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Law Corporations

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March 14, 2011

Senate Committee on Commerce and Consumer Protection  
The Honorable Rosalyn H. Baker, Chair

HB924HD2 – RELATING TO INSURANCE  
Tuesday, March 15, 2011, 9:00 a.m., Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi, and Members of the Committee on Commerce and Consumer Protection:

My name is Karin L. Holma. I am on the Board of Directors of the Building Industry Association of Hawaii, and have been a construction lawyer in Hawaii for 19 years. I am in strong support of the intent of HB924hd2. Attached is a revised version of HB924, which is being submitted on behalf of the Building Industry Association of Hawaii and the General Contractors Association. The changes in this revised version, the "BIA/GCA version," are summarized below. They are intended to address concerns raised by the Hawaii Insurers' Council and others in the industry.

A. THE CHANGES IN THE BIA/GCA VERSION

In promoting HB924, the construction industry simply wants what it paid for – insurance coverage for bodily injury and property damage arising from construction defects. HD2 significantly broadened the original draft bill submitted by changing the trigger of insurance coverage. At the same time, it narrowed the scope of insurance by excluding coverage for wanton and willful acts or omissions, and by other terms and conditions contained therein.

The BIA/GCA version does the following:

- Requires "occurrence" to be construed in accordance with the expectations of the parties at the time the insurance contract is entered into. This is consistent with a long line of Hawaii case law regarding the interpretation of contracts. It is also appropriate to be included in the insurance code because there are other statutes in the insurance code setting forth how insurance policies must be construed – e.g., § 431:10-237 and § 431:10-240.
- Defines "construction professionals" to include developers and others in the construction industry because they are the purchasers of "OCIPs" (owner controlled

insurance programs), which are insurance policies intended to cover very large individual projects (those costing in excess of \$25,000,000 million dollars), including for example, the J.A. Burns School of Medicine, the Kauai Judiciary Building, and the Ko'olani condominium project.

- Includes surplus lines insurance because that was a concern raised by the Hawaii Insurers' Council.
- Supplements the findings to better state the background facts and reasons for the bill.

B. WHY THIS LEGISLATION IS CRITICAL

The testimony of numerous others, as well as the attached BIA/GCA version of HB924, set forth the reasons why it is critical that this legislation be passed.

C. COMMENTS TO CONCERNS RAISED BY OPPOSITION TO HB924

Contrary to the arguments raised by some, HB924 is constitutional. The bill is not retroactive because it restores rights that contractors and others in the construction industry had before the Hawaii Intermediate Court of Appeals decided *Group Builders and Tradewinds Ins. Co. v. Admiral Ins. Co.* (Haw. App. 2010). It does not create new obligations or impose new duties. Even if the bill was characterized as "retroactive," it is constitutional because it has a significant and legitimate public purpose. Where a statute is enacted to deal with a broad, generalized economic problem retroactively, it does not violate the Contracts Clause, *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934), nor does it violate due process. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994).

Some insurance companies have issued endorsements, claiming that they will cover such damages. The problem with the endorsements is that they are prospective only. This means that there is no insurance coverage for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. Also, not all of the carriers have issued endorsements (notably, Chartis or AIG, which has earned millions of dollars in premiums), the endorsements are all different, and it is difficult to determine what coverage is being provided.

Opponents also argue that legislation such as HB924 could "constrict" the insurance market. In Colorado, the only state that has enacted legislation to address a decision

Chair Baker, Vice Chair Taniguchi, and  
Members of the Committee on Commerce  
and Consumer Protection  
March 14, 2011  
Page 2

similar to the *Group Builders* decision, the only carriers that left the market were those that claimed there was no coverage. (The reason only one state has enacted such legislation is because very few courts have decided cases in the same way that *Group Builders* was decided. This year, a South Carolina appellate court decided a case similar to the way *Group Builders* was decided. In response, the South Carolina Legislature is currently working on a bill to restore contractors' insurance coverage).

