

SB1192

Measure Title: RELATING TO INSURANCE.

Report Title: Commercial Liability Insurance Policies; Construction Professionals

Description: Clarifies the laws relating to the interpretation of commercial liability insurance policies affecting construction professionals.

Companion:

Package: None

Current Referral: CPN, JDL



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, February 9, 2011
8:30 a.m.

TESTIMONY ON SENATE BILL NO. 1192 – RELATING TO INSURANCE.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department has concerns about whether the provisions belong in the Insurance Code, Hawaii Revised Statutes ("HRS").

The purpose of this bill is to add a new part to Article 1 of the Insurance Code to provide clarification of coverage for damages arising out of construction defects, in response to the Hawaii Intermediate Court of Appeals' decision in *Group Builders, Inc. v. Admiral Ins. Co.*, 123 Haw. 142 (2010).

The issue in the *Group Builders* case was whether alleged faulty construction work, giving rise to contractual claims, constitutes an "occurrence" under a commercial general liability policy.

The purpose of the Insurance Code, HRS chapter 431, is to regulate the business of insurance by licensing and examining insurers, producers, and other licensees. As a regulator, the Insurance Division does not become involved in the interpretation of liability insurance policies or whether an insurance policy meets the reasonable expectations of construction professionals.

As such, the Department believes that these provisions do not belong in the Insurance Code.

We thank this Committee for the opportunity to present testimony on this matter.

TESTIMONY OF JEFFREY SHONKA

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Wednesday, February 9, 2011
8:30 a.m.

SB 1192

Chair Baker, Vice Chair Taniguchi, and members of the Committee, my name is Jeffrey Shonka, CFO of First Insurance Company of Hawaii and President of the Hawaii Insurers Council. I am here representing the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite more than 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** SB 1192. As a response to the Hawaii Intermediate Court of Appeals decision in *Group Builders v. Admiral Insurance*, this bill is unnecessary and may likely lead to additional market disruption and lawsuits. The Group Builders case held that an insurer has no duty to indemnify in a construction defect lawsuit when the claims asserted against the construction professional are based on breach of a construction contract.

The bill would direct the courts to "presume" that the work of a construction professional resulting in property damage is an "accident" unless the property damage is expected and intended. This bill would instruct the courts that they may consider a list of factors in determining whether an insurance policy meets a construction professional's objective and reasonable expectation of coverage. In addition, this bill would direct the courts that they must construe the insurance policy in favor of coverage in the case of conflicting policy provisions. This bill also alters long-standing court decisions by

shifting the burden of proof from the construction professional to the insurer to establish whether an exception to a policy exclusion applies.

SB 1192 should be held for many reasons including the following:

1. The bill attaches new legal rights and duties to already completed transactions, resulting in a retroactive statute that may not survive legal challenge.
2. The bill intrudes upon the prerogative of the Judiciary by directing or instructing courts how to interpret insurance policies issued to construction professionals. This is a matter traditionally and best left to the Judiciary.
3. The question of whether an insurer has a duty to provide a defense to a construction professional in a construction defect lawsuit is still pending before the Hawaii Intermediate Court of Appeals. The *Group Builders v. Admiral Insurance* decision referenced in SB 1192 decided only the issue of the duty to indemnify, which is much narrower than the duty to defend.
4. The free market is the best mechanism for insurers to respond to the needs of construction professionals. Several insurers, capable of handling risks of all sizes, have already responded by restoring coverage for construction professionals post-*Group Builders* by policy endorsements.
5. Insurance producers have expressed confidence that they can secure needed coverage for their construction clients. The insurance marketplace is not in crisis at this time; coverage is available and pricing is competitive.
6. However well-intended, legislative mandates could have the contrary effect of worsening the insurance climate by constricting the market, potentially eliminating the

variety of insurance coverage options and resulting in higher premiums for construction professionals.

Based on the foregoing, the Hawaii Insurers Counsel respectfully requests that SB 1192 be held. Thank you for the opportunity to testify.

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

SB 1192 – RELATING TO INSURANCE
Wednesday, February 9, 2011
8:30 am
Conference Room 229

Chair Rosalyn Baker, Vice Chair Brian 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 strong support of SB 1192 - Relating to Insurance which clarifies the laws relating to the interpretation of commercial liability insurance policies affecting construction professionals.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their CGL policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insureds, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. A copy of a PBN story from November 2010 discussing the ramifications is attached. Already, insurance carriers have denied coverage for claims. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on SB 1192 – Relating to Insurance.



P.O. Box 2866
Honolulu, Hawaii 96803
(808) 527-7777

TESTIMONY OF BEN BONDROFF

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

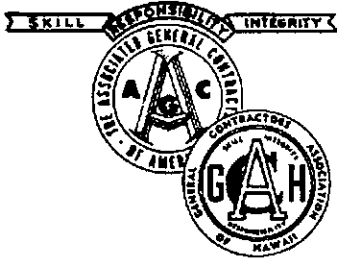
Wednesday, February 9, 2011
8:30 a.m.

