

MEMORANDUM

FROM: Jim & Lynda Gardner
Gardner & Gardner, Attorneys, PC
Legislative Counsel for Two Jinn, Inc. dba Aladdin Bail Bonds

TO: Interested Parties

DATE: February 11, 2013

RE: House Bill 2548 (“Establishes commercial bail system”)

I Executive Summary

On November 27, 2012, the Marion County Circuit Court issued a declaratory judgment declaring that the “State of Oregon has the authority under the Insurance Code to authorize a surety to issue bail bonds in Oregon.” *See* attached letter from the Harrang Long law firm and attached judgment. Since the state did not appeal the judgment, the judgment is binding and conclusive on the state and all its representatives and agents. As a consequence of the judgment, the state and its agents must authorize a qualified surety to issue bail bonds if requested to do so. Moreover, under the legal doctrine of claim preclusion—or *res judicata*—the state and its Insurance Division will be bound by the Declaratory Judgment in any subsequent lawsuit or proceeding arising under the same set of facts.

Because of the widespread but obviously incorrect assumption on the part of policymakers and others that surety bail was not authorized under existing Oregon law, there currently exists a regulatory void with respect to commercial surety bail. Passage of HB 2548 would fill that void with a pervasive set of regulatory provisions modeled on “best in class” provisions currently in effect in Washington, California and Idaho. Moreover, HB 2548 would help address the funding crisis currently confronting the Oregon court system by dedicating new surety bail fee revenue as well as surety bail forfeiture revenue to the Judicial Department Operating Account.

From a policy perspective, passage of HB 2548 would help the state of Oregon address the chronic failure-to-appear problem that has plagued the Oregon criminal justice system for years. In addition, it would eliminate Oregon’s dubious distinction as the only state in the nation that does not permit out-of-state bail recovery agents to conduct operations within its borders, thus rendering Oregon the preferred safe haven for fugitive criminal defendants who have fled other states.

II Summary of Key Provisions of the Bill

The key provisions of HB 2548 may be summarized as follows:

- The bill regulates the activities of bail agents, bail recovery agents and bail surety insurers.

- The bill sets forth the conditions under which surety bail will be forfeited.
- The bill dedicates revenue from surety bail forfeitures as well as revenue from a new fee to the Judicial Department Operating Account.
- The bill requires DCBS to adopt a schedule of fees sufficient to cover the department’s regulatory costs.
- The bill requires that a bail recovery agent must have been issued a private investigator’s license with an endorsement as a bail recovery agent by the Department of Public Safety Standards and Training (DPSST) and must receive training and continuing education in the lawful location and apprehension of fugitive criminal defendants. The expense of this regulatory oversight and training is born by the bail industry.

III The Policy Rationale for Passage of HB 2548

Passage of HB 2548 would help Oregon address two serious problems that have plagued the Oregon criminal justice system for years—a high failure-to-appear (FTA) rate on the part of criminal defendants and Oregon’s unique status as the only state in the nation that does not permit out-of-state bail recovery agents to conduct operations within its borders. Oregon’s high FTA rate imposes unnecessary costs on the criminal justice system (wasted law enforcement court appearances primary among them) and threatens public safety by permitting criminal defendants to “skip” with virtual impunity. Oregon’s unique fugitive haven status creates even more serious public safety risks by rendering Oregon the preferred safe haven for criminal defendants who have unlawfully fled other states.

Numerous independent studies, including studies by the U. S. Department of Justice’s Bureau of Justice Statistics, have demonstrated that commercial surety bail is superior to other forms of pretrial security release in securing the timely appearance of criminal defendants in court and in guaranteeing their presence at every stage of a criminal proceeding.

See, e.g., E. Helland [Dept. of Economics, Claremont-McKenna College] and A. Tabarrok [George Mason University], *Public versus Private Law Enforcement: Evidence from Bail Jumping*¹:

Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance and if they do fail to appear they are 53 percent less likely to remain at large for extended periods of time. Deposit bonds perform only marginally better than release on their own recognizance. Requiring defendants to pay their bonds in cash can reduce the FTA rate to a similar rate than that for those released on surety bond. Given that a defendant skips town, however, the probability of recapture is much higher for those defendants on surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond compared to those released on cash bond.

1. This study was based entirely on statistics from the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics of the U.S. Department of Justice.

See also T. Cohen and B. Reaves [BJS Statisticians], *Pretrial Release of Felony Defendants in State Court – State Court Processing Statics, 1990 -2004* (Special Report published by the Bureau of Justice Statistics, U. S. Dept. of Justice in November, 2007 (pretrial releases secured by surety bonds had the lowest fugitive rate (3%) for felony pretrial releases while pretrial releases secured by deposit bonds and full cash bonds had more than double the surety bond fugitive rate).

R. Morris [Director of the Center for Crime and Justice Studies, University of Texas at Dallas], *Pretrial Release Mechanisms in Dallas County, Texas* (Research Report completed on behalf of the Dallas County (Texas) Criminal Justice Advisory Board – January, 2013) (“Overall, analyses based on the data explored here suggest that commercial bonds were the most successful in terms of defendant appearance rates, followed by attorney bonds, cash bonds, and pretrial services releases.”).



