

CONSTRUCTION CLAIMS TASK FORCE

Draft

Regular Meeting Minutes

September 21, 2005

The Construction Claims Task Force met on Wednesday, September 21, 2005, in Room 260, Labor and Industry Building, 350 Winter Street NE, Salem, Oregon.

Members Present: David DeHarrport
Jon Fahr
Eric Grasberger
Elsie Jones
Bill Nesmith
Laura Schauer
Tom Skaar
Jim Vavrek
Steve Malany (*via phone conference*)

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
Richard Baumann, Building Codes Division
Reese Lord, Building Codes Division
Ravi Mahajan, Building Codes Division
Michael Morter, Insurance Division
Cece Newell, Insurance Division
Rae Taylor, Insurance Division
Bill Boyd, Construction Contractors Board
Cathy Dixon, Construction Contractors Board
Gina Fox, Construction Contractors Board
Steve Corson, Department of Consumer and Business Services

Guests Present:

Derek Atwood, Contractors Insurance Service	Tom Dymont, CBIC
Jeff Manning, Oregonian	Toni Chodrich, Oregon Mutual
Steve Murrell, State Farm Insurance	Myles Eldsmore, Oregon Mutual
Carl Heberlein, Allied Insurance	Renee Haynes, HADD
Joe Johnson, Johnson Construction Contracting	Kelly Janie
Steven C. Burke, Representing homeowners/builders	Daniel L. Duyck, Schwabe Williamson & Wyatt PC
Kristen Reppeto, Insurance Producer	Larry Peabody, Superior Exteriors Inc
Terry Hurst, NW Natural	Matt Markee, Surplus Line Association
Stephen Kafoury, OR Remodelers Assoc.	Joyce Faltus, consumer
Bill Cross, OR Building Officials Assoc.	Ken Cochran, AFSCME Local 3856
Shawn Miller, PCI, Liberty NW	Sherri Lund-Fery, CISI
Chuck Day, Adair Homes	Brian Miller, Farmers Insurance
Kelly Ross, CBIC	Amanda Rich, CBIC

Jim Bolt, ABC Roofing
Pat Dorney, CBIC
Jeff Dean, Associated Builders & Contractors
Jim Varco, HADD
Lana Butterfield, DIAO-1, Safeco
Brian Doherty, CBIC
Marla Gibson, consumer
Lani Parr
Don Miner, OMHA

Drew Hagedorn, CFM
John Knepp, Pector Risk Management
Jon Chandler, OR Home Builders Assoc.
Angie Dilkes, Pac/West Communications
Jessica Adamson, Assoc. Gen. Contractors
Scott Barrie, OR Home Builders Assoc.
Eric Anderson, Wiss Janney Elstner
John Costello, Pinnell Busch
Jack Munro, AIA, IIABO

Action Items

- Submit public notice for Nov. 1 2005 meeting.
- Provide insurance study materials to task force.
- Research case studies from Washington, Arizona, New Jersey, Colorado, and British Columbia.
- Draft guidelines for providing public testimony.

I. TASKFORCE BUSINESS

A. Call to Order:

Cory Streisinger, Director, Department of Consumer and Business Services called the meeting to order at 1:30 p.m.

B. Opening Comments and Introductions:

Director Streisinger welcomed everyone and thanked the task force members for their service. She provided some background on the department's involvement in this issue. The Department of Consumer and Business Services (DCBS) is Oregon's largest consumer protection and business regulatory agency. During the 2003 Legislative Session, a number of construction contractors contacted the department to discuss the difficulties they were having in obtaining liability insurance. A number of insurers were leaving the market and insurance coverage being harder and harder to obtain. A fair amount of time has been spent looking at the insurance issues. It has become clear that we needed to take a broader look at what is going on in the construction industry and what is driving construction claims. The task force is charged with looking at a broad range of construction issues, construction claims, and construction practices and make recommendations about how to create a construction industry that is even stronger than the one that we have today. Director Streisinger emphasized the importance of the construction industry to Oregon's economy, as well as the importance for consumers of having confidence in the quality of the homes they purchase - often the largest single investment they will ever make. Director Streisinger pledged the necessary staff support to assist the task force.

