

**CONSTRUCTION CLAIMS TASK FORCE**  
**DRAFT**  
**Regular Meeting Minutes**  
**October 25, 2006**

The Construction Claims Task Force met on Wednesday, October 25, 2006, in Room 260, Labor and Industry Building, 350 Winter Street NE, Salem, Oregon.

**Members Present:** David DeHarrport  
Eric Grasberger  
Elsie Jones  
Tom Skaar  
Jim Vavrek  
Jon Fahr  
Laura Schauer

**Members Absent:** Steve Malany  
Bill Nesmith

**Staff Present:** Mark Long, Administrator of Building Codes Division  
Craig P. Smith, Construction Contractors Board  
Joel Ario, Insurance Division  
Richard Baumann, Building Codes Division  
Chris Huntington, Building Codes Division  
David Dahl, Insurance Division  
Cece Newell, Insurance Division  
Joyce Patton, Insurance Division  
Rick Blackwell, Building Codes Division  
Richard Rogers, Building Codes Division  
Ravi Mahajan, Building Codes Division  
Michael Morter, Building Codes Division  
Tamara Brickman, Building Codes Division  
Bill Boyd, Construction Contractors Board  
Cathy Dixon, Construction Contractors Board

**Guests Present:**

Larry Boyd, SLAOR  
Toni Chodrich, Oregon Mutual  
Steven Peterson, Oregon Mutual  
Jeff Dean, ABC  
Pat Dorney, CBIC  
Kelly Ross, CBIC  
Dave Johnson, 2-10 Home Buyers Warranty  
Frances Mayor, Oregon Mutual  
Jutta Barney, Oregon Mutual  
Tom Dymont, CBIC  
Brian Doherty, Miller Nash  
Stuart Ramsing, OBOA  
Janet Adkins, Legislative Committee  
James Bela, Oregon EQ Awareness

Scott Barrie, OHBA  
Jim Nicks, City of Portland  
Curtis Rosser, HBW Insurance Service  
Kristen Leonard, OTLA  
Jim Markee, SLHO  
John Knepp, Pacific Risk Management  
Jack Munro  
Bill Cross, OBOA/BOMA  
Greg Miller, AGC  
Ralph Groener, AFSCME  
Tim Spencer, BASF  
Alan Seymour, ODOE  
Lana Butterfield, BCS  
Brian Miller, Farmers

**Action Items**

- Submit public notice for November 28, 2006 meeting, including a list of the 11 proposals.
- Discussion and action on package of proposals.
- Discuss items under further consideration.
- Consideration of tentative additional December meeting.

**I. TASKFORCE BUSINESS****A. Call to Order:**

Chair Eric Grasberger called the meeting to order at 9:05 a.m.

**B. Approval of Agenda for October 25, 2006 Meeting and Order of Business:**

**MOTION:** Eric Grasberger moved to approve the agenda for the October 25, 2006 meeting.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**C. Approval of September 19, 2006 Meeting Minutes:**

**MOTION:** Eric Grasberger moved to approve the September 19, 2006.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**D. Next Meeting Date:**

**MOTION:** Eric Grasberger moved to approve the next meeting dates of:

- November 28, 2006, 12:00 p.m. to 5:00 p.m.
- December 20, 2006, 9:00 a.m. to 2:00 p.m.
- January 12, 2007, 9:00 a.m. to 12:30 p.m.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**MOTION:** Eric Grasberger moved to approve the tentative additional meeting date of December 8, 2006, 1:30 p.m. to 4:30 p.m.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**E. Project Update:**

Mark Long, Building Codes Division (BCD), reported that the October meeting will focus on the review and consideration of the remaining Phase I proposals and Phase II proposals, including discussion of “claims-made” versus “occurrences” and, time permitting, an overview of the preliminary draft report. The November 28, 2006 meeting will include public comment and will focus on review and discussion of proposals for inclusion in the legislative report. **(Exhibit 1 and Exhibit 2)**

Chair Grasberger reported that he gave an update to the Senate Interim Consumer Protection Committee on October 5, 2006, regarding what recommendations the Task Force is considering. Mark Long, BCD, reported that although the Task Force report is not due until January, the Senate Interim Consumer Protection Committee would like to receive a draft prior to January 2007 distribution date.