Finally, opponents argue that it is not appropriate for the Legislature to enact this bill where the Intermediate Court of Appeals is still considering the issue of a duty to defend in the *Group Builders* case. The *Group Builders* decision is final with respect to the duty to indemnify, which is what the bill addresses. The court's decision on the duty to defend is irrelevant to HB924.

\* \* \*

Thank you for the opportunity to testify.

Sincerely,

BAYS LUNG ROSE & HOLMA

By: 

Karin L. Holma  
Attorney at Law, A Law Corporation  
Its General Partner

KLH:mml  
Attachment

SECTION 1. (a) The legislature finds that:

- (1) Insurance coverage to protect both the general public and private industry is vital to the economic and social welfare of the citizens of Hawaii;
- (2) The law in Hawaii is that an insurance policy must be construed liberally in favor of the insured and that any ambiguities must be resolved against the insurer. *Yamaguchi v. State Farm Mut. Auto Ins. Co.*, 706 F.2d 940 (9<sup>th</sup> Cir. 1983); *Barber v. Chatham*, 939 F. Supp. 782 (D. Haw. 1996) (because insurance policies are contracts of adhesion, any ambiguity in its interpretation must be resolved against the insurer.)
- (3) Hawaii courts have developed a solid policy of ruling against the forfeiture of insurance coverage in the absence of specific exclusions, fraud, or other serious dereliction on the part of the insured, if such conclusion is not patently unreasonable. *AVEMCO Ins. Co. v. Chung*, 388 F. Supp. 142 (D. Haw. 1975). Forfeiture of insurance coverage is so disfavored that the courts are always prompt to seize hold of any circumstance to uphold the validity of a policy. *Id.*
- (4) In 2010, the Hawaii intermediate court of appeals decided *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), which held that construction defect claims are not "occurrences" under commercial general liability policies, and therefore that such policies do not cover bodily injury or property damage arising from construction defects;
- (5) The overwhelming testimony in favor of this bill was that insurance companies doing business in Hawaii and providing insurance to construction professionals had long represented that their commercial general liability policies covered claims for bodily injury and property damage arising from construction defects.
- (6) In the *Group Builders* case, Tradewind Insurance Company, Ltd., which is a subsidiary or related entity to Island Insurance Company, paid \$3.65 million dollars in defense and indemnity of its insured, Group Builders. Tradewind then sued Admiral Insurance Company, seeking contribution for the amounts it had paid on behalf of its insured. Tradewind argued in the case that construction defect claims are "occurrences" under commercial general liability policies, which therefore cover bodily injury and property damage arising from construction defects;
- (7) The testimony in favor of this bill was also undisputed that contractors and others relied on the representations of the insurance companies and paid millions of dollars in premiums for the insurance coverage. Principals from four general construction companies testified that their companies alone had paid in excess of \$17 million dollars for commercial general liability policies in the preceding 10 years;
- (8) The *Group Builders* decision takes away insurance coverage that (1) existed; (2) was paid for; and (3) has been relied upon by citizens throughout Hawaii for decades. Not only did the decision disregard the expectations of the parties, its effect could be economically disastrous to not only contractors, but to numerous other persons who have suffered injuries, property owners, and even the State of Hawaii. One single catastrophic accident could result in hundreds of millions of dollars of damages, which insurance would not cover;
- (9) Given the critical nature of insurance and the role it plays in the economy, it is of great public importance that parties are held to the legal obligations and expectations imposed on them by law at the time they purchase insurance. The potential for changes in court

interpretations of insurance policies threatens to deprive parties of the expectations existing at the time they enter into insurance contracts, and allows parties to disclaim legal obligations that the contracting parties understood to be enforceable, and but for which they would not have entered into the agreement.

- (10) The purpose of this Act is to ensure that the expectations of parties at the time they enter into insurance contracts is upheld and that insurance coverage that construction professionals have already paid for is provided. This Act does not change the terms of the contracts of insurance as they existed, were represented, and understood at the time they were entered into.

