

HB

340



6

HOUSE COMMITTEE REPORT

1-26-04

(7)

Date Referred to Committee: January 12, 2004

FURTHER REFERRALS: Judiciary

Date of Committee Action: January 23, 2004

The LABOR AND COMMERCE Committee considered:

HB 340

HOUSE BILL NO. 340

DAMAGES IN CONSTRUCTION CLAIMS

"An Act relating to damages in an action for a defect in the design, construction, and remodeling of certain dwellings; and providing for an effective date."

Recommends it be replaced with [ ] HCS or [X] CS for HB 340 (LSC)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR [X] Same Title [ ] New Title

- [ ] attach amendments
[ ] add new referral to Committee
[ ] Letter of Intent Committee

List of Abbrev for Depts.: ADM, CED, COR, CRT, EED, DEC, DFG, GOV, HSS, LEG, LAW, LWF, MVA, DNR, DPS, REV, DOT, UA

Table with 5 columns: List by Dept(s), \*FN#, Fiscal, Indet., Zero. Row 1: CED, |, |, |, X

Table with 5 columns: List by Dept(s), FN#, Fiscal, Indet., Zero. All cells are empty.

Table with 6 columns: Signing with recommendations, Printed Last Name, DP, DNP, NR, AM. Rows include Crawford, Lynn, Gatto, Guttenberg, and Anderson.

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Don Bullock, Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** February 11, 2004  
**Re:** CS Request

---

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1266M, HB 340 with the changes written in the attached work draft, Page 3, Lines 4-6.

The bill was passed out of committee on Monday. If you have any questions, please call me at 4990. Thank you so much!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

23-LS1266V  
Bullock  
2/10/04

**CS FOR HOUSE BILL NO. 340(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVES MEYER, Anderson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to damages in an action for a defect in the design, construction, and**  
2 **remodeling of certain dwellings; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 09.45.893(c) is amended to read:

5 (c) The notice required by (a) of this section must be conspicuous and must be  
6 in substantially the following form:

7 ALASKA LAW AT AS 09.45.881 - 09.45.899 CONTAINS  
8 IMPORTANT REQUIREMENTS THAT YOU MUST FOLLOW  
9 BEFORE YOU MAY FILE A COURT ACTION FOR DEFECTIVE  
10 DESIGN, CONSTRUCTION, OR REMODELING AGAINST THE  
11 DESIGNER, BUILDER, OR REMODELER OF YOUR HOME.  
12 WITHIN ONE YEAR OF THE DISCOVERY OF A DESIGN,  
13 CONSTRUCTION, OR REMODELING DEFECT, BEFORE YOU  
14 FILE A COURT ACTION, YOU MUST DELIVER TO THE

1 DESIGNER, BUILDER, OR REMODELER A WRITTEN NOTICE  
2 OF ANY DESIGN, CONSTRUCTION, OR REMODELING  
3 CONDITIONS YOU ALLEGE ARE DEFECTIVE IN ORDER TO  
4 PROVIDE YOUR DESIGNER, BUILDER, OR REMODELER WITH  
5 THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY  
6 FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT  
7 ANY OFFER MADE BY THE DESIGNER, BUILDER, OR  
8 REMODELER. THERE ARE STRICT DEADLINES AND  
9 PROCEDURES UNDER STATE LAW, AND FAILURE TO  
10 FOLLOW THEM MAY AFFECT YOUR RIGHT TO FILE A COURT  
11 ACTION. ALASKA LAW AT AS 09.45.895 CONTAINS  
12 LIMITATIONS TO THE AMOUNT OF DAMAGES THAT MAY  
13 BE RECOVERED IN A COURT ACTION FOR DEFECTIVE  
14 DESIGN, CONSTRUCTION, OR REMODELING.

15 \* **Sec. 2.** AS 09.45.895 is repealed and reenacted to read:

16 **Sec. 09.45.895. Limitation on damages; collateral sources.** (a) Except as  
17 provided in (c) of this section, in an action covered under AS 09.45.881 - 09.45.899, a  
18 claimant may recover only the following damages caused by a defect:

19 (1) the reasonable cost of repairs necessary to cure a defect, or actual  
20 damages that result from the construction defect, including reasonable and necessary  
21 engineering or consulting fees required to evaluate and cure the defect, that the  
22 construction professional is responsible for repairing;

23 (2) the reasonable expenses of temporary housing reasonably  
24 necessary during the repair period;

25 (3) the reduction in market value, if any, to the extent that the  
26 reduction is due to the defect; and

27 (4) reasonable and necessary attorney fees.

28 (b) In an action under AS 09.45.881 - 09.45.899, a court shall deduct from the  
29 compensation awarded to a claimant any compensation paid to the claimant under a  
30 homeowner's warranty contract or a homeowner's insurance policy as compensation  
31 for the defects that are the subject of the action. The amount of this deduction does

1 not include any compensation paid by the construction professional to the claimant to  
 2 satisfy the claim or any compensation paid under an insurance policy issued to the  
 3 construction professional to satisfy the claim.

4 (c) Subsections (a) and (b) of this section do not apply if the defect was caused  
 5 by gross negligence, <sup>or reckless or intentional misconduct</sup> ~~or fraud~~ by the construction professional. ~~In this subsection,~~  
 6 ~~"gross negligence" means reckless, wilful, or wanton misconduct.~~

7 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
 8 read:

9 APPLICABILITY. This Act applies to an action covered under AS 09.45.881 -  
 10 09.45.899 that accrues on or after the effective date of this Act.

11 \* Sec. 4. This Act takes effect July 1, 2004.

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** February 9, 2004  
**Re:** CS Request

---

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS1266H, HB 340, incorporating the attached two amendments. Amendment one is straightforward. Regarding conceptual amendment #2, our suggestion is as follows, but please feel free to offer your suggestions:

Create a new subsection:

This section does not apply to actions where the construction professional is found to be fraudulent and/or grossly negligent. For purposes of this subsection, "gross negligence" means reckless, wilful, or wanton misconduct. (same as AS 18.08.086)

The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

CSHB 340 (L+C) version # - PASSED

Amendment # 1  
by Rep. McGuire

Page 2, Lines 28-30:

Delete (b) in its entirety.

CS HB 340 (L+C) version H - PASSED  
Conceptual  
Amendment # 2

by Rep. OGG

\* additional  
Create exception for actions that are  
a result of: gross negligence and/or fraud.



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

DATE: January 26, 2004

TO: Representative Lesil McGuire  
Chair, House Judiciary Committee

FROM: Representative Kevin Meyer *Kevin Meyer*

RE: CS HB 340 (L&C) Damage *Kevin Meyer* Construction Claims

---

At your earliest convenience, please schedule CS HB 340 (L&C) Damages in Construction Claims for a hearing in the House Judiciary Committee.

CS HB 340 (L&C) places a limit on the damages that can be awarded in a construction defect lawsuit to the actual cost of fixing the defect and other closely related costs.

Thank you for your time and consideration of this matter.



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## SPONSOR STATEMENT

### CS HB 340 (L&C)

**“An Act relating to damages in an action for a defect in the design, construction, and remodeling of certain dwellings; and providing for an effective date.”**

CS HB 340(L&C) Damages in Construction Claims places a limit on the damages that can be awarded in a construction defect lawsuit to the actual cost of fixing the defect and other closely related costs. This bill does not apply to, limit, or otherwise affect lawsuits alleging personal injury or wrongful death resulting from construction defects.

