

# **CONSTRUCTION CLAIMS TASK FORCE**

## **PHASE 2**

### **PROPOSALS**

**DECEMBER 20, 2006**

- **First Party Warranty**
- **General Liability Coverage**
- **Wrap Project Limits**
- **Voluntary Loss Control Discounts**
- **Data Reporting Requirements**

**Phase II Proposal #1 First-Party Warranty Proposal**  
**Part 1 - Two Year Warranty**  
**Part 2 – Ten Year Structural Warranty with Optional Third Party Provider**  
**December 20, 2006**

*At the November 28, 2006 meeting the Construction Claims Task Force moved to have staff clarify specific areas of the mandated first party warranty for new residential structures and the ten year structural warranty program. Following those directives, staff has revised the outline of the warranty proposals to create a general document providing direction to the final drafting of the warranty language.*

Policy Statement: The Construction Claims Task Force, as directed in House Bill 2078, reviewed the possible impact of warranties on the filing of construction claims and recommends that a two year first-party warranty be implemented in Oregon. In addition, a ten year structural defect warranty should be established as a consumer protection which the contractor may elect to provide on a first party basis or may choose to back with a warranty contract offered by a third party vendor.

**The Construction Claims Task Force recommends that the 2007 Legislature adopt a statute that would provide for the following:**

**General Warranty Requirement**

Every builder of a new residential structure must provide a written first- party warranty for two years.

A separate structural defect warranty should be provided for ten years. The structural defect warranty may be provided on a first-party contract by the builder, or on a separate warranty contract purchased from a warranty provider.

**Scope of the Warranty:**

1. Warranty will apply to new residential structures
2. Commencement will occur at the time of first occupancy.

**Warranty Coverage:**

1. During the initial one-year period the residential structure will be free from any defect
2. During the second year the distribution systems and building envelope will be free from any defect.
3. During the ten years from the date of first occupancy the residential structure will be free of any structural defect.

**Warranty will be recorded in Deed Record.**

**No Disclaimer or Waiver of Warranty Permitted.**

**Warranty Claim Process/Enforcement:**

1. If damage is discovered during the first year Construction Contractors Board (CCB) dispute resolution process may be used.
2. If damage is discovered after the time frame for CCB dispute resolution action the process of claim under ORS 701.560-701.600 would be required to institute a cause of action.

**Damage Remedies Shall Include Attorney's Fees for the Prevailing Party.**

## Phase II Proposal #2: General Liability Coverage December 20, 2006

*At the September 19, 2006 meeting the Construction Claims Task Force moved to have staff outline specific suggestions to amend required coverage under ORS 701.105 to include the requirement for completed operations liability. In order to accomplish this action, a statutory change will be required.*

Policy Statement: Oregon law requires general liability insurance in order to obtain a contractors license in Oregon. The current law only requires that the insurance apply while the work is in progress. The Task Force has determined that better consumer protection would exist if coverage obtained by contractors was required to include completed operations liability. Completed operations liability would extend to bodily injury or property damage that occur due to the contractors negligence and occur after the job is complete.

### 1. Requirement of Completed Operations Liability

Staff recommends that the current language under ORS 701.105 be changed to read:

**Insurance required of licensed contractors; alternative form of security; rules.** (1) Except as provided in subsection (2) of this section, a contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance *including completed operations liability* covering the work of the contractor that is subject to this chapter, for an amount not less than:

### 2. Enforcement

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).

Enforcement of the requirement to include completed operations should continue under this existing format as a function of the CCB. This provides the opportunity for enforcement action including suspension of the license if it is found that the coverage represented for the contractor does not properly meet the requirement.

A change in the rule under OAR 812-003-0200 (3) should add the requirement that the certificate of insurance specifically indicate that completed operations coverage is included.

### 3. Implementation

A phase-in period will be necessary to implement the new requirement. Contractor's general liability is written on an annual basis. The change should be implemented so that contractors are required to obtain the completed operations coverage and provide the new certificate on or before the renewal date of their current policy.

