



THE ZIDELL COMPANIES

May 8, 2013

Oregon House Committee on
Consumer Protection and Government Efficiency
Oregon State Capitol
900 Court Street, NE
Salem, OR 97301-4047

Re: Support for SB 814

Chair Holvey and Members of the Committee:

The Zidell Companies is pleased to offer its support for SB 814, amending the Oregon Environmental Cleanup Assistance Act.

The Zidell Companies have been pursuing environmental cleanup coverage from an insurer for a site cleanup claim, since the early 1990s. In 1994, Zidell began the investigatory phase of a cleanup, related to historic contamination both at its property and on adjacent state-owned Willamette riverbed property, located south of downtown Portland. Contamination and property damage had occurred as a result of many years of industrial activity on the site by prior owners and operators, since the early 1900s, and also as a result of Zidell's ship dismantling and other industrial businesses, which operated from the late 1940s through the mid-1970s.

In 1994, when Zidell received a cleanup order from the Oregon Department of Environmental Quality, it gave notice to and requested that its multiple insurers defend and indemnify the company against the claim. All of Zidell's insurers refused to assist in the investigation of the claim and refused to pay defense costs. Zidell was forced to incur and pay several years' worth of defense costs and investigatory expenses itself, and was forced to file litigation against all of its insurers in 1997 for breach of the duty to defend and seeking a declaratory judgment for indemnity and payment of future cleanup costs. Some of Zidell's insurers did eventually agree to settle the claim, between 1997 and 2000. One major insurer refused, and it continues to litigate the case currently, fully 19 years after it received notice of the claim. The case against that insurer continued to trial and Zidell won a trial court judgment in 2003.

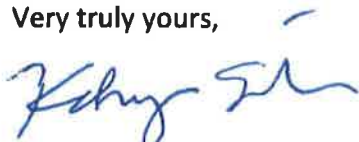
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The insurer, however, immediately filed a petition for review in the Oregon Court of Appeals related to several portions of the trial court's judgment. After an appeal process that took approximately five years, the Oregon Court of Appeals issued an order in 2008 that dealt with some of the matters that had been appealed. The decisions on those few issues were then appealed by the insurer to the Oregon Supreme Court. Now, in 2013, ten years after its case reached an initial trial court judgment in 2003, and having been through 16 years of trial and appellate litigation, the case continues, and the insurer continues to refuse to make any indemnity payments or to settle. The Oregon Court of Appeals recently issued a second decision in the case, and has now remanded a portion of the case back to the Multnomah County Circuit Court for retrial, due to an error in the trial court's 2003 judgment. In addition, the same (non-settling) insurer also filed, in 2003, and continues to pursue a contribution claim against Zidell's other (settling) insurers, seeking damages from those insurers (who chose to settle with Zidell) for its alleged over-payment of defense costs.

Zidell supports Senate Bill 814. The unfair claim settlement practices that insurers have used, and that Zidell has experienced, must be terminated in Oregon. Settlements must be encouraged and cleanups must be expedited. Contribution claims by non-settling insurers, such as are occurring with Zidell's one non-settling carrier, must be prevented or limited, as SB 814 would do, in order to encourage early settlements and timely clean ups. These statutory provisions are long overdue as protection for Oregon policy holders against unfair claims handling and settlement practices by insurers.

We appreciate the Committee's consideration of the Oregon Environmental Cleanup Assistance Act, and we urge your support of SB 814.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Kathryn Silva', with a stylized flourish at the end.

Kathryn Silva

General Counsel