Beginning in 2001, a disturbing trend among insurance carriers developed that is impacting the housing industry nationwide, but particularly in Alaska. Construction professionals are paying significantly higher insurance premiums for statutorily required general liability insurance. Under AS 08.18, a contractor must file with the State of Alaska satisfactory evidence that the applicant has public liability and property damage insurance covering the applicant's contracting operations in this state.

Coupled with the rising costs in mandatory insurance, contractors and subcontractors are also facing a decline in policy availability and number of insurance carriers in the state of Alaska. If a construction professional is able to find affordable insurance, often the policy is limited in coverage, and generally excludes coverage for any claims arising out of a construction defect.

The cause of these difficulties is the increase in construction defect litigation. Insurance carriers are passing expenses incurred due to these lawsuits on to construction professionals in the form of increased premiums. Insurance carriers are pulling out of the Alaska residential construction market, thus making it difficult to obtain required liability insurance.

CS HB 340(L&C) provides a working solution to the cost of general liability insurance and availability of quality insurance providers in Alaska. By establishing a limit on the amount of damages that may be recovered in a construction defect lawsuit, insurance carriers can see that Alaska is working towards establishing a less risky insurance environment. The passage of CS HB 340(L&C) will create an incentive for national carriers to return to Alaska and provide construction professionals with a break in the cost of mandated insurance.

Last Updated: January 26, 2004



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

**DATE:** January 26, 2004  
**TO:** Representative Lesil McGuire  
Chair, House Judiciary Committee  
**FROM:** Representative Kevin Meyer *K-M*  
**RE:** CS HB 340 (L&C) Damages in Construction Claims

---

HB 340 was amended in the House Labor and Commerce Committee. The following changes occurred, resulting in a House Labor and Commerce Committee Substitute.

1. A new section was added that amends AS 09.45.893(c). Language was added to the required notice, which must be provided to a homebuyer by a construction professional. In the notice, the homebuilder must notify the buyer that under AS 09.45.895, there are limitations to the amount of damages that may be recovered in a construction defect court action.
2. On page 2, line 20: The following language was added:  
Following: "defect,"  
Insert: " or actual damages that result from the construction defect,"
3. Sections were renumbered accordingly.



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## SECTIONAL ANALYSIS

CS HB 340 (L&C)

**“An Act relating to damages in an action for a defect in the design, construction, and remodeling of certain dwellings; and providing for an effective date.”**

**Section 1:** Provides that a homebuilder must provide notice of limitations to a homebuyer under AS 09.45.893(c).

**Section 2:** Repeals and reenacts AS 09.45.895. Provides that an action covered under AS 09.45.881-09.45.899, is limited to the following:

1. The reasonable cost of repairs to cure the defect or actual damages caused by the construction defect;
2. The reasonable temporary housing expenses, if any, during the repair of the defect;
3. The reduction in market value, if any, caused by the construction defect; and
4. The reasonable and necessary attorney fees.

Provides that damages awarded in a construction defect lawsuit may not exceed the greater of the purchase price of the house or the current fair market value of the house without the defect.

**Section 3:** Applicability

**Section 4:** Effective Date

Last Updated: January 26, 2004

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 340(L&C)  
 (H) Publish Date: 1/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Damages In Construction Claims RDU Occupational Licensing (117)  
 Component Occupational Licensing  
 Sponsor Representative Meyer  
 Requester Labor & Commerce Component No. 2360

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation relates to claims and court actions for defects in the design, construction, and remodeling of certain dwellings, and limits when certain court actions may be brought; it has no impact on the Department.

Prepared by: Rick Urion, Director Phone (907) 465-2538  
 Division Occupational Licensing Date/Time 1/21/04 12:29 PM  
 Approved by: Edgar Blatchford, Commissioner Date 1/21/2004  
 Agency Department of Community & Economic Development



**NAHB**  
NATIONAL ASSOCIATION  
OF HOME BUILDERS



## CIVIL JUSTICE REFORM

Civil Justice Reform is needed to counter the detrimental impact that increased costs of litigation have had on the housing industry. Civil Justice Reform has several key components, including class action reform and state notice & opportunity to repair laws. With respect to class actions, High Production Builders and affiliate members may be subject to class action lawsuits in the context of a product defect case. Class action lawsuits are subject to widespread abuse by trial attorneys and individual plaintiffs, resulting in costly and unfair settlements, skyrocketing insurance premiums, and unreasonable attorneys fees, with little benefit to consumers. The state notice & opportunity to repair laws create a system that requires homeowners to notify builders of alleged construction defects before commencing litigation. The process gives builders the opportunity to inspect the defects and offer to repair the defects or to settle the claim via monetary payment. The legislation's intent is to resolve disputes between builders and consumers without having to resort to time consuming and costly litigation.

On June 12, 2003 the House approved H.R. 1115, the "Class Action Fairness Act of 2003." The bill was approved by a vote of 253 to 170, with 32 Democrats voting for the legislation. NAHB sent a letter to the entire House in support of the bill and placed calls to Democrats who were undecided on the day of the vote. One amendment was adopted by voice vote on the House floor. The amendment broadens the category of class action cases that would remain in state court. The amendment was a compromise that mirrored an amendment authored by Senator Diane Feinstein (D-CA) and adopted by the Senate Judiciary Committee during its mark up of the Senate version of the class action bill. The adoption of the amendment increases the chance that the bill will move through the Senate and be passed into law. Supporters of the bill claim that reform is needed to curb the trend of "forum shopping," a practice in which class action cases are being filed in state courts that are known for awarding large settlements.

### Provisions of the amendment adopted on the House floor:

- Raises the aggregate amount in controversy required for federal court jurisdiction from \$2 million to \$5 million.
- If less than one-third of the plaintiffs are citizens of the same state, the case is automatically eligible for federal court jurisdiction under the new diversity rules in this bill.
- If between one-third and two-thirds of the plaintiffs are citizens of the same state as the primary defendants, the federal courts have the discretion, after weighing five factors, to determine if the case is appropriately of a local character and return intrastate class actions to state court.
- If more than two-thirds of the plaintiffs are citizens of the same state, the case remains in state court and is not subject to the new rules contained in this bill.
- If there are fewer than 100 plaintiffs, the case remains in state court.

The amendment substantially changed the reach of the original bill. NAHB is currently assessing the amendment, and its impact on our members, in anticipation of the Senate's review of the bill.

Senate Majority Leader Bill Frist (R-TN) has indicated that he is planning to bring class action reform legislation to the Senate floor for a vote sometime in this Fall. S. 274, the "Class Action Fairness Act of 2003", was reported out of the Senate Judiciary Committee in April. The bill is similar to the House passed class action bill, H.R. 1115.



**NAHB**  
NATIONAL ASSOCIATION  
OF HOME BUILDERS



#### CIVIL JUSTICE REFORM

NAHB worked with a consultant to gather data to help identify the underlying liability problems facing the building industry and to develop potential solutions that may address these problems. Further, a review was conducted of the constitutionality/legality and political feasibility of various tort reform options. This information enabled NAHB to develop and adopt a resolution on civil justice (tort) reform at the 2003 Spring Board of Directors meeting.