SB 1192

My name is Ben Bondroff, Senior Vice President of First Insurance Company of Hawaii. First Insurance Company opposes this bill for the reasons outlined by Hawaii Insurers Council. We would like to emphasize that part of the Group Builders case is still pending the Intermediate Court of Appeals and therefore any legislative action would be premature.

First Insurance Company underwrites construction liability insurance policies and we have a significant market share in this line of business. We continue to do business in this area and have responded to the first part of the Intermediate Court of Appeals decision in Group Builders by adding an endorsement to our policies. If SB 1192 is passed, First Insurance Company will need to review our underwriting guidelines for this line of insurance.

I'm happy to answer any questions. Thank you for the opportunity to testify.



GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1066 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: gca@gcahawaii.org • WEBSITE: www.gcahawaii.org

February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

The General Contractors Association (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms.

We **strongly support** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

The GCA **strongly supports** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 9, 2011

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

RE: SB1192 "Relating to Insurance"

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

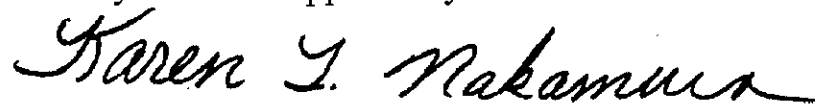
I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA strongly supports SB1192, Relating to Insurance. The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided.

Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves support the interpretation of coverage because the insurance carriers calculated the risk in the premiums they charged to their insureds, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. A copy of a PBN story from November 2010 discussing the ramifications is attached. Already, some insurance carriers have denied coverage for claims. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage.

Thank you for the opportunity to share our views with you.

A handwritten signature in cursive script that reads "Karen I. Nakamura". The signature is written in black ink and is positioned above the typed name and title.

Chief Executive Officer

BIA=Hawaii

Verdict exposes contractors to liability risks

Premium content from Pacific Business News - by Janis L. Magin , Pacific Business News

Date: Friday, November 19, 2010, 1:00am HST

Related News

A recent Hawaii appeals court decision has thrown into question whether contractors are covered by the insurance policies they purchase to protect themselves from liability for injuries and property damage arising from construction defects. The decision by the state Intermediate Court of Appeals said "construction defect claims do not constitute an 'occurrence' under a [commercial general liability] policy." That means the commercial general liability insurance policies don't provide coverage for construction defects, said **Anna Oshiro**, an attorney with Damon Key Leong Kupchak Hastert, which was hired by the Hawaii General Contractors Association to try and intervene in the case. Most commercial general liability policies are occurrence-based, which means they cover the client when the occurrence happens, said attorney **Mark Murakami**, who works with Oshiro.

The problem is the appeals court said that a construction defect can never be an occurrence so the policies can never cover a construction defect claim, he said. "Until someone gets a case to the Hawaii Supreme Court it's going to be the law," Murakami said,

The case, Group Builders Inc. v. Admiral Insurance Co., stemmed from the mold found at the Hilton Hawaiian Village's Kalia Tower.

Group Builders was a subcontractor on the \$95 million project. The firm settled with Hilton, but assigned its claim against Admiral, as well as its rights to sue in Group Builders' name, to its previous insurer, Tradewind Insurance Co.

Commercial general liability policies can cost hundreds of thousands of dollars for large construction projects.

"It's a significant expense line in every business' [profit and loss statement]," said **Chad Karasaki**, CEO of the insurance brokerage Aon Risk Services Inc. of Hawaii, which has been working with insurance companies to amend the wording of the policies to "defeat" the verbiage of the court ruling so that contractors are still covered.

While insurance companies have been working to remedy the situation by issuing endorsements and riders to existing policies for projects going forward, the appeals court decision means that companies still face exposure for claims related to buildings completed in the past couple of years, which would include nearly a dozen high-rise condominiums completed in the past seven years.

"Under Hawaii law you have 10 years to sue a contractor for construction defects," Oshiro said. "From today going backward you don't have any coverage."

The General Contractors Association was unsuccessful in its attempt to intervene.

"The biggest issue right now is all of us have paid lots and lots of money for these insurance policies thinking we had coverage, and then with this court ruling it negates the coverage we thought we were buying," said the association's president, **Conrad Murashige**, president of Shioi Construction Inc. Everyone understands that the insurance coverage is not for the construction defects themselves, Karasaki said. Rather, it is for the bodily injury and property damage that arise from a construction defect. "We believe it should be covered," he said. "It was routinely covered prior to the Group Builders case."

Some negotiations that had been in mediation or arbitration have fallen apart since the decision was issued.