## **II. TASK FORCE REVIEW AND CONSIDERATION OF PHASE I PROPOSALS**

### **PHASE I PROPOSALS:**

Mark Long, BCD, discussed the proposals to be reviewed by the Task Force members (**Exhibit 3 and Exhibit 4**). Staff recommendations are:

#### **A. PROPOSAL 6—BUILDING ENVELOPE CERTIFICATION: (Exhibit 5)**

Mark Long, BCD, discussed the recommendation with Task Force members. This proposal would give CCB authority to certify building envelope contractors. Require the responsible managing individual (RMI) to obtain a certification for the firm. Prohibit uncertified construction businesses from working on building envelopes. The RMI would get the certification and then train the workers. There would be continuing education required every three years.

Task Force members discussed whether to limit the requirement to residential only or require for both residential and commercial construction. Also discussed was whether every worker should have to be certified or whether to use the RMI model. Perhaps require the RMI to become certified and then train its workers. The RMI would train the workers and then give each worker a certificate showing that they have been trained. Task Force members like the term “competent person” rather than RMI. Task Force members discussed developing standards for training of each worker. Task Force members discussed requiring building inspectors to have the training as well.

Laura Schauer suggested using the OR-OHSA model. The competent person takes training and becomes certified. The competent person then trains the workers, keeps a log of training dates and who attended. Once the workers are trained, they can work without the competent person on-site supervising.

#### **Building Code Training:**

Task Force members discussed whether to require all construction contractors to meet continuing education requirements every three years.

Task Force members approved the following:

- Maintain the CCB licensing system currently in place.
- Create a certification that is required for any contractor licensed in Oregon directly working on a residential or commercial building envelope.
- Prohibit uncertified contractors from working on building envelopes.
- For contracting firms, require contractors that work on building envelopes employ at least one individual acting in a supervisory capacity who has obtained the certification.

- Require a contracting firm's certified envelope specialist provide the prescribed degree of training to subordinate employees on the appropriate materials, code requirements, and design requirements utilized at the particular structure.
- Require the certified envelope specialist to verify by checklist that construction work involving the envelope meets code requirements and approved designs.
- Require a certified envelope specialist to complete and submit additional verification to the local building department in order to obtain a certificate of occupancy.
- Require certified individuals take a set number of continuing education hours on substantive construction requirements.
- Modify as needed the appropriate CCB enforcement laws to ensure contractors are properly certified and meeting any responsibilities under the certification.
- Require all contractors obtain continuing education, which may include education on building code changes.

**MOTION:** Eric Grasberger moved to request staff to develop a concept paper for training and continuing education on building codes for each trade.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**B. PROPOSAL 4—CONSUMER INFORMATION: (Exhibit 6)**

Mark Long, BCD, and Craig P. Smith, Construction Contractors Board (CCB) discussed the consumer notices with Task Force members. CCB has legislative concepts to require contractors to obtain signatures on the forms and keep a copy of the form.

Task Force member Tom Skaar reported that the CCB Board members asked to tie in the need for a written contract to the lien notice requirements. Task Force members discussed whether 72 hours to read the notices is too much time. Change item 2 to say a signature is required.

Task Force members approved the following:

- Amend administrative rules to disallow distribution of previous versions of the Information Notice to Owners.
- Require by statute signature lines on consumer information, lien notice and dispute resolution forms for consumer and contractor to sign to verify distribution.
- Lack of written contract invalidates a claim of a valid construction lien.
- Provide one business day after signing a construction contract for a consumer to fully review consumer protection information and the contract.
- In cases where a contractor does not provide required forms for the consumer, extend length of time to file a claim with the CCB from one year to two years.

**MOTION:** Eric Grasberger moved change item 4 from “72 hours” to “one business day” and add “of existing home” after “contract for construction”. This applies to all construction.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**MOTION:** Eric Grasberger moved to accept all five staff recommendations with the addition of item 4 changes and item number three, add that the right to file a lien claim is invalid for lack of a written contract.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**C. PROPOSAL 5—RESIDENTIAL PERMITS: (Exhibit 7)**

Mark Long, BCD, discussed the recommendations with Task Force members.