Efforts this year to advance Notice & Opportunity to Repair legislation have scored notable success, with 12 states passing new laws and others still considering them. As of October 20, 2003 notice and opportunity to repair legislation has been signed into law in 2003 by the governors of twelve states (Alaska, Colorado, Florida, Idaho, Indiana, Kansas, Kentucky, Montana, Nevada, Oregon, South Carolina, and West Virginia). Texas' major construction reform bill, which adds to their existing dispute resolution process, was signed by the governor on June 20. The new law includes building standards, which eliminates existing implied warranties, but creates a specific statutory warranty of habitability. NOR bills are still active in several states.

NAHB continues to work with national organizations of elected and appointed public officials that are considering reform of the nation's tort liability system.

#### NAHB Contacts

Sam Leyvas, Director  
State & Local Government Affairs  
(800) 368-5242 ext. 8362  
[sleyvas@nahb.com](mailto:sleyvas@nahb.com)

David Jaffe, Staff Vice President  
Construction Liability & Legal Research  
(800) 368-5242 ext. 8317  
[djaffe@nahb.com](mailto:djaffe@nahb.com)

Kathy Doddridge, Sr. Staff Vice President  
Legislative & Political Relations  
(800) 368-5242 ext. 8470  
[kdoddridge@nahb.com](mailto:kdoddridge@nahb.com)

#### NAHB Web Resources

[www.nahb.org](http://www.nahb.org)

#### Civil Justice Reform

**Alaska State Chamber of Commerce**

**2004 Position**

**Amend the Tort Laws and Regulations**

The Alaska State Chamber of Commerce supports amending tort laws and regulations to reduce the number of wasteful law suits and exorbitant settlements and awards that cause insurance rates to climb and businesses to become less competitive in Alaska.



## AIA Says Colo. Bill Provides Relief from Construction Defect Lawsuits

April 22, 2002

A bill making its way through the Colorado House would limit the damages available for civil actions arising out of construction defects and should be enacted as quickly as possible, according to the Alliance of American Insurers.

An amended version of the bill (HB 1398) passed in committee earlier this month. It would require a claimant to file a list of construction defects, limit civil damages, prohibit non-economic damages except for bodily injury or wrongful death and prevent suits for negligence where a building violation has been alleged unless the claimant can show actual loss or damages. Claimants would be entitled to reasonable costs of repairs and temporary housing, the reduction of market value, reasonable value of loss, reasonable attorney fees, additional costs incurred including expert fees and interest as permitted by law.

The introduced version of the bill applied to residential construction defect claims. However, the amended version eliminates the word "residential," extending the bill to all construction defect claims.

"This is a good bill because it is aimed at reducing the costs of construction defect litigation, which may help provide some relief to insurers and construction professionals in Colorado," Sarah White, a policy manager in the Alliance's property/casualty department.

Colorado is one of several states tackling the problem construction defect lawsuits are causing, she noted. "Washington Gov. Gary Locke (D) recently signed into law SB 6049, which establishes an alternative dispute resolution procedure, giving aggrieved parties other options besides litigation in these situations."

Construction defect lawsuits are a growing problem for contractors in many western states. Because of the increased amount of expensive litigation, insurers have either stopped writing policies to cover contractors, or have been forced to price the policies at rates up to 10 times higher than prior coverage.

"The issue of construction defect lawsuits is of major concern to our industry," White remarked. "Courts have been struggling with the definition of what constitutes a construction defect and whether or not they fall within the coverage of commercial general liability (CGL) policies. We believe CGL policies weren't intended as warranties.

"Many lawyers see this as another class-action shopping spree, and they are suing every contractor and subcontractor they can find, trying to get insurers to foot the bill. I've seen reports of one case that involved 20 contractors and 50 lawyers that ran for 22 weeks. The courts have been inundated by these lawsuits."

URL: [www.insurancejournal.com/news/newswire/west/2002/04/22/17507.htm](http://www.insurancejournal.com/news/newswire/west/2002/04/22/17507.htm)

**REBOUND?**  
**SUBSCRIBE NOW**

**GET 24 BIWEEKLY ISSUES PER YEAR**

OF THE MAGAZINE THAT SUCCESSFUL AGENTS AND BROKERS RELY ON

INCLUDING:  
 > EXCLUSIVE ARTICLES  
 > REGIONAL NEWS  
 > COVERAGE DIRECTORIES  
 > NEW MARKETS  
 > AND MORE!

**SAVE 45%**

WHEN YOU ORDER ONLINE

**CLICK HERE**

Tuesday, July 02, 2002  
Copyright © Las Vegas Review-Journal

## **INSURANCE CRISIS: Builders voice concerns**

Defect lawsuits blamed for rise in coverage costs

**By HUBBLE SMITH**  
REVIEW-JOURNAL

Hundreds of trade contractors Monday blamed an increase in frivolous construction defect litigation for an "insurance crisis" that threatens to cripple Nevada's home building industry.

"This situation has gripped the industry for several years and continues to get worse," said Steve Hill, president of Silver State Materials and chairman of the Coalition for Fairness in Construction, a group that was recently formed to lobby for legislative reform.

Hill was one of several hundred contractors who jammed the Sawyer State Building Monday to testify, via videoconference, before Nevada Insurance Commissioner Alice Molasky-Arman about the availability and cost of construction liability insurance.

More industry officials attended the hearings in Carson City.

The crisis is driving up the median price of a new home in Las Vegas, which is currently at \$187,000 and expected to top \$200,000 by the end of the year. Home builders estimate that 1,400 potential buyers are priced out of the market for every \$1,000 increase in price.

Additionally, Hill said, with construction jobs accounting for about 10 percent of Nevada's work force, the state can expect to see a rise in unemployment if this issue isn't resolved.

Robert Lewis, whose family has built 25,000 homes in Las Vegas since 1961, said one of the reasons he sold his company to KB Home in 1999 was the "hostile environment" for home builders resulting from construction defect litigation and the inability to get insurance.

"I always viewed insurance as a necessity to do business," he said. "Agents may have sold me more insurance than I needed, but it provided our company and our customers comfort and ease of mind."

Lewis said insurance coverage, when available, was not only expensive but

often limited. And instead of having choices, it became a take-it-or-leave-it proposition.

"I really don't blame the carriers since they too have become a victim of our litigious society," he said.

Bruce King, president of Pete King drywall and painting in Las Vegas and Arizona, testified that his insurance rates have gone from \$161,000 a year in 1999 to \$1.4 million that he expects to pay in August.

"Some people say it's because of September 11, but these insurance companies are not only raising their rates, they're leaving the state of Nevada," King said.

Builders would receive four to eight rate quotes just two to three years ago, whereas today they're lucky to get one or two quotes, said Mark Tomlinson, president of the Southern Nevada Home Builders Association.

Molasky-Arman said she's aware of the shortage, and has been sending out notices to beware of insurance companies that are not authorized to do business in Nevada. She said one has already been discovered.

Many things are feeding construction defect litigation, said Paul Wilkins, a building official in charge of permits and inspections for the city of Las Vegas.

"We expect homeowners, if there's a problem, to call up a contractor and they'll come out and fix it," he said. "There are some contractors where a customer calls and gets routed to customer service and they never get back to them."

