

CONSTRUCTION CLAIMS TASK FORCE
DRAFT
Regular Meeting Minutes
December 20, 2006

The Construction Claims Task Force met on Wednesday, December 20, 2006, in Room 260, Labor and Industry Building, 350 Winter Street NE, Salem, Oregon.

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

Members Absent: Elsie Jones

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

Guests Present:

Larry Boyd, Surplus Lines Association
John Chodrick, Oregon Mutual
Scott Barrie, OHBA
Kelly Ross, CBIC
Alan Seymour, ODOE
Pat Dorney, CBIC
Tom Dyment, CBIC
Brian Doherty, Miller Nash
Jim Brown, Red Shield

Steven Murrell, State Farm
Shawn Miller, PCI
Brian Miller, Farmers Insurance
Lana Butterfield, BCS
Jeff Dean, ABC
Jack Munro, AIA/IIAO
Jutta Barney, OMI
Jim Denno, Building Codes Division

Action Items

- Submit public notice for January 12, 2007 meeting.
- Prepare final report.

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

Chair Eric Grasberger called the meeting to order at 9:14 a.m.

B. Approval of Agenda for December 20, 2006 Meeting and Order of Business:

MOTION: Laura Schauer moved to approve the agenda for the December 20, 2006 meeting.

VOTE: 8-0, Ayes—Deharport, Grasberger, Fahr, Malany, Nesmith, Schauer, Skaar, and Vavrek.

MOTION PASSED

C. Approval of December 8, 2006 Meeting Minutes:

MOTION: Laura Schauer moved to approve the December 8, 2006, meeting minutes.

VOTE: 8-0, Ayes—Deharport, Grasberger, Fahr, Malany, Nesmith, Schauer, Skaar, and Vavrek.

MOTION PASSED

D. Next Meeting Date:

MOTION: Eric Grasberger moved to approve the next meeting date of January 12, 2007, 9:00 a.m. to 12:00 p.m.

VOTE: 8-0, Ayes—Deharport, Grasberger, Fahr, Malany, Nesmith, Schauer, Skaar, and Vavrek.

MOTION PASSED

E. Project Update:

Mark Long, Building Codes Division (BCD), reported that he hopes to complete review of the proposals today and the legislative report. The January 12, 2007, meeting will be more of a ceremonial meeting that will conclude with the signing of the legislative report. **(Exhibit 1)**

II. FINAL ACTION ON PROPOSALS:

Task Force members reviewed the proposal contained in the draft report. **(Exhibit 2)**

A. Phase I, #6: Building Envelope Certification:

Task Force members discussed who would sign off on permits; the general or the subcontractors. It was determined that the matter would be left to the general contractor to have one checklist they sign off on or have each subcontractor fill out a checklist for the work they perform and turn all the checklists in on the permit for the final occupancy certificate. Mark Long, BCD, reported that he will meet with local building departments to standardize a form that every building department will use and every contractor will fill out. Task Force members discussed perhaps developing a form/checklist that is broken out into various elements of the construction project

that includes a place for subcontractors to sign off on the phase they performed. Also discussed was placing a statement in the policy statement that states the Task Force members' intent is that there is no requirement for a single certification form, that there may be multiple certifications submitted for the construction project.

Task Force members made the following revisions:

- Number 2 is revised to read: "Each entity or person that works on the elements of a building envelop (e.g., roof, walls, windows, deck connections, doors, etc.) must utilize the services of a "first-tier" certified envelope specialist, whose role includes some substantial on-site observation."
- Number 4 is revised to read: "Each individual that installs or supervises elements of a building envelope must also have a "second-tier" envelope certification."

Task Force members determined that the first-tier certified envelope specialist must also have the second-tier training as part of their certification process. Those who supervise, but do not perform installations also need to have the second-tier certification.

The providers of the education must be required to issue the certification cards at the conclusion of the training.

Task Force members clarified that number 8, the requirement that all contractors obtain continuing education, which may include education on building code changes, is required for all licensed contractors, not just those performing building envelope work.

Task Force members discussed the degree of on-site presence that would be required of those certified in the first-tier. The intent of the Task Force members is that there would be substantial on-site supervision.

MOTION: Eric Grasberger moved to approve the recommendations with the amendments made by the Task Force.

VOTE: 8-0, Ayes—Deharport, Grasberger, Fahr, Malany, Nesmith, Schauer, Skaar, and Vavrek.

MOTION PASSED

B. Phase II, #2, General Liability Coverage; #4, Voluntary Loss Control Discounts; and #5 Data Reporting Requirements:

Task Force members discussed the recommendations. **(Exhibit 4)**

MOTION: Eric Grasberger moved to approve proposals #2, #4, and #5.

VOTE: 6-2, Ayes—Deharport, Grasberger, Fahr, Nesmith, Schauer, and Skaar, Nays—Malany and Vavrek.

MOTION PASSED

C. Phase II, #1, First-Party Warranty: (Exhibit 4 and Exhibit D)

Task Force members discussed the recommendations and made the following revisions:

- No Disclaimer, Limitation or Waiver of Warranty Permitted.
- Under Scope of Warranty, No. 2, revise to read: “Commencement will occur at the time of first occupancy or title transfer, whichever occurs first.”

Task Force members discussed what happens if the contractor occupies a new home for a period of time and then sells it. It is their intent in this circumstance that the home would not be considered a new home, but a regular real estate transaction on a previously occupied/used home. Also discussed was using CCB’s definition of occupancy.

MOTION: Tom Skaar moved to approve the Phase II, proposal no. 1 with the amendments to: 1) change to read: No Disclaimer, Limitation or Waiver of Warranty Permitted; and 2) under Scope of Warranty, No. 2, revise to read: “Commencement will occur at the time of first occupancy or title transfer, whichever occurs first.”.

