



# **CONTRACTORS STATE LICENSE BOARD**

SENATE BILL 465 (HILL) STUDY

## **Contractors State License Board**

Report to the Legislature

Senate Bill 465 (Hill) Study

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## **INTRODUCTION**

### **A. Senate Bill 465**

Section 7071.18 of the Business and Professions Code, added by Statutes 2016, Chapter 372, Section 2 (Senate Bill 465), became effective on January 1, 2017.

Subparagraph (b) subdivision (1) provides that the Contractors State License Board prepare a study of judgments, arbitration awards, and settlements that were the result of claims for construction defects for rental residential units.

The statute provides that the study includes the following criteria:

- 1. Criteria used by insurers or others to differentiate between settlements that are for nuisance value and those that are not**
- 2. Whether settlement information or other information can help identify licensees who may be subject to an enforcement action**
- 3. If there is a way to separate subcontractors from general contractors when identifying licensees who may be subject to an enforcement action**
- 4. Whether reporting should be limited to settlements resulting from construction defects that resulted in death or injury**
- 5. The practice of other boards within the department**
- 6. Any other criteria considered reasonable by the board.**

### **B. Question Presented**

The question posed for response by subparagraph (b) subdivision (1) of Business and Professions Code Section 7071.18 is whether the results of the study demonstrate that the board's ability to protect the public as described in Section 7000.6 would be



enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for residential units. Section 7000.6 of the Business and Professions Code provides:

Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

### **C. Abstract**

The data collected for this study is briefly summarized in the "Data Collected" chart below. The six criteria that are identified within subparagraph (b) subdivision (1) Section 7071.18 of the Business and Professions Code make up each of the six sections of this study. Each of the six sections of the study are divided into three parts as follows: (1) a background of the criterion topic, as it relates to the Contractors State License Board (CSLB) or to the issue of construction defects for rental residential units generally; (2) presentation of the data (if any) relevant to each criterion; and (3) analysis of the data relevant to each criterion, with an intermediate conclusion.

The study ends with a Board recommendation. The recommendation is that the ability of the Board to protect the public as described in Section 7000.6 would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for rental residential units.

There are also 9 Exhibits referenced throughout this study. For purposes of confidentiality, and to ensure compliance with Business and Professions Code Section 7071.18 subparagraph (b) subdivision (2), the Exhibits are not published with this study. This study is available for download at [www.cslb.ca.gov](http://www.cslb.ca.gov); please contact the CSLB Executive Office at 916-255-4000 to request a paper copy of the study.

### **DATA COLLECTED FOR THIS STUDY**

The following chart (**Figure 1**) summarizes the data CSLB has collected (excluding research articles reflected in the endnotes of this study) to prepare a study of



judgments, arbitration awards, and settlements that were the result of claims for construction defects for rental residential units.

DATA	TIME PERIOD COVERED	CASES / RESPONSES
Construction Defect <b>Civil Cases</b> from Construction Dockets	2016 – Present	651
Arbitration <b>Cases</b> involving Construction Defect	2016 – Present	2
Settlements, Verdicts, Judgment <b>Summaries</b> involving Construction Defect and Rental Residential Units	2012 - 2017	17
Civil Case <b>Memoranda</b> Documenting Construction Defect Settlements	2012 – 2017	3
<b>Judgments</b> for Breach of Contract or Negligence	2016 – 2017	2
CSLB “Disclosure Survey” <b>Responses</b> – Licensed Contractors	September and October 2017	3,999
CSLB “Disclosure Survey” <b>Responses</b> – Formerly Licensed Contractors	September and October 2017	37
CSLB “Disclosure Survey” <b>Responses</b> – Consumers	September and October 2017	2,414
CSLB “Disclosure Survey” <b>Responses</b> – Insurers	September and October 2017	273

Figure 1

### STUDY CRITERIA AND ANALYSIS

#### 1. Criteria used by insurers or others to differentiate between settlements that are for nuisance value and those that are not

##### Background

##### *What Is Nuisance Value?*

In its 3,200-definition Glossary of Insurance and Risk Management Terms,<sup>1</sup> the International Risk Management Institute, Inc. (IRMI) does not provide a definition of “nuisance value” or “nuisance settlement.” The absence of a definition of these terms from an organization that defines itself as the premier authority and educator for risk management, insurance, and legal professionals<sup>2</sup> tends to lend credence to one commentator’s claim that insurance adjusters “won’t usually use the term ‘nuisance



value' when making settlement offers."<sup>3</sup> According to Black's Law Dictionary, a "nuisance settlement" is defined as:

"A settlement in which the defendant pays the plaintiff purely for economic reasons — as opposed to any notion of responsibility — because without the settlement the defendant would spend more money in legal fees and expenses caused by protracted litigation than in paying the settlement amount."<sup>4</sup>

It is necessary to differentiate between "nuisance claim," "nuisance value," and "nuisance settlement." A nuisance claim is the claim that led to the nuisance settlement.<sup>5</sup> For example, a nuisance claim may be defined in terms of a "squeaking floor" or conditions resulting from "normal wear and tear"<sup>6</sup>, or a claim that [an insurance company may believe] is worth nothing at all.<sup>7</sup> An insurer may begin negotiations on a claim by denying coverage and refusing to defend an injured party's demand for settlement or by offering the nuisance value settlement.<sup>8</sup>

The nuisance value, then, is the actual amount for which the "nuisance" claim ultimately settled.<sup>9</sup> Legal practitioners have defined the nuisance value in terms of an amount less than the cost of trial<sup>10</sup> or the cost to defend the claim.<sup>11</sup> Some of the costs of litigation may include the insurer's appointing and paying competent defense counsel as well as experts and other reasonable costs, and defending the entire action, including both claims that are potentially covered and claims that are not.<sup>12</sup>

#### *Are Construction Defect Cases Settled for Nuisance Value?*

In an industry in which approximately ninety-five percent of all construction defect cases are settled before trial<sup>13</sup>, the answer may be inferred to be "yes." Just to what extent, however, is difficult to define, as statistics of defense costs and indemnity dollar costs relating to construction defect claims are for the most part unavailable.<sup>14</sup> As one commentator states, there is a startling lack of data from which one can draw any conclusions about the degree to which nuisance lawsuits infect the judicial system.<sup>15</sup>

However, where the insurance industry has generally claimed to have suffered substantial losses from construction defect claims<sup>16</sup>, nuisance value decisions are



certainly made every day in deciding whether to settle or go to trial. The first criteria CSLB examined in researching the Question Presented is the extent to which actual settlements could be distinguished in terms of whether they were settled for a nuisance value or not.

### Data

The CSLB consulted with four liability insurers<sup>17</sup> who currently report civil judgments, settlements and awards to licensing agencies to identify which criteria are useful for differentiating between settlements that are nuisance value and those that are not.

Four criteria for identifying nuisance settlements were identified after consulting with insurers: (1) the cost to litigate versus the cost to settle; (2) the size of the case and related damages; (3) the insured has little to no liability; and (4) the number of parties involved. The CSLB then developed a nine-question survey, and with the assistance of the Department of Insurance, distributed the survey to 1,300 insurers. A total of 273 participated in the survey. The survey and its responses are reproduced in its entirety at **Exhibit 1**.

Question 6 of this survey asked, "What criteria does your company use to differentiate between settlements that are for nuisance value and those that are not? (Please select all that apply)." The six answer choices to Question 6 were:

- 1) If the insured has little to no liability
- 2) The size of the case and the damages
- 3) The number of parties involved
- 4) If the potential cost of litigation is more than the cost to settle
- 5) None
- 6) Other (please specify).

Forty-four of the insurer respondents provided 110 responses to Question 6; therefore, each respondent selected between two and three of the criteria above as criteria that are relevant for identifying whether a settlement was for a nuisance value. Thirty-six of



the forty-four respondents selected answer choice number (4). Twenty-nine selected answer choice number (2). Twenty-five selected answer choice number (1). Two of the forty-four respondents provided the answer “Other” in response to Question 6. The written responses of the two insurers who selected “Other” are as follows.