SECTION 2. Chapter 431, article 1, is amended by adding one new section to part I to be appropriately designated and to read as follows:

“§431:1-\_\_ Insurance policies issued to construction professionals. (a) For purposes of this section:

- (1) “construction professional” means a person, sole proprietorship, partnership, corporation, limited liability company, or other recognized legal entity that engages in an activity intended to assist in the development, design, construction, or repair of an improvement to real property regardless of whether this person or entity maintains a professional license, including but not limited to a contractor as defined in Chapter 444.
- (2) “liability insurance policy” means a contract of insurance that covers occurrences of damage or injury during the policy period and insures a construction professional for liability arising from construction-related work.

(b) The term “occurrence” in every liability insurance policy issued to a construction professional shall be construed in accordance with the reasonable expectations of the parties and in accordance with the law existing at the time the policy was entered into.

(c) Notwithstanding any section to the contrary, this section shall apply to surplus line insurance as defined in section 431-8-102.

(d) Any provision in an insurance policy issued in violation of this section shall be void and unenforceable as against public policy.

(e) This section shall apply only to an insurance policy that covers occurrences of damage or injury during the policy period and that insures a construction professional for liability arising from construction-related work.

SECTION 3. This Act shall apply to all liability insurance policies currently in existence and issued on or after the effective date of this Act.



# JAS. W. GLOVER, LTD.

GENERAL CONTRACTORS

License No. ABC-3

March 14, 2011

TO: THE HONORABLE SENATOR ROSALYN H. BAKER, CHAIR AND  
MEMBERS OF COMMITTEE ON COMMERCE AND CONSUMER  
PROTECTION

SUBJECT: H.B. 924, HD2 RELATING TO INSURANCE.

## NOTICE OF HEARING

DATE: Tuesday, March 15, 2011  
TIME: 9:00a.m.  
PLACE: Conference Room 229

Dear Chair Baker and Members of the Committee,

Jas. W. Glover, Ltd. supports the intent of HB 924, HD2, but not the version proposed in HD2.

The GCA has been working with the BIA on an amendment and together, they have developed an amendment that addresses the construction industry concerns. The amendment is attached to the testimony of Karin Holma, Esq. on behalf of GCA and BIA.

The Group Builders decision by the Intermediate Court of Appeals in May 2010 provided insurance carriers with a huge financial windfall. Under Group Builders, insurance companies are not required to provide insurance coverage for bodily injury or property damage that arise out of construction defects, even though contractors and developers paid for the insurance coverage.

Over the last ten years four GCA members, Albert C. Kobayashi, Inc, Hawaiian Dredging Construction Company, Shioi Construction Inc, and Ralph S. Inouye, Inc. collectively paid more than \$20 million for the commercial general liability insurance policies and are now told that the coverage for which they paid does not exist. Even though they paid their premiums, if they have no coverage, they are at risk for potentially millions more.

I believe that the court's decision in Group Builders is unfair, because as a result, some insurance companies are not honoring their contractual obligations. Each party to a contract should honor its contractual obligations.

Thank you for the opportunity to testify on this very important problem.

Sincerely,

John Romanowski  
Vice President

Honolulu  
P.O. Box 579 • Honolulu, HI 96809  
tel: (808) 591-8977 • fax: (808) 591-9174

Hilo  
890 Leilani St. • Hilo, HI 96720  
tel: (808) 935-0871 • fax: (808) 961-9237

Kona  
P.O. Box 4116 • Kailua-Kona, HI 96745  
tel: (808) 329-4113 • fax: (808) 326-6017

Lihue  
P.O. Box 1929 • Lihue, HI 96766  
tel: (808) 245-3609 • fax: (808) 246-62

**DALE MOORE, GENERAL CONTRACTOR**

Dale Moore, General Contractor - BC 18674  
P.O. Box 82149  
Honolulu HI 96839  
808 937-0404 [Mooreohana@aol.com](mailto:Mooreohana@aol.com)

March 14, 2011

TO: THE HONORABLE SENATOR ROSALYN H. BAKER, CHAIR AND  
MEMBERS OF COMMITTEE ON COMMERCE AND CONSUMER  
PROTECTION

SUBJECT: H.B. 924, HD2 RELATING TO INSURANCE.  
NOTICE OF HEARING

DATE: Tuesday, March 15, 2011

TIME: 9:00a.m.

