

CONSTRUCTION CLAIMS TASK FORCE
Draft
Regular Meeting Minutes
November 1, 2005

The Construction Claims Task Force met on Tuesday, November 1, 2005, 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
Joel Ario, Administrator, Insurance Division
Richard Baumann, Building Codes Division
Reese Lord, Building Codes Division
Ravi Mahajan, Building Codes Division
Richard Rogers, Building Codes Division
Bill Boyd, Construction Contractors Board
Cathy Dixon, Construction Contractors Board
Gina Fox, Construction Contractors Board
Elizabeth McMahon, Insurance Division
Cece Newell, Insurance Division

Guests Present:

Steve Murrell, State Farm Insurance
Hamilton Emery, SWW
Larry Boyd, SLAQ
John Stalcup, Yamhill County
Lana Butterfield, BCS
Lori Graham, COP
John Knepp, Pacific Risk Mgmt.
Chuck Day, Adair Homes
Bob Moore, City of Gresham
Bob Gilmore, Jackson County

John Stuart
Myles Eldsmore, Oregon Mutual
James Bela, Oregon Eq. Awareness
Jim Varco, HADD
Tom Dymont, CBIC
Kirk Eland, CBIC
Pat Dorney, CBIC
Kristen Reppeto, Pacific Risk Mgmt.
Brian Doherty, CBIC
Ed Glad, PNWRC Carpenters
Brian Miller, Farmers Insurance
Larry Peabody, Oregon Remodelers
Mark Rose, Morrison Hershfield

Kristen Leonard, ORA
Renee Haynes, HADD

Dennis Gamroth
Mikael Salonvoan, Syracuse University
Amanda Rich, CBIC
Kelly Ross, CBIC
Shawn Miller, PCI
Stephen Kafoury, OR Remodelers Assoc.
Mark Webb, AIG
Greg Miller, AGC
Nicole Commissiong
John Powell
Jack Munro, AIA, IIABO

Bill Cross, OR Building Officials Assoc.
Achilles Karagiozis, Oak Ridge Nat'l Lab.
Joe Johnson, Johnson Construction Consulting Inc.
George Tsongas, Portland State University
Scott Barrie, OHBA
Joyce Faltus
Eric Hoff, Western Architectural
John Lamb, Western Architectural
David Ricketts, RDH Building Sciences
Steven C. Burke, Homeowner & Builder
Matt Markee, Surplus Line Assoc.

Action Items

- Draft and submit a protocol regarding speaking engagements to task force.
- Prepare regulatory agency presentations for the December meeting.
- Organize expert testimony topics under the four categories defined by the task force.
- Review any potential overlap of the insurance study and CCB requirements for contractors.
- Staff will disseminate submitted information via the Web every two weeks.

I. TASKFORCE BUSINESS

A. Call to Order:

Chair Eric Grasberger called the meeting to order at 1:30 p.m.

B. Approval of Agenda for November 1, 2005 Meeting:

MOTION: Eric Grasberger moved to approve the agenda for the November 1, 2005 meeting.

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

C. Approval of September 21, 2005 Meeting Minutes:

MOTION: Eric Grasberger moved to amend the September 21, 2005 meeting minutes on page 2, bullet 3, is amend to read: "Research case studies, **including but not limited to**, Washington, Arizona, New Jersey, Colorado, and British Columbia."; on page 3, item D, sixth line, is amend to read: "Discuss **the possibility of an RFP** for construction defects study."; and approve the 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 December 2, 2005, 9:30 a.m. to 12:00 noon.

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

E. Opening Comments:

Cory Streisinger, Director Department of Consumer and Business Services (DCBS), discussed the scope of the taskforce's work. When HB 2078 was put together the consensus among the bill's proponents was that the litigation system would not be part of the taskforce's work. Instead, the taskforce should focus on the construction process, quality control, codes, inspections, enforcement, insurance, and other issues. The bill expressly set out the composition of the taskforce to ensure the appropriate expertise was represented. The Oregon Home Builders Association submitted a letter (Exhibit A) to the taskforce confirming the understanding of those who put the bill together.