1. *“All of the above – case by case evaluation”;*
2. *“Nuisance value settlements are approved primarily in cases where the insured’s liability is remote or non-existence, and the anticipated likelihood of prevailing at trial are substantial. Although settlement amounts approved may vary depending upon the magnitude of the injuries claimed, approved settlements tend to be properly characterized as nominal or diminimus; i.e, less than \$25K; often less than \$10K.”*

In response to Question 9 to insurers, which asked for general comments on the topic of construction defect settlements, two other insurers responded with the following:

1. *“Cost of litigation often exceeds settlement especially with subcontractors. Nuisance value settlements are often made when even liability is questionable.”*
2. *“First, these are disputed liability cases. Secondly, because of the joint and several laws of California, you can never be assured that the amount reflected in settlement is solely related to negligence of the party that paid the claim. Then, you have to realize that there are a multitude of factors that play into a settlement that is paid by an individual insurance company on behalf of a subcontractor. There may be 3 drywall subs in the same litigation, and 6 insurance companies that pay a claim for those 3 subs. There is no accurate picture of liability. In addition, the amounts paid may include indemnity money for the defense of another party.”*

### **Analysis**

#### *Cost, Not Responsibility, a Factor*

The data from this survey demonstrates that of insurers who report civil settlements to licensing boards who answered Question 6, the majority (82 %) of the insurers identify the potential cost of litigation exceeding the cost to settle as the primary indicator of a nuisance value settlement, followed by the size of the case and the damages (66%). Whether the insured appears to be liable was the third most significant factor (57%).



The number of parties to the claim was a factor for 32% of the respondents. See **Figure 2\***, below.

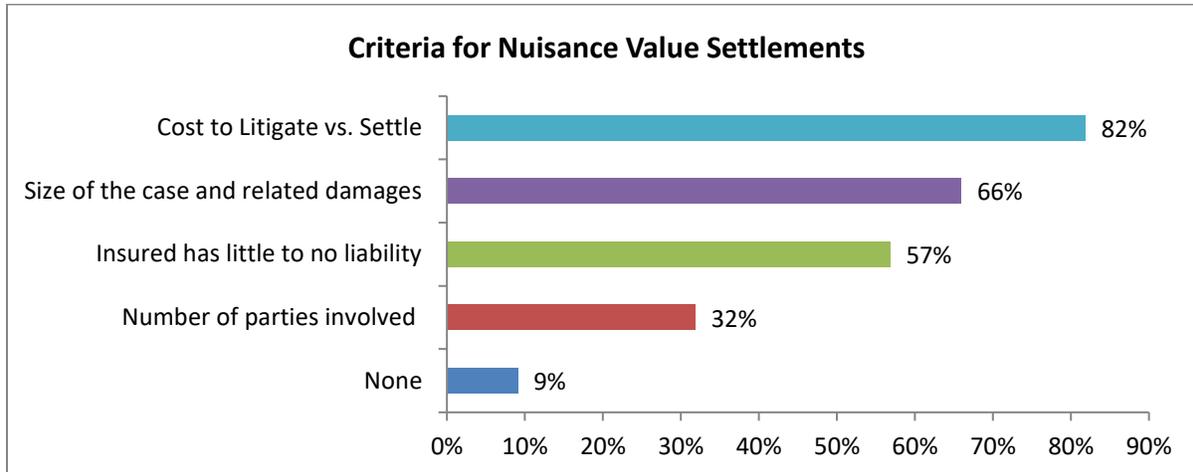


Figure 2

\*percentages rounded up to nearest 10<sup>th</sup>

Both the research conducted by CSLB on the topic of nuisance settlements and the survey responses from insurers regarding nuisance value criteria support the conclusion that the cost of litigation and potential damages is significantly more heavily weighed (by a combined 17%) toward the decision about whether to settle for a nuisance value than is the question of whether there is clear responsibility on either side. This finding supports the general definition of a nuisance value – that it represents an economic decision more than a decision about merits or responsibility.

However, the fact that the insured’s responsibility is not as heavily weighed when deciding whether a claim is a nuisance does not mean that the insured has no responsibility or liability in the underlying claim at all. A nuisance settlement does not necessarily mean that the case in fact has no merits.<sup>18</sup> It may simply reflect a decision that a defendant has decided it is not economically viable to go to trial, regardless of the plaintiff’s case.<sup>19</sup> Indeed, the terms “nuisance lawsuit” and “frivolous lawsuit” are not interchangeable.<sup>20</sup>

To this extent, a nuisance determination seems to be more of a negotiation tool to prevent trial than it is an assessment of parties’ relative responsibility in the action.



*Should Nuisance Value Be a Consideration at All?*

The consideration of whether a construction defect settlement is “nuisance value” – for the purposes of this study – is most likely a criterion for analysis because it goes to the question of the CSLB workload if settlement reporting were to be required. That is, it likely derives from the idea that filtering out nuisance value settlements would prevent the CSLB from having to receive settlements in which there is no major issue of fault. However, the analysis of this question changes upon the realization that construction defect is not traditionally covered by insurance unless the “defect” causes other property damage. Furthermore, the insurance company has a duty to investigate all claims regardless of coverage – or, settle early on (for nuisance value).

For the purposes of insurance and risk management, the IRMI defines “construction defect,” in part, as follows:

A deficiency in the design or construction of a building or structure resulting from a failure to design or construct in a reasonably workmanlike manner, and/or in accordance with a buyer's reasonable expectation...Whether, and to what extent, coverage applies in liability policies for claims alleging construction defects is a matter of serious debate both in insurance circles and in the courts.<sup>21</sup>

In the construction industry, modern insurance policies often exclude coverage for faulty design, workmanship, and/or materials.<sup>22</sup> As such, defective construction by itself is not an “occurrence” or “property damage” for the purpose of triggering coverage under a commercial general liability insurance policy.<sup>23</sup> Therefore, in most cases contractors (and subcontractors) are not insured for defective construction per se.<sup>24</sup>

In settling construction defect cases, insurers do not simply refuse to settle on the grounds there is no coverage, because they bear all responsibility if coverage is found.<sup>25</sup> This means that an insurer may refuse to defend a construction defect claim only if the policy clearly does not cover the claim as set forth in the civil complaint and as might be discovered by reasonable investigation.<sup>26</sup> The insurer must continue to defend the insured until the lawsuit is concluded or until the insurer conclusively shows that there is no potential for coverage.<sup>27</sup>



This duty to defend may be one reason why “nuisance-value” settlement in construction litigation is a consideration at all. If settlements for nuisance value are settled more for cost than responsibility, it does not seem prudent to eliminate them from contention for consideration by the CSLB if additional investigation – which litigating parties have chosen to forgo by settling – could identify responsibility.

**2. Whether settlement information or other information can help identify licensees who may be subject to an enforcement action**

**Background**

*Access to Existing Settlement Information*

*“When insurance companies pay out tens of millions of dollars for construction defect claims, they require a full and complete release for all current and future claims as well as strict confidentiality...In the end, Homeowners Associations are willing to accept these terms in order to receive these large recoveries that are required to rebuild their communities.”<sup>28</sup>*

Settlement information is difficult to obtain. In almost every case, only the parties know that a settlement has taken place and what the terms of the agreement are.<sup>29</sup> The California Evidence Code provides that statements made during mediation and settlements are protected from disclosure by Sections 1119 and 1152 of the code, which make the discussions confidential and inadmissible.<sup>30</sup> The lack of available settlement information severely undermines the ability of researchers to draw conclusions about nuisance (or other kinds of) settlements.<sup>31</sup>

One stakeholder, an attorney specializing in construction litigation, provided a sample of a confidentiality clause that was identified as representative, generally, of clauses that are common in civil settlement agreements that are negotiated in California:

The Parties agree that they shall keep confidential all settlement negotiations, the terms under which the Parties have settled, and the terms and conditions of this Settlement Agreement (except for the Confidentiality clause itself) and that the settlement terms contained herein are confidential and are intended to remain confidential following execution. The Parties further agree that all correspondence, this



Settlement Agreement and writings as defined by California Evidence Code § 250, and of any other type that pertain to or make reference to the terms and conditions of this Settlement Agreement, shall remain confidential. Notwithstanding the foregoing, the Parties may disclose the terms of this Settlement Agreement in any action or proceeding to enforce the terms hereof, to their lawyers and accountants, **to government agencies, as required by law**, and, to the extent required by law, to the court, or pursuant to any other compulsory process or law, including disclosure pursuant to Rule 3.770 of the California Rules of Court, if required.

The provision of this settlement language “to government agencies, as required by law” (bolded above) is an exception to the confidentiality restrictions. That is, if a law required the settlement to be disclosed to a government agency, the settlement would not be confidential for that purpose.