PLACE: Conference Room 229

Dear Chair Baker and Members of the Committee,  
Dale Moore, General Contractor **supports the intent** of HB 924, HD2, but not the version proposed in HD2.

The GCA has been working with the BIA on an amendment and together, they have developed an amendment that addresses the construction industry concerns. The amendment is attached to the testimony of Karin Holma, Esq. on behalf of GCA and BIA.

The Group Builders decision by the Intermediate Court of Appeals in May 2010 provided insurance carriers with a huge financial windfall. Under Group Builders, insurance companies are not required to provide insurance coverage for bodily injury or property damage that arise out of construction defects, even though contractors and developers paid for the insurance coverage.

Over the last ten years four GCA members, Albert C. Kobayashi, Inc, Hawaiian Dredging Construction Company, Shioi Construction Inc, and Ralph S. Inouye, Inc. collectively paid more than \$20 million for the commercial general liability insurance policies and are now told that the coverage for which they paid does not exist. Even though they paid their premiums, if they have no coverage, they are at risk for potentially millions more.

I believe that the court's decision in Group Builders is unfair, because as a result, some insurance companies are not honoring their contractual obligations. Each party to a contract should honor its contractual obligations.

Thank you for the opportunity to testify on this very important problem.



DELTA  
CONSTRUCTION  
CORPORATION

90-225 Oluana Street, Kapaeha, Hawaii 96757 \* Tel: 808.683.1215 \* Fax: 808.683.6329 \* Toll Free: 1.800.343.1213

March 14, 2011

TO: THE HONORABLE SENATOR ROSALYN H. BAKER, CHAIR AND  
MEMBERS OF COMMITTEE ON COMMERCE AND CONSUMER  
PROTECTION

SUBJECT: H.B. 924, HD2 RELATING TO INSURANCE

NOTICE OF HEARING

DATE: Tuesday, March 15, 2011  
TIME: 9:00a.m.  
PLACE: Conference Room 229

Dear Chair Baker and Members of the Committee,

Delta Construction Corporation supports the **intent** of HB 924, HD2, but not the version proposed in HD2.

The GCA has been working with the BIA on an amendment and together, they have developed an amendment that addresses the construction industry concerns. The amendment is attached to the testimony of Karin Holma, Esq. on behalf of GCA and BIA.

The Group Builders decision by the Intermediate Court of Appeals in May 2010 provided insurance carriers with a huge financial windfall. Under Group Builders, insurance companies are not required to provide insurance coverage for bodily injury or property damage that arise out of construction defects, even though contractors and developers paid for the insurance coverage.

Over the last ten years four GCA members, Albert C. Kobayashi, Inc., Hawaiian Dredging Construction Company, Shioi Construction Inc., and Ralph S. Inouye, Inc. collectively paid more than \$20 million for the commercial general liability insurance policies and are now told that the coverage for which they paid does not exist. Even though they paid their premiums, if they have no coverage, they are at risk for potentially millions more.

I believe that the court's decision in Group Builders is unfair, because as a result, some insurance companies are not honoring their contractual obligations. Each party to a contract should honor its contractual obligations.

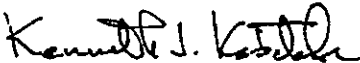


The Honorable Senator Rosalyn H. Baker, Chair  
and Members of Committee on Commerce and  
Consumer Protection  
March 14, 2011  
Page 2

Thank you for the opportunity to testify on this very important problem.

