

CONSTRUCTION CLAIMS TASK FORCE
Regular Meeting Minutes
February 15, 2006

The Construction Claims Task Force met on Wednesday, February 15, 2006, in Room 260, Labor and Industry Building, 350 Winter Street NE, Salem, Oregon.

Members Present: David DeHarrport
Jon Fahr
Eric Grasberger
Elsie Jones
Steve Malany
Bill Nesmith
Laura Schauer
Tom Skaar
Jim Vavrek

Members Absent: None

Staff Present: Cory Streisinger, Director of Department of Consumer and Business Services
Mark Long, Administrator of Building Codes Division
Craig P. Smith, Administrator, Construction Contractors Board
Richard Baumann, Building Codes Division
Reese Lord, Building Codes Division
Cece Newell, Insurance Division
Bill Boyd, Construction Contractors Board
Cathy Dixon, Construction Contractors Board
Michael Morter, Insurance Division
Andrea Simmons, Building Codes Division
Rick Blackwell, Building Codes Division

Guests Present:

Kelly Ross, CBIC
Lori Graham, City of Portland
Philip Johnson, AFSCME
Scott Barrie, OHBA
Jeff Dean, ABC
Phil Peach, Oregon Remodelers Association
Larry Peabody, Oregon Remodelers Association
Lana Butterfield, Safeco, American Family/PIA
Keith Wright, Bricklayers Local #1
Mark Roddy, Bricklayers Local #1
Michael A. Thompson, Roofers Union #49
Brian Miller, Farmers Insurance
Kenneth Nota, Dryvit Systems
Douglas Mault, Dryvit Systems
James Bela, Oregon Earthquake Awareness
Steve Zvescher, Plasters #82

Corwin McKinnis, Plasters #82
Royal Robinson, Plasters #82
Jerod Broadfoot, OBCTC
Bob Moore, City of Gresham
Stuart Ramsing, OBOA
Roland Carlson, Ore Pac Building
Susanne Griffin, DuPont
Tim Bogart, Bogart Construction
Toni Chodrick, Oregon Mutual
Steve Kreig, City of Woodburn
Greg Miller, AGC
Preston Pxakkons, Ore Pac
Alan Seymour, Oregon Dept. of Energy
Renee Haynes, HADD
Jim Varco, HADD
Glyn Jones, S D Deacon

Tom Dymont, CBIC
Janet Adkins, Interim Committee (Legislature)
Kristen Leonard, OTLA
Wallace Corwin, Jeld-Wen
Robin LaMonte, LFO

Tim Wach, USG
John Powell
Frank Nunes, Lath-Plaster Institute
Kirk Larsen

Action Items

- Submit public notice for April 11, 2006 meeting.
- Compile recommendations to date.
- Agency reports BCD/CCB.
- Write concept papers on initial recommendations from the February 15th meeting for discussion at the April meeting.
- Prepare state comparison for task force review at the April meeting.

I. TASKFORCE BUSINESS

A. Call to Order:

Chair Eric Grasberger called the meeting to order at 1:35 p.m.

B. Approval of Agenda for February 15, 2006 Meeting:

MOTION: Eric Grasberger moved to approve the agenda for the February 15, 2006 meeting.

VOTE: 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

C. Approval of January 25, 2006 Meeting Minutes:

MOTION: Eric Grasberger moved to approve the January 25, 2006 minutes.

VOTE: 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

D. Next Meeting Date:

MOTION: Eric Grasberger moved to approve the next meeting date of April 11, 2006, 1:30 p.m. to 5:00 p.m.

VOTE: 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

E. Project Update:

1. Managing Information:

Timeline, Exhibit 2: Mark Long, Building Codes Division, reported that staff will send task force members an email regarding July, August and September meeting dates.

The April meeting will be a working review and analysis meeting. Staff is compiling data from 25 other states and will deliver an overview of the findings,

i.e. licensing, insurance, and bond requirements. Task force members asked that staff include a summary of other states' efforts and how they view their success, what is working for them and what is not working.

Task force members asked that Construction Contractors Board and Building Codes Division to deliver a report to the task force at the April meeting.

Task force members also asked to have more time set aside in the agenda at future meetings for them to discuss issues.

2. Insurance Study RFP:

Mark Long, Building Codes Division, reported that staff has met with the contracted firm. The draft report will be presented at the June 28, 2006 task force meeting.