*Settlement Information – Knowing What to Look for (Parties)*

Settlement information is easier to obtain if the researcher knows what (i.e. “who”) it is looking for. As one attorney stakeholder informed this writer during a telephone conversation, “the existence of a settlement itself is not what’s confidential; what may be confidential is the terms, who paid, and how much.”

For example, in locating settlement information about the licensed general contractor who constructed the building at the source of a balcony collapse in Berkeley, California in June 2015 that tragically ended six lives, CSLB was able to research individual county superior court records by a search using that contractor’s business name. This uncovered docket records of lawsuits naming the contractor as a party.

From this, CSLB was able to obtain, in some cases by paying for, copies of court motions and judgments that referenced actions that were resolved by settlement. The motions and judgments did not include the settlements themselves.<sup>32</sup> The contents of the different court documents were used to identify an amount in settlements that the general contractor was party to, which involved three separate civil cases in Santa Clara County against the same general contractor totaling an amount of \$22,999,792.32 in settlements.<sup>33</sup> These documents are provided in their entirety at [Exhibit 2](#).

*Settlement Information – Knowing What to Look for (Case Type and Causes of Action)*

In the absence of individual party names to search (which makes locating lawsuits easier), when locating settlement information pursuant to this study, CSLB is limited to searching court records by either cause of action (the legal basis for suing, e.g., negligence, breach of warranty, etc.) or by case type (a “construction defect” lawsuit).

However, “construction defect” is merely a type of case or claim about something that has gone wrong, not a cause of action itself (i.e., not a legal basis to sue in itself).

California courts have recognized the validity of several causes of action for the pursuit of a construction defect claim.<sup>34</sup> Some examples are: statutory causes of action (e.g. the SB 800 Homebuilder “Fix It” Construction Resolution Law in Civil Code Sections 895 through 945.5);<sup>35</sup> strict liability; breach of implied warranty; negligence; fraud; and destruction of subjacent and lateral support.<sup>36</sup> Other common causes of action alleged in construction defect cases include breach of contract and misrepresentation.

**Data**

In compiling settlement information pursuant to this study, to determine whether settlement information or other information can help identify licensees who may be subject to an enforcement action, the CSLB gained access to a paid third-party online legal research service that provided a California civil court case research tool.<sup>37</sup>

Preliminary search efforts based on construction defect causes of action (e.g. negligence, breach of warranty, etc.) proved fruitless, as those causes of action encompass an infinite number of claims that exceed the scope of construction defect. However, the third-party legal research service provided a court docket search option, as well as settlement, arbitration, verdict, and judgment search options, all of which contained information on cases filed in California state courts. The databases were able to be searched by case “type,” of which “Construction Defect” was an available type.

This allowed CSLB to research construction defect civil actions in two different ways: (1) a search of court dockets for “construction defect” case types; and (2) a search of construction defect verdicts, judgments, settlements, and arbitrations.



(1) Construction Defect – Dockets

The first settlement information research effort was conducted searching California court docket information dated after December 31, 2015 through November 9, 2017 for the key word “construction defect” as a case type. The docket search is limited to the dockets themselves as prepared by court clerks. It does not search actual court case document files themselves.

Therefore, this search located all California court cases identified in a court docket by court personnel as a construction defect case. The intent of this search was to understand how many construction defect actions are on California court calendars in recent years and whether those results could immediately identify licensed contractors.

**The search located 651 individual court cases involving construction defect in California.**

One “court case,” as used in this section, refers to a single entry that includes two adverse party names (e.g. Party A v. Party B), a date, a superior court name, a case number, and case type “construction defect.” A complete table of the 651 results is provided within **Exhibit 3**.

The CSLB analyzed the 651 court cases to attempt to identify California licensed contractors. Because the entries provided party name only, without additional identifying information about the party, the CSLB was not able to *positively* identify individual license qualifiers in CSLB license records and match them to the parties named in the 651 adverse party names.<sup>38</sup> However, in most of the cases in the dockets, the adverse party names very likely identify licensed California contractors,<sup>39</sup> sufficient to produce the charts below (**Figures 3 and 4**).

As a result, **CSLB was able to match 463 of its licensees in the 651 construction defect court cases located in California dockets.**<sup>40</sup>



CONSTRUCTION DEFECT CASES IN CALIFORNIA – BETWEEN 12/31/15 AND 11/9/17

MATCHING LICENSEE TO DOCKET - RESULTS	# OF TIMES
Party in Case does not immediately match any CSLB Licensee	188
Party in Case does match CSLB Licensee	415
Party in Case matches one of any number of licensees	48
<b>Total # of Cases with Construction Defects</b>	<b>651</b>

Figure 3

Many the licensees in the docket actions appeared multiple times, as indicated in the following chart (Figure 4). For example, one licensee (generically named Licensee number 158) was named in 38 different cases, and, for example, another 130 licensees were named in one case only. The contractors’ names (produced in full in Exhibit 3) are removed from the chart below.

CONSTRUCTION DEFECT CASES IN CALIFORNIA – BETWEEN 12/31/15 AND 11/9/17

CSLB LICENSEE	NUMBER OF LICENSEES	NUMBER OF TIMES NAMED IN CASE	NUMBER OF TIMES PARTY IN CASE MATCHES A LICENSEE (Licensees x Times Mentioned)
Licensee 1 – Licensee 130	130	1	130
Licensee 131 – Licensee 136	6	2	12
Licensee 137 – Licensee 140	4	3	12
Licensee 141 – Licensee 144	4	4	16
Licensee 145 – Licensee 146	2	5	10
Licensee 147 – Licensee 148	2	8	16
Licensee 149	1	9	9
Licensee 150 – Licensee 151	2	10	20
Licensee 152	1	16	16
Licensee 153	1	17	17
Licensee 154 – Licensee 155	2	25	50
Licensee 156	1	34	34
Licensee 157	1	35	35
Licensee 158	1	38	38
<b>TOTAL</b>			<b>415</b>

Figure 4



(2) Construction Defect – Settlements, Verdicts, Judgments, Arbitrations

The second search CSLB conducted for settlement-type information was a search for construction defect actions that are final, as opposed to dockets, in which the current case statuses (dismissed, etc.) were unknown. The final actions were identified as construction defect settlements, verdicts, judgments, and arbitrations.<sup>41</sup>

In the case of settlements and verdicts, CSLB obtained only summaries of construction defect settlements and verdicts as prepared by third parties (as opposed to the actual verdicts or settlements themselves). In many cases, identifying information was not available in the originals, presumably the result of confidentiality provisions. In the case of judgments and arbitrations, CSLB obtained the full documents. The documents reviewed for this section are exhibited in their entirety, as follows: settlement information (**Exhibit 4**), verdicts (**Exhibit 5**), arbitrations (**Exhibit 6**), judgments (**Exhibit 7**).

The following charts (**Figures 5, 5.1, 5.2, 6, 7, and 8**) show relevant data identified for each of the document types studied. Each chart identifies the type of claim, amount of award or settlement, whether an identifiable licensee was involved, and whether the alleged act or omission underlying the construction defect claim occurred within 10 years of finality of the action (e.g. within 10 years of the verdict, settlement, etc.)<sup>42</sup>

**Settlements<sup>43</sup>**

**SETTLEMENT CASES AFTER MARCH 25, 2013**

NUMBER	LICENSEE?	STRUCTURE <sup>44</sup>	CLAIM/ CASE TYPE	WITHIN 10 YEARS?	AWARD
1	YES	Two-story Residence	Construction Defect	YES	\$ 75,000
2	LIKELY	300-Unit Condominium Project	Construction Defect	YES	\$XX,XXX,XXX <sup>45</sup>
3	LIKELY <sup>46</sup>	1,238 Senior Living Homes	Construction Defect	UNCLEAR <sup>47</sup>	\$2,100,000
4	YES	Single Family Home Residential Lot	Construction Defect	UNCLEAR	\$ 2,250
5	YES	444 Homes	Construction Defect	UNCLEAR	\$ >11,000,000



6	YES	Residential Homes	Construction Defect	UNCLEAR	\$ 560,000
7	YES	22 Live/Work Units	Construction Defect	UNCLEAR	\$2,298,326
8	YES	26 Live/Work Units	Construction Defect	UNCLEAR	\$3,112,219
9	YES <sup>48</sup>	23 Unit Commercial Building	Construction Defect	UNCLEAR	\$ 252,500
10	NO <sup>49</sup>	Single Family Residence	Construction Defect	YES	\$ 96,680
11	LIKELY <sup>50</sup>	Residential Home	Construction Defect	NO	\$ 97,000

Figure 5

The construction defect settlement information located for this study (Exhibited at 4) constitutes a combination of two searches of the third-party legal research service in itself: the first searching for settlements for the year 2016 (without limitation), and the second conducting the same search but back to 2013 and limited by key word “rental residential units.” Between the two searches, 16 total settlements involving construction defect were located (five of which were duplicates). The CSLB assumes more than 16 construction defect settlements were reached in the State of California since 2013.<sup>51 52</sup>

Figure 5.1, below, represents a summary chart of the first construction defect settlement search described above, and Figure 5.2, below, a summary of the second construction defect settlement search described above.