Craig Smith, Administrator, Construction Contractors Board (CCB), welcomed and thanked Task Force members for their service. The Construction Contractors Board (CCB) is the state agency that works to hold contractors accountable for their business practices. The Board works to accomplish this goal through consumer education, contractor education, contractor licensing, dispute resolution, and enforcement of contractor regulations. Administrator Smith suggested that the Task Force will be a vehicle to help Oregon's construction industry prevent future construction defects, and

improve the overall quality of work performed by construction contractors. Mr. Smith went on to highlight the important role that small businesses play in Oregon's economy, and emphasized that solutions to the construction defects problem should maintain a healthy climate for small businesses.

Director Streisinger turned the meeting over to Mark Long.

Mark Long, Administrator of the Building Codes Division, thanked all the taskforce members and the audience for attending the meeting. The Building Codes Division adopts the codes that buildings are subsequently built to. To the extent that the codes and the products that are approved under the state building code are contributing to the problem, the division will work to address these issues. We want to be part of the solution and work with all of you on the issues of insurance, consumer protection, codes and standards and inspections.

Taskforce members were asked to introduce themselves and tell who they represent and what they hope to accomplish.

Mark Long introduced some of the key staff members on the taskforce: Rich Baumann, Building Codes Division; Cathy Dixon, Construction Contractors Board; Michael Morter, Insurance Division; Cece Newell, Insurance Division; Reese Lord, Building Codes Division; and Bill Boyd, Construction Contractors Board.

C. Election of Chair and Vice Chair:

Mark Long opened the nominations for chair of the taskforce. Jim Vavreck nominated Eric Grasberger to serve as chair and it was a consensus of taskforce members that Mr. Grasberger would serve as chair. Elise Jones nominated Laura Schauer to serve as vice-chair. It was a consensus of taskforce members that Ms. Schauer would serve as vice-chair.

D. Project Update—Overview and Work Plan:

Mark Long discussed the work plan with taskforce members. **Exhibit 1.** Phase I: Define the scope of the insurance study; defect data and regulatory framework (fall 2005). Phase II: Gather data: monitor research, and hold expert presentations (spring 2006). In November and December 2005 the taskforce will review construction defects data, discuss the regulatory environment, determine research needs, and review national and international comparisons. Discuss RFP for construction defects study. Phase III: Review and analysis: review studies, evaluate proposed actions, and solicit feedback (summer 2006). Monitor progress of insurance and construction defect studies. Analyze construction claims versus state mandates. Look at cost benefit analysis. The insurance study report should be completed by May and delivered to taskforce members. During the period May through July 2006 the taskforce will analyze the data and draft the report and develop a list of proposed actions and recommendations. Phase IV: Report: draft legislative report and present findings to legislative assembly (fall 2006).

E. Taskforce members discussed the dates for the next two meetings. The next meeting will be held Tuesday, November 1, 2005 from 1:30-4:00 p.m. in the L&I Building, Room 260. The third meeting was set for December 2, 2005, from 9:30 a.m. to 12:00 p.m. at the same location. A meeting notice will be sent to all parties on the taskforce's mailing list.

Information about the taskforce will be available on the website as well (<http://egov.oregon.gov/DCBS/CCTF/>)

II. NEW BUSINESS

Review Scope of Insurance Study:

Michael Morter and Rae Taylor of the Insurance Division discussed the draft insurance study RFP scope of work with taskforce members. **Exhibit 2** and **Exhibit 3**. The RFP must be reviewed by the Department of Justice and the Department of Administrative Services prior to release. The goal is to award the contract by mid-December 2005.