Task Force members discussed giving CCB authority to issue a \$5,000 fine for not taking out the required permits and that the contractor loses their lien rights. Also discussed was perhaps crafting the language so that when the work is performed by a contractor that they are required to take out the permit.

Task Force members discussed requiring certificates of occupancy statewide. This would help CCB with the issue of occupancy on dispute resolution complaints.

Mark Long, BCD, discussed developing a standardized inspection checklist that consumers could rely on to know what they should expect inspections to cover. All jurisdictions would be required to use the standardized inspection checklist. Task Force members are in favor of this concept.

Task Force members approved the following:

- Alter permit application process to require the applicant to specify the owner of the project, the contractor performing the work for the owner, and identify the CCB-issued license number and the identity of any certified envelope specialists working on the permitted construction project.
- When an owner acquires a permit, require local building department to distribute revised Information Notice to Owners About Construction Responsibilities. Revised form should include at a minimum (1) the owner's duty to comply with building codes, (2) the responsibility of the owner to supervise construction work, if the owner is acting as their own general contractor, and (3) the owner's responsibility to make corrections after inspection.
- Require a certificate of occupancy for all structures built to the residential component of the state building code.

**MOTION:** Eric Grasberger moved to approve item no. 2 in proposal 5 with the change that this applies to situations where owners take out permits.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**MOTION:** Eric Grasberger moved to have staff redraft a concept paper, the goal of which is to identify the means to improve the clarity regarding which person or entity will be responsible for taking out a permit. The concept should include the potential for a CCB-imposed fine and loss of lien right when a contractor fails to take out a permit.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**MOTION:** Eric Grasberger moved to strike item 5.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**MOTION:** Eric Grasberger moved to approve items 6 and 7.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED**

**D. PROPOSAL 7—ENVELOPE DESIGN DETAILS: (Exhibit 8)**

Mark Long, BCD, discussed staff recommendations that would require the person preparing the plans to submit envelope details for residential construction on designs that resist water intrusion. The plans would include the selected design methodology used. The plans would not be reviewed by the local building departments.

Task Force members suggested performance standards or a methodology to follow in what to include in the envelope plans. They discussed how much detail would be submitted. Some Task Force members felt it was up to industry to determine how much detail should be included in the envelope plans.

Mark Long reported that building permit offices do have a concern about stamping plans approved when they did not review the envelope detail plans.

**MOTION:** Tom Skaar moved to table this proposal.

**VOTE:** 4-3, Ayes—Deharport, Skaar, Jones and Vavrek; Nays—Grasberger, Fahr, and Schauer.

**MOTION PASSED**

*(Note: minimum number of votes required (5) for official action was not obtained. Motion will be reconsidered at the November meeting.)*

Task Force members discussed perhaps adding language to require providing envelope details or other reasonably defined details.

**E. TOM SKAAR CCB REPORT:**

Construction Contractors Board (CCB) Board Chair Tom Skaar reported that CCB Board members, at the October 24, 2006 board meeting, reviewed the Phase I proposals and had the following comments:

Recommendation #2: (Emergency suspensions) CCB favors improving current emergency suspension authority. Board members noted that statutes currently allow emergency suspensions and that additional authority may not be needed. Emergency suspensions found in ORS 701.135(2) may be sufficient or could be expanded to offer greater protections for the public. The Board favors increasing emergency suspension authority for unpaid construction debt if such authority could be granted in accordance with the constitution and other due process requirements. CCB counsel, Kathleen Dahlin, Senior AAG, cautioned the Board about seeking authority outside of the Administrative Procedure Act.

Recommendation #4: (Require applicants to disclose financial matters.) The Board members thought this concept likely had merit. Additional mandates on the CCB, however, may require additional staff to process license applications in a timely manner.

Mark Long reported that this wraps up Phase I.

