

TESTIMONY OF KATHRYN SILVA

THE ZIDELL COMPANIES

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

ON HB 3160

March 14, 2013

My name is Kathryn Silva and I am General Counsel for Zidell Companies, based in Portland, Oregon.

The Zidell Companies have been pursuing coverage from an insurer on an environmental claim, since the mid-1990s. Zidell began the investigatory phase of a DEQ cleanup order in 1995, related to historic contamination both at its property and on adjacent state-owned Willamette riverbed property. 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 from Zidell's ship dismantling business, which operated from the late 1940s through the mid-1970s.

In 1994, when Zidell received a cleanup notice from DEQ, it gave notice to and requested that its multiple insurers defend and indemnify the company against the State's cleanup demand. All of Zidell's insurers refused to assist in investigation of the claim and refused to pay defense costs. Zidell was forced to incur and pay defense costs and investigatory expenses itself, and was forced to file a lawsuit against all of its insurers in 1997 for breach of the duty to defend and seek a declaratory judgment for indemnification 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 receiving notice of the claim. The case against that insurer continued to trial and Zidell won a judgment in 2003 against the insurer.

The insurer, however, immediately in 2003 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, again, 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 last week issued a 2nd decision in the case, and has now remanded a portion of the case back to the Multnomah County Circuit Court for re-trial, due to an error in the trial court's judge's judgment, that was issued in 2003.

Zidell believes that the insurer in this case should have accepted the defense of the claim promptly when it was tendered, in 1994. And Zidell believes that the insurer should have settled the claim and paid the indemnity amounts for cleanup costs that Zidell has incurred, which are in excess of twenty million dollars. Although Zidell believes that its insurer has acted in bad faith and has used unfair claim settlement practices, we have been unable to assert any claim or seek penalties related to that conduct and those claim handling practices in Oregon, over the 19 years that we have been seeking coverage for this clean up claim. If Zidell had been able to assert claims and seek penalties for unfair claim settlement practices, the insurer would perhaps have been compelled to settle this case many years ago.

Zidell supports House Bill 3160 and Senate Bill 686 both of which include insurance in the definition of goods and services that are subject to claims and penalties for unlawful trade practices. The unfair claim settlement practices that insurers have used, and that Zidell has experienced, must be terminated in Oregon. This statutory provision is long overdue as protection for Oregon policy holders against unfair claim handling and settlement practices. Thank you.