3. Research:

Mark Long, Building Codes Division, stated that the task force has received approximately 50 recommendations to date **Exhibit 1**. After receiving public comment on those recommendations, the task force will perform a prioritization exercise that will allow staff to begin further researching the top 10-15 recommendations. Staff will then provide a more detailed presentation at the April meeting.

II. NEW BUSINESS – PANEL PRESENTATIONS

The task force asked that presenters focus their comments on specific problems and suggested solutions. The task force also asked for public comment on the list of recommendations.

A. Contractors Panel:

Presenters were Andrew L. Beyer, Walsh Construction Company/Oregon; Tim Bogart, Bogart Construction Enterprises, Inc.; Glyn Jones, S.D. Deacon Enterprises, Inc.; and Phil Peach, Oregon Remodelers Association.

Andrew L. Beyer, Walsh Construction Company/Oregon, Mr. Beyer submitted **Exhibit A**. He reported that there are major differences between large, mid-size, and small commercial general contractors and residential homebuilders and remodelers. He recommends clearly differentiating between requirements for commercial general contractors and homebuilders and stated that one approach will not work for both. For multi-unit structures, focus on quality design and construction. Require design certification for building envelope design by third-party consultants or project architects. Require jurisdictional inspection for envelope system compliance. Require model document submittal for permits and design review, based upon State of Washington's condominium statute of 2005. Require adequate experience, training, general liability coverage and bonding for contractors to build multi-unit housing. Require a "fix it first" approach to claims. This would reduce costs by stopping further damage and reducing legal fees. Require that all parties be notified within three months of problem identification and to contribute to initial fix. Use a

four step process for appropriate repair and establishing liability: a) assess the problem; b) establish causes and required repair; c) fix it; and d) then fight about who pays for it and the right to sue remains intact through the process. Require field training and certification for general contractors and subcontractors for building envelope system installations. Insurance premiums have increased 264 percent for our company with diminished policy coverage. Require general contractors to carry a minimum of one million dollars general liability (completed operations) insurance. Require architects to carry a minimum of one million dollars of professional liability insurance. Align the statute of repose to either six years or ten years for both contractors and architects. Establish maintenance requirements for owners on building envelope and key building systems. Require documented maintenance of the building envelope and key building systems by owner in order to make construction defect claims. Approximately 20 percent of the industry consists of homebuilders, which makeup approximately 57 percent of the claims.

Tim Bogart, Bogart Construction Enterprises, Inc., Mr. Bogart submitted **Exhibit B.** He reported that from a siding installers perspective, manufacturers and vendors selling siding products need to notify siding contractors of installation changes. Architects or design professionals need to develop more complete details and review the details with the contractor. The building wrap is the most important element of siding and needs to be inspected. It is too easy to get a license. A specialty license requires continuing education. There needs to be certification in weather resistant barriers, and for installation of windows, flashings, and siding. Base licenses on gross volume in residential, commercial or multi-family (apartments/condominiums/townhouses). There needs to be proper insurance coverage and increased bond amounts. The State of Washington uses third-party inspections, approval by architect and design engineer.

Glyn Jones, S.D. Deacon Enterprises, Inc., Mr. Jones submitted **Exhibit C.** He reported that the building envelope has the following problems: 1) lack of building envelope design standards; 2) developers are unwilling to spend money on building envelope design; 3) architects lack of emphasis on the envelope; 4) no follow-up or inspections required by architect or engineer after design completion, and 5) lack of design professional standards relating to building envelope design. Recommends promoting industry certification for design professionals in building envelopes; develop design standards, and continuing education requirements for architects and engineering licensees. Require building envelope details for permit review and approval. Require sign off by architect/engineer or a certified professional. Require basic knowledge to obtain a contractor's license, including continuing education. Workers actually performing the work need to be trained. Have architect/engineer approve Value Engineering items. Develop quality assurance program, including documenting the work performed and establish preventative maintenance programs. Promote annual inspections. Builders should provide manuals and maintenance schedules to owners. Have third-party inspections.

Phil Peach, Oregon Remodelers Association (ORA), Mr. Peach submitted **Exhibit D.** He reported that two-thirds of the members of ORA consist of five or less people in the company. ORA supports the concept of certification of building envelope

installers. ORA would support a recovery fund if it replaced the current bonding requirements. Competency testing of all contractors will be a tough project; focus on the problem areas. Educate the workers. CCB needs to be given funds to educate consumers to reduce construction problems. ORA suggests that the task force focus more on insurance problems and less on construction defects.

B. Crafts and Trades Panel:

Presenters were Royal Robinson; Plasters and Cement Masons Local 528; Corwin McKinnis, Plasters and Cement Masons Local 528; Mike Thompson, Roofers Local 49; and Keith Wright, Bricklayers & Allied Craftworkers Local #1.