**CONSTRUCTION DEFECT SETTLEMENTS LOCATED FOR THE YEAR 2016**

COUNTY/DISTRICT	NUMBER OF AWARDS	PERCENTAGE OF TOTAL	AVERAGE AWARD	MEDIAN AWARD	HIGHEST AWARD
Los Angeles, CA	3	30	\$2,433,333	\$0	\$ 7,300,000
Orange, CA	2	20	\$174,421	\$174,421	\$ 348,842
Riverside, CA	2	20	\$1,247,500	\$1,247,500	\$2,100,000
Alameda, CA	1	10	\$124,410	\$124,410	\$124,410
San Bernardino, CA	1	10	\$2,250	\$2,250	\$ 2,250
Ventura, CA	1	10	\$233,200	\$233,200	\$233,200



AWARDS BY PARTY

	2016	TOTAL NUMBER OF CASES	PERCENTAGE OF TOTAL
Settlements	5	5	50
Plaintiff Verdicts*	3	3	30
Defense Verdicts**	2	2	20
Total	10	10	100

\*Plaintiff verdicts are based on the jury verdict before any modifications by the court

\*\*Defense verdicts are \$0 awards before any modifications by the court

Figure 5.1

CONSTRUCTION DEFECT SETTLEMENTS LOCATED AFTER 2013 LIMITED BY “RENTAL RESIDENTIAL UNITS”<sup>53</sup>

COUNTY/DISTRICT	NUMBER OF AWARDS	PERCENTAGE OF TOTAL	AVERAGE AWARD	MEDIAN AWARD	HIGHEST AWARD
San Francisco, CA	4	23.53	\$1,822,360	\$2,040,270	\$3,112,219
Los Angeles, CA	3	17.65	\$2,433,467	\$401	\$7,300,000
Riverside, CA	3	17.65	\$718,749	\$56,248	\$2,100,000
Ventura, CA	3	17.65	\$141,500	\$97,000	\$252,500
Orange, CA	2	11.76	\$3,542,738	\$3,542,738	\$7,085,475
San Bernardino, CA	2	11.76	\$281,125	\$281,125	\$560,000

AWARDS BY PARTY

	2013	2014	2015	2016	TOTAL # OF CASES	PERCENTAGE OF TOTAL
Settlements	2	2	4	3	11	64.71
Plaintiff Verdicts*	3	0	0	1	4	23.53
Defense Verdicts**	0	0	1	1	2	11.76
Total	5	2	5	5	17	100

\*Plaintiff verdicts are based on the jury verdict before any modifications by the court

\*\*Defense verdicts are \$0 awards before any modifications by the court

Figure 5.2

Verdicts

VERDICT CASES AFTER MAY 28, 2013

NUMBER	LICENSEE?	STRUCTURE	CLAIM/ CASE TYPE	WITHIN 10 YEARS?	AWARD
1	LIKELY <sup>54</sup>	310-Unit Loft	Construction Defect	NO	\$7,300,000



Condominium Project					
2	YES	Housing Development	Construction Defect	YES	\$56,248
3	YES	Home Remodel	Construction Defect	YES	\$ 0.00 <sup>55</sup>
4	YES	Housing Development	Construction Defect	YES	\$ 0.00 <sup>56</sup>
5	YES	Rental Residential Units	Construction Defect	YES	\$ 401 <sup>57</sup>

Figure 6

**Arbitrations<sup>58</sup>**

ARBITRATION CASES AFTER DECEMBER 31, 2015					
NUMBER	LICENSEE?	STRUCTURE	CLAIM/ CASE TYPE	WITHIN 10 YEARS?	AWARD
1	YES	28-Unit Condominium project	Construction Defect	NO	\$ 733,077
2 <sup>59</sup>	YES	New Home	Construction Defect	YES	\$ 83,771
3	YES	18 Apartment Units	Construction Defect	YES	\$1,782,214

Figure 7

**Judgments<sup>60</sup>**

JUDGMENT CASES AFTER JANUARY 2017					
NUMBER	LICENSEE?	STRUCTURE	CLAIM/ CASE TYPE	WITHIN 10 YEARS?	AWARD
1	YES	Restaurant Remodel	Construction Defect	YES	\$232,201.45
2	YES	Paving within Common Interest Development	Construction Defect	YES	\$ 58,805.00

Figure 8

**Analysis**

There are two issues raised for analysis by reporting criterion two: (1) how much incoming workload would be realized by CSLB if reporting was required; and (2) the ability for CSLB to identify licensees for enforcement action from the reporting.

(1) Incoming Workload

In combining the foregoing data in the 673 construction defect civil actions reviewed by CSLB for this study (651 civil cases and 22 final actions defined in terms of settlements, verdicts, arbitrations, or judgments), 432 of the actions (or 64 %) identify, to a



reasonable certainty,<sup>61</sup> a licensed contractor. Another approximately 10% (or much higher<sup>62</sup>) may be identifiable with more information.

Based solely on information located in conducting this study, if licensees were required to report construction defect settlements to CSLB effective January 2016, then this agency may have received at least 1,238 such settlements between January 2016 and the date of publication of this study.<sup>63</sup> Based upon this figure, CSLB estimates hiring of approximately 13 additional staff would be necessary to accommodate the work.

## (2) Ability to Identify Licensees for Enforcement Action from the Reporting

The Legislature has enacted a comprehensive statutory scheme<sup>64</sup> known as the Contractors State License Law<sup>65</sup> to protect the public against the consequences of incompetent workmanship and deception practiced by unreliable building contractors<sup>66</sup>. The statutory provisions are administered by the Contractors State License Board<sup>67</sup> and the registrar of contractors.<sup>68 69</sup>

The issue presented by reporting criteria number two is whether the information contained in reported settlement documents could be used to identify licensed contractors who may be subject to enforcement action (based on what is contained in the documents) by the CSLB. Answering that question requires analyzing the authority of the CSLB to take disciplinary action at all.

### *(a) An Investigation is Required Before Taking Enforcement [Disciplinary] Action*

Under the provisions of Business and Professions Code Section 7090:

The registrar may upon his or her own motion and shall upon the verified complaint in writing of any person, investigate the actions of any applicant, contractor, or home improvement salesperson within the state and may deny the licensure or the renewal of licensure of, or cite, temporarily suspend, or permanently revoke any license or registration if the applicant, licensee, or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action.

When taking disciplinary action, besides ordering the temporary suspension or permanent revocation of a license, the registrar may impose upon the contractor “such



specific conditions as may be just in connection with his operations as a contractor.”<sup>70 71</sup> The Legislature has specified various “causes for disciplinary action,” of which “willful departure from or disregard of accepted trade standards for good and workmanlike construction” or from the “plans or specifications,” as well as a “willful or deliberate disregard and violation of the building laws of the state” are just some of such causes of actions.<sup>72 73</sup> Facts that constitute “causes for disciplinary action” are proved at an evidentiary hearing<sup>74</sup> resulting in “disciplinary action” being taken by the registrar, principally by the suspending or revoking of the contractor's license.<sup>75 76</sup>

Due to the foregoing, the CSLB cannot accept a copy of a settlement or other civil resolution involving construction defect and use it in and of itself to take enforcement action. According to Business and Professions Code Section 7090, an investigation would be required before any of the enforcement actions described could be taken, either upon the registrar’s own motion, or if the settlement document were to arrive in the form of a complaint.