Then there's the sheer volume of construction activity in Las Vegas. Over the past eight to nine years, Wilkins said construction valuation permits have exceeded \$1 billion a year.

"So that's going to attract a lot of people, all kinds of people," he said, suggesting the high volume of construction activity is probably attracting some lower-quality contractors and builders.

Insurance company representatives generally agreed with the contractors, saying rising premiums are primarily a result of settlements in construction defect cases.

"Insurance companies are basically saying we need to define what a construction defect is and how a policy is supposed to respond," said Rod Leavitt, owner of Leavitt Insurance Agency in Las Vegas.

For example, he asked, if a toilet doesn't sit straight and rocks back and forth, is that a defect or just a maintenance problem?

"A lot of things that were never contemplated to be covered by insurance, the legal society is calling it a defect," he said.

Nancy Quon, a construction defect attorney with the firm Mainor & Harris, said Monday's hearing was an attempt by the construction industry to dovetail with what's happening in medical malpractice insurance.

"It was merely an attempt to catch the Legislature's ear," she said. "A lot of this talk about the right to repair ... there was already legislation on the books that allowed them to do that, but they didn't take advantage of it."

This story is located at:

[http://www.reviewjournal.com/lvrj\\_home/2002/Jul-02-Tue-2002/business/19098091.html](http://www.reviewjournal.com/lvrj_home/2002/Jul-02-Tue-2002/business/19098091.html)

## Industry Under Siege:

### Contractors Face Greater Cost, Less Choice for Insurance

*by Joe Wheeler*

*From The Construction Zone: July 2000*

Nevada's contractors face increasing costs and less choice of insurance carriers for their general liability insurance thanks to construction defect lawsuits.

Cheryl Justin, branch manager of Comstock Insurance, said that construction defects are a national problem, and that insurance companies are looking harder at southern Nevada risks. One insurer, Hawkeye, has chosen to non-renew most kinds of residential subcontractors, while other insurance companies are excluding contractors who build condominiums.

"What happening is that with residential general contractors, or "paper" generals, it's becoming more difficult to find coverage for them," Justin said. "They are ultimately responsible for the work of all the subs, and if they've had any construction defect cases, it's hard to write them."

Federated Insurance is a well known insurer who still writes subcontractors who do residential construction. Rates have gone up and those who do work on condos will face much more scrutiny in underwriting. So far, Nevada isn't so bad, according to Justin. "We still have good insurance markets."

How long that lasts is a guess. Another problem facing contractors is the quality of the insurance companies willing to write construction risks. "There's a lot of companies who will write coverage," Justin said. "It's just that the companies may not be financially strong or the coverage is reduced."

Tom Wheeler, vice president of marketing for Nevada Contractors Insurance, said that construction defect loss control needs to begin with the project. Documentation of every phase of construction may answer questions of quality asked years later.

"NCI is just starting to offer products like general liability that expose the company to these types of suits," Wheeler said. "We want to make sure our insureds are practicing effective loss control, which means preparing to defend allegations of construction defects."

Contractors must also be aware of changes made to coverage at renewal, according to Comstock Insurance's Justin. Coverage changes could include provisions that leave a contractor on his own if he's sued for a construction defect.

"There are some companies who exclude subsidence," Justin said. "If it's determined that subsidence is the problem, there's no coverage." One of the largest defect settlement on record, \$21 million, involved subsidence issues in North Las Vegas. Based on that, "It's important that contractors understand the exclusions in their policy," Justin said.

Exclusions can be changed at renewal. If a contractor is not careful, his policy may leave him exposed to settling a lawsuit using his own resources. At a recent seminar on construction defects, attorney Scott Rasmussen said that the average case takes two years to settle and the highest cost may not be the settlement, but the legal fees. If the contractor's policy excludes coverage, the contractor pays those costs.

Although a construction defect lawsuit may take two to three years to resolve, time is not on the contractor's side. The insurance company "reserves" an amount of money for the settlement as soon as the lawsuit is filed. That "reserve amount" is credited against the contractor's loss ratio from that point on. When the policy comes up for renewal, the rates go up according to the total amount paid in actual claims and the amount "reserved."

According to attorney Rasmussen, the settlement amount does not reflect the actual cost of the case. If a construction defect case settles for approximately \$20,000 to \$30,000 for a subcontractor, the cost would be much higher when legal fees are factored in. A case that takes two years to resolve will have an additional \$60,000 to \$70,000 in fees.

Such settlements and fees can give a contractor a "negative" loss ratio, meaning that the insurance company paid out more money than collected in premiums. This puts the contractor at the highest level for renewal - *if* that insurer chooses to renew at all.

"There's going to be a lot of business owners who will have to get other coverage," Cheryl Justin said. "Until the legislature changes the law to let money go to repairs and not to attorneys, this is how it's going to be."



[Back to Main Page](#)

[EMAIL the ZONE](#) or

Call (702) 615-7644

## Industry Under Siege:

### Defect Claims Impact Insurance

*Division of Insurance Survey Shows Less Coverage, Higher Rates*

by Joe Wheeler

*From The Construction Zone: March 2001*

Nevada's Division of Insurance conducted a survey of contractors, insurance companies, and insurance agencies to assess the availability and affordability of insurance.

The results depict an insurance market with, "A limiting of coverage by the carriers, coupled with an increase in rates and premiums for residential developers and contractors."

The survey form was sent to 1000 construction companies, 203 insurance agencies, and 544 insurance companies in August, the results tabulated over time.

Of the construction companies surveyed, not all those who got the survey chose to respond. Those who did were asked to answer questions such as, "Are you having any difficulties procuring construction defect coverage in Nevada?"

The answers reflected that insurance is getting more expensive, that carriers are discontinuing coverage for condos and town homes, that some carriers are canceling policies or non-renewing them, and that contractors are losing customers due to restrictions placed upon them by insurance carriers.

Contractors are passing the higher cost on to their customers, according to one response. The increased insurance cost will be passed on to buyers, and some potential home buyers (especially the first time buyer), will not be able to afford a home.

A builder reported that the construction defect claims process goes awry from the beginning. Citing that insurance companies either give him a new or inexperienced attorney to represent his case, or an attorney who is just "going through the motions" with the plaintiff's attorneys. What really rankled the contractor was the chummy, "coffee club" atmosphere that exists between defense and plaintiff attorneys. They all seem to know one another, he said, the contractor being the only one not part of the club. "This can be seen at nearly every stage of litigation and it is simply a crime, in my estimation."

The most common claims for defects experienced by contractors are for condos, wind damage and subsidence issues. One contractor reacted bitterly to "boiler plate" defect lists that include items that do not even exist at the sites named in the claim. He said, "...As a homebuilder, I am guilty until proven innocent."

Insurance agencies responded that the trend in premiums is for increases, most of the respondents saying that premium increases were 15 percent or higher. New restrictions have multiplied into a laundry list of excluded coverages and excluded activities. Montrose exclusions are common, as are multi-family housing exclusions, condos and town home exclusions.

Agents are finding it harder to place coverage for framing, concrete and drywall contractors, or anyone that has more than 20 home starts a year. Another side of the issue is that while coverage has gotten more restricted, and more complicated, the agents feel that the contractors understand it less and less.