### III. TASK FORCE REVIEW AND CONSIDERATION OF PHASE II PROPOSALS

**PHASE II PROPOSALS:**

Joel Ario, Insurance Division, discussed the proposals (**Exhibit 9 and Exhibit 10**) with the Task Force members. Staff recommendations are:

- A. PROPOSAL 4—VOLUNTARY LOSS CONTROL DISCOUNTS: (Exhibit 11)**  
Joel Ario reported that under this proposal the Insurance Division would issue a Bulletin that would streamline the process for insurance companies to apply to offer discounts. This would apply to admitted carriers.

Task Force members approved the following:

- Encourage use of loss control discounts on construction contractor business.
- Clarify by issuance of an Insurance Division Bulletin that discounts offered for contractors adopting best practices recommended by the Construction Claims Task Force will not be required to include statistical support for the discounts in their filings.
- Bulletin to be issued using examples of best practices adopted by the Task Force in their final report to the Legislature in 2007.

**MOTION:** Eric Grasberger moved to approve proposal 4.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek.

**MOTION PASSED****B. PROPOSAL 3—WRAP PROJECT LIMITS: (Exhibit 12)**

Joel Ario reported this proposal would:

Streamline rate filing requirements for policies on single project owner or contractor controlled coverage applying to all contractors working on a job in two areas:

- Eliminate project minimum limit for projects including workers' compensation to allow open consideration by insurers for projects of any size. Filing and prior approval would continue to be required in order to allow for proper handling of claims for injured workers.
- Waive requirements for fictitious groups for group general liability policies for contractors to encourage open market for smaller projects that do not include workers' compensation.

Joel Ario reported that GL policies written for wraps generally do cover for ten years, but that there are variations and limitations on subcontractor coverage periods. It was generally discussed that the bulk of this coverage is written in the surplus market, which are not regulated and each contract can vary. Why have a \$90 million statutory limit, let the market control. Most insurance carriers for construction work are non-admitted carriers that the state does not regulate. Some states regulate non-admitted carriers, but the federal government is about to adopt rules to regulate surplus lines. Wrap policies would have to be approved by Insurance Division, safety groups do require approval.

**MOTION:** Tom Skaar moved to approve proposal 3.

**VOTE:** 5-2, Ayes—Deharport, Grasberger, Fahr, Schauer, and Skaar; Nays—Jones and Vavrek

**MOTION PASSED**

**C. PROPOSAL 1—FIRST-PARTY WARRANTY: (Exhibit 13)**

Joel Ario, Insurance Division, reported that this would require residential contractors to have a 1-2-10 first-party warranty. This would be enforced through the CCB bond for the first year.

Task Force members discussed allowing the contractor to contract out to another party the 10 year structural portion of the warranty. Also discussed was looking at years 1-2 being a first-party warranty and years 3-10 a third-party warranty.

Cece Newell, Insurance Division, stated that a couple of states do allow the third-party warranties to be awarded to a third-party provider. I think part of the issue with the third-party warranties were the very specific definitions of what was covered and what was not covered. It may difficult to find a market for a third-party warranty.

Tom Skaar discussed having a 10 year warranty, which actually covers years 1-2 structurally. Look at it as two different warranties; one state mandated first-party

warranty for years 1 and 2 and a state mandated 10 year structural warranty. One is first-party and the other is third-party or first-party at our option.

Task Force members discussed that the third-party warranty would not be a very long document of what is covered, but would be mandated by statute what would be covered. Under number 3, the third bullet should read: "...from structural defect, including **but not limited to** any..."

Cece Newell, Insurance Division, the Maryland definition says "where it adversely affects the load bearing function to the extent that becomes or is in danger of becoming unsafe, unsanitary or otherwise."

Task Force members discussed staff researching what other states have in statute and what third-party providers would cover. The third-party warrant provisions need to be available and cover what is needed.

**MOTION:** Eric Grasberger moved to approve number 1 as to warranty coverage for 1-2 years.

**VOTE:** 6-1, Ayes—Deharport, Grasberger, Fahr, Schauer, Skaar, and Vavrek;  
Nays— Jones

**MOTION PASSED**

- Establish a first party warranty requirement for new residential structures.
- One year warranty provided by the builder to warrant that the structure will be free from any defect due to workmanship, materials or noncompliance with building code.
- Two year warranty provided by the builder to warrant that the building envelope will be free from any defect due to materials, workmanship or noncompliance with building code.
- Warranty to be recorded in deed at the time of sale.
- Transfer of warranty without charge to subsequent owners during the warranty period.
- No disclaimer or waiver of warranty permitted.

