

CPR INSURER CALIFORNIA CONSTRUCTION DEFECT DISPUTE RESOLUTION PROTOCOL

Claims by homeowners or associations of homeowners alleging construction defects against developers and general contractors are common, especially in California. The developer or general contractor, in turn, may assert claims against a number of other parties involved in the project-subcontractors, design professionals, etc. The Insurers of virtually all of these parties may be obligated to defend their insured(s) and numbers of law firms and experts may be retained to represent the various defendants, who may attempt to defend themselves by seeking to shift liability to the other parties. Coverage issues may arise between Insurers and policyholders. This may be a costly and duplicative process.

In most such cases, a significant issue is the amount of damages. Certain cases are tried to judgment. Many are settled eventually, but only after a protracted, costly defense effort. Defense expenditures often are disproportionate to the value of the case.

We believe that it is in the interest of all parties that new alternatives should be considered to attempt to resolve construction defect claims expeditiously, preferably without litigation, and that legal fees, expert fees and other defense expenditures be coordinated among the parties to the greatest extent possible. To achieve these objectives, we adopt the following protocol on behalf of our company and its subsidiaries with respect to any future construction defect claim (the Claim) arising in California which we become involved as an Insurer of one or more parties, with defense obligations, and subject, whenever required, to the consent of our policyholder(s).

A. MATTERS COVERED BY PROTOCOL

1. We will attempt in good faith to cooperate in the resolution of the Claim by participating in mediation at an early point in time, if feasible before litigation is commenced, with the other involved parties and their insurers. If the initial mediation is unsuccessful, we will repeat the attempt at critical junctures in the pre-trial process. We will also comply fully with California's Calderon Act, Civil Code Section 1375.
2. We aim to conduct our insured's defense in a coordinated and cost-effective manner. To achieve this aim, we will share qualified counsel, experts and services with co-defendants pursuant to a joint defense agreement to be agreed by the participating parties/insurers on a case by case basis. The primary objectives of the joint defense effort will be:
 - (a) to establish a high quality defense;
 - (b) to avoid litigation, cross-claims and other infighting;
 - (c) to determine whether deficiencies exist and formulate a reasonable scope and method of repair so as to facilitate a prompt and equitable resolution of the claims;
 - (d) to reduce defense costs by reducing duplication of counsel, experts, and investigation attendant to protracted construction defect litigation;

(e) to establish procedures for resolving issues and minimizing controversy among the parties concerning allocation of defense and indemnity payments; and
(f) to develop a settlement strategy.

3. We will offer mediation to our policyholder(s) to attempt to resolve any differences between us regarding coverage for the Claim.

4. We agree to attempt to resolve through mediation any differences with other Insurers or with other defendants regarding apportionment of liability.

5. Any mediations pursuant to this Protocol will be conducted in accordance with the CPR Procedure for Mediation of Construction Defect Claims (the "Procedure").

B. PROVISIONS OF PROTOCOL

1. Disputes Involving Signatory and Non-Signatory Insurers

If the dispute involves one or more Insurers who have not signed this Protocol, such non-signatory Insurers will be invited to participate. If one or more of the parties who are not signatories to this Protocol are not willing to comply with these procedures, the signatory parties will seek to implement this Protocol, unless they conclude in their sole discretion that said absent Insureds) are indispensable.

2. Involvement of Policyholders

Any policyholder may be invited to participate voluntarily in any aspect of the Procedure by any participating Insurer. If such an invitation is extended and declined, the Procedure nevertheless will go forward. The preceding notwithstanding, if in the sole judgment of any Insurers(s) of an absent policyholder, the presence of such policyholder is necessary for any reason, said Insurer(s) may opt out of the Procedure.

3. Commencing Litigation

The procedures specified in this Section B, including the Procedure, shall be the sole and exclusive procedures for the resolution of a dispute involving signatories covered by this Protocol; provided, however, that a party may commence legal action or other proceedings for any reason, and may take whatever action such party in its sole judgment deems necessary to defend any lawsuit or other proceeding to which it is made a party. Despite such action, the parties will continue to participate in good faith in the procedures specified herein.

4. No Prejudice or Waiver of Rights

Nothing in this Protocol is intended to reflect on the merits of any party's coverage position on any issue. By participating in the procedures specified herein, no party waives or otherwise prejudices any right or position it may otherwise have.

The Procedure is a modified version of Appendix B to the CPR Insurance Industry Dispute Resolution Commitment.

C. CONTRACTUAL DISPUTE RESOLUTION PROVISIONS

If a dispute arises out of or relates to a contract between our company and another insurance company which contains dispute resolution provisions in conflict with those set forth above, the contractual provisions will govern, unless the parties otherwise agree. The existence of an arbitration clause in such contract would not, in and of itself, constitute a conflict.

D. DURATION AND WITHDRAWAL

This Protocol shall become effective as soon as CPR notifies the signatories that ten Insurers have signed the counterparts of this Protocol, and shall remain effective so long as at least ten Insurers remain signatories to the Protocol. Each signatory may terminate its Protocol on 30 days written notice to CPR, provided that the signatory's obligation to participate in the procedures specified herein commenced before the effective date of such termination shall not be affected thereby.

E. GOOD FAITH COMPLIANCE

Our company will make a good faith effort to comply with this Protocol; however, it does not represent a contractual obligation and is not enforceable in a court of law.

Company

Authorized Claims Officer

Date: _____

*Note: Please send a signed copy of this Protocol to the
International Institute for Conflict Prevention & Resolution
30 East 33rd Street, 6th Floor, New York, NY 10016.
CPR will publish a registry of companies subscribing to the Protocol.*