Of the 221 insurance carriers that participated in the DOI's survey, 193 of them had not written construction risk coverage in the last four years, 17 were still writing coverage (many with restrictions or exclusions), and 11 carriers had stopped writing contractors altogether.

**[Back to Main Page](#)**

**[EMAIL the ZONE](#) or**

**Call (702) 615-7644**

## SECOND CHANCES

*Thirteen more states pass laws giving builders the right to fix defects in new homes.*

With the ink barely dry on many right-to-repair laws, it's too early to say how much they will ultimately help builders struggling against construction-defect trends and spiraling insurance costs.

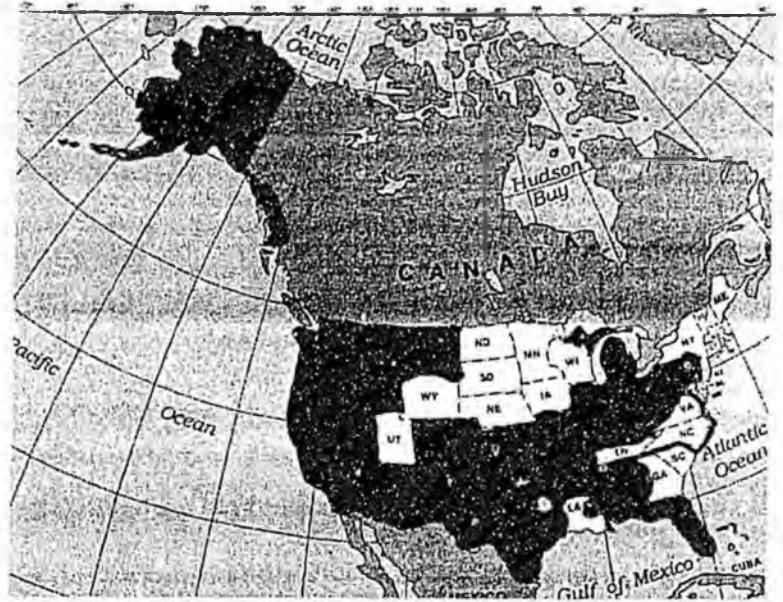
But early responses are promising. "We've gotten a favorable reaction from the insurance industry," says Clayton Traylor, senior staff vice president of construction, codes and standards (state and local operations) at the National Association of Home Builders (NAHB). "The real bounce for the insurance guys is that something is different...they're looking at the probability that there will be fewer [construction defect] cases going into the court system."

Builders and others hope that will be the case, especially in the thirteen states that passed laws in 2003, giving builders the right to fix any defects in homes before being sued. At press time, Pennsylvania was also considering such a bill.

Among the 17 states with such legislation in place, the NAHB likes the laws in Colorado and Texas best. Colorado limits the amount and type of damages builders must pay in construction-defect suits, while Texas provides for self-policing through a nine-member panel that has the power to set mandatory residential construction performance standards. These state standards should eliminate much of the wrangling of construction-defect litigation by making it easier for people in Texas to decide whether or not a new home's imperfections is truly a defect. "In other states, a construction defect is in the eye of the beholder," Traylor says. "In Texas, these standards are adopted by statute, so they have the force of the law."

Next year, builders hope to pass right-to-repair laws in Arkansas, Illinois, Mississippi, New Mexico, and Oklahoma, where bills made progress last year.

*\*17 states currently have right-to-repair laws on the books. Eight are considering such legislation.*



IRIM  
RANCE

# The Insurance Crisis

A survival guide for a challenging market

By Ed Gemtle

What goes up must come down, right? In the midst of an all-around economic downtime, this seems the case, but the real question builders are asking is, will these rising insurance premiums ever come down?

"The economy is cyclical," Joel Gregoire of Lockton Insurance says, and right now, it's a hard market. "During the general liability issue, growth was the hot topic. Now, with layoffs and closings, the economy has shifted to natural growth control," recalls Rob Nanfelt, government affairs director for the Colorado Association of General Builders. Insurers are dropping out of the market, and those that are staying are raising their prices and reducing essential coverage. What can a builder do to cushion the blow? The first step to resolving this problem is to define the crisis; the second, is to identify the possible solutions.

## The crisis

The high price for general liability unfortunately puts smaller builders out of business because they can't afford the premiums. "A small residential builder only puts out a few hundred a year, unless they are high-end projects, it's hard to add that on to cover the cost, so they can't stay in business," Nanfelt says.

Why are premiums on the rise? Many factors have been in motion contributing to the difficulty of keeping premiums

low, while getting important coverage.

According to Colleen King, a speaker at the 2003 International Builders' Show (IBS) from a carrier that specializes in builder insurance, "The investment market is changing. Insurers aren't getting high returns on paid premiums." With interest rates decreasing, insurers are also losing out on gains, "passing this cost on to the builder." In addition, catastrophes have been more prevalent; for example, the insurance industry has paid out billions of dollars with Sept. 11, King explains, not to mention a string of natural disasters: floods, hurricanes, earthquakes. "You may be asking how this affects you? Look at it like this — when, insurance pays out a loss, it affects everyone."

In the immediate forefront of this crisis, construction defect litigation has hit every state and poses a constant threat to all general liability providers. "In the residential market, insurance losses are horrendous. Insurance carriers are drawing out from residential construction due to poor underwriting losses, which means [insurers] are paying out more in losses than they're taking in with premiums," reports Bruce Harrell, CEO of HBW Insurance Services.

He continues that these providers choose not to deal with the problem, but rather leave the industry altogether. "The problem with certificates of insurance is that it is nearly impossible to accurately predict the potential losses. Reinsurers don't predict risk and insurance carriers can't figure out the amount to charge over 10 years," Gregoire says. This unpredictability drives insurers to leave the market to make money where good predictions can be made, like workers' compensation, he adds.

## Exclusions and endorsements

Meanwhile, having wised up to the potential for huge losses and soliciting lawyers, the few insurers remaining are actually eliminating critical coverage from general liability policies on issues such as soil movement and mold. Carriers have exercised their right to exclude likely "incidents" from general liability coverage. Patrick Wielinski of Cokinos, Bosien & Young says in his article, *The Changing Landscape of Coverage Disputes Over Defective Work Claims* (March 2000; [www.IRIM.com](http://www.IRIM.com)), that exclusions, targeted specifically at business risks, have done little to affect the basic coverage under the policy. The exclusion simply amounts to a restatement of basic concepts relating to the definition of "property damage."

"In terms of insurance coverage disputes, this phenom-



enon has resulted in a de-emphasis of the traditional property damage exclusions as a basis to deny coverage for defective work claims," Wielinski notes.

Builders who have had coverage in the past are not shielded from this trend. Upon renewal of contracts, endorsements and exclusions can be added, removing the coverage a builder once had from his policy. Clifford J. Shapiro, partner and chair of the construction law group at Sachnoff & Weaver, Ltd. in Chicago, advises that it is key to be careful when renewing policies to ensure that a builder is well covered or at least aware of the coverage they've been given. Shapiro notes that the reality of a tight market is obvious when a general contractor renews his/her insurance; it's likely that he or she will leave with a higher rate and less coverage.

Standard policies have more frequently been including endorsements, or written changes in policy stating certain terms, that legally become part of the policy, Shapiro explains. "These offer an insurer the right to change a policy in conjunction with what the market can bear on renewal," he says.