*(b) How Would CSLB Investigate a Construction Defect Civil Settlement for the Purposes of Taking (Administrative) Enforcement Action?*

In the context of the construction industry, there is no one universally accepted definition of a construction “defect” or “failure.”<sup>77</sup> The Civil Code has provisions that describe certain physical defects that can occur in a structure that will be actionable at law (if they do occur, e.g. water intrusion), and provides that the occurring of those things in a home *is* a “construction defect;”<sup>78</sup> however, the Civil Code does not otherwise provide a precise definition of “construction defect” itself.<sup>79</sup> Furthermore, a civil complaint underlying a construction defect settlement will allege civil violations of law that the CSLB does not administer (for example, negligence, or breach of express and implied warranties). This means that for the CSLB to investigate a civil matter involving a licensed contractor in order to determine if disciplinary action is warranted, a violation of the Contractor’s Law must be identified for the CSLB to allege in the investigation.



Furthermore, the burden of proof for liability in a civil action is by a “preponderance of the evidence.”<sup>80</sup> To take administrative disciplinary action against a licensee after an investigation, the CSLB must establish the violation by a showing of clear and convincing evidence.<sup>81</sup> A burden of clear and convincing evidence is a higher standard of proof than preponderance.<sup>82</sup> This means that evidence which may be sufficient to demonstrate liability to the trier of fact in a civil court may not in itself be sufficient to suspend or revoke a contractor’s license, without further investigation and additional evidence.

*(c) CSLB Statute of Limitations to Investigate a Complaint is Generally Four Years*

Business and Professions Code Section 7091 subparagraph (a) provides that, “A complaint against a licensee alleging commission of any **patent** acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for disciplinary action.” [*Emphasis added*]. Black’s Law Dictionary defines “patent” as an adjective that means “obvious” or “apparent.”<sup>83</sup> This means that the CSLB has jurisdiction over contractors for up to four years from the date of violation for obvious problems caused by their work.

There is a limited exception to the four-year provision above; Business and Professions Code Section 7091 subparagraph (b) subdivision (2) provides for the following:

A complaint against a licensee alleging commission of any **latent** acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation, shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the disciplinary action.

[*Emphasis added*] Black’s Law Dictionary defines “latent” as an adjective that means “concealed” or “dormant.”<sup>84</sup> This means that the exception to the four-year statute of limitations only applies in limited circumstances (i.e., when the alleged violation is Business and Professions Code Section 7109 *and* the alleged act or omission is a “structural defect” as defined by regulation). Therefore, only when the alleged act or



omission of the contractor involves concealed or dormant problems caused by the work does CSLB have jurisdiction over contractors for 10 years rather than 4 years.

Business and Professions Code Section 7109 and the structural defect “regulation” (referred to in Business and Professions Code Section 7091) each require definition:

**Section 7109**

- (a) A willful departure in any material respect from accepted trade standards for good and workmanlike construction constitutes a cause for disciplinary action, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect.
- (b) A willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner or his or her duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans or specifications, constitutes a cause for disciplinary action.

**861.5. Definition of “Structural Defect”<sup>85</sup>**

For the purposes of subdivision (b) of Section 7091 of the Code, “structural defect” is defined as meaning:

- (1) A failure or condition that would probably result in a failure in the load bearing portions of a structure,
- (2) which portions of the structure are not constructed in compliance with the codes in effect at the time for the location of the structure, provided that,
- (3) such failure or condition results in the inability to reasonably use the affected portion of the structure for the purpose for which it was intended.

*(d) When does the 10-Year Exception to the 4-Year Statute of Limitations Apply?*

The statute of limitations period during which a complaint can be filed, or a disciplinary action initiated, begins running as soon as all legal elements necessary to establish a violation of the section involved are met.<sup>86</sup> To allege a violation of Business and Professions Code Section 7109, there are very specific requirements for CSLB to consider before the 10-year statute of limitations applies.



The CSLB must establish in its investigation of a complaint that there has been (a) willful departure in any material respect from accepted trade standards for good and workmanlike construction or (b) a willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner or authorized representative. Therefore, the limitation period would begin to run as soon as the licensee willfully departed in a material respect from accepted trade standards or building plans and specifications.<sup>87</sup>

In order to make a determination about either subparagraph (a) or subparagraph (b) of Business and Professions Code Section 7109, the CSLB must first establish three findings of fact pursuant to Section 861.5 of Title 16, Division 8, Section 861.5 of the California Code of Regulations (CCR) Section 861.5: that (1) there exists a failure or condition that would probably result in a failure in the load bearing portions of a structure; and (2) the [affected] portions of the structure are not constructed in compliance with the codes in effect at the time for the location of the structure; and all of this provided that (3) the failure or condition results in the inability to reasonably use the affected portion of the structure for the purpose for which it was intended.

To make these findings, the CSLB must engage the resources authorized by law to investigate the facts that underlie any civil construction defect settlement reported to CSLB. This may include contracting with licensed professionals for site investigation of the affected structure<sup>88</sup> and possibly working the complaint for a period of six months to a year<sup>89</sup> to establish the findings by clear and convincing evidence. It may also require CSLB, as part of the investigation, to subpoena<sup>90</sup> any records involved in the civil dispute underlying the settlement, as the documentation provided by the settlement itself would likely be insufficient to make the required findings.

Indeed, via an allegation of Business and Professions Code Section 7109, the CSLB took substantially all the foregoing steps in investigating and eventually revoking the license of the general contractor behind the construction of the balcony that was subject to the tragic collapse in June of 2015.<sup>91</sup>



*(e) Practical Effect of the 4 versus 10-Year Statute of Limitations Periods if Settlement Reporting Were to Be Mandated*

On the question of whether settlement reporting could identify licensees for enforcement action, an attorney stakeholder provided input in a letter to the CSLB dated October 19, 2017, writing:

*“I express skepticism whether many cases such as these would ever actually result in a CSLB disciplinary matter without a change to [Business and Professions Code] Section 7091. I would assume that most of the construction of apartment buildings that had such a catastrophic failure were constructed more than 10 years before the failure, which means that there is no right of the CSLB to discipline the contractor (except perhaps if a resulting judgment is not paid) [pursuant to existing Business and Professions Code Section 7071.17].”*

Of the 22 construction defect settlements, arbitrations, judgments, and verdicts analyzed by CSLB, 11 (or 50%) of them were filed within 10 years. Two (or 9%) were not. Seven (or 31%) were filed within a period that cannot be determined. Therefore, of the data CSLB was able to review – at least half of the actions would fall within CSLB statute of limitations for disciplinary action only if the CSLB was able to establish following an investigation, the requirements of Business and Professions Code Section 7109 ((a) or (b)) and CCR Section 861.5. Otherwise, as discussed earlier in the analysis, the standard four-year statute of limitations would apply to the actions. It is unclear at this time, without more, whether the facts underlying the settlements CSLB reviewed for this study arise to the level of establishing to a clear and convincing standard that Business and Professions Code Section 7109 violations exist.

Further, in reviewing the 22 actions, it appears that other conceivable violations of the Contractor’s Law could be present in the facts of the actions, aside from defect claims.<sup>92</sup> These facts would need to be investigated by the CSLB before there was enforcement action. In that sense it does appear that settlement reporting could be used to identify licensees that may be subject to enforcement action not just related to defects.



However, if a settlement involving construction defect is forwarded to the CSLB which could involve multiple acts or omissions, if the settlement is more than four years old, the CSLB would be limited to alleging Business and Professions Code Section 7109, even if other violations appeared to be present.

Due to the foregoing analysis, in answering the question posed by study criteria two, the fact that a civil settlement has occurred at all is useful only in the sense that reporting to the CSLB *identifies* “a licensee for an enforcement action.” Whether that licensee is/would be subject to disciplinary action can come only after the CSLB’s investigation as to whether there is a violation of the contractor’s law in the set of facts underlying the project[s] that is/are the subject of the settlement.<sup>93</sup>

**3. If there is a way to separate subcontractors from general contractors when identifying licensees who may be subject to an enforcement action**

*“Typically what happens in [multi party litigation] is that the owners will sue the developer and/or the architect-engineer. The developer and/or the architect-engineer will then cross-complain against all of the subcontractors for indemnity. Many of the subcontractors will then cross complain against each other.”<sup>94</sup>*

In compiling data for this study, the CSLB was unsuccessful in locating information that separated prime contractor defendants in the action from any number of cross-defendants that can be and are often named after a given civil complaint is filed. For example, neither the case docket information the CSLB located nor the settlement, verdict, judgment or arbitration summaries or opinions discussed above consistently named cross-defendants (or other contractors) to the action other than the main party defendant.