"I was involved in a recent case where we were in a mediation the exact same time the Group Builders decision was issued," said attorney **Kelly LaPorte** of Cades Schutte. "That definitely affected the dynamics."

The construction company **Albert C. Kobayashi Inc.** is in the midst of negotiations over a project on Maui that's "right now in limbo" because of the Group Builders decision, said President **Russell Young**, who declined to name the project. Aon Risk Services has been trying to raise awareness about the problem since the decision was issued in May, but said there wasn't a lot of interest. "Unfortunately, there weren't a lot of solutions," Karasaki said. "Because people didn't have a solution they didn't want to identify the problem."

Because the appeals court decision was not appealed to the Hawaii Supreme Court, the industry must wait until another case comes up for the high court to rule.

"There's going to have to be a denial of coverage by an insurer, then the insured is going to have to sue and then it'll get heard," Karasaki said. "In the meantime, if people don't address the issue, the period of time of the gap in their coverage is going to be longer and longer."

Read more: [Verdict exposes contractors to liability risks | Pacific Business News](#)

Nan Inc

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February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Nan, Inc. **strongly supports** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co. court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the Group Builders' decision.

The results of the Group Builders decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the Group Builders decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

Nan, Inc. **strongly supports** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee. Thank you for considering our concerns on the above bill.



Sandra Kim, In-House Counsel

WAILEA MF-9 ASSOCIATES LLC

411 Huku Li'i Place, Suite 204
Kihei, HI 96753

Phone 808-891-8363
Email office@quill-group.com

TESTIMONY OF MARTIN F. QUILL, MANAGER
WAILEA MF-9 ASSOCIATES, LLC
IN SUPPORT OF S.B. 1192

BEFORE THE SENATE COMMITTEE
ON COMMERCE AND CONSUMER PROTECTION
WEDNESDAY, FEBRUARY 9, 2011
8:30 A.M.
CONFERENCE ROOM 229

Chairperson Baker and Members
of the Senate Committee On Commerce And Consumer Protection:

Thank you for this opportunity to present testimony generally in support of Senate Bill No. 1192. This testimony is offered by Wailea MF-9 Associates LLC ("MF-9"), a Maui condominium developer.

MF-9 supports this important legislation which is intended to address the adverse impact of the decision by the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw. App. 2010).

This decision has had a severe negative impact on both the development and construction industries in Hawaii, and at the same time, created a massive windfall for certain insurers. Indeed, as far as I can tell, the insurers who have taken the most aggressive position on *Group Builders* are not the local insurers who are committed to the Hawaii market. Rather, the insurers who are opportunistically exploiting *Group Builders* and filing lawsuits against their insureds to defeat coverage are the world's largest insurers who have no commitment to Hawaii.

In MF-9's case, it spent literally millions of dollars for insurance coverage for its Maui project. The *Group Builders* decision, at least from the perspective of MF-9's insurer, turned those premium dollars into a complete windfall and left MF-9, as well as the Hawaii contractor and subcontractors responsible for building the project, without

insurance coverage for construction defects, the very thing they sought coverage for, paid millions of dollars to obtain, and was a risk which the insurer understood it was covering and for which it charged millions of dollars in premiums. In fact, the key endorsement in MF-9's policy expressly states that the policy applies to property damage arising out of construction operations.

The *Group Builders* decision has affected, or may one day affect, *every* real estate developer and *every* construction-related company doing business in Hawaii, not just "construction professionals" as the current draft of the bill states. Among those whose comprehensive general liability insurance coverage was effectively eliminated by *Group Builders* are developers, as well as general contractors and subcontractors.

We therefore suggest the bill be amended to clarify that any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling units to the public for the property that is the subject of a claim or was in the business of building, developing, or constructing units for public purchase for the property also fall within the protection of SB 1192.

This remedial, curative legislation is urgently needed to restore the insurance coverage that Hawaii's insureds believed they paid for and had, and which historically has been recognized and provided by insurers under commercial general liability policies prior to the *Group Builders* decision. Indeed, many insurers issued, and insureds obtained, extended coverage for complete operations under such policies, typically for a period of ten years, the period of the statute of repose that applies to actions for damages due to a deficiency in the design or construction of an improvement to real property under Haw. Rev. Stat. Section 657-8. Some large mainland insurers are taking the position that even this extended coverage is abrogated by *Group Builders*. Remedying the unfortunate effect of *Group Builders* however goes beyond just this state's construction industry. It would protect this state's homeowners and purchasers of real estate. It would reinstate the coverages afforded indirectly to those who purchase from developers. Without the promise of insurance standing behind the developers, many potential homeowners in this State could look elsewhere rather than risk a defunct and bankrupt builder who has no insurance coverage to fix problems a building may suffer

after sale and during the 10 years of the statute of repose; the very type of remedy our state's right to repair law seeks to encourage.