Royal Robinson, Plasterers and Cement Masons Local 528, Mr. Robinson submitted **Exhibit E** and **Exhibit F**. He reported that NW Wall and Ceiling Bureau has been working on developing a building envelope manual and curriculum to assist the eventual certification and continuing education of plasterers in Western Washington. The goal in certification is to provide training to apprentice and journeyman plasterers in the application process and proper flashings and plastering techniques. This would help decrease contractor liability and provide for better-trained workers. A full certificate would require 40 hours of training. The task force should look at licensing and certification processes for building envelope specialists. He urged better education for all design-engineering professionals. Some of the problems are due to a lack of detail in drawings regarding: flashing, windows, caulking, parapet walls, transition of materials, and rooflines.

Corwin McKinnis, Plasterers and Cement Masons Local 528, stated that their apprenticeship program is open to non-union members as well as union members. The Oregon chapter hopes to adopt building envelope training this year.

Mike Thompson, Roofers Local 49, stated that the problem of water intrusion in roofing is a lack of qualified roofers and installations not done to manufacturer's specifications. Not using the correct roofing materials is another reason for roof failure. The only way to train roofers is to make it mandatory and make roofing a licensed trade. Applicants must pass a hands-on test. An alternative to licensing would be to have roofers certified by the manufacturers. Roofing is more technical today than it was in the past.

Keith Wright, Bricklayers & Allied Craftworkers Local 1, Mr. Wright submitted **Exhibit G**. An apprenticeship program in this field of work has been in effect for 100 years. He endorsed the plasterers' certification program. Contractors can become state certified training agents and participate in the apprenticeship program. The training will need oversight to ensure that it actually takes place. The Masonry and Ceramic Tile Institute of Oregon and SW Washington serves as a data library for architects and engineers, and has all the latest code changes and technical manuals. Architects and engineers participate in yearly seminars at Oregon State University. Task force members asked what he sees as causes of problems. Mr. Wright replied: "poor installation, value engineering where items are taken out of the plans to save money, backup systems, and caulking. I see caulking installed improperly. Caulking

has a lifetime and cannot replace flashings, which are removed to save money, or peel and stick flashings are used.”

C. Building Material Suppliers Panel:

Presenters were Wallace D. Corwin, Jeld-Wen and Kenneth Nota, Dryvit Systems, Inc.

Wallace D. Corwin, Jeld-Wen, Mr. Corwin submitted **Exhibit H**. He stated that suppliers are kind of becoming the insurance agents for buildings today. Up until 2003, the building codes stated that the builder was responsible to install windows or flashing in a weatherproof manner. The State of California requires manufacturers to send installation instructions with their products. The 2005 model that was recently adopted states that “builders now have to follow the manufacturer’s instructions when installing windows.” If the instructions fail, manufacturers are responsible for them. Jeld-Wen inspects about 8,000 homes a year and also trains and tests extensively. Jeld-Wen believes the Construction Contractors Board is there to protect builders, subcontractors, suppliers, and the public. There is conflicting scientific evidence on why buildings fail. It is the little things that cause the problems, like missed lap flashings, holes in flashings, or no kick outs at gutters. It’s not the vapor barrier in the wall or displacement of vapor barriers or those types of issues that are causing the problems. The majority of problems we see are from very small lapses in very basic building trade tasks. The number one problem is missed lap flashing. Water runs downhill, the piece on the bottom is lapped over the top of the top piece and the water runs right into the wall. Jeld-Wen does not support the concept of third-party review of design work on a building, because the third-party consultant is not taking the risk with the design. There is a model in Arizona that we feel works the best. A standard warranty is required. If there is a patent defect in the building during that time, the builders board intercedes, mediates, and determines who is accountable and responsible for repairs. It only covers a two-year period. Two training DVDs were submitted to show some of Jeld-Wen’s training, **Exhibit I** and **Exhibit J**. Jeld-Wen developed their own DVDs for visual reference in addition to written instructions, because most trades-people are visual. Jeld-Wen certifies the installation and provides a ten-year warranty from the date of completion of the building.