Therefore, the CSLB has limited data on subcontractors that are subject to construction defect actions, as it relates to this study. That said, the third criterion of this study requires no presentation of data other than already discussed, as the criterion hinges entirely on a policy question: who is responsible for a construction defect in a project involving both a general contractor and a subcontractor (as it relates to administrative violations of the contractor’s law)?



## Background

On a typical construction project, most of the work is performed not by the prime contractor but by numerous subcontractors, each of whom enters into a separate written agreement with the prime contractor.<sup>95</sup> Because the subcontractor has no direct contractual relationship with the project owner, its rights, duties, and liabilities depend entirely upon the terms and conditions of its subcontract.<sup>96</sup> And, the prime contractor is dependent upon the performance of its subcontractors to meet its obligations to the owner.<sup>97</sup> There are also protections in the law for subcontractors whose indemnity obligations to a prime contractor are limited by the extent to which a construction defect claim arose out of the subcontractor's work.<sup>98</sup> This leaves subcontractors a number of options when defending a construction defect action, which tends to raise concerns about coordination of legal defenses on large projects with many defects.<sup>99</sup>

In addition, construction defect cases with numerous parties often settle at the last minute after a substantial amount of money has been spent and at the "eleventh hour" because parties tend to think that they do not have sufficient facts to settle early in the process.<sup>100</sup> Where it is not always clear at the outset of a construction defect claim who is responsible for the problem(s), an investigation or civil discovery would be required. The forgoing may explain why there are numerous cross complaints about relative responsibility. It may also provide a reason why construction defect settlements are so common.<sup>101</sup>

## Analysis

The fact is, even though one of the parties may have followed plans and specifications, this does not necessarily exonerate it from *civil* liability for construction defects.<sup>102</sup> For the purposes of administrative liability through a CSLB investigation, whether a prime contractor or subcontractor, or both, should bear ultimate responsibility in a construction defect action is an inquiry on which a legal stakeholder consulted during this study provided an assessment.



The attorney, who has represented contractors for over 20 years, in a letter to the CSLB dated October 19, 2017, stated:

*“The statutory direction [of Business and Professions Code Section 7071.18] asks if there is a way to separate subcontractors from general contractors when identifying licensees who may be subject to an enforcement action. The reality is, such “separation” must first determine if the flaw was caused by a design error, or the failure of the contractor to follow the design. The contractor’s requirement is to follow the design so if that failed, the reporting should be on the engineer and not the contractor. If the injury or death is caused by construction means and methods, liability should focus on the one who actually caused the defect, and it often is the subcontractor(s) who have done it wrong.”*

The issue of whether the flaw was caused by the design, or the failure to follow it, goes to whether the contractor violated either subparagraph of Business and Professions Code Section 7109, as discussed in the previous section. Of course, Business and Professions Code Section 7109 applies to all licensees, whether a prime or subcontractor. Who caused the flaw would be an essential part of the CSLB’s investigation if a construction defect settlement were reported to the agency. However, the policy of the CSLB on this issue, as a consumer protection agency, is that if the prime contractor is the individual who enters the contractual agreement with the consumer, the prime is responsible to finish the project according to plans and specifications either “by themselves or through others”.<sup>103</sup> In addition, if a consumer were to be held liable for a subcontractor’s negligent and illegal acts, the prime contractor has violated the terms of the contract.<sup>104</sup>

None of this exonerates a subcontractor who, as a licensee, is as equally responsible for completing their phase of the contract in accordance with the plans, specifications, and legal requirements of their portion of the agreement<sup>105</sup> and against whom CSLB retains authority to fully discipline on a project. However, absent a unique set of facts, on a project on which an ostensible defect involving multiple contractors has occurred the policy of the CSLB would be to hold the prime contractor responsible for completing the project according to plans and specifications.<sup>106</sup>



Finally, if a statute or regulation were to require construction defect settlement reporting by prime and subcontractors, in the event one settlement involved two licensed contractors on a single project, there would need to be a means for the CSLB to receive that information simultaneously and not separately, in order to properly analyze and assign responsibility without having to conduct undue additional research to differentiate between any number of civil cases to which the settlements would relate.

#### **4. Whether reporting should be limited to settlements resulting from construction defects that resulted in death or injury**

##### **Background**

Disputes among participants in a construction project based on construction defects will surface either during construction or after completion.<sup>107</sup> Disputes occurring during construction are usually resolved exclusively among the parties involved in the project usually on contract or negligence theories or as defenses to collection actions.<sup>108</sup> Disputes *after completion* tend to arise only after the owner, an occupant, or neighbor suffers personal injury or property damage.<sup>109</sup>

For example, in the case of the tragic balcony deaths in Berkeley, no parties were aware of the defective construction until the balcony collapsed and resulted in death. In another example, just weeks after the tragic Berkeley balcony collapse, a stairway at Folsom apartment complex in Sacramento County collapsed, killing one, and resulting in civil litigation that is ongoing.<sup>110</sup> The CSLB did review that incident and determined that the statute of limitations for administrative action pursuant to Business and Professions Code Section 7091 had elapsed as to the general building contractor responsible for the construction according to a 1998 building permit.<sup>111</sup>

In California, civil liability by a contractor or developer for injury or damage occurring after construction may turn on whether the defects were patent (discoverable on reasonable inspection) or latent (discoverable only on postdamage investigation).<sup>112</sup> Whether a defect is latent or patent is also relevant to the CSLB 10-year statute of



limitations to administratively discipline a contractor for a violation of Business and Professions Code Section 7109.<sup>113</sup>

### **Data**

Other than the widely publicized tragedies in Berkeley and Folsom California referenced above, the CSLB does not have meaningful data about construction defects resulting in injury or death in California for the purposes of this study.<sup>114</sup> The 22 settlements analyzed in section 2 of this study did not appear to involve injury or death based on the descriptions of those actions (see Exhibits 4, 5, 6, and 7). In 1,099 cases in which CSLB has referred licensed contractors to administrative discipline for alleged violations of Business and Professions Code Section 7109 since January 2016, it is extremely uncommon that a case has clearly involved a death ostensibly *caused* by a construction defect.<sup>115</sup>

In addition, the difficulty of locating such examples in researching civil litigation files may be complicated by the fact that such cases tend to be categorized (in civil case records) as “negligence,” “strict liability,” or “wrongful death”<sup>116</sup> cases as opposed to “construction defect.”<sup>117</sup> Also note, the widely-litigated SB 800 Homebuilder “Fix It” Construction Resolution Law in Civil Code Sections 895 through 945.5 specifically exempts from litigation under those sections any claims for personal injury.<sup>118</sup> As such, claims for injuries or death may involve general tort actions (e.g. negligence) as opposed to construction defect actions, which tend to be based in contract.

Finally, as to the frequency of death or injury due to deck or porch collapses generally in the United States, a Consumer Product Safety commission for by the Associated Press conducted a study.<sup>119</sup> The report estimated that 6,500 emergency room visits from 100 hospitals were associated with deck or porch failures or collapses in the past 10 years<sup>120</sup>. A spokesperson stated that, as there are millions of ER visits a year, collapses resulting in death “appears to be rare.”<sup>121</sup>



### **Analysis**

Just as injury or death can affect the measure of damages in a civil case,<sup>122</sup> injury or death goes to a factor to be considered in the CSLB disciplinary guidelines on the question of determining whether revocation, suspension, or probation is to be imposed in each case.<sup>123</sup> That is, the second factor of those guidelines is “actual or potential harm to the public.” It hardly need be mentioned that injury or death is a severe “actual harm” to the public which would warrant the more severe action of revocation as opposed to suspension or probation.

If settlements of construction defect cases involving injury or death were required to be made to the board, there does not appear to be a reason to limit the cases to death or injury, which simply goes to the severity of CSLB discipline than whether the Contractor’s Law was violated. It is not clear that there would be a significant number of such cases, and as a result, such a limitation could constitute an instance of an “exception swallowing a rule.” Preliminary analysis suggests that the number of construction defect case settlements, if required to be reported to CSLB would not exceed 600 or so a year (see criterion 2 of this study).