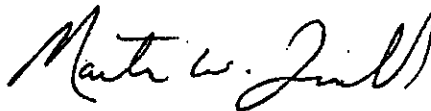
This decision will undoubtedly also have an adverse impact on the surety companies who must now fill the void because of the ill-advised insurers who are exploiting *Group Builders* to their advantage.

Absent immediate attention to this injustice by the Hawaii legislature, *Group Builders* will have a serious adverse impact on all future construction projects in Hawaii, including those of state and county agencies.

Respectfully submitted,

WAILEA MF-9 ASSOCIATES LLC,
A Hawaii Limited Liability Company

By: WAILEA MF-9 DEVELOPERS LLC
A Hawaii Limited Liability Company
Its Manager-Member



Martin W. Quill
Its Manager

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 9, 2011

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons
President

Subject: S.B. 1192 – RELATING TO INSURANCE

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. SAH is composed of nine separate and distinct subcontracting organizations including:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We are in support of this bill.

On the outset, we have to disclaim that we are not experts in insurance nor do we handle liability insurance policies. We do know however, that our members buy insurance with the expectation that it will serve its purpose to defend them in those rare instances where they run into trouble. The *Group Builders* case has brought about great uncertainty within the subcontracting community, not knowing whether their insurance policy is really worth the premiums that they pay.

It is with this in mind then that we support progress in this area towards interpretations that would allow for the coverage of our members and any damages arising out of construction defects.

Based on the above, we support the concept of this bill and we request your favorable consideration.

Thank you.

Grace Pacific

C O R P O R A T I O N
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February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Grace Pacific Corporation **strongly supports** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

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Grace Pacific Corporation **strongly supports** the passage S.B. 1192, and respectfully asks that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Robert M. Creps, Senior Vice President

Grace Pacific
CORPORATION
P.O. Box 78 / Honolulu, Hawaii 96810

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Quarry Office (808) 672-3545 Fax (808) 672-3906



February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
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PLACE: Conference Room 229

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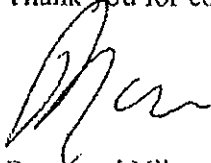
Grace Pacific Corporation strongly support SBI 192, Relating to Insurance.

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Grace Pacific Corporation strongly support the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

A handwritten signature in black ink, appearing to read 'Raymond Nii', written in a cursive style.

Raymond Nii
Manager, Admin, Eng, IDIQ



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Rosalyn, Baker, Chair
Senate Committee on Commerce and Consumer Protection

From: Samuel Sorich, Vice President

Re: **SB 1192 – Relating to Insurance**
PCI Position: Oppose

Date: Wednesday, February 9, 2011,
8:30a.m.; Conference Room 229

Aloha Chair Baker and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) PCI opposes SB 1192 which would overturn several significant court cases relating to commercial liability policies and would also change by statute how commercial general liability (CGL) policies are handled for construction professionals in the State of Hawaii.

As stated in the legislative findings, one of the intents of the bill is to legislatively overturn the decision of the Hawaii intermediate court of appeals in *Group Builders, Inc, and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co. (Group Builders case)*. The case confirms well-established law that it is no "accident" when a contractor's poor workmanship results in damage to the professional's own work, and that a contractor should not be insured to repair or replace his/her own defective work under a CGL policy. This is the prevailing majority trend reflected in reported case law throughout the United States, and SB 1192 would overturn this sound law and legislate Hawaii into a minority view on the issue.

The *Group Builders* case reflects sound public policy. It incentivizes general contractors to hire competent subcontractors who will provide quality work, not just those who submit the lowest bid. It also incentivizes contractors to spend the money necessary to avoid construction defects—defects that can hurt people and damage property—instead of simply turning a blind eye to bad business practices and letting their insurers pay for the resulting damage. The *Group Builders* case re-affirms the sound principle that every professional, in whatever field, should remain responsible for the quality and soundness of his/her own work. To hold otherwise creates a clear disincentive for a contractor to do good work in the first place.

SB 1192 seeks to convert a CGL policy, which is intended to insure against accidents that cause bodily injury or property damage, into a performance bond or warranty.

These insurance products are available in the marketplace to those construction professionals who wish to obtain them, but legislatively converting a CGL policy into such a product is unwise public policy.

The wholesale re-writing of insurance companies' obligations in SB 1192 will have adverse effects on the availability and affordability of insurance for construction professionals in Hawaii. It is clear that the changes mandated by the Bill have not been factored into the cost of CGL policies in effect today.

There is also a fundamental unfairness inherent in SB 1192 since in addition to requiring insurers to pay for losses that they did not contract to incur, it makes these changes retroactive. This retroactive rewriting of policies currently in effect is not only unfair, it likely constitutes an impermissible impairment of existing contractual obligations and is unconstitutional. This bill will surely spawn litigation on these issues, which is not in the best interests of Hawaii or the judicial system.