HARRANG LONG
GARY RUDNICK P.C.
ATTORNEYS AT LAW

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February 5, 2013

Representative [REDACTED]
900 Court St NE, [REDACTED]
Salem, OR 97301

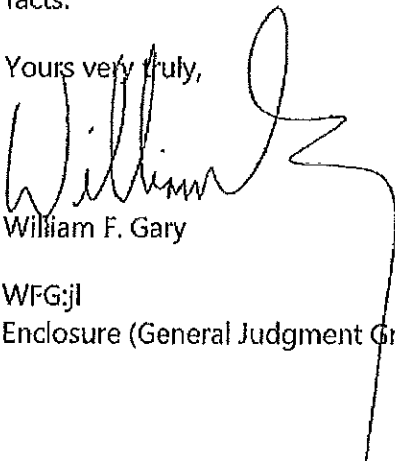
Re: Bail Bond Authorization

Dear Representative [REDACTED]

On November 27, 2012, the Marion County Circuit Court issued a Declaratory Judgment in the case of *Two Jinn, Inc., dba Aladdin Bail Bonds v. State of Oregon, acting by and through the Oregon Insurance Division*, (Marion County Case No. 12C15361.) A declaratory judgment is a declaration of legal rights or obligations and is expressly authorized by ORS 28.010. The judgment declares that the "State of Oregon has the authority under the Insurance Code to authorize a surety to issue bail bonds in Oregon."

Since the state did not appeal the judgment, the judgment is binding and conclusive on the state and all its representatives and agents. The state and its agents must authorize a qualified surety to issue bail bonds if requested to do so. Moreover, under the doctrine of claim preclusion -- or res judicata -- the state and its Insurance Division will be bound by the Declaratory Judgment in any subsequent lawsuit or proceeding arising under the same set of facts.

Yours very truly,



William F. Gary

WFG:jl
Enclosure (General Judgment Granting Declaratory Relief)

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ENTERED

NOV 29 2012

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STATE OF OREGON
Marion County Circuit Courts
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FILED

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

**TWO JINN, INC., dba ALADDIN BAIL
BONDS,**

Plaintiff,

vs.

**STATE OF OREGON, acting by and
through the OREGON INSURANCE
DIVISION,**

Defendant.

Case No. 12C15361

Hon. Courtland Geyer

**GENERAL JUDGMENT
GRANTING DECLARATORY
RELIEF**

This matter came before the court on a petition of plaintiff for a declaration as to the rights and obligations of plaintiff and defendant under Oregon law. Plaintiff appeared by and through Pamela L. Abernethy and William F. Gary of Harrang Long Gary Rudnick P.C. Defendant appeared by and through Jesse B. Davis, Assistant Attorney General. On November 13, 2012, the court heard oral argument on defendant's Motion to Dismiss and plaintiff's Motion for Summary Judgment.

After hearing the arguments of counsel, reviewing the memoranda and evidence in support, the Court entered an Order denying defendant's Motion to Dismiss and granting in part plaintiff's Motion for Summary Judgment, finding that the matter was not moot for the reasons argued by plaintiff and expressed by the Court on the record, and that plaintiff was entitled to a declaration of rights under ORS 28.010.

The Court finds that there is no further reason to delay entry of a Final Judgment and, accordingly, having been fully advised,

1 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
2 DECREED AS FOLLOWS:

3 1. The State of Oregon, acting by and through the Oregon Insurance
4 Division, has the authority under the Oregon Insurance Code, ORS Chapters 731, 732,
5 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750, to authorize a surety to issue
6 bail bonds in Oregon.

7 2. Plaintiff is awarded its costs pursuant to ORS 28.100.

8 DATED this 27th day of Nov., 2012.

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10 _____
11 COURTLAND GEYER,
Circuit Court Judge

12 Submitted by:
13 Pamela L. Abernethy, OSB #801500
14 Harrang Long Gary Rudnick P.C.
Of Attorneys for Plaintiff

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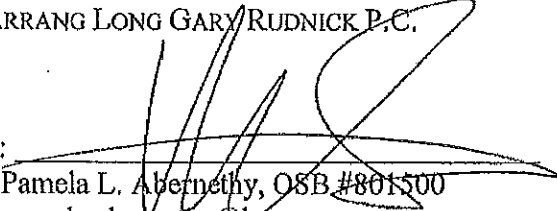
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CERTIFICATE OF SERVICE

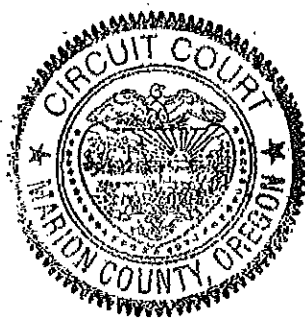
I certify that on November 27, 2012, I served or caused to be served a true and complete copy of the foregoing **GENERAL JUDGMENT GRANTING DECLARATORY RELIEF** on the party or parties listed below as follows:

- Via First Class Mail, Postage Prepaid
- Via Electronic Mail
- Via Facsimile
- Via Personal Delivery

Jesse B. Davis
Department of Justice
Trial Division
1515 SW Fifth Avenue, Suite 410
Portland OR 97201
Fax: 971-673-5000
Email: jesse.b.davis@doj.state.or.us
Of Attorneys for Defendant

HARRANG LONG GARY/RUDNICK P.C.

By: Pamela L. Abernethy, OSB #801500
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Of Attorneys for Plaintiff Two Jinn, Inc.,
dba Aladdin Bail Bonds

50043097.1



STATE OF OREGON } 96
County of Marion

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court on: 2/11/13
TRIAL COURT ADMINISTRATOR

By: KK