### **5. The practice of other boards within the department**

#### **Background**

For the purposes of this study, the CSLB researched case information from two other construction-related boards, the Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG) and the California Architects Board (CAB).<sup>124</sup> Each board currently subjects their licensees to case reporting requirements of the nature contemplated by Business and Professions Code Section 7071.18.

#### **Data**

##### *Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG)*

The case reporting requirements for professional engineers are governed by Business and Professions Code Section 6770.<sup>125</sup> The case reporting requirements of Land



Surveyors are governed by Business and Professions Code Section 8776<sup>126</sup>. The reporting program has been in place since 2008.<sup>127</sup>

According to BPELSG, the agency opens cases on all settlement reports they receive pursuant to the two statutes above. Convictions and administrative actions are reviewed on a case-by-case basis and very few result in a case being opened. In almost all the civil action settlements that are reported to BPELSG, the civil complaint included all of the parties that worked on the project (contractor, engineer, etc.).

The BPELSG does not recall any civil action reported to BPELSG that went to trial and ended in a judgment. Civil actions frequently end in settlement; BPELSG has stated that the majority of the actions reported to them pursuant this requirement is for settlements and not judgments because the respondents are encouraged to settle by insurance companies.<sup>128</sup> According to BPELSG, licensees have no statutory requirement to have liability insurance. The following charts (represented by **Figures 9 and 10**) demonstrate the civil actions reported to the BPELSG pursuant to Business and Professions Code Sections 6770 and 8776.

**BPELSG  
LEGAL ACTIONS PROGRAM**

FISCAL YEAR	REPORTS RECEIVED	FROM LICENSEES	FROM INSURERS	FROM COURTS	CIVIL ACTION REPORTS	CRIMINAL ACTION REPORTS
2007/08	9	7	2	0	6	3
2008/09	23	12	11	0	21	2
2009/10	52	29	22	0	50	2
2010/11	69	39	32	0	70	1
2011/12	59	29	30	0	59	0
2012/13	39	24	15	0	38	1
2013/14	42	30	13	0	36	7
2014/15	57	29	28	0	54	3
2015/16	40	27	13	0	35	4

Figure 9



NUMBER OF CASES OPENED/ CLOSED

CALENDAR YEAR	OPENED	CLOSED (OF OPENED)	NO VIOLATION	VIOLATION FOUND
2008	13	13	5	8
2009	21	20	15	5
2010	54	40	25	15
2011	72	40	32	8
2012	24	7	4	3
2013	10	0	0	0
2014	26	26	16	10
2015	41	41	30	11
2016	26	25	22	3
2017	21	10	5	5

Figure 10

California Architects Board (CAB)

Pursuant to Business and Professions Code Section 5588, a licensed architect shall report to the board in writing within 30 days of the date the licensee has knowledge of any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture if the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater. The following chart (Figure 11) details the number of cases which were opened because of CAB’s reporting requirement. Of the 155 cases, two (1.3%) resulted in citations and one (0.6%) resulted in disciplinary action, and 96 (61.9%) were closed for no violation.

SETTLEMENT CASES

FISCAL YEAR	CASES OPENED
2012/13	33
2013/14	25
2014/15	27
2015/16	35



2016/17	35
<b>Total</b>	<b>155</b>

Figure 11

During fiscal year (FY) 2012/13 through 2014/15, CAB had a licensee population of 20,403 and received 85 settlement reports, an average of 28 per year. CAB received settlement reports for approximately 0.14% of its licensees during each FY, of which 3.6% resulted in disciplinary or enforcement action: two (2.4%) citations and one (1.2%) disciplinary action. Of these 85 cases, 48 (56.5%) were submitted by professional liability insurance carriers, 36 (42.3%) were submitted by licensees, and 1 (1.2%) was submitted by the plaintiff. All related to civil actions against a licensee. The table in **Figure 12** includes this information broken down by fiscal year.

FISCAL YEAR	SETTLEMENT CASES OPENED	LICENSEE POPULATION	DISCIPLINARY ACTIONS	ENFORCEMENT ACTIONS (CITATIONS)
2012/13	33	20,217	0	0
2013/14	25	20,504	0	1
2014/15	27	20,488	1	1
<b>Total</b>	<b>85</b>	<b>N/A</b>	<b>1</b>	<b>2</b>

Figure 12

The total number of all cases opened by CAB over past fiscal years (**Figure 13**) was:

FISCAL YEAR	COMPLAINTS FILED
2012/13	296
2013/14	294
2014/15	292
2015/16	385
2016/17	324
<b>Total</b>	<b>1,591</b>

Figure 13

The tables below (**Figures 14 and 15**) detail how many cases resulted in disciplinary action that were disclosable to the public and their closure types:



FISCAL YEAR	DISCIPLINARY ACTIONS	ENFORCEMENT ACTIONS (CITATIONS)	TOTAL DISCLOSABLE ACTIONS
2012/13	1	22	23
2013/14	1	20	21
2014/15	1	47	48
2015/16	4	65	69
2016/17	4	32	36
<b>Total</b>	<b>11</b>	<b>186</b>	<b>197</b>

Figure 14

FISCAL YEAR	REVOCACTION	PROBATION W/ SUSPENSION	PROBATION ONLY	PUBLIC REPIMAND	LICENSE DENIAL	ENFORCEMENT ACTIONS (CITATIONS)	TOTAL ACTIONS
2012/13	0	1	0	0	0	22	23
2013/14	0	0	0	0	1	20	21
2014/15	0	1	0	0	0	47	48
2015/16	1	1	2	0	0	65	69
2016/17	1	1	0	1	1	32	36
<b>Total</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>186</b>	<b>197</b>

Figure 15

### Analysis

According to the CAB, their experience with the reporting requirements, as to the results and success of the program, is largely the same as experienced by BPELSG.<sup>129</sup> That is, BPELSG since implementation of the program finds that approximately 60 to 65% of the reporting results in no violation of BPELSG laws,<sup>130</sup> and CAB for the last several years finds that around 2.6% of the reporting results in administrative violations.<sup>131</sup> Both boards emphasized that the reporting requirement is solely a consumer protection tool<sup>132</sup> and for the public good<sup>133</sup> and that the emphasis to licensees is that the intent is not to be a “clearing house for how many lawsuits they may have.”<sup>134</sup> Both agencies conduct an investigation before any administrative action could occur. The BPELSG receives approximately 60 settlements per year,<sup>135</sup> and the CAB receives approximately 30 settlements due to the reporting requirements.<sup>136</sup>

The BPELSG has approximately 100,000 licensees<sup>137</sup> and CAB has approximately 22,000 architects<sup>138</sup>; the CSLB licenses more than both agencies combined, a total of



approximately 280,000 active licensees as of this writing. In addition, each board differs from the CSLB from a licensing standpoint. That is, BPELSG and the CAB license individuals<sup>139</sup>, whereas the CSLB licenses entities via a qualifying individual who demonstrates the requisite knowledge and experience for licensure.<sup>140</sup>

The key difference between the BPELSG and CAB in comparison to the CSLB, for the purposes of this study, is that civil liability for defects goes to whether there was a defect in the design itself as to engineers<sup>141</sup> and architects<sup>142</sup>, whereas civil liability for defects goes to whether there was a departure in the execution of that design by the licensed contractor.<sup>143</sup> Generally, the fact that there are considerably more contractors involved in a single construction project than there are architects or engineers in that very project tends to support the conclusion that a single defect lawsuit is likely to involve more licensees for the CSLB than it would for the BPELSG and CAB. And because of the number of individuals identified as members of personnel on a license exceeds one person and they are all licensees,<sup>144</sup> an enforcement action resulting from a reported settlement stands to affect many more individuals than an action instituted by BPELSG or CAB.

That said, the number of actions taken against licensees for both BPELSG and CAB due to reporting does not vary widely; approximately 11% of reports result in disciplinary action for architects compared to approximately 15% for engineers. The CSLB does not currently have a reporting requirement; however, it is reasonable to conclude that if it did, its findings would not be widely different. Between January 2012 and January 2017, CSLB received 64,666 complaints against licensees. Of those, 9,882 resulted in legal action, which is approximately 15%.