Kenneth Nota, Dryvit Systems, Inc., Mr. Nota submitted **Exhibit K**. He introduced Doug Mault, who is the Director of Industry Relations for Dryvit and a homeowner in the Portland area. They are experienced as a leader in the EIFS industry and have reviewed hundreds of reports relating to construction defects. The primary problem on residential homes is: improper or omitted flashing at roofs, windows, decks, chimneys, and other key points; improperly installed windows or windows not suitable for the environment; improperly installed roofing materials; and omitted sealants at terminations, and dissimilar materials. The presence of these types of construction defects often result from: lack of proper integration of the various building envelope components; lack of sufficient construction details, specifications and instructions; lack of clearly defined scopes of work for various contractors; lack of coordination between the subcontractors to ensure proper integration and responsibility for work; lack of jobsite supervision; and lack of sufficient number of skilled laborers. Ninety-five percent of Dryvit’s claims are from residential

construction even though their business is primarily commercial construction. The reports we have reviewed and our observations of projects average five percent or less of the wall space shows any evidence of water intrusion. Commercial buildings have less construction defects because a design professional is usually actively involved in the project. Subcontractors have well defined scopes of work and tend to be larger more experienced companies. The general contractor controls coordination between the various trades and sequencing of construction. Dryvit produces an application video on proper installation. Dryvit is working with insurance companies to educate them on our products. Potentially, there could be special insurance for EIFS products in the future. What is critical to the performance of a building envelope is proper design and integration of the various building envelope components, on-site supervision by the general contractor or a design professional to ensure proper coordination between the various trades, proper execution of the plans and completion of the work.

Doug Mault, Dryvit, stated that he has worked with Dryvit since 1971. The face sealed system was the original product brought here in 1969. In the commercial arena, sophisticated users continue to use the face sealed system. For example, the product is still in demand on schools and office buildings that are exposed to the same moisture issues as residential structures.

III. PUBLIC COMMENT:

Mark Long, BCD, reported that **Kelly Atwood, Contractors Insurance Services** submitted a written testimony, **Exhibit L**, prior to the meeting, but was unable to attend the meeting.

Jim Varco, Homeowner, representing Homeowners Against Deficient Dwellings (HADD): Mr. Varco submitted **Exhibit M, Exhibit N, Exhibit O, and Exhibit P** (*Note: Mr. Varco's written testimony was received on February 16, 2006*). Mr. Varco described his experience and his opinions about the state agencies he has dealt with regarding his situation. These state agencies have failed. These agencies need to remember their missions. Mr. Varco expressed his concerns regarding: how contractor licenses are maintained, representation of board members, oversight of local building departments, and inspector qualifications. Mr. Varco believes that this task force is being controlled by the Department of Consumer and Business Services and the Building Codes Division.

Renee Haynes, Homeowner, representing Homeowners Against Deficient Dwellings (HADD): Ms. Haynes submitted **Exhibit Q** and read her testimony verbatim. Ms. Haynes described her experience and her opinions about the state agencies she has dealt with regarding her situation. The state building code could have been changed to incorporate building envelope issues long ago without legislative changes. Boards consist primarily of industry people, whose intent among their peers is to lower the bar at the homeowners expense. A growing number of builders are not qualified, are not ethical, and are not overseen. Inspectors are not enforcing existing code provisions. Older homes do not have these types of problems because these two agencies did not exist until the early 1970's. Licenses need to be suspended, bonds need to be increased, and meaningful fines need to be assessed. Boards need to be balanced or be a majority

of consumers. Assist homeowners to educate them regarding these issues. Prosecute the violators like the criminals they are.

Task Force Member Elsie Jones stated that in her own defense and for other task force members, she is not being controlled or told what to do.

Chair Eric Grasberger stated that there is no control going on here by these agencies.

Kirk Larsen, Dylan Development Group, Mr. Larson submitted **Exhibit R**. He stated that building integrity management utilizes proactive tools, programs, training and resources to improve the way builders build and owners maintain their investment. Smart growth communities utilize teamwork in high-density condominiums. Four things affect mold: temperature, food source (a lot of construction materials are a food source), spores, and moisture. Moisture takes 48 hours under those conditions and you will have mold. We need to proactively and aggressively find the best methods for quality control and quality assurance.

Larry Peabody, Oregon Remodelers Association, A huge perception problem exists regarding the Construction Contractors Board. CCB needs more teeth, tougher licensing standards and more enforcement tools. There are organizations that will train window installers. The American Architectural Manufacturers Association (AAMA) has a program that takes a day and half to complete to obtain a certification. Window installers should not be allowed to advertise without being certified by AAMA or some similar organizations. The Exterior Design Institute has all kinds of rules and guidelines about the building envelope and they have a certification program.