In addition to its other problems, SB 1192 also imposes on insurers a duty to defend and investigate notices of claims made under the policy. These duties do not exist under the plain language of standard CGL policies, and this is not a coverage that was purchased by contractors who bought a CGL policy. If a construction professional wishes to purchase a policy provides such coverage, the construction professional should purchase this type of policy, not have the Legislature change the terms and conditions of the policies that have already been purchased.

For these reasons, PCI respectfully requests that you hold this bill in committee.

TESTIMONY OF JOHN SCHAPPERLE

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Wednesday, February 9, 2011
8:30 a.m.

SB 1192

Chair Baker, Vice Chair Taniguchi, and members of the Committee, my name is John Schapperle, President of Island Insurance Companies. Island is the only locally owned and managed property and casualty insurance company in the State of Hawaii with roots tracing back to our founding in 1939 and does business solely in the State of Hawaii. Our policyholders represent homeowners, owners of automobiles and business owners located throughout all of Oahu and the neighbor Islands. Approximately 60% of our premiums written represent business insurance of which about 30% is written for contractors. We have a vested interest in Hawaii, our business community and contractors doing business in our State.

Island Insurance **opposes** SB 1192. This bill is in response to the Hawaii Intermediate Court of Appeals decision in *Group Builders v. Admiral Insurance* to which one of the Island Companies, Tradewind Insurance Company, Ltd., was a party. Tradewind held they **did have a duty to indemnify** Group Builders for property damage resulting from a construction defect. Tradewind, in fact, indemnified original plaintiff and then sought recovery for a portion of these damages from Admiral through court action. Admiral however prevailed in the circuit court with a ruling that there was not a duty to indemnify which was followed by an appeal by Tradewind to the Intermediate Court of Appeals. Unfortunately the Intermediate Court of Appeals upheld the circuit court's decision and further ruled that property damage resulting from construction defect was not an "occurrence" and therefore not covered under the General Liability policy.

Our philosophy on coverage as an insurer responsible to our policyholders has always been and remains that we resolve doubts in favor of providing coverage to our policyholders. Our record clearly shows we rarely file actions to avoid coverage. Following the decision of the Intermediate Court of Appeals, Island Insurance Companies implemented an endorsement providing contractors with coverage for property damage resulting from construction defects which had been negated by the Intermediate Court of Appeals. Most other insurers providing coverage for the majority of the construction business in Hawaii did the same. There is no insurance crisis for contractors. Coverage is available.

SB 1192 should be held for many reasons including the following:

1. The free market has addressed the issue of property damage resulting from construction defect by those insurers which write the majority of the market share of contractors in the State of Hawaii endorsing their policies to provide coverage for property damage resulting from construction defect.
2. This bill also potentially conflicts with the Judiciary's responsibility of interpreting insurance policies.
3. Though the Intermediate Court of Appeals has ruled on the Duty to Indemnify, the far greater obligation, that of the insurer's Duty to Defend, is still pending a decision from that same Court.
4. Mandating coverage which is readily available could result in an adverse reaction from the free market culminating in restriction of coverage and/or higher premiums. Mandating coverage can also send the very wrong message to the market that the Legislature is adverse to a free market system and anti-business.

We therefore ask the Legislature to Hold SB 1192.



February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Maryl Pacific Construction, Inc. strongly supports SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

Maryl Pacific Construction, Inc. strongly supports the passage of S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Sincerely,

Mary L. Silva, CSP
Risk Manager

MARYL PACIFIC CONSTRUCTION, INC.
HARBOR COURT • 55 MERCHANT STREET, SUITE 2900 • HONOLULU, HI 96813
PHONE (808) 545-2920 • FAX (808) 545-3584

AN EQUAL OPPORTUNITY EMPLOYER



February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Continental Mechanical of the Pacific **strongly support** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

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Continental Mechanical of the Pacific **strongly support** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Regards,
Continental Mechanical of the Pacific

Samuel T. Fujikawa
CEO

AIR CENTRAL INC
1717 Colburn Street
Honolulu, HI 96819

February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,


Air Central Inc. **strongly support** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

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Air Central Inc. strongly support the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.



Greg Kiyon
President
Air Central Inc.



February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Paul's Electrical Contracting LLC **strongly support** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

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Paul's Electrical Contracting LLC **strongly support** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Adachi", written in a cursive style.

Paul M. Adachi, padachi@paulselectrical.com
Managing Member

99-1400 Koaha Place, Aiea, Hawaii 9670, 808-486-9866(P), 808-486-0736(F)



87-2020 Farrington Highway ■ Waianae, Hawaii 96792 ■ Tel: 808 668-4561 ■ FAX: 808 668-1368 ■ Website: www.pvtland.com

February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

PVT Land Company Ltd. **strongly supports** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders*' decision.