If these additions fall through the cracks, which can be the case with smaller companies who don't have an in-house risk management team, and a claim is filed, the builder learns about these changes the hard way, Shapiro adds. Once a renewal notice is signed, it is a binding contract, he says, so it is pertinent that a builder has a broker, an attorney or a third party look over the policy before it is signed. "Be aware of what you're buying," Shapiro asserts.

### Wise additions to internal practices

So what can a builder do to keep insurance premiums low and receive good coverage? In the face of this crisis there are no quick fixes; however, there are ways you can improve your business to make yourself more attractive to insurers.

One of the big challenges you will face, Harrell points out, is the difficulty in determining legal liability for builders and contractors. Unfortunately for builders, the insurance industry operates on this principle.

"Your general liability policy is designed to protect you from any legal liability brought against you," Harrell says. "If insurers can't determine when this starts and ends, the industry generally leaves because they need a dollar amount in order to turn a profit." The builder must implement change in his practices to set the stage for credibility, reassuring the providers they can invest in you, he adds.

First, you must prove that you are a reliable client. "It is your responsibility to prove to the underwriter that you are better than other builders because you are fighting for the

same coverage," explains Bruce Thompson, senior loss control consultant at Lockton Insurance and a presenter at IBS.

The ways things are going, Harrell says, you must be responsible for implementing a risk management program, step up and define your legal liability.

### Documentation procedures

Gregoire says that as a builder, a quality assurance program is essential with step-by-step plans and an audit program. "Go out with construction managers and train them how to look for potential construction defects," he says. "Have written programs in place, go over them with a carrier and broker, making sure you're doing things right before anything happens." Thompson suggests working with the NAHB, your broker, your attorney and other builders to see what they're doing; ask for their help.

Shapiro recommends a third-party job oversight engineer to lend credibility to your documentation. The oversight engineer serves to watch over and document the project through its various stages. Although smaller firms may not be able to afford this, keeping proper documentation throughout will still be beneficial if an occurrence arises, Shapiro says.

The NAHB Research Center (NAHBRC) gives these pointers for quality assurance documentation in its *Quality Assurance System for Wood Framing Contractors* manual. In the event a construction defect claim is brought against your firm, you should have such documentation to support your work and your product. The NAHBRC suggests that within the firm, an appointed employee must ensure that records are retained for a minimum of three years.

**The following records must be retained:**

- Job specifications
- Completed inspection forms
- Records of nonconformances
- Warranty service and repair records

**Contracts, including:**

- Builder-trade contracts
- Purchase contracts

**Quality management records, including:**

- Training and test records
- Preventive action records, quality system audits and review records
- All quality manual versions
- Builder satisfaction surveys

### Beneficial wording

The Hartford Loss Control Department, one of the nation's

## FEATURE: INSURANCE

largest investment and insurance companies, recommends these options in the Product Liability Risk Transfer Techniques portion of its Technical Information Paper Series.

**Certificates of Insurance.** These certificates state the essential provisions of your policy, exerting the existence and limits of your coverage. The loss control department suggests the policy be insured by a reputable domestic insurer and cover comprehensive general liability, product liability and workers' compensation. Also, make sure the policy limits are equal to or greater than your own, and you are named as the certificate holder.

**Waivers of Subrogation.** In the event of an incident, an insurer has the right to attempt to recover some of its losses if they feel the builder was at fault. Waivers of Subrogation prevent such a lawsuit. The builder would need to have this waiver from the other party's insurer prior to any loss; it is an endorsement to the insurance policy issued to the other party. Shapiro points out that although these are common practice, they do raise complex issues. In some cases, the waiver can prevent builders from pursuing other lawsuits. For example, if an insurer picks up half the cost of a claim and a builder the other half, but the subcontractor was at fault, the builder would be bound by the waiver, unable to regain losses from the subcontractor.

**Hold Harmless Agreements.** This is a legally binding contract by which the other party agrees to hold you harmless for any liability arising out of their work, including liability for claims that would not be covered by insurance. Such parties include vendors,

contractors and subcontractors. This agreement must be in writing and must clearly state the homeowner's responsibility to indemnify you against liability of loss or damage. The agreement should have no time limitations or be cancelable without sufficient notice.

### Prevention

The best way to keep the confidence of your insurer and your premiums low is by preventing incidents before they occur.

**Subcontractors.** Shapiro recommends that as a builder, you must make sure you're working with a reputable subcontractor who signs agreements with precise warranty and indemnification wording. Any of the inclusions listed are worthless if you're not dealing with a good, reliable subcontractor. "The best protection for construction defects is to go with the best subcontractor you can afford," Shapiro advises.

"The courts buy into the illusionary belief that contractors should be able to control the quality of their work, even though that work may have been performed by one of many subcontractors on a complex construction project. Any defective work claim would therefore fall under the contractor's risk of doing business," Wielinski says. "After a project is complete, it becomes your project — the subcontractor is exempt, and you are responsible," Shapiro warns.

"The courts are not working in our favor; they are ruling that faulty workmanship be paid from the assets of the builder," Harrell states. The insurance industry doesn't have to reimburse you or protect you for coverage eliminated by the court through endorsements, he continues. "You are left exposed; the insurance company is not responsible for you — they won't offer you an attorney if you get sued — it will come out of your pocket."

However, there are steps you can take to protect yourself and have control over what's happening to your business. Harrell says. (For more information, refer to the *The Liability Game* on page 32.)

**Customer Service.** With any type of claim, be proactive, Thompson recommends. Being aggressive is cheaper in the long run. "If you catch wind of a possible claim, put your best people on it to find out how things are going. Customer service is important even before a problem. Follow up with your clients and their satisfaction," he says.

The Hartford Loss Control Department suggests that complaint management be dealt with seriously. "In product liability, near misses or complaints can be construed as notice of a defect or problem that could cause harm or damage." It goes to say that complaints offer opportunity. "If handled in a professional manner, complaints represent opportunities for cor-

rection of immediate problems; constructive ideas to improve products; improving services; and modifying promotional material and information."

**Planning.** Shapiro recommends that a builder take costs into account prior to a claim. "Rather than accrue a loss for repairs, problems should be anticipated, not acknowledged in hindsight." However, if there is a complaint, regardless of whether you fixed it or not, Shapiro warns that you're aware of the potential traps you may encounter. "For example, the notice trap — let's say a problem is brought to your attention, and you fix it but don't report it to your insurer. Then five years down the line, the problem returns and results in a lawsuit. Your insurer can sue you for breach of contract. You'll get dropped and be left to cover the lawyer fees and fix the problem by yourself," he says.

Most policies have notice provisions to report occurrences when a problem first emerges. If you do things behind the backs of your insurer, the insurance company can take you to court saying you breached these notice provisions. Eventually, you will end up with no coverage, paying lawyer fees for both the claim and breach of contract. Shapiro insists that you report incidents to your insurer; it ultimately protects you.

### Crucial legislation

Builders are not alone in this crisis. Organizations are working to get legislation passed that will protect the builder from the destruction construction defect claims can have on firms. Such legislation will not only ease the minds of builders, it should bring insurers back to the market.