VOTE: 8-0, Ayes—Deharport, Grasberger, Fahr, Malany, Nesmith, Schauer, Skaar, and Vavrek.

MOTION PASSED

D. Phase II, #3 Wrap Project Limits: (Exhibit 4 and Exhibit E)

Task Force members discussed the recommendations and suggested adding a definition of distribution systems to the report.

MOTION: Tom Skaar moved to approve the Phase II, proposal no. 3 with an amendment to add a statement to the report that this proposal has nothing to do with ORS 30.140 and does not impact the viability of wraps in the State of Oregon.

VOTE: 8-0, Ayes—Deharport, Grasberger, Fahr, Malany, Nesmith, Schauer, Skaar, and Vavrek.

MOTION PASSED

III. FINALIZE LEGISLATIVE REPORT:

The Task Force members reviewed the draft report, made recommendations for revisions. The revisions were made and a second draft was distributed (**Exhibit C**). Task Force members determined that the additional issues should be broken out into three categories: design issues; construction issues; and claims issues and were revised to read as follows:

A. Additional Issues to Consider:**Design Issues:**

- **No insurance requirements for architects and engineers and other design professionals**

During the course of its discussion of insurance issues the task force noted that architects, engineers, and other designers are not required by law to maintain liability insurance coverage for the work they perform. The task force believes

that additional analysis of the insurance requirements for architects and engineers may be appropriate.

- **Architect Training**

Based on the Task Force recommendation that contractors and their employers obtain training and certification on code and envelope construction, the Task Force believes that similar training requirements would be appropriate for architects.

- **Lack of envelope design details**

During the course of its work an issue was raised as to the lack of required envelope design detailing on structural plans. The task force believes that the requirement of additional envelope details provided on building plans may merit further analysis.

Construction Issues:

- **No sanction for repeated re-inspections**

During the course of public testimony a concern was raised that jurisdictions have limited ability to provide a sanction for contractors whose work required repeated re-inspections in order to get the work to code. In addition the Task Force observed that such information may be useful to consumers when they select a contractor. While the issue was raised too late in the process for the Task Force to fully discuss the issue, the task force believes that additional analysis on the issue may be appropriate.

Claims Issues:

- **Failure to mediate dispute prior to filing lawsuit or enforcing arbitration rights**

During the course of its work the Task Force noted the time and expense involved in resolving construction defect disputes in the courts or through arbitration. Currently, nothing in Oregon law requires parties and the insurance companies involved in a construction dispute to mediate resolution of the dispute prior to filing a lawsuit or enforcing arbitration rights. The Task Force believes that mandatory mediation prior to filing a lawsuit or enforcing arbitration rights merits further analysis.

- **Ability of a limited liability company to dissolve and leave contractor liable**

During the course of its work, the Task Force noted that a business entity is allowed to dissolve after its purpose has been achieved (a construction project), potentially leaving the contractor, subcontractor, owner, design professional or others liable for the full project. The Task Force believes current requirements governing dissolution may be inadequate and may merit further analysis.

- **High transactional costs in insurance litigation**

During the course of meeting discussions, the Task Force identified an issue related to the fact that construction contractors' liability insurance claims have higher defense costs than other general liability classes. There are many differing theories as to why these litigation costs are higher and what can be done about

them ranging from proposals that would discourage litigation, such as mediation, tort reform, and avoidance of frivolous lawsuits, to those that would encourage timely settlement of claims, such as a private right of action for bad faith. The Task Force believes that the causes of high transactional costs in insurance litigation may merit further analysis.

- **Indemnification of additional insured parties in construction contracts**
During the course of discussion the Task Force identified an issue related to the indemnification of additional insured parties in construction contracts. Questions were raised regarding the meaning of certain statutory provisions, as well as judicial decisions and insurance policy language related to indemnification of additional insured parties. The Task Force believes that the statutes governing indemnification of additional insured parties may merit further analysis.

B. Recovery Fund Proposal.

Task Force members discussed the recovery fund and what limits should be placed on the fund and when the assessment of a fee would be utilized.

MOTION: Eric Grasberger moved to approve the recovery fund proposal with an amendment to set the minimum fund balance at \$250,000; the fund shall be funded by civil penalty money collected by CCB from prior year. If the fund is less than \$250,000, CCB may assess residential contractors a fee to bring the fund balance up to \$250,000 balance and the assessment will be no more than \$40 per contractor.

VOTE: 8-0, Ayes—Deharport, Grasberger, Fahr, Malany, Nesmith, Schauer, Skaar, and Vavrek.

MOTION PASSED

IV. PUBLIC COMMENT:

No public comment.

V. ADJOURNMENT

Chair Grasberger adjourned the meeting 1:50 p.m.

Exhibits:

- 1 – CCTF Agenda/Timeline (1 page) – *Agenda item I-E*
- 2 – Draft legislative report (13 pages) – *Agenda item III*
- 3 – Phase I proposals (59 pages) – *Agenda item II*
- 4 – Phase II proposals (6 pages) – *Agenda item II*
- A – Training requirements for architects on building envelopes (1 page)
- B – List of Recommendations requiring administrative or legislative action (3 pages)
- C – Updated draft report (13 pages) – *Agenda item III*
- D – Updated first party warranty proposal (1 page) – *Agenda item II*
- E – Updated wrap proposal (1 page) – *Agenda item II*
- F – Draft Recovery Funds report from NASCLA, Craig P. Smith, CCB (21 pages)
- G – Comparison Between Provisions of First-Party Warranty and ORS 100.185 Warranties (Condos) (2 pages)