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PVT Land Company Ltd. **strongly supports** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.
Stephen E. Joseph / Vice-President



February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Rons Construction Corporation strongly supports SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co. court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the Group Builders' decision.

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Rons Construction Corporation strongly supports the passage S.B. 1192, and respectfully asks that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Y. Matsunaga".

Wayne Y. Matsunaga
Executive Vice President & General Manager



S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

S & M Sakamoto, Inc. **strongly supports** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

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S & M Sakamoto, Inc. **strongly supports** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Dennis M. Ideta, Senior Vice President

February 8, 2011

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



SUBJECT: S.B. 1192 RELATING TO INSURANCE.

Dear Chair and Members of the Committee,

Royal Contracting is celebrating 50 years of being a contractor in Hawaii.

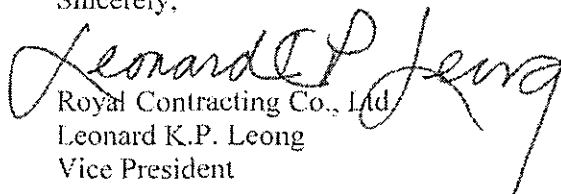
During the past years we have faced many challenges, but to lose insurance coverage that we have had for 50 years is our greatest challenge.

It is something that is paid for and insurance should be provided for the premium paid.

Without proper insurance coverage, smaller contractors may be forced to close their business in lieu of risking their equity.

We urge passage of SB 1192.

Sincerely,


Royal Contracting Co., Ltd
Leonard K.P. Leong
Vice President



February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

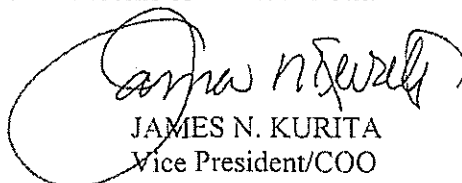
LYZ, Inc. **strongly support** SB1192, Relating to Insurance.

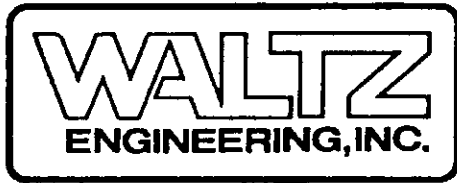
The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders* decision.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

LYZ, Inc. **strongly support** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.


JAMES N. KURITA
Vice President/COO



A Woman Owned & Operated Small Business

500 ALAKAWA STREET, #119 • HONOLULU, HAWAII 96817 • PH: (808) 842-7955 • FAX: (808) 842-3985 • LIC #BC-14014

February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,


Waltz Engineering, Inc. **strongly supports** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders*' decision.

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Waltz Engineering, Inc. **strongly supports** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.


Lorinda L.S. Waltz
President



February 8, 2011



TO: THE HONORABLE ROSALYN H. BAKER, CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING



DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Haas Insulation **strongly supports** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.



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Haas Insulation **strongly supports** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Regards,

Aaron K. Wallen
President



819 MOOWAA ST., STE 105
HONOLULU, HAWAII 96817

HAWAII CONTRACTORS LICENSE NO. C-19954: C-1 & 42
PHONE: 808.845.0775
FAX: 808.845.0684

**KLOPFENSTEIN'S
LIGHTING INC.**

Rick Fell

President

PHONE:
808 533-0558 x104

FAX:
808 521-2891

1128 Nuuanu Ave., Ste. 101 • Honolulu, HI 96817
email: rfell.11a610@lighting.net

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
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PLACE: Conference Room 229

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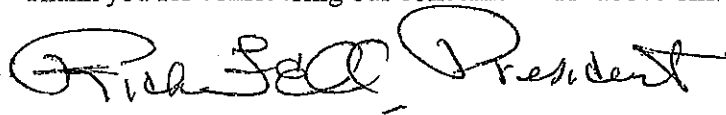
Klopfenstein's Lighting, Inc. does strongly support SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

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Klopfenstein's strongly supports the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

 Rick Fell, President



DC Asphalt Services, Inc.

P.O. Box 30508, Honolulu, HI 96820

Dene (808) 478-9292 Chris (808) 478-2443

Shop (808) 839-4500 Lic.#C-26608 Fax (808) 356-0797

February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

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DATE: Wednesday, February 9, 2011

TIME: 8:30 a.m.

