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To: Senate Committee on Judiciary
From: Stephen P. Maher, AIA
RE: Support for Senate Bill 1575

My name is Stephen Maher. I am an architect based in Eugene, Oregon. I am writing today in strong support of Senate Bill 1575.

Oregon professional service contracts often require design professionals including architects to defend others for legal claims or damages even when the design professional is not responsible. This “duty to defend” language is legally problematic and expensive. It is a barrier to entry for many small businesses and is uninsurable by professional liability insurance carriers.

Businesses purchase liability insurance to protect themselves from legal harm. However, there is limited professional liability insurance available to architects that cover the legal expenses for others involved in construction projects. This leaves Oregon’s design professionals in an unfair situation with no way to protect themselves other than to unfairly assume the risk and hope for the best—or to forgo designing projects altogether. Often, design firms make the tough decision to walk away from contracts, but they cannot walk away every time. When designers are compelled to sign these agreements, they are committing their business assets to pay these costs, regardless of fault. Because these risks are significant, and potentially catastrophic, the result is fewer firms seeking such work and diminished competition. Other states, including California, Colorado, Utah, and Washington have laws stating a design professional will only be responsible for defense costs to the proportionate extent of their liability or fault. Oregon should follow suit.

The proposed bill will ensure fairness by:

1. Requiring each party to a construction contract be responsible for their own negligence or fault. This means parties will pay damages based on actual liability, rather than alleged liability.
2. Ensuring whichever party is negligent would be able to purchase the proper insurance. This is not the case today and results in high-risk contract provisions that are unreasonable and uninsurable.
3. Allowing all design companies, small and large, to compete on an even playing field. This is not the case now as the contractually imposed duty to defend is a major prohibitive factor for many small businesses considering construction projects.

I respectfully ask this committee to support SB1575. Thank you for your public service.

Sincerely,



Stephen P. Maher, AIA