Very truly yours,

DELTA CONSTRUCTION CORPORATION,

  
By KENNETH J. KOBATAKE  
President

KJK:lm



**S & M SAKAMOTO, INC.**  
GENERAL CONTRACTORS

March 14, 2011

TO: THE HONORABLE SENATOR ROSALYN H. BAKER, CHAIR AND  
MEMBERS OF COMMITTEE ON COMMERCE AND CONSUMER  
PROTECTION

SUBJECT: H.B. 924, HD2 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Tuesday, March 15, 2011  
TIME: 9:00a.m.  
PLACE: Conference Room 229

Dear Chair Baker and Members of the Committee,

S & M Sakamoto, Inc. supports the intent of HB 924, HD2, but not the version proposed in HD2.

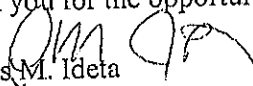
The GCA has been working with the BIA on an amendment and together, they have developed an amendment that addresses the construction industry concerns. The amendment is attached to the testimony of Karin Holma, Esq. on behalf of GCA and BIA.

The Group Builders decision by the Intermediate Court of Appeals in May 2010 provided insurance carriers with a huge financial windfall. Under Group Builders, insurance companies are not required to provide insurance coverage for bodily injury or property damage that arise out of construction defects, even though contractors and developers paid for the insurance coverage.

Over the last ten years four GCA members, Albert C. Kobayashi, Inc, Hawaiian Dredging Construction Company, Shioi Construction Inc, and Ralph S. Inouye, Inc. collectively paid more than \$20 million for the commercial general liability insurance policies and are now told that the coverage for which they paid does not exist. Even though they paid their premiums, if they have no coverage, they are at risk for potentially millions more.

I believe that the court's decision in Group Builders is unfair, because as a result, some insurance companies are not honoring their contractual obligations. Each party to a contract should honor its contractual obligations.

Thank you for the opportunity to testify on this very important problem.

  
Dennis M. Ideta  
Senior Vice President



**Alan Shintani INC.**  
GENERAL CONTRACTOR BC 13068

March 15, 2011

Senator Roz Baker, Chair  
Committee on Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, Hawaii 96813

RE: HB924, HD2 Relating to Insurance

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection:

I support the intent of HB924, but am opposed to the current draft, HD2 and request your consideration of the amendments that will be offered by BIA-Hawaii.

HB924 was introduced to address the Group Builders decision by the Intermediate Court of Appeals in 2010 which basically stated that insurance companies, who sold commercial general liability policies to contractors to provide coverage for claims for bodily injury and property damages arising from construction defects, now did not have to pay on these claims.

*As a Licensed General Contractor, we are required by law to purchase and carry a General Liability Insurance at all times. Every couple of years when we renew our license we are told to provide proof that we have this insurance in place before they will approve our renewal. I believe these laws were put in place to protect the public in case anything went wrong. Right now because of this case, it is the insurance company's decision as to what they will pay or not at the time of the claim. If they decide not to pay, the contractor is still liable.*

I believe that this decision is unfair, especially when contractors have already paid for the coverage, then are told that the insurance carriers do not have to pay for the claims. This does not appear to be a fair practice because the insurance companies are not honoring their obligations.

To emphasize the serious nature of this issue, it is very unsettling for anyone to purchase an insurance policy without the assurance that they are going to get what they have paid for.

While some insurance companies are offering endorsements to cover these claims, these endorsements are prospective and do not cover the ten-year period for which contractors, developers, and even the State, are at risk, even though they had paid their premiums in good faith. Please pass the bill with amendments to allow continued discussion to reach a solution to the problem.



Alan Shintani  
President  
Alan Shintani, Inc.

cc; BIA, Karen Iwamoto.

TO: THE HONORABLE SENATOR ROSALYN H. BAKER, CHAIR AND  
MEMBERS OF COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: H.B. 924, HD2 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Tuesday, March 15, 2011  
TIME: 9:00a.m.  
PLACE: Conference Room 229

Dear Chair Baker and Members of the Committee,

My name is Fred Moore, President, HSI Mechanical, Inc., a Hawai'i Small Business Enterprises, and **supports the intent** of HB 924, HD2, but not the version proposed in HD2.

