

March 17, 2021

Testimony to the
Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213

Good morning Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation.

For the record, my name is Daniel Houf representing Harper Houf Peterson Righellis Inc a privately owned multi-discipline engineering firm with 105 employees. We have been in business in Oregon since December 1990 and employ Civil, Structural Engineers, Surveyors, Environmental Scientists, Landscape Architects, Planners, and support staff. I am writing today to strongly support the -2 amendment to Senate Bill 213.

Senate Bill 213 will bring fairness to professional services contracts by ending the inclusion of duty to defend clauses in public and private agreements. This duty to defend clause is onerous as it requires the design professional be responsible to defend an owner or other party against claims asserted by a third-party even if the design professional is not negligent. This duty to defend clause is not fair, equitable or inclusive.

This requirement in professional services contracts is not reasonable to design firms of any size, but it is especially damaging to emerging and small businesses that typically don't have the ability to advocate against these contract requirements. We find the duty to defend clauses to be a deterrent and undue risk to compete for certain projects, many of which are with governmental agencies.

Our firm has been negatively impacted using the "duty to defend" clause in an agreement with a City contract. In this situation the construction company employee working on the project turned on a pipe that flooded the City street and caused damage to personal property. The City invoked our requirement to defend them against the claims based on the contract, not the negligence. This took our company substantial time, effort, and money to satisfy our obligation under the agreement, even though we were not at fault.

The professional errors & omissions coverage will only respond for defense costs if negligence has been found on the part of the professional in performance of services under the agreement. This means if negligence is not found, but the requirement to "defend" remains then the Company has the undue burden of paying out of pocket for those defense expenses.

We respectfully ask this committee to support the -2 amendment to SB 213 and send this bill to the Senate floor. This is good business policy that will assist firms across the state in being able to engage in construction projects, including many government-funded projects, by removing this onerous duty to defend clause.

Thank you for your service and we are happy to be a resource if you have additional questions.

Thank you.

Sincerely,
HARPER HOUF PETERSON RIGHELLIS INC.

A handwritten signature in black ink, appearing to read 'D S Houf', with a stylized flourish at the end.

Daniel S Houf
President



