

2016 Regular Session

**Approved
6-6-16**

HOUSE STUDY REQUEST NO. 5

BY REPRESENTATIVE FOIL

CONTRACTORS/CONSTRUCTION: Requests a study relative to contractors' insurance policies and whether such policies should insure claims against contractors' workmanship

1 A STUDY REQUEST

2 To the House Committee on Commerce to study and to provide recommendations
3 concerning contractors' and subcontractors' general liability policies and whether
4 such policies should insure claims against their own workmanship and to report its
5 findings to the House of Representatives prior to the convening of the 2017 Regular
6 Session of the Legislature of Louisiana.

7 WHEREAS, a Commercial General Liability Policy (CGL) generally does not insure
8 a contractor or subcontractor for property damage due to the respective contractor's or
9 subcontractor's own faulty workmanship; however, the Louisiana Second Circuit Court of
10 Appeals affirmed the holding of a lower court that a certain general contractor was entitled
11 to insurance coverage for the costs of repairing defective work performed by a subcontractor
12 (*Broadmoor Anderson v. National Union Fire Insurance of Louisiana*, 40,096 (La. App. 2d
13 Cir. 9/28/05), 912 So. 2d 400); and

14 WHEREAS, the insurance policy at issue was a CGL policy, and such policy was
15 purchased by the project owner and named as additional insureds "all contractors" and "all
16 tiers of subcontractors"; and

17 WHEREAS, after the project's completion, the owner noticed problems with leaks
18 concerning ceramic tile shower stalls in certain rooms, and such leaks were determined to
19 have been caused by defective workmanship in the installation of certain shower pans; and

1 WHEREAS, the general contractor and subcontractor collaborated in efforts of
2 remediation; and

3 WHEREAS, shortly after the commencement of repairs, the general contractor made
4 a formal demand on the CGL insurer for the general contractor's costs for remediation; and

5 WHEREAS, ultimately, the general contractor filed suit against the insurer and
6 obtained a summary judgment finding coverage in favor of the general contractor; and

7 WHEREAS, cases of precedence hold that a contractor is not entitled to insurance
8 coverage through a CGL policy for property damage caused by the contractor's own
9 defective performance, and a common refrain among those cases is that "a CGL policy is not
10 intended to serve as a performance bond"; and

11 WHEREAS, the ruling in *Broadmoor Anderson* does not directly affect that common
12 refrain, because the subcontractor responsible for the defective work was not entitled to any
13 insurance coverage for costs of remediation; and

14 WHEREAS, as summarized by a California court, "Generally liability policies...are
15 not designed to provide contractors...with coverage against claims their work is inferior or
16 defective...Rather liability coverage comes into play when the contractor's (insured)
17 defective materials or work cause injury to property *other than* the insured's own work or
18 products." (*Clarendon America Ins. Co. v. General Sec. Indem. Co. of Arizona* (2011) 193
19 Cal. App. 4th 1311, 1325) (emphasis added); and

20 WHEREAS, the Louisiana State Licensing Board for Contractors (board) is the state
21 agency authorized to license and regulate building contractors in this state, and such board
22 serves the mission and purpose of "the protection of the general public from incompetent
23 and fraudulent acts of a contractor while promoting the integrity of the construction
24 industry"; and

25 WHEREAS, many Louisiana citizens hire board-licensed contractors to perform and
26 complete both residential and commercial constructions in this state; and

27 WHEREAS, some such citizens allege adverse outcomes with respect to defective
28 constructions resulting from the substandard workmanship of respective licensed
29 contractors; and

1 WHEREAS, such allegations of adverse outcomes prompt a particular concern of
2 such citizens relative to CGL policies of contractors licensed in this state; and

3 WHEREAS, such particular concern relates to the aforementioned common refrain
4 that "a CGL policy is not intended to serve as a performance bond" and thus, a CGL policy
5 generally does not contain coverage to insure citizens' claims against contractors with
6 respect to contractors' substandard or faulty workmanship; and

7 WHEREAS, while the state shares interest in the board's mission and purpose to
8 protect the general public from certain incompetent and fraudulent acts while promoting
9 integrity of the state's construction industry, it is also a state interest to determine whether
10 the general public may be better protected by CGL policies that insure citizens' claims
11 against contractors, when such claims result from assertions of substandard or faulty
12 workmanship of contractors licensed in this state through the Louisiana State Licensing
13 Board for Contractors.

14 THEREFORE, the House of Representatives of the Legislature of Louisiana requests
15 the House Committee on Commerce to study and to provide recommendations concerning
16 contractors' and subcontractors' general liability policies and whether such policies should
17 insure claims against their own workmanship, and to submit a written report of its findings
18 to the House of Representatives prior to the convening of the 2017 Regular Session of the
19 Legislature of Louisiana.

20 THEREFORE, in undertaking the study and issuing recommendations, the House
21 Committee on Commerce may seek input from the Louisiana State Licensing Board for
22 Contractors and may request documents or data, conduct public hearings, hear the testimony
23 of witnesses, and take any other actions that it deems necessary to carry out its functions.

24 THEREFORE, the Louisiana State Licensing Board for Contractors is hereby
25 authorized to exercise its discretion as to the use of or engagement in certain research,
26 consultations, studies, or any other pertinent information deemed essential by the board
27 regarding input as to whether such CGL policies should necessarily insure claims against
28 contractors' workmanship.

29 THEREFORE, a copy of this Study Request shall be transmitted to the executive
30 director of the Louisiana State Licensing Board for Contractors.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HSR 5 Original

2016 Regular Session

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Requests the House Committee on Commerce to study and report its findings and recommendations concerning contractors' and subcontractors' general liability policies and whether such policies should insure claims against their own workmanship, and to provide a written report to the House of Representatives prior to the 2017 R.S.