**Phase II Proposal #3 Wrap Project Limits Proposal**  
**December 20, 2006**

*At the November 28, 2006 meeting the Construction Claims Task Force moved to have staff modify the statutes pertaining to rating for group general liability policies, ORS 737.600.*

Policy Statement: The Task Force determined that it is in the consumer's interest to assure that contractors have access to general liability coverage when working on owner controlled or contractor controlled building projects. Currently, wrap projects without workers' compensation are primarily written in the surplus lines market. Amending ORS 737.600(3) to remove contractor liability from the requirements of the fictitious group statute for group general liability policies would remove certain restrictions that may be limiting the ability of admitted carriers to write in this market.

This proposal would streamline the rate filing requirements for contractor group general liability coverage by exempting contractor liability from the fictitious group statute of the insurance code. Several other business areas such as lumber and certified daycare services are already exempted from this section of the insurance code.

Amend ORS 737.600(3) to remove contractor liability from the requirements of the fictitious group statute for group general liability policies.

**Phase II Proposal #4 Voluntary Loss Control Discounts Proposal****December 20, 2006**

*At the September 19, 2006 meeting the Construction Claims Task Force moved to have staff outline suggestions for a draft bulletin concerning voluntary loss control discounts. Proposed language for the bulletin appears below.*

Policy Statement: Since construction defect liability claims often emerge and settle several years after project completion, there can be a significant time lag between the adoption of best practices or other efforts expected to reduce claims and the loss data showing the effect of the efforts. The purpose of this bulletin is to encourage insurers to implement voluntary loss control discounts in their rating plans for contractors who adopt the recommendations of the Task Force rather than have insurers wait for the claim experience to reflect the loss reduction measures.

Insurance Division Bulletin INS 2007-xx

To: All Insurers

Re: Loss Control discounts for construction contractors.

The Oregon Construction Claims Task Force, which was convened by the 2005 Oregon State Legislature. Several best practices have been identified such as the use of high quality building materials, artisan training, installer education and in-construction inspection programs. *[Drafting note: list will be finalized after CCTF report of final recommendations is complete].*

For rating purposes these recommendations are considered new practices, and the Insurance Division recognizes historical loss experience may not be predictive of future claims for these contractors. Since these changes are expected to lower contractor liability claims, the Oregon Insurance Division encourages insurers to offer voluntary loss control discounts for these best practices. Any insurer who offers discounts for contractors adopting, some or all, of the best practices recommendations of the Oregon Construction Claims Task Force will not be required to include statistical support for these discounts in their filings with the Department of Business and Consumers under ORS 737.205 and ORS 737.310.

Insurers are expected to collect and maintain data as required under ORS 737.230 to support and update their filed discounts when this bulletin expires or is withdrawn.

## **Phase II Proposal #5 Data Reporting Requirements Proposal**

### **December 20, 2006**

*At the November 28, 2006 meeting the Construction Claims Task Force moved to have staff outline suggestions for the Oregon Insurance Division to be given the authority to require a data call for construction contractor liability insurance coverage.*

**Policy Statement:** In order to review and monitor the effectiveness of the Task Force recommendations, the Insurance Division will develop a set of data items to be reported by insurers on an as needed basis.

The Insurance Division would determine the required data elements to be reported in collaboration with contractor liability insurers, including those in the surplus lines, and other industry representatives, including contractors and consumer representatives based upon the input and guidance from a task force or other advisory group. The data elements may include the gross premium written, contractor policy counts, paid losses, case reserves or other metrics as determined to be necessary to monitor the availability or affordability of contractor liability insurance for the market segments specified. The areas targeted by the task force and those segments identified as experiencing difficulty in the liability insurance market may also serve as a guide.

The data may be collected going forward or on a limited historical basis. The costs of insurer programming and the cost for state agencies to collect and monitor the data reported should be considered relative to the expected benefit, which the information will provide.

The purpose of any data collected would be to monitor the effectiveness of the actions of the CCTF on construction defect liability claims as well as the effect on the availability and affordability of contractor liability insurance.

DCBS currently has the authority to call for data on a targeted request. However, this proposal would require a statutory change if a report were to be required on a regular ongoing basis.