PLACE: Conference Room 229

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DC Asphalt Services, Inc. strongly support SB1192. Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

DC Asphalt Services, Inc. strongly support the passage S.B. 1192. and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Sincerely,

Chris Laird



HIIA

Hawaii Independent Insurance Agents Association

February 8, 2011

To: Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice-Chair
Committee on Commerce & Consumer Protection

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: SB1192 – Relating to Insurance
Hearing: Wednesday, February 9, 2011 8:30 am Conference Room 229

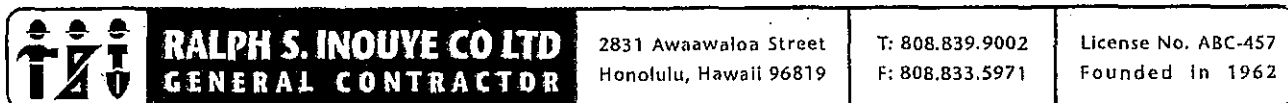
The Hawaii Independent Insurance Agents Association (HIIA) **supports with reservation comments** SB 1192 which has as its intent to clarify the laws relating to the interpretation of commercial liability insurance policies affecting construction professionals.

Points of Concern:

- The definition of “construction professionals” is not clearly defined.
- There may be other parties of interest that should be included in the general liability coverage but might not be included due to interpretation.
- The effective date language in the bill indicates “all insurance policies currently in existence or issued on or after the effective date of this Act.” There should be a provision that the coverage should apply retroactively in order to cover those claims that may or have already occurred under the expired policies.

HIIA is a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs. Many of our clients are contracting risks and their insurance coverage is crucial to the health and welfare of the construction business and public interest.

Thank you for the opportunity to provide our testimony.



February 8, 2011

To: The Honorable Senator Rosalyn H. Baker, Chair and Members of the
Committee on Commerce and Consumer Protection (CPN).

Subject: SB1192, Relating to Insurance
Hearing Date & Time - February 9, 2011 at 8:30am
Conference Room 229
Testimony in **Support**

Dear Chair Baker and Members of the CPN Committee:

My name is Lance Inouye and I am the President of Ralph S. Inouye Co., Ltd.,
General Contractor and member of the General Contractors Association of Hawaii. We have
been in business in Hawaii since 1962. We **strongly support** SB1192, Relating to
Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind
Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance
coverage that contractors, subcontractors, and other construction industry participants have
already paid for is provided. Contractors and others have long paid insurance premiums for
insurance coverage in their Comprehensive General Liability (CGL) policies that would cover
bodily injury and property damage resulting from defective workmanship. The insurance
policies themselves supports the interpretation of coverage, the insurance carriers
calculated the risk in the premiums they charged to their insureds, and the insurance
carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. I'm told insurance
carriers have already denied coverage for claims based on this decision. Some insurance
carriers have issued endorsements, but the endorsements are all different and if they
provide coverage, they only provide coverage from the date of the endorsement forward.
There is no coverage for work that has already been completed. If a catastrophic accident
occurred on a project that has already been completed, the insurance carriers would not be
legally obligated to cover the claims as a result of the *Group Builders* decision, even though
the contractors paid for the coverage. We ask you to fix this significant problem.

We **strongly support** SB1192, and respectfully ask that the bill be passed out of the committee.

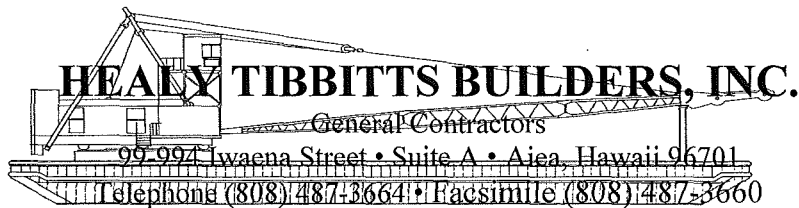
Thank you for the opportunity to testify.

Sincerely,

RALPH S. INOUE CO., LTD.



Lance M. Inouye
President & CEO



February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011

TIME: 8:30 a.m.

PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Healy Tibbitts Builders, Inc. **strongly support** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

Healy Tibbitts Builders, Inc. **strongly support** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Very truly yours,
Healy Tibbitts Builders, Inc.

Richard A. Heltzel
President



DATE: February 8, 2011

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

SUBJECT: S.B. 1192 RELATING TO INSURANCE.

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chair and Members of the Committee,

Architectural Glass and Aluminum **strongly supports** SB1192, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

Architectural Glass and Aluminum **strongly supports** the passage S.B. 1192, and respectfully ask that the bill be passed out of the committee.

Thank you for considering our concerns on the above bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christopher Knitter', with a long horizontal line extending to the right.

Christopher Knitter
Manager

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TESTIMONY IN FAVOR OF SB 1192

I respectfully urge your support for passage of SB 1192, a bill which seeks to address the Intermediate Court of Appeals' holding in *Group Builders, Inc. v. Admiral Ins. Co.*, 123 Hawaii 142, 231 P.3d 67 (Haw. Ct. App. 2010). As you know, *Group Builders* held that construction defects do not constitute an occurrence under a Commercial General Liability policy.