The scope of work states that the contractor shall study options and make recommendations regarding actuarially sound insurance reforms, alternatives and pricing, including loss control discounts or the designation of a single private insurer to provide construction contractor insurance coverage required under ORS 701.105. Options shall be evaluated against the two goals of ensuring the availability and affordability of contractor liability insurance and maintaining or increasing consumer protection, including consumer remedies for construction defects. Things to be studied include: alternative coverage mechanisms, pricing options, and insurance reforms. The contractor shall attend at least three taskforce meetings. The contractor will provide monthly reports to the taskforce. The first draft report will be due May 1, 2006. The final report will be due July 31, 2006.

Taskforce members asked that a copy of the RFP and the scope of work documents be sent to them electronically for their review. Director Streisinger stated that she would send them a copy.

Mark Long reported that staff would be gathering information on what other states have done to deal with construction defects and will have a summary for the next meeting. States listed were Washington, Arizona, New Jersey, and Colorado. Also Vancouver, British Columbia.

Taskforce members discussed the need for guidelines regarding public testimony. It was agreed that some meetings will have less time devoted to public comment and more time set aside for the taskforce members to discuss the issues while other meetings can have more time devoted to public comment. Staff will submit recommendations for discussion at the next meeting.

III. PUBLIC COMMENT

William (Jim) Bolt, ABC Roofing Inc.: Mr. Bolt submitted **Exhibit A** into the record. Mr. Bolt is a roofing contractor with 56 years of experience. He testified that his insurance went from \$30,000 three years ago to over \$100,000. He believes that EIFS is responsible for most moisture-related construction claims. .

Renee Haynes, Homeowners Against Deficient Dwellings (HADD), homeowner: Ms. Haynes submitted **Exhibit B** and **Exhibit Q**. Ms. Haynes believes that the mold in her home was the result of building during a very wet winter and closing up the home without allowing time for materials to dry. She believes the resultant mold is responsible for serious health consequences for her family. Ms. Haynes expressed concerns that the task force may be biased in favor of industry, and implored the task force to "protect families

and children like mine, not finding better ways to shield themselves from responsibility.” She proposed several recommendations:

- Outlaw binding arbitration that gives shoddy builders something to hide behind.
- Outlaw substandard materials such as mold filled grain and strand board and stucco.
- Require moisture readings to be well below levels that support mold growth before homes are closed.
- See that inspectors actually protect citizens as they are paid to do.
- Obligate builders to fully insure themselves, which is currently required, but not enforced.
- Establish record keeping that flushes out the individuals that operate without ethics and prevent them from dissolving companies and reforming under new names. Establish ethics in your own industry.
- Require builders to build homes right the first time and when errors are made, fix them.

In response to a question from Chair Grasberger, Ms. Haynes elaborated on her testimony about arbitration. She expressed concerns that arbitration companies are formed and paid for by the construction industry and they often have personal relationships between the arbitrator and their builder.

Jim Varco, HADD, homeowner. Mr. Varco submitted **Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit H, and Exhibit I**. Mr. Varco requested that the task force schedule some of the meetings when the average working person could possibly attend. Mr. Varco described a series of problems he encountered while having a home built in Lane County.

Dan Duyck, attorney, Schawbe, Williamson & Wyatt PC. Mr. Duyck emphasized that other jurisdictions have studied this issue. He encouraged the task force to look at the Vancouver, British Columbia study as well as the work of RDH Building Engineers and Morrison Hershfield.

Joyce Faltus, homeowner. Ms. Faltus submitted **Exhibit J, Exhibit K, Exhibit L, and Exhibit M**. Ms. Faltus described in detail the construction defects with her Central Oregon home.

Marla Gibson, homeowner. Ms. Gibson submitted **Exhibit N**. Ms. Gibson described some of the problems she encountered during construction of her home and offered suggestions to the task force.

