

## **SB 383**

### **Expert Witness Clarification**

In 2005, the American Institute of Architects Oregon (AIA) and the American Council of Engineering Companies-Oregon (ACEC) worked to pass “certificate of merit” legislation for design professional lawsuits.

Oregon certificate of merit statute requires that an attorney representing a plaintiff certify that an impartial third party design professional has been consulted and believes that there is a fundamental basis for the complaint. This third party is the unnamed “expert witness,”

Certificates of merit address the problem of design professional liability risk - they are often drawn into large, complex lawsuits on activities well outside of a design professional’s control. An expert witness helps to identify when the design professional may potentially share in the fault, and the attorney provides that information to the court when filing the claim. A certificate of merit in this circumstance helps to show when claims are lacking basis and allows the court to concentrate on the true merits of the original case.

Because of the potential to stop some frivolous claims and the ability for all involved (including insurers) to better assess the allegations and applicability in a case, the long-term effect may be lowering of the design professional risk levels and insurance costs.

With SB 383, we are trying to improve the statute by making sure that expert witnesses are well suited to address the standard of care by adding requirement that:

- 1) They are licensed in Oregon so they work under the same federal, state and local building codes; and
- 2) They have the same license (i.e. an architect attesting to another architect’s work – not an engineer) and corresponding experience that goes with that license; and
- 3) They have discussed with the lawyer the alleged conduct, which lawyer summarizes for filing.

Two other changes in bill:

- 1) Phrase in ORS 31.300 changed from “construction design professional” to just “design professional” as nowhere else in ORS is the term used and we wanted continuity. This does not change the statute meaning, implication or applicability.
- 2) Removes public agencies from certificate of merit requirement.

Amendment being offered to bill:

- In the original SB 383, the phrase “practicing in the same jurisdiction” was used. This is not defined anywhere. Frankly, it could imply that an expert witness had to come from the same *court* jurisdiction where papers were filed against a design professional. Since we merely wanted to assure they were licensed in Oregon, this phrase is removed and we rely on the requirement for licensure under ORS 671 or 672 to assure knowledge of local codes.