New legislation has captured the attention of the insurance market. In Colorado, the "notice and opportunity to repair" law, passed in April, contains

caps on damages awarded to plaintiff's and noneconomic damages, like pain and suffering, at \$250,000. Such legislation is very important to insurers who can now actuate the risk of insuring a builder. Nanfelt explains that American Family Insurance was about to drop its builders' insurance but ceased to pull out with the passing of the bill. He says that "this is remarkable."

However, a citizen ballot is in the works to overturn the bill. "We need to sell and market our stance as a way to measure risk to the insurers and try to ensure that the opposing bill will die," Nanfelt says. "The problem is that it takes time [with insurance companies]. You have the decision makers at a corporate office in other states, looking at the risks — some builders don't have time."

"Ultimately we'd like insurers to come back to the market and offer a product at a reasonable price," Nanfelt explains.

Gregoire suggests that builders contact their legislators to get similar bills passed in their states; builders should also get involved in organizations like the NAHB.

There is hope. Aside from the tips given, "The bottom line is that insurance carriers won't change until construction defects get resolved before the problem," Gregoire says. "All builders must improve the quality of construction before there will be any change."

Let's hope the cliché is reliable and the premiums that do go up, will eventually come down. (For more information on construction defect liability issues, see page 32) ♦

## Communicate Your Design Ideas with Chief Architect® 9.0!



New!  
VERSION  
9.0!

### Builders, Designers, Remodelers...

Let your clients see their finished product before you even build it! With Chief Architect 9.0 design software, you can quickly create fully editable concept drawings and floor plans. And, with the click of a button, Chief will create full-color 3D images of your finished design!

### Chief Architect 9.0 is the Answer!

- Create professional Plan Sets!
- Easy click-and-drag interface!
- Editable 3D Models & Virtual Walkthroughs!
- One-click Cross-sections & Elevations!
- Automatic Material Lists!
- 90-Day Money-Back Guarantee!

## Call Now!



## 1-800-482-4433



ADVANCED RELATIONAL TECHNOLOGY, INC.  
Tel: (204) 864-4264 • Fax: (204) 864-1218  
201 N. 3rd Street, Suite #2100 • W. Fargo, ND 58104  
[www.chiefarchitect.com](http://www.chiefarchitect.com)

A Cygnus Business Media Publication

## Fighting A War: It's Time To Be Proactive

A few months ago the state of Colorado followed in the footsteps of other states leading the charge to help protect builders from construction defect litigation, and adopted the "notice and opportunity to repair" legislation.

This new law asks homeowners to notify builders and give them the chance to fix defects before filing a lawsuit.

While this law is a huge step forward in the battle for affordable general liability insurance, the war is not yet over.

Premiums need to become affordable once again, and insurance companies need to offer more coverage rather than create more exclusions. This will only happen when insurance companies can reduce their risk. In order for this to happen, a limit of liability on builders and the homes they build must be established — where does a builder's liability start and where does it end?

Our industry has been in an insurance and liability crisis for far too long, and it's time we start being proactive. The "notice and opportunity to repair" law is the first such measure taken toward a comprehensive solution. It provides caps on damages and limits a plaintiff's recoveries (for the full description, see pg. 36). This legislation has also captured the attention of insurance companies, as some have decided to continue offering coverage in states that have the law.

Only seven states have adopted this law so far, and others have it in the works. But, what's disheartening is that while Colorado builders were feeling some relief with the passing of the bill, a citizen ballot is in the works to overturn the bill. An overturn could be a major setback to resolving the insurance and liability crisis if homeowners in other states take similar action. Insurance companies may decide not to re-enter or worse yet, more may leave; premiums will continue to increase, and builders will continue to be exposed to risk, making a profitable business difficult. Ultimately, the costs will be passed onto the homeowners. (I have to point out: Would the homeowners pushing the overturn in Colorado think differently if they knew that?)

So, what can you do? Get involved. Work with your local builders' association and legislature. Tell your clients why this is important and educate them. This war can only be won when building professionals band together and take a proactive stance.



Photo: Susie's Photography

*Jordanna Smida*

Editor Jordanna Smida  
E-mail: jordanna.smida@cygnusb2b.com  
Managing Editor Joshua Lentz  
E-mail: joshua.lentz@cygnusb2b.com

Editorial Intern Jackie Roombke  
Contributing Writers Shawn McCadden,  
George Hadley, Bruce Ferguson,  
Jonathan Sweet, Chaya Chang,  
Rick Tyrell, Lis King, Janice Anne Costa,  
William Atkinson, Daina Manning

Graphic Designer Cherie Reed  
Graphic Technician Ann Christian  
Production Director Brett Apold  
Production Mgr. Steve Swick  
Circulation Mgr. Marie Escobar  
Reader Service Mgr. Rich Handricks  
Ad Services Rep. Kathleen Weaver  
Admin. Assistant Heidi Burnette

**cygnus**  
Business Media

President & CEO Paul Mackler  
Chief Financial Officer Carl Fazio  
V.P. Human Resources Judy Heidebrecht  
V.P. Information Technology Gordon Gavin

CYGNUS PUBLISHING  
President Richard Reiff  
Group V.P. Mike Martin  
Group Publisher Eliot Seifrin  
V.P. Manufacturing Tom Martin  
Dir. of Circulation Scott Cravens

CYGNUS CUSTOM MARKETING  
Senior V.P. Bob Stange

CYGNUS EXPOSITIONS  
President Jeff Price

CYGNUS INTERACTIVE  
V.P. Interactive Paul Andrews



NAHB



© 2003 by Cygnus Business Media, Inc. All rights reserved. No part of this magazine may be reproduced in any form, including electronically, without written permission from the publisher of Design/Build Business.



January 16, 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,

A handwritten signature in black ink, appearing to read "Chuck Spinelli", with a horizontal line extending to the right.

Chuck Spinelli  
Spinell Homes, Inc.

JAN 22 2004

# NCP

DESIGN/BUILD, LTD.

January 19, 2004

Representative Kevin Meyers  
Alaska State Legislature  
State Capitol Building, Room 513  
Juneau, Alaska 99811

Dear Rep. Meyers:

My business is facing rising insurance rates that are debilitating, and I see others in the housing industry facing the same problem. I am encouraged to see a bill like House Bill 340.

I am sending you this letter to ask the Legislature to pass HB340.

Like many other builders, my construction company has seen insurance premiums increase over 500% just in the last year. (Other builders say their rates have gone up as much as 2500%.) This is ridiculous! Insurance costs per home are averaging anywhere from \$2,500 to \$4,000, depending on how many homes a contractor builds.

Insurance costs are not calculated into the amount of the appraisal, which means small to medium size building companies will probably go out of business unless something is done. They simply aren't going to be able to absorb costs this large. Mortgage loans used to pay for home prices are limited by the appraisal, and in most cases lending institutions have underwriting standards for loan-to-value ratios at 95% or even less.

HB340 provides reasonable limitations on awards for construction defect claims. If there is a problem in the construction of a home, everyone is better served if the problem is fixed. By limiting awards to actual damages, this creates a situation where there is always an incentive to simply repair the damage.

If something isn't done to help avoid and limit construction claims and awards, the housing Markey will suffer from the loss of registered contractors - many who have been in business in Alaska for a long time and have solid reputations as good quality builders.

I support HB340 because I would rather fix defects and see a system aimed toward fixing defects and limiting awards to their actual costs.

