



May 16, 2013

Mr. Jeff Barker, Chairman
Oregon House Judiciary Committee
900 Court St. NE, H-480
Salem, Oregon 97301

Re: Senate Bill 46 (SB 46)

Dear Representative Barker:

My name is Jeff Myhre. I am the President and Founder of Myhre Group Architects, Inc. Our company is located at 620 SW 5th Avenue, Suite 500, Portland, Oregon 97204.

On May 15, 2013, I attended a House Judiciary Committee meeting in Salem, and I provided the following testimony in support of SB 46:

I am an Oregon Registered Architect in good standing with the Oregon Board of Architect Examiners. I am also a Registered Architect in good standing in seven other western states consisting of Washington, Wyoming, Utah, Colorado, California, Nevada, and Idaho. I am also a member of the American Institute of Architects (AIA) and a member of the National Council of Architectural Registration Boards (NCARB).

I have been practicing architecture here in Oregon for over 21 years. I care very much about the quality of professional design services that my company and I provide to our clients. I also take my duty and responsibility as an Oregon Registered Architect to protect public health, safety, and welfare very seriously.

Unfortunately, over the past few years, I have seen a significant increase in the amount of third-party and construction defect claims being made against Registered Architects in Oregon. In fact, prior to 2005, I had never heard of, seen, or been involved with a third-party or construction defect claim. However, in the past 8 years alone, Myhre Group Architects and I have dealt with over ten separate third-party claims. None of these claims have been made against us by any client of ours, and all of these claims have come from third-party entities with whom we've never met nor done business with.

While we have been successful at defending every single claim brought against us, and we have never been adjudged liable for any sort of professional negligence, willful misconduct, or wrongdoing, these claims are emotionally difficult to deal with, very expensive, and extremely time consuming. Furthermore, in my opinion and belief, they are simply not fair, reasonable, or just.

Basically, the way it works is as follows: When a project is developed and sold by an Owner or real estate developer, they are required by law to hire a Registered Architect (or Engineer) and licensed General Contractor to design and build the project. Once the project is complete, the Owner can then sell the project in an "as-is" condition, and through their purchase and sale agreement with the new buyer, they can fully indemnify themselves from almost all future liability associated with the original design and construction of the project.

Since the Architect has a duty under Oregon law to protect public health, safety, and welfare, the Architect's potential liability associated with the project does not go away with the Owner's sale of the project. Therefore, due to the lack of contractual privity in our state, as generally decided by the various circuit courts over the last 40 years, the Architect can be held liable to the new Owner for design and construction

decisions that were rendered on behalf of, or directly by, the original Owner, whether they were endorsed or agreed to by the Architect or not.

Since the current statute of repose in Oregon for General Contractors is six years, as was changed by the legislature in 2009, and not ten years as it is still currently for Registered Architects, the Architects are exposed to four additional years of professional liability and risk for the actual construction of the building than the General Contractor who actually built it is. In my opinion, these four years are the most crucial as well, since many times deferred building maintenance and general building negligence can cause serious moisture intrusion problems that begin to occur around years 7 and 8.

Unfortunately, the resulting problems are usually characterized by plaintiff attorneys' as construction defects, which they are usually not. But, since the Architect is the only one of the three primary project team members of Owner, General Contractor, and Architect, or the "three legs of the stool" as they say in our industry, with a statute of repose that is long enough to allow these problems to occur, they are the ones who get sued.

Furthermore, even though Architects are not licensed to build buildings or provide any sort of construction services, nor are they experts in construction techniques, procedures, means, or methods, Registered Architects are frequently sued for negligence associated with not stopping a building Owner or General Contractor from cutting corners or deviating from the design intent that the Architect has expressed in its Construction Documents and Specifications.

Therefore, even when an Architect identifies that there may be a significant problem during construction that the Architect believes, in its professional opinion, may negatively impact public health, safety, and welfare there isn't much the Architect can actually do other than to inform the governing jurisdiction and State Board of Architect Examiners. And even then, the Architect will still have the immense displeasure and significant cost of defending the claim that will inevitably be brought against them sometime in the future.

In my opinion, I believe that my fellow citizens here in Oregon care very much about right, wrong, and fairness. I also believe that when there is a gross discrepancy in the state statues regarding something like the current statute of repose for Registered Architects and General Contractors, unfortunately, there will always be people who are more than willing to take advantage of it. It is for these reasons, and for my continued passion for improving the professional practice of architecture here in the great state of Oregon, that I am here today in strong support of passing SB 46.

Thank you for your time and consideration.

Sincerely,
MYHRE GROUP ARCHITECTS, INC.



Jeff Myhre, AIA, NCARB
President