- Builders should have to carry insurance for their workmanship or have X amount of dollars that would cover damages to a home.
- Increase the amount of bond available through the CCB complaint process and ensure that estimate of damages are accurate.
- Building departments should review plans and say whether they are good plans or deficient plans. I think the inspector should notify the homeowner and inform them of serious problems that are not specific to the code. That is what I had counted on as a consumer.

Steven C. Burke, attorney. Mr. Burke identified areas that in his experience the task force should examine including: Contractor accountability, the use of unskilled labor, licensing

requirements, construction practices related to the use of caulk, airtightness, and inconsistent code enforcement. Mr. Burke offered suggestions to the task force.

- Homeowners should have to put a builder on notice that they have a claim, but mandating a right to cure is not the best idea because there are situations where you don't want that contractor to come back.
- Pass a "looser pays" law to reduce lawsuits. Look for alternative dispute resolution to resolve consumer and builder disputes. Arbitration is not very good, if the contractor looses, there is nothing that is done about it; no record is created.
- Wrap-up policies would help reduce claims and prevents claims in good ways.

John Costello, design consultant, Pinnell Busch. Mr. Costello encouraged the task force to look at research conducted nationwide on this issue. He also expressed concerns that front line inspectors are not made aware of the size and scope of the problems. He closed by saying "If you can reduce construction deficiencies or set up structures to address those problems, the insurance problems will fall into a non-problem area."

Larry Peabody, contractor, Superior Exteriors. Mr. Peabody has extensive experience in repairing building envelopes. He suggested making it harder to become a licensed contractor. Standards, certification/training, and inspections need to focus on windows, siding, and roofing and deck installations, including caulking, flashings and sheet metal installations.

John Knepp, Pacific Risk Management Insurance. Mr. Knepp has been in the insurance business for 28 years. He testified that the majority of problems around construction defects are the result of a small minority of contractors. He believes insurance policies are not clear to contractors and homeowners.

Joe Johnson, Johnson Construction Consulting. Mr. Johnson suggested the task force set of standards for quality; look at California as an example. Three areas of concern are design, quality control/quality assurance, and homeowner maintenance. Mr. Johnson offered the following suggestions to the task force:

- Pre-construction review of designs is important in relation to water penetration issues.
- Develop standards regarding flashing, caulking, and vapor barriers that workers understand
- Verify that work is being done correctly through third party inspectors and/or training and certification of contractors
- Documentation of the project should be ongoing to prove that the work is being done correctly or check list.
- Identify homeowners' responsibility to provide adequate maintenance.

IV. ADJOURNMENT

Chair Grasberger adjourned the meeting 5:17 p.m.

Exhibits:

- 1 - Project update/workplan (2 pages) - *Agenda item I-D*
 - 2 - Summary of RFP (1 page) - *Agenda item II*
 - 3 - RFP section 2, scope of work (1 page) - *Agenda item II*
- A - ABC Roofing on defects issues (4 pages) - *Agenda item III*
B - Consumer Reports "Housewrecked" (7 pages) - *Agenda item III*
C - Letter from Greg Malkasian (1 page) - *Agenda item III*

- D - Letter from Rebai Tamerhoulet (5 pages) - *Agenda item III*
- E - Field inspection by Doug Dick (5 pages) - *Agenda item III*
- F - Suggestions (1 page) - *Agenda item III*
- G - House of Horrors article 8/3/03 (7 pages) - *Agenda item III*
- H - Homeowner's nightmare article 5/7/04 (1page) - *Agenda item III*
- I - House from hell article 12/1/04 (1 page) - *Agenda item III*
- J - Letter to task force (9 pages) - *Agenda item III*
- K - New Jersey investigation (7 pages) - *Agenda item III*
- L - Lindsay email (1 page) - *Agenda item III*
- M - Urgent need for protection (4 pages) - *Agenda item III*
- N - Letter to task force (3 pages) - *Agenda item III*
- O - British Columbia safeguards article (1 page)
- P - Mold and moisture intrusion report (3 pages)
- Q - Letter to task force (1 page) - *Agenda item III*