Group Builders offers little, if any, analysis to support its decision. It relies primarily on (1) federal district court cases which postulate that the Hawaii Supreme Court would find that construction defects do not arise from an occurrence; and (2) on a decision from the Colorado Court of Appeals, *Gen. Sec. Indemn. Co. v. Mountain States Mut. Cas. Co.*, 205 P.3d 529 (Colo. Ct. App. 2009), which was effectively overruled by the Colorado legislature. See Colo. R. Stat. §13-20-808.

Consequently, a wealth of relevant Hawaii case law was overlooked by the ICA in *Group Builders*. The decision ignores the established standards of insurance policy interpretation and burdens of proof required by the Hawaii Supreme Court (see, e.g., *Dairy R. Partners v. Island Ins. Co.*, 92 Hawaii 398, 411-13, 992 P.2d 93, 106-08 (2000); *First Ins. Co. of Hawaii v. State*, 66 Haw. 413, 417-18, 665 P.2d 648, 651-52 (1983)). In fact, one of the seminal insurance cases decided by the Hawaii Supreme Court, *Sentinel Ins. Co. v. First Ins. Co. of Hawaii, Ltd.*, 76 Hawaii 277, 875 P.2d 894 (1994), involved a dispute regarding coverage for construction defects. Yet, *Group Builders* does not even mention *Sentinel*.

Group Builders also disregards Hawaii statutory law which requires that the policy be construed according to the entirety of its terms, "as amplified, extended, restricted, or modified by any rider, endorsement or application attached to and made a part of the policy." Haw Rev. Stat. §431:10-237.

Although an act by a contractor or subcontractor may have been performed intentionally, the alleged resulting property damage is usually not expected by the insured, but is due to an accident. Therefore, contrary to the holding in *Group Builders*, in the typical construction defect case, there is, in fact, an "occurrence."

Merely because a construction defect arises from an "occurrence" does not guarantee coverage, however. Once an occurrence is established, the proper analysis turns to consideration of whether the policy's exclusions narrow or negate coverage. In the construction defect arena, the "business risk" exclusions, such as "your work" or "your product" exclusions, may limit or remove all coverage for construction defects under the policy. *Group Builders* ignored the presence of the business risk exclusions, merely holding that construction defects claims do not constitute an occurrence. Yet, why would these exclusions be necessary if a construction defect was never caused by an accident, and therefore not an occurrence?

Contrary to Hawaii law, *Group Builders* ignored consideration the entirety of a policy's terms, instead merely deciding that construction defects do not constitute an occurrence.

SB1192 will help restore the proper analysis when construing Commercial General Liability policies.

Respectfully submitted on February 8, 2011, by:

Tred R. Eyerly
1164 Kaeleku St.
Honolulu, HI 96825

Glenn K. Sato
Attorney At Law

888 Mililani Street, PH1
Honolulu, Hawai'i 96813

February 3, 2011

VIA ELECTRONIC SUBMISSION ONLY
Senate Committee on SB 1192
State Capitol
Honolulu, Hawaii 96813

Re: Written Testimony In Support of SB 1192

Dear Committee Members:

I have been a private attorney for 33 years and for the last 10 years I have focused on construction defect actions for association of owners in high rise projects and owners of single family homes in large residential projects. Over the years, I have run into the issue of coverage for construction defects in both the federal and state court's in Hawaii. Although I have dealt with the coverage issue related to construction defects in the federal and state actions, I will leave the technical legal background to those more involved with the proposed legislation.

I want to submit for your consideration a case I started in 2008 and finished at the end of 2010. At the beginning of the case, the developer and contractors invited me to meetings involving their insurance brokers. The insurance brokers confirmed with the underwriting department of a national insurance company that the policy (an OCIP policy) covered construction defects, however, the insurer's claims department denied coverage and the developer and contractors had to engage in extensive litigation to get the insurer to pay a relatively small portion of the claim. I took another 2 years to recover from all of the others involved in the construction defect.

I want to submit for your consideration another case that I and other law firms started in 2009 and remains pending. The action involves the rusting of hurricane straps that tie the walls and roof of single and multi-family homes to their foundations to protect the homes from high winds. The straps at the foundation level are rusted through and, as a result, the homes are not protected from high winds. The developer is in extensive litigation with some of its carriers to get sufficient funds to make repairs to our clients' homes. The rusted hurricane straps were present from at least 2005.

The policies that insurers sold to the developers and contractors were supposed to cover construction defects. With the current federal and state decisions possibly standing for the proposition that no coverage exists (these decisions are wrong) under such policies, the defendants and homeowners will suffer while the insurers get to avoid claims that were supposed to be covered and keep premiums that were paid to them for such coverage.

Very truly yours,



Glenn K. Sato