**AMENDED MOTION:** Eric Grasberger moved to accept proposal 1 as to warranty coverage in years 1 and 2 with all other portions of this proposal in effect for the warranty in years 1 and 2 as written by staff. Under number 7 add third bullet point that reads: Along with other costs agreed to by contract or allowed by law.

**VOTE:** 6-1, Ayes—Deharport, Grasberger, Fahr, Schauer, Skaar, and Vavrek;  
Nays— Jones

**MOTION PASSED**

- Ten year warranty for any structural defect that results in failure of a load bearing part of the home or causes structural damage that materially affects the use of the home for residential occupancy.
- Builder may warrant structural defect or purchase warranty coverage that meets the requirements of the warranty provisions.

- Specific definition of structural defect would apply. The current proposed language is:
- *Structural defect* means any defect in the load-bearing portions of a new residential structure that adversely affects its' load-bearing function to the extent that the home becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise uninhabitable.
- As in the First Party Warranty Part 1 the following requirements would be included:
- Warranty to be recorded in deed at the time of sale.
- Transfer of warranty without charge to subsequent owners during the warranty period.
- No disclaimer or waiver of warranty permitted.

**MOTION:** Eric Grasberger moved to have staff research what language might be acceptable to third-party guarantors for 10 year structural warranty.

**VOTE:** 7-0, Ayes—Deharport, Grasberger, Fahr, Jones, Schauer, Skaar, and Vavrek

**MOTION PASSED**

Mark Long stated that in order to properly notice the public regarding the issues that will be open for public comment at the November meeting, the task force should agree that all proposals should be open for the public to comment on at the next meeting. The task force agreed that the 11 proposals from Phase I and Phase II should be open for public comment.

#### **Data Reporting Requirements (Exhibit 14)**

- Require insurers writing contractors liability in Oregon to maintain and report specific data elements on contractor business to allow for assessment of market conditions on an ongoing basis.
- Proposed areas of consideration for regularly maintained data include:
  - Written premium by classification
  - Policy count by classification
  - Paid Losses
  - Loss reserves
  - Reported claim count

#### **General Liability Coverage (Exhibit 15)**

- Amend requirements for contractor licensing to provide that the coverage necessary for contractors general liability include completed operations liability.
- Enforcement would continue under existing law with the Construction Contractors Board.
- Phase-in period would be allowed to implement the requirement as existing licensure renews after the effective date.

In addition, staff will draft brief endorsements on the four items that are also under consideration by the task force.

**III. OVERVIEW OF DRAFT LEGISLATIVE REPORT: (Exhibit 16)**

Due to lack of time this matter was not discussed.

**IV. ADJOURNMENT**

Chair Grasberger adjourned the meeting 2:15 p.m.

*Exhibits:*

- 1 – Strategy/Schedule for completion (1 page) – *Agenda item I-E*
- 2 – CCTF Agenda/Timeline (1 page) – *Agenda item I-E*
- 3 – Status report on Phase I proposals (1 page) – *Agenda item II*
- 4 – Phase I Motions and Proposal Schedule (4 pages) – *Agenda item II*
- 5 – Building envelope certification (13 pages) – *Agenda item II*
- 6 – Consumer information proposal (3 pages) – *Agenda item II*
- 7 – Residential permits (4 pages) – *Agenda item II*
- 8 – Envelope design details (2 pages) – *Agenda item II*
- 9 – Status report on Phase II concepts (1 page) – *Agenda item III*
- 10 – Phase II motions/proposals schedule (2 pages) – *Agenda item III*
- 11 – Voluntary loss control discounts concept (1 page) – *Agenda item III*
- 12 – Wrap project limits concept (1 page) – *Agenda item III*
- 13 – First party warranty concept (2 pages) – *Agenda item III*
- 14 – Data reporting requirements concept (4 pages) – *Agenda item III*
- 15 – General liability coverage concept (1 page) – *Agenda item III*
- 16 – Draft legislative report (8 pages) – *Agenda item IV*