James Bela, Earthquake Awareness, Mr. Bela submitted **Exhibit S** and **Exhibit T**. He gave a presentation on earthquake codes. Mr. Bela is concerned about the adopted code provisions for J bolts. He discussed a code change proposal for plate washers. He suggested that Oregon adopt the State of Washington's code requirements. Mr. Bela believes that the Oregon code has been weakened over the last few code adoption cycles, putting Oregon at risk if a significant seismic event occurs. Oregon has weaker seismic provisions in the adopted code than California and Washington. Mr. Bela recommends that the state adopt the base model code provisions without amendments for seismic safety.

Susan Griffin, DuPont, Dupont is the manufacturer of Tyvek®. This product is used as a building wrap in the construction industry and is one of the most popular and widely known building wraps. It increases air and water resistance, lowering heating and cooling costs and providing better protection against moisture intrusion. Tyvek® reduces airflow through wall cavities; resists bulk water and wind-driven rain; and allows moisture vapor to escape from inside walls. Tyvek® has 160 specialists that perform jobsite training on product installation. Our company offers a web-based certification program where certified persons must meet certain requirements after two years and again after five years. Solutions exist and we are willing to work with this task force to resolve issues around the adopted building codes and the training of code officials. A company we have worked with has developed a program called "Code

College". The program is designed to aid in the implementation and enforcement of building codes.

IV. TASK FORCE GENERAL DISCUSSION:

Prioritization Exercise:

Task force members received 15 votes (adhesive dots). Members voted simultaneously by placing their dots by their preferred recommendations. Members could vote for the same recommendation more than once. Task force staff will tally the votes and send the results out before the next meeting.

General Discussion:

Chair Grasberger asked CCB to provide the task force with information on the statutory makeup of the Construction Contractors Board.

Task force members discussed the difference between the residential code and the commercial code. The Residential Specialty Code covers detached one-and-two family dwellings, townhouses, rowhouses and certain apartments depending upon fire-sprinkler requirements and certain square footage limitations, that are three stories or less above grade. The Structural Specialty Code (commercial code) covers all other structures not covered under the Residential Specialty Code. Training and experience requirements differ between residential and commercial code applications. The task force discussed whether residential structures have fewer code requirements than commercial structures. Also discussed was the public's perception that CCB and BCD are there to protect them, people's perception needs to be corrected that the state can't protect them from everything.

V. ADJOURNMENT

Chair Grasberger adjourned the meeting 7:28 p.m.

Exhibits:

- 1 – Recommendations received to date (5 pages) – *Agenda item I-E-3*
- 2 – CCTF Agenda/Timeline (1 page) – *Agenda item I-E-1*
- 3 – Improvements to CCB Service (1 page) – *Agenda item I-E*
- A – Andrew Beyer, Walsh Construction Co/Oregon (2 pages) – *Agenda item II-A*
- B – Tim Bogart, Bogart Construction Enterprises, Inc. (5 pages) – *Agenda item II-A*
- C – Glyn Jones, S.D. Deacon (1 page) – *Agenda item II-A*
- D – Phil Peach, Oregon Remodelers Association (1 page) – *Agenda item II-A*
- E – Royal Robinson, Operative Plasterers and Cement Masons International Association (1 page) – *Agenda item II-B*
- F – Royal Robinson, Plasterers Certification Manual (1 page) – *Agenda item II-B*
- G – Keith Wright, Bricklayers & Allied Craftworkers (2 pages) – *Agenda item II-B*
- H – Wallace Corwin, Jeld-Wen, (1 page) – *Agenda item II-C*
- I – Wallace Corwin, (Custom Vinyl Installation DVD) – *Agenda item II-C*
- J – Wallace Corwin, (Flashing Lap Issues DVD) – *Agenda item II-C*
- K – Kenneth Nota, Dryvit Systems (7 pages) – *Agenda item II-C*
- L – Kelly Atwood, Contractors Insurance Services, (5 pages) – *Agenda item III*
- M – Jim Varco, testimony (1 page) – *Agenda item III*
- N – Jim Varco, testimony (5 pages) – *Agenda item III*
- O – Jim Varco, testimony (3 pages) – *Agenda item III*

- P – Jim Varco, testimony (8 pages) – *Agenda item III*
- Q – Renee Haynes, testimony (2 pages) – *Agenda item III*
- R – Kirk Larsen, Construction Defect Task Force Presentation (4 pages) – *Agenda item III*
- S – James Bela, Public Proposal Form (6 pages) – *Agenda item III*
- T – James Bela, ASCE 7-06 Seismic Provisions (1 page) – *Agenda item III*

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