Thank you for supporting HB 340.

Sincerely,



N. Claiborne Porter Jr.  
NCP Design/Build



January 16, 2004

Representative Kevin Meyers  
 Alaska House of Representatives  
 Room 513 Capitol Building  
 Juneau, Alaska 99801-1182

In Re: HB340, relating to construction defect awards

Dear Rep. Meyers:

This letter is to help show my support to get HB340 passed this legislative session.

Businesses like mine in the housing industry are finding that general liability insurance unobtainable due to extreme cost increases and fewer and fewer carriers offering policies in Alaska.

Something needs to be done. HB340 will help.

State law requires contractors to register with the Division of Occupational Licensing, and also to obtain bonding and insurance. If insurance becomes unavailable or unaffordable, many residential contractors in this state will simply have to lapse their state registration. Consumer protection will suffer if our system becomes an incentive to offer unregistered, unlicensed, and uncovered home construction services.

HB340 offers a win win situation by establishing a system that tries to focus on getting construction defects repaired rather than litigated. It is reasonable by solely applying to defect claims and not to claims in tragic situations of personal injury or death.

Thank you for your efforts towards solving an issue that is a big and growing problem for the housing industry. HB340 is an important bill, and I would like to see it pass.

Sincerely,

**"Building Better Places to Live, Work and Play"**

**ANCHORAGE HOME BUILDERS ASSOCIATION, INC.**

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





ahba

Affiliated with NAHB

January 16, 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

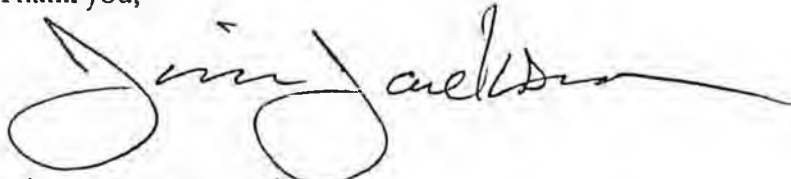
HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,



Jim Jackson  
AHBA President

**"Building Better Places to Live, Work and Play"**

**ANCHORAGE HOME BUILDERS ASSOCIATION, INC.**

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





ahba

Affiliated with NAHB

January 16, 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,

*Amy Alkasin*  
*One of 71 Kind Design*

JAN 22 2004

**“Building Better Places to Live, Work and Play”**

**ANCHORAGE HOME BUILDERS ASSOCIATION, INC.**

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757



January 26, 2004

Representative Kevin Meyers  
Alaska House of Representatives  
Room 513 Capitol Building  
Juneau, Alaska 99801-1182

In Re: HB340, relating to construction defect awards

Dear Rep. Meyers:

This letter is to help show my support to get HB340 passed this legislative session.

Businesses like mine in the housing industry are finding that general liability insurance unobtainable due to extreme cost increases and fewer and fewer carriers offering policies in Alaska.

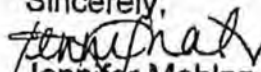
Something needs to be done. HB340 will help.

State law requires contractors to register with the Division of Occupational Licensing, and also to obtain bonding and insurance. If insurance becomes unavailable or unaffordable, many residential contractors in this state will simply have to lapse their state registration. Consumer protection will suffer if our system becomes an incentive to offer unregistered, unlicensed, and uncovered home construction services.

HB340 offers a win win situation by establishing a system that tries to focus on getting construction defects repaired rather than litigated. It is reasonable by solely applying to defect claims and not to claims in tragic situations of personal injury or death.

Thank you for your efforts towards solving an issue that is a big and growing problem for the housing industry. HB340 is an important bill, and I would like to see it pass.

Sincerely,

  
Jennifer Mahlen  
IABA Member

January 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,



Mark A Tomlinson  
President  
Fairbanks Title Agency

January 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,



Andy Raawoif  
Tongass Construction (Sec. State Homebuilders Assn.)  
2942 S. Tongass Hwy.  
Ketchikan, Ak. 99901

JAN 22 2004

RITA HAMILTON  
P.O. BOX 32802  
JUNEAU, ALASKA 99803  
(907)780-5888 ggrita@gei.net

January 15, 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

I am a retired builder and still active in the Home Builders Association. This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you.





— company —  
405 E. Fireweed Lane, Ste. 203  
Anchorage, AK 99503  
(907) 277-7090  
Fax (907) 277-7087

January 16, 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential homebuilders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the homeowner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires homeowners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,

Paul Rieland  
General Manager  
The Dean Company, INC.



January 16, 2004

Representative Kevin Meyers  
Alaska State Legislature  
State Capitol Building, Room 513  
Juneau, Alaska 99811

Dear Rep. Meyers:

My business is facing rising insurance rates that are debilitating, and I see others in the housing industry facing the same problem. I am encouraged to see a bill like House Bill 340.

I am sending you this letter to ask the Legislature to pass HB340.

Like many other builders, my construction company has seen insurance premiums increase over 200% just in the last year. (Other builders say their rates have gone up as much as 2500%.) This is ridiculous! Insurance costs per home are averaging anywhere from \$2,500 to \$4,000, depending on how many homes a contractor builds.

Insurance costs are not calculated into the amount of the appraisal, which means small to medium size building companies will probably go out of business unless something is done. They simply aren't going to be able to absorb costs this large. Mortgage loans used to pay for home prices are limited by the appraisal, and in most cases lending institutions have underwriting standards for loan-to-value ratios at 95% or even less.

HB340 provides reasonable limitations on awards for construction defect claims. If there is a problem in the construction of a home, everyone is better served if the problem is fixed. By limiting awards to actual damages, this creates a situation where there is always an incentive to simply repair the damage.

If something isn't done to help avoid and limit construction claims and awards, the housing market will suffer from the loss of registered contractors - many who have been in business in Alaska for a long time and have solid reputations as good quality builders.

I support HB340 because I would rather fix defects and see a system aimed toward fixing defects and limiting awards to their actual costs.

Thank you for supporting HB340.

Sincerely,



Bill Taylor-President



ANCHORAGE

3015 C Street, 99503  
(907) 561-1844 (Fax) 561-1948

EAGLE RIVER

11823 Old Glenn Hwy, Suite #117, 99577  
(907) 694-1436 (Fax) 694-1474

TRANSALASKA TITLE COMPANIES

HOMER

1670 Lake Street, Suite 300, 99601  
(907) 215-5201 (Fax) 215-5203

JUNEAU

2227 North Jordan Avenue, 99801  
(907) 789-5252 (Fax) 789-7395

KENAI

105 Trading Bay Road, Suite 101, 99611  
(907) 281-7501 (Fax) 281-7719

KODIAK

316 Center Street, Suite 205, 99615  
(907) 486-8338 (Fax) 486-8181

SEWARD

909 Third Avenue, Box 469, 99664  
(907) 224-5272 (Fax) 224-5281

SITKA

315 Seward Street, 99835  
(907) 747-7166 (Fax) 747-7151

SOLOOTNA

176 North Birch, 99669  
(907) 262-5708 (Fax) 262-9594

WASILLA

163 East Parks Hwy, Suite 101, 99654  
(907) 376-5248 (Fax) 376-6010

January 16, 2004

Representative Kevin Meyers  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,

Wesley E. Keller  
Branch Manager

JAN 21 2004