

## Phase II Concept #2: General Liability Coverage

September 19, 2006

### I. Issue

The Construction Claims Task Force has asked to take a closer look at requiring that the coverage provided for general liability for contractors, as required by ORS 701.105, include completed operations that would extend for the entire period of the statute of repose, which is currently ten years in Oregon.

### II. Current Law

In Oregon, licensed contractors must carry public liability, personal injury and property damage insurance covering the work of the contractor. Subsequent interpretation of the legal requirements by the Department of Justice concluded that “the law does not appear to impose” that completed operations coverage be included in the contractor’s policy. An insurance policy that only provides coverage for the period while the job is in process (i.e., “work in progress” coverage) is currently acceptable to meet the insurance requirement for a contractor’s license. This limited policy form provides coverage only for work in progress and will not extend to bodily injury or property damage that results after the project is complete or the work is accepted by the owner.

Contractors are currently responsible for the procurement of insurance as required by law, and the proper documentation of that coverage to the Construction Contractors Board lies with the contractor according to CCB administrative rules as outlined in OAR 812-003-0200(2).

### III. Alternatives

Completed operations coverage generally extends the protection given by a general liability policy to lawsuits claiming injury or property damage that result due to the contractors negligence which arise after the construction project is completed.

### IV. Enforcement

Enforcement of a requirement to include specific coverage for completed operations is probably best handled under the current enforcement format through the CCB. During the course of their work the Task Force has addressed whether the completed operations requirement might be best assigned to a specific class of contractors under this scenario – i.e., contractors undertaking work involving the building envelope. Completed operations could be required as a condition of becoming a certified envelope specialist.

### V. Implementation

Given the current statutory language, a legislative change would be necessary in order to require contractors carry completed operations coverage as part of their general liability policy.

### *Additional Research*

The task force asked staff to discuss the difference between “claims-made” and “occurrence” coverage forms. A “claims-made” insurance policy pays claims presented to the insurer during the term of the policy or within a specific term after its expiration. It limits liability insurers’ exposure to unknown future liability. On the other hand, an “occurrence” policy pays claims arising out of bodily injury or property damage that occur during the policy term, even if they are filed many years later. General liability insurance with completed operations coverage can be written on either a claims made

or an occurrence basis. Both forms offer the same liability coverage, bodily injury and property damage liability. The difference is in how the coverage is “triggered” in the event of a claim. Claims made coverage forms normally allow for the purchase of an “extended reporting endorsement” that will extend coverage for claims presented after the policy period for bodily injury or property damage that took place during the policy period. Extended reporting endorsements can be limited to a specific number of years, or in some cases for an indefinite period.

In terms of the claims-made and occurrence forms, we know that the occurrence form is more common, although no firm data is available that tells us how many of the 44,000 plus contractors insured in Oregon have claims made forms as opposed to occurrence forms. In harder to place areas of the market, the percentages may exceed 50%. Availability of coverage could be a major factor if the Task Force were to propose disallowing claims made forms.

Contractors in some “hard to place” classifications may only have the option in some cases to obtain coverage on a claims-made form. If claims-made coverage is properly managed with close attention to the purchase of extended reporting and the wording of the replacement form, completed operations coverage can continue for the contractors.