D. Project Update:

1. Status of RFP for Insurance Study:

Joel Ario, Insurance Division, reported that the RFP has been reviewed by the Attorney General's office and some final changes are being made based on those comments. We hope to award the contract by mid-December. The first draft report will be due May 1, 2006 and the final report will be due July 31, 2006. Director Streisinger reported that the bill directs her to make the selection and she will follow all State of Oregon purchasing rules. Chair Grasberger asked taskforce members to contact him or Cory if they are interested in volunteering to evaluate the RFP for the insurance study.

2. Information Management:

Mark Long, Building Codes Division, reported that some case studies have been placed on the taskforce's website. Additional studies as well as staff summaries will be added in the future. To manage the volume of information that is being sent to the task force, staff will post information to the web twice a month and send a notice to taskforce members to keep them informed.

3. Staff Protocol for Public Contact:

Mark Long discussed the form "Staff Protocol for Public Contact" (Exhibit 1) that staff will use when contacted by the public. He asked if the taskforce would like to adopt a similar procedure/form. Taskforce members would like to add to the form information regarding contacts by email and responses by email. Taskforce members also discussed what they should do when asked to speak at a function. Staff will draft a document for the taskforce to review at the next meeting.

4. Timeline:

Mark Long discussed the timeline (Exhibit 3) developed by staff with taskforce members. Public comment time is scheduled for the February, April and June meetings. The May meeting has been left open for possible public comment as well as expert testimony to allow for flexibility.

5. Construction Claims Taskforce Research Process:

Mark Long discussed the form "Construction Claims Task Force Research" (Exhibit 3) with taskforce members. Taskforce members discussed removing dispute resolution and legal remedies from the list of topics because of concerns over the scope of the task force, but made no decision to remove them at this time. The taskforce members determined that the topics and groups of individuals or entities should be broken down into the following four categories: owners, builders, developers, and accessories. Staff will draft a document placing the items on the list under one of these categories and inviting parties of each group to come together and make a presentation focusing on their perspective of the problem and proposed solutions.

6. Construction Contractors Board and Building Codes Division:

Taskforce members asked that a representative from the Construction Contractors Board and a representative from the Building Codes Division come to the next meeting and give a 15-minute overview of their agency. The taskforce members further asked Mark Long and staff of the taskforce to review any potential overlap of the insurance study and CCB insurance requirements for contractors.

II. NEW BUSINESS**A. Dave Ricketts, RDH Building Engineers Presentation: (Exhibit B)**

David Ricketts reported that his firm has worked in British Columbia and the State of Washington. They found moisture problems were mostly due to window leaks, rainfall, and features of the building. The climate in the Pacific Northwest causes many problems due to heavy rain, limited drying, and winds. The most common problems in today's buildings are lack of overhangs, sensitive wall assemblies, roofs and roof intersections with chimneys, decks, and windows. Switching to a rain screen system creates an air cavity behind the cladding to allow water to drain out the bottom. Buildings are exposed to conditions of wetting and drainage and drying cycles. Older buildings have fewer problems because of less exposure due to larger overhangs, doors and windows were recessed, less insulation, and less complex architecture was used. Elements of addressing the problems are: training, guidelines, improved technology, guidance to owners, mockups, field review and field testing, licensed builders, and mandatory warranty program. In Oregon he sees practices not used uniformly, lack of consistency in construction techniques, and a lack of accepted guidelines. He suggests mandatory guidelines. Improve the quality of construction methods and there will be fewer problems.

B. George Tsongas, Portland State University Presentation: (Exhibit C)

George Tsongas reported that construction defect claims are caused by improper or poor design, lack of sufficient details; improper installation of components due to not following installation instructions; poor workmanship; and poorly designed or manufactured components. One of the major consequences of construction defects is water intrusion. Defects allow excessive water entry into the building envelope components (roofs, walls, floors, etc.), which lead to mold and decay. Dr. Tsongas provided extensive testimony and photographs to support his conclusions. Numerous

code changes were recommended as well as changes to inspection procedures, construction practices, contractor certification and training for window installers.

Dr. Tsongas also discussed indoor air and mold conditions. One-third of all northwest homes have some visible mold indoors. Green lumber causes mold problems. Suggests a new code to require framing to be dry enough to avoid mold growth (less than 19%). Use better venting in bathrooms and kitchens by requiring fans. Exhaust moisture out of the building instead of using recirculating fans. Require hardwired dehumidifiers in all ground-floor housing with slab-on-grade.

