Northwesterly along said easterly line of U.S. Highway 101 to the point of beginning.

EXCEPTING THEREFROM the following described parcels:

A tract of land lying in Government Lot 3, Section 5, Township 9 South, Range 11 West, of the Willamette Meridian, in Lincoln County, Oregon, described as follows:

Beginning at a point South 149.00 feet and East 1339.90 feet of the meander corner between Section 5, Township 9 South, Range 11 West, of the Willamette Meridian and Section 32, Township 8 South, Range 11 West, of the Willamette Meridian; thence North 257.13 feet to the North line of said Section 5; thence Easterly along the North line of said Section 5, 155.0 feet; thence South 150 feet; thence along the arc of a 45 foot radius curve left, 70 feet; thence South  $55^{\circ} 29' 37''$  West 132.88 feet to the point of beginning.

A tract of land lying in Government Lot 3, Section 5, Township 9 South, Range 11 West, of the Willamette Meridian, in Lincoln County, Oregon, more particularly described as follows: Beginning at a point that is South 249.0 feet and East 1339.90 feet of the meander corner between Section 5, Township 9 South, Range 11 West, of the Willamette Meridian, in Lincoln County, Oregon and Section 32, Township 8 South, Range 11 West, of the Willamette Meridian, in Lincoln County, Oregon; thence west 130 feet; thence North 25 feet; thence along the arc of a 45 foot radius curve left 50 feet; thence North  $75^{\circ} 44' 47''$  East, 120.0 feet, more or less, to a point that is 100 feet north of the point of beginning; thence South 100 feet to the point of beginning.

**CLAIM OF CONSTRUCTION LIEN  
ENGINEER**

*Lien claimant's name and address:*  
Kittelson & Associates, Inc.  
610 SW Alder Street, Suite 700  
Portland, OR 97205

*Owner's name and address:*  
Depoe Bay, LLC  
Corporation Service Co.-Registered Agent  
6500 Harbour Heights Parkway, Suite 400  
Mukilteo, WA 98275

*After recording, return to:*  
Kenneth P. Childs  
Steel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204

Lincoln County, Oregon  
10/27/2008 10:24:12 AM  
DOC-CSTL  
\$25.00 \$11.00 - Total = \$36.00  
**2008-12449**  
Cnt=1 Pgs=5 Str=2 LELY



I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office officed.



Dana W. Jenkins, Lincoln County Clerk

On January 8, 2008, Kittelson & Associates, Inc. ("Claimant") entered into a contract with Fortress Capital Partners ("Contract") for transportation engineering services ("Services") intended for use in or to facilitate the construction of a Mixed-Use Development ("Improvement"). The Improvement is situated upon certain land ("Land") in the County of Lincoln, State of Oregon, which includes the site of the Improvement, described in Exhibit A attached hereto and incorporated herein by this reference.

The address of the Improvement is otherwise known as 1032 N. Hwy 101, Depoe Bay, Oregon 97341.

The name of the owner or reputed owner of the Land is Depoe Bay, LLC. To Claimant's knowledge, Depoe Bay, LLC has entered into a lease or other agreement with Fortress Capital Partners, LLC, and Fortress Capital Partners, LLC has an interest in the Land. The improvements are owned either by Depoe Bay, LLC or Fortress Capital Partners, LLC, or both.

The name of the person that employed Claimant to provide the Services is Fortress Capital Partners, LLC. At all relevant times, Depoe Bay, LLC and Fortress Capital Partners, LLC had knowledge of the ongoing engineering services being performed for the Improvement.

Claimant commenced performance of the Contract on January 8, 2008 and ceased performance thereof on August 13, 2008.

The following is a true statement of Claimant's demand after deducting all just credits and offsets:

Contract Price for the Services performed (see Exhibit B attached hereto and incorporated herein by this reference)	\$37,819.34*
Less all just credits and offsets	(\$22,579.89)
Balance due Claimant (see Exhibit B)	<u>\$ 15,239.45**</u>
* Plus accumulated interest as required by the Contract or applicable law.	
** Plus accumulated interest as required by the Contract or applicable law and recording fees for recording this Claim of Construction Lien.	

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Claimant hereby claims a lien pursuant to ORS 87.001 - 87.093 for the amount last stated above upon the Improvement and upon the site of the Improvement within the Land, together with such additional Land as may be required for the convenient use and occupation of the Improvement as determined by the Court at the time of the foreclosure of the lien.

DATED: 10/24, 2008.

Claimant: KITTELSON & ASSOCIATES, INC.

By: [Signature]  
Marc Butorac, PE, PTOE - Principal Engineer

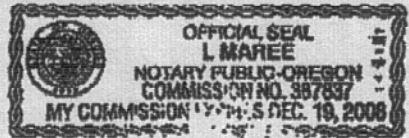
STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

I, Marc Butorac, being first duly sworn, do hereby depose and state: I am the Principal Engineer of Kittelson & Associates, Inc., Claimant named in the foregoing instrument. I have knowledge of the facts set forth therein. All statements made in the instrument are true and correct as I verily believe.

[Signature]  
Marc Butorac

Signed and sworn to before me on October 26<sup>th</sup>, 2008.

[Signature]  
Notary Public for Oregon  
My commission expires: December 19<sup>th</sup>, 2008



**EXHIBIT B****BREAKDOWN OF CONTRACT PRICE AND CLAIM**

The Contract Price is based on hourly rates for the Services performed. As of the date of the Claim of Lien, the total amount due Claimant under the Contract, including but not limited to for performance of additional Services thereunder, is \$37,819.34 (plus accumulated interest as required by the Contract or applicable law).

As of the date of the Claim of Lien, Claimant has received payments totaling \$22,579.89.

As such, the amount of the Claim (other than recording fees and accumulated interest as required by the Contract or applicable law) is \$15,239.45.

A breakdown of the claim (\$15,239.45) is:

Fees	\$14,487.00
Reimbursables	<u>752.45</u>
Total:	<b>\$15,239.45*</b>

\*Plus accumulated interest as required by the Contract or applicable law and recording fees for recording this Claim of Construction Lien.

**EXHIBIT B**  
**Page 1 of 1**

PortInd3-1646926.1 0040795-00001

**Exhibit 2**  
**Page 5 of 5**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR LINCOLN COUNTY  
LINCOLN COUNTY COURTHOUSE  
225 W. Olive Newport, Oregon 97365  
(541) 265-4236

March 11, 2009

TED W ARMAN  
17829 RANCHERA ROAD  
SHASTA LAKE CITY CA 96019

Arman Ted W/Lopez Stephen B  
Case#: 075493 Civil Fraud

**NOTICE OF SCHEDULED COURT PROCEEDING**

Scheduled Proceeding: **Hearing Motion**  
Date: **5/18/09**  
Time: **10:00AM**  
Room: **Judge Littlehales' Courtroom**  
Additional Information:  
**ALL PENDING MOTIONS**

**IMPORTANT NOTICE: PLEASE READ**

Failure to appear at the court event indicated above at the time and place specified may result in an order being rendered against you in this case.

CC:  
IRON MOUNTAIN MINES INC  
CHARLES F HUDSON