The Group Builders decision by the Intermediate Court of Appeals in May 2010 provided insurance carriers with a huge financial windfall. Under Group Builders, insurance companies are not required to provide insurance coverage for bodily injury or property damage that arise out of construction defects, even though contractors and developers paid for the insurance coverage.

Over the last ten years four GCA members, Albert C. Kobayashi, Inc, Hawaiian Dredging Construction Company, Shioi Construction Inc, and Ralph S. Inouye, Inc. collectively paid more than \$20 million for the commercial general liability insurance policies and are now told that the coverage for which they paid does not exist. Even though they paid their premiums, if they have no coverage, they are at risk for potentially millions more.

I believe that the court's decision in Group Builders is unfair, because as a result, some insurance companies are not honoring their contractual obligations. Each party to a contract should honor its contractual obligations.

Thank you for the opportunity to testify on this very important problem.

Fred Moore  
President  
HSI Mechanical, Inc.  
Cell: 808-478-8482  
[fmoore@hsimechanical.com](mailto:fmoore@hsimechanical.com)  
[www.hsimechanical.net](http://www.hsimechanical.net)

The Pacific Resource  
**PARTNERSHIP**



Testimony of C. Mike Kido  
External Affairs  
The Pacific Resource Partnership

Senate Committee on Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair

HB 924, HD2 – RELATING TO INSURANCE  
Tuesday, March 15, 2011  
9:00 am  
Conference Room 229

Chair Baker, Vice Chair Taniguchi and Members of the Committee:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP is in **support of the intent** of HB 924, HD2 - Relating to Insurance which clarifies the laws relating to the interpretation of commercial general liability insurance policies affecting construction professionals.

PRP **strongly endorses the "BIA/GCA version"**, proposed sd1, as a reasonable common sense remedy to restore equality and fairness to Hawaii's insurance market for Hawaii's construction industry consumers without damaging the financial stability on those who choose to be in Hawaii's insurance marketplace.

In May 2010, the Hawai'i intermediate court of appeals decided *Group Builders, Inc. and Tradewind Insurance Co. v. Admiral Insurance Co.* The court ruled that construction defect claims do not constitute an "occurrence" under a CGL policy, and therefore Admiral Insurance did not have to pay to cover the mold claims at Kalia Tower at the Hilton.

Under *Group Builders*, insurance companies are not required to provide insurance coverage for bodily injury or property damage that arise out of construction defects, even though contractors and developers paid for the insurance coverage.

The decision has created a huge windfall for insurance carriers. Principals from AC Kobayashi, Shioi Construction, Hawaiian Dredging, and Ralph S. Inouye testified that they alone had paid in excess of \$20 million in premiums for insurance coverage in the last 10 years. The courts now say that the insurance companies do not have to honor their promises. These are just four of hundreds of contractors and developers in Hawaii, who have paid millions of dollars of premiums for insurance coverage that no longer exists.

Not only did the contractors and developers pay millions of dollars in premiums, now, if claims are asserted against them for injuries or property damage arising from some construction defect, they are risk for potentially millions of more dollars.

Some insurance companies are offering endorsements to cover these claims, but the endorsement is prospective – it does not cover the ten year period for which contractors, developers, even the State, are at risk and for which they paid millions of dollars in coverage. There are other problems with the endorsements and some insurance companies are not offering any endorsement at all.

The construction industry simply wants what it paid for-- insurance coverage for bodily injury and property damage arising from construction defects.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on HB 924, HD2 – Relating to Insurance. Again, PRP **strongly endorses** the “BIA/GCA version” as proposed sd1, as a reasonable common sense remedy to restore equality and fairness to Hawaii’s insurance market for Hawaii’s construction industry consumers without damaging the financial stability on those who choose to be in Hawaii’s insurance marketplace.