C. Dr. Archilles Karagiozis, Oak Ridge National Laboratory Presentation: (Exhibit D)

Dr. Karagiozis reported that envelope failures are caused by water leakage (faulty workmanship), air leakage, design, faulty materials, and aging. His program tests the dynamics of thermal flow, airflow, and moisture flow. Using computer modeling, it is possible to design buildings taking into consideration absorption rates of products used and climate conditions. His lab has screened envelope systems and ranked 35 different prototypes. Designs are incorporating increasingly smart materials, which can increase the level of forgiveness of the building envelope. It is possible to identify what type of walls should be used for Oregon's climate. Use better designs and materials for more challenging climate conditions. Additional suggestions included inspections during construction and better trained contractors in installation methods.

D. John Lamb and Eric Hoff, Western Architectural—Building Design Consultants Presentation: (Exhibit E)

John Lamb reported that all buildings leak so the answer is to design buildings to drain. Train installers. Another problem is there is inadequate oversight on projects by the general contractor or foreman. Flashing, caulking, weatherproofing and areas prone to water intrusion should be inspected before they are covered up.

Eric Hoff reported that if properly flashed water will flow away from the building. The problem is there is very little widespread knowledge on how to properly install the flashing. Get contractors to understand that the old methods no longer apply. Educate them on what systems should be used and how to use different materials. Most residential designs are not done by experts, the younger less experienced designers in a firm are often the ones developing the designs. The State of Washington is requiring a third-party inspector to certify if the contractor constructed the design properly. Some builders are looking at problems as a cost of doing business. Suggest requiring a code inspection of weather proofing/water intrusion before they are covered up. Raise the bar on the minimum code requirements. Require humidistat fans that measure moisture and run when needed.

E. Joe Johnson, Johnson Construction Consulting Presentation: (Exhibit F)

Joe Johnson reported that the reasons why construction defects occur are: defective building materials or components, violation of building codes at the time of construction, failure to meet design and specification requirements, failure to meet manufacturer requirements, and failure to build according to accepted trade standards for construction. There are shared responsibilities for construction defects by owners

and developers, architects and engineers, contractors, manufacturers/distributors/ industry organizations, and Building Codes Division. There is a need to establish clear and consistent standards and set a comprehensive measurement for minimum quality performance criteria. Require builders to have education, training, and certification in building envelopes, including continuing education. Require this certification for the general contractor and all installers. The building envelope would include window and doors, deck flashing, and roof diverters.

Mr. Johnson also stressed the need for quality control measures: pre-construction plan review, mock ups, performance water testing, check list, review manufacturer requirements to plans and installation, third-party inspections, manufacturer's review for compliance, and project documentation. The project documentation would establish an as built document to assist when problems arise that includes pictures of the various stages of construction. Enforcement should include submitting QA/QC Plan for meeting building envelope performance requirements, conducting spot inspections, audit of certifications and projects, and annual reviews. Maintenance is important. Require contractor to provide maintenance plans and information to owners for a minimum of ten years. Develop an on-line information center for maintenance issues, questions and links.

III. PUBLIC COMMENT

No oral public comment was taken at the meeting.

IV. ADJOURNMENT

Chair Grasberger adjourned the meeting 5:20 p.m.

Exhibits:

- 1 – Staff Protocol for Public Contact (1 page) – *Agenda item I-D-3*
- 2 – Public Testimony Protocol (2 pages) – *Agenda item I-D-3*
- 3 – Timeline (1 page) – *Agenda Item I-D-4*
- 4 – Construction Claims Task Force Research (1 page) – *Agenda Item I-D-5*
- A – Letter from Jon Chandler, Oregon Home Builders Assoc. (1 page) - *Agenda item I-E*
- B – Dave Ricketts, RDH Building Engineers Presentation (9 pages) – *Agenda Item II-A*
- C – George Tsongas, Portland State University Presentation (18 pages) – *Agenda Item II-B*
- D – Dr. Archilles Karagiozis, Oak Ridge National Laboratory Presentation (12 pages) – *Agenda Item II-C*
- E – John Lamb and Eric Hoff, Western Architectural—Building Design Consultants Presentation – (1 page) – *Agenda Item II-D*
- F – Joe Johnson, Johnson Construction Consulting Presentation – (5 pages) – *Agenda Item II-E*
- G – Letter from Yamhill County – (2 pages) – *Agenda Item III*