A Servco Pacific Company  
2841 PUKOLOA STREET, HONOLULU, HAWAII 96819

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March 14, 2011

Senator Roz Baker, Chair  
Committee on Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, Hawaii 96813

RE: HB924, HD2 Relating to Insurance

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection:

I support the intent of HB924, but am opposed to the current draft, HD2 and request your consideration of the amendments that will be offered by BIA-Hawaii.

HB924 was introduced to address the Group Builders decision by the Intermediate Court of Appeals in 2010. That decision provided that insurance companies who sold commercial general liability policies to contractors to provide coverage for claims for bodily injury and property damages arising from construction defects, now did not have to pay on these claims.

I believe that the court's decision is unfair, especially since contractors have for years paid for this coverage, only to find now that the insurance carriers are not obligated to pay for claims that may arise.

While some insurance companies are offering endorsements to cover these claims, these endorsements are prospective and do not cover the ten-year period for which contractors, developers, and even the State, are at risk, even though all had paid their premiums in good faith. I believe the current legislature has an obligation to address this issue. Please include the amendments proposed by BIA-Hawaii and pass the bill in order to allow continued discussion with the goal of reaching a fair and equitable solution to the problem.

Sincerely,

Craig Washofsky  
President  
Servco Home & Commercial Products



# Testimony of Glenn Ida

Representing,  
The Plumbers and Fitters, Local 675

## **In Support of HB924, HD2**

Before the Senate:  
Committee on Commerce and Consumer Protection

Tuesday Mar. 15, 2011  
9 AM, Conference Room 229

Aloha Chair Baker, Vice-Chair Taniguchi and Members,

My name is Glenn Ida; I represent the 1300 plus active members and about 600 retirees of the Plumbers and Fitters Union, Local 675.

Local 675, **Strongly Supports HB 924, HD 2**- Relating to Insurance which will clarify the laws relating to the interpretation of commercial liability insurance policies affecting the construction industry.

Contractors have a 10 year statute of limitation to cover a construction project. The construction company pays for this insurance to cover property damage and bodily injury claims and construction defects for 10 years. The Group Builder's case is giving the insurance companies an "out" from paying for the ten years contractors may have paid for.

This bill will restore the insurance coverage the contractors purchased to cover them for the ten years, which they are responsible for. Without this insurance coverage, any catastrophic claim could bankrupt the construction company and enjoin all participants to the project. The Plumbers and Fitters Local 675, **Strongly Supports HB 924, HD 2.**

Thank you for this opportunity to testify.

Glenn Ida, 808-295-1280

**TO:** Senator Rosalyn H. Baker  
Chair, Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 230  
*Via Email: CPNTestimony@Capitol.hawaii.gov*

**FROM:** American Insurance Association

**DATE:** March 14, 2011

**RE: H.B. 924, H.D.2 – Relating to Insurance**  
**Hearing: Tuesday, March 15, 2011 at 9:00 a.m., Room 229**

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The American Insurance Association **opposes** H.B. 924. H.D. 2, Relating to Insurance, which clarifies the laws relating to the interpretation of commercial general liability insurance policies affecting contractors.

AIA represents approximately 300 major insurance companies that provide all lines of property and casualty insurance and write more than \$117 billion annually in premiums. The association is headquartered in Washington, D.C., and has representatives in every state, including Hawaii.

AIA is concerned about the impact of making this measure retroactive and the impact this would have on existing insurance policies. This would impose obligations on carriers that were not contemplated in the underwriting of the policies at their inception. Passage of this measure would likely result in costly legal challenges in the courts, with a high likelihood that the law would ultimately be overturned.

However well-intentioned, we believe that the legislature should not impose or mandate such coverage requirements on insurers. This could result in unintended negative consequences for the overall insurance market in Hawaii.

For the reasons stated above, we respectfully ask that you hold H.B. 924, H.D. 2. Thank you for the opportunity to testify.