The differences between the CAB and BPELSG licensing programs compared with the CSLB preclude significant comparison of their reporting programs to make predictions about the effects of such a reporting program for CSLB. However, one attorney stakeholder opines that, based on the reporting requirements for engineers at least, the effects of such a settlement program for the CSLB could result in more construction



defect cases going to trial as opposed to settling. The attorney stated, in an October 19, 2017 letter to CSLB:

*“The requirement to report a settlement already exists with regards to engineers for a wide variety of claims...These laws make settling defect claims with engineers in any case with significant defects, almost impossible – both my partner XXXX and I have been involved in cases with engineers where there was no way of settling the claim for more than the reporting limit.”*

As to whether settlement reporting would discourage settlement entirely, one stakeholder suggested this could resolve the nuisance issue entirely. A spokesperson for a legal center representing California homeowners stated, at a September 30, 2015 meeting of stakeholders on the issue of SB 465 reporting for licensed contractors:

*“25% of Californians live in an HOA. Lay people don’t have expertise in construction but they’re handling 10s of millions of dollars and they need all the help they can get when they’re going out to hire a contractor to do a pretty large job in a multi-unit development. It can be argued that how many lawsuits that were filed against a particular contractor that resulted in a judgment or settlement, period, ...would be very useful... If a settlement is reported to CSLB...it might trigger pushback from the industry, who thinks they’re nuisance claims, it may actually trigger contractors to NOT settle but fight. We saw this in the auto industry. Huge damage awards to consumers. Industry pushed back and auto insurance companies took a hard line not to settle. It has changed the culture.”*

## **6. Any other criteria considered reasonable by CSLB**

### **Background**

In addition to the criteria provided within Business and Professions Code Section 7071.18 for the elements of this study, the CSLB conducted studies of its own. The CSLB distributed via email a unique survey on the issue of construction related litigation to 140,000 licensees and 8,000 consumers. In total, 3,999 licensees and 2,414 consumers responded to the survey.

The intent of the survey was to poll stakeholders on the feasibility of a reporting requirement of the nature underlying SB 465, as well as to gauge the level of the



stakeholders’ involvement or experience, generally, with civil lawsuits involving construction. The entirety of the survey of licensees is included in **Exhibit 8**. The entirety of the survey of consumers is included in **Exhibit 9**.

**Data**

The CSLB survey of licensees and consumers focused on stakeholders’ experience with judgments, arbitration awards, and settlements. Those that answered provided information that reduced to **Figures 17, 18, and 19**, below.

<b>LICENSEES</b>			
	<b>CIVIL JUDGEMENT</b>	<b>ARBITRATION AWARD</b>	<b>SETTLEMENT</b>
Involved in one or more	224	325	560
Prime Contractor	155	223	315
Subcontractor	81	109	254
<b>PROJECT TYPE</b>			
Single-Family Dwelling	138	207	332
Multi-Family Dwelling (Rental Residential)	15	12	49
Multi-Family Dwelling (Individually Owned)	14	25	81
Commercial	73	84	161
Industrial	26	32	64
<b>AVERAGE AMOUNT PER OCCURENCE</b>			
\$1-\$15,000	111	143	216
\$15,001-\$30,000	24	50	91
\$30,001-\$50,000	20	29	62
\$50,001-\$100,000	19	35	56
\$100,001-\$250,000	9	33	62
\$250,001-\$500,000	9	9	19
\$500,001-\$1,000,000	9	11	21
More than \$1,000,000	7	6	17

Figure 17

<b>CONSUMERS</b>			
	<b>CIVIL JUDGEMENT</b>	<b>ARBITRATION AWARD</b>	<b>SETTLEMENT</b>



Involved in one or more	276	298	684
<b>PROJECT TYPE</b>			
Single-Family Dwelling	247	262	609
Multi-Family Dwelling (Rental Residential)	7	11	21
Multi-Family Dwelling (Individually Owned)	16	18	45
Commercial	15	10	21
Industrial	3	3	8
<b>AVERAGE AMOUNT PER OCCURENCE</b>			
\$1-\$15,000	205	25	510
\$15,001-\$30,000	18	33	75
\$30,001-\$50,000	12	12	30
\$50,001-\$100,000	9	13	24
\$100,001-\$250,000	13	5	9
\$250,001-\$500,000	9	1	3
\$500,001-\$1,000,000	2	3	6
More than \$1,000,000	2	1	10

Figure 18

Licensees, consumers, and insurers, were also asked whether CSLB’s consumer protection mission would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for rental residential units. Out of 3,479 licensees, 1,869 responded “yes” (53.72%) and 1,610 responded “no” (46.28%). Out of 2,273 consumers, 2,175 responded “yes” (95.69%) and 98 responded “no” (4.31%). Out of 143 insurers, 90 responded “yes” (62.94%) and 53 responded “no” (37.06%). The responses are charted as follows:

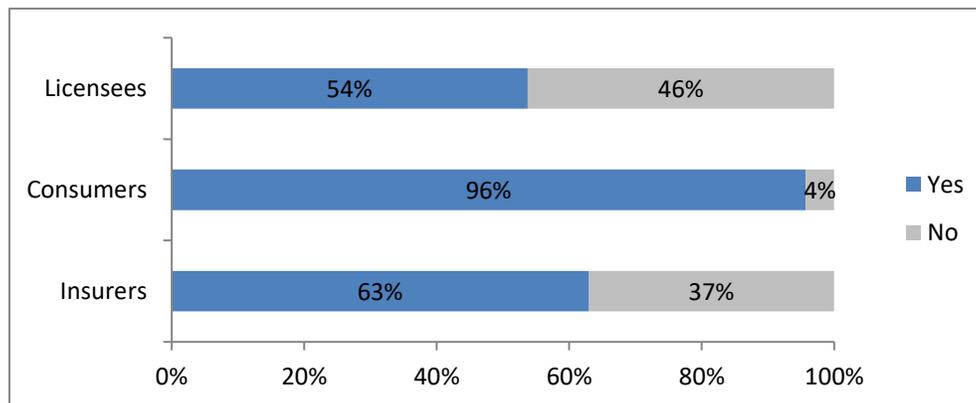


Figure 19



## Analysis

The CSLB did not anticipate that more than half of its licensees who responded to the survey would support a reporting requirement. Some of the written responses to Question 19 (which asked of licensees if consumer protection would be enhanced by a reporting requirement), are as follows:

*Contractors would be more inclined to remedy any issues.*

*As long as the reporting was actual defects not a complaint...and it should be judgments only, a settlement is sometimes less expensive for the contractor than going to court. A settlement does not admit any "guilt" on either party so this should not be reported.*

*Sounds like this is a good idea, but implementation costs could be huge to administer and monitor. Who ends up paying for this?*

*Most contractors care about how they perform. To have a negative post on your business never helps, especially if you have settled the case, learn from your mistakes and move on to do better in the future. However, if the contractor is repeated offender public must have access to that info.*

*Construction defect lawsuits typically involve every trade involved in the construction of a home. For instance, an HVAC contractor is named in a lawsuit involving a structural defect in the foundation of a building. The lawsuit names every trade involved searching for the deepest pockets. The CSLB should be very careful moving forward possibly posting judgments. Not all judgments are fair.*

*Reported but not necessarily made public.*

*A contractor's history of legal settlements is not a good indicator of competency of the contractor. Without knowing the full details of the litigation it would only hurt the consumer and the contractor by providing incomplete information that could lead to an incomplete or irrational judgement of the contractor. Also, the longer a contractor does business, the more potential it has for litigation. Providing this information would create a misleading bias in favor of newer contractors.*

*This would provide insight to the contractor you are hiring and provide security to the consumer to know who they are hiring.*



*Homeowners and Developers should be able to easily review legal histories of the contractors they are considering to hire. It's the most obvious report card that should be available to consumers.*

*Overly burdensome to global contractors where these types of actions are routine within the industry and do not affect financial solvency. Just ask for a financial statement instead to show net worth, solvency*

The data CSLB collected in the administration of its own survey appears to comport with the information compiled for this study as a whole. Parties seem to concur that settlements, at least those for nuisance value, tend to be a reflection more of cost avoidance than individual liability or responsibility. The consensus also seems to be that construction litigation is extremely common and affects many parties to the construction project at issue, no matter how attenuated their involvement with the alleged defect may be.

Licensed contractors' concerns with settlement reporting appear to focus primarily on the fact that such settlements [as a whole] may not reflect direct responsibility. Industry and legal stakeholders appear to be concerned that such reporting would discourage the settlement of cases entirely or that the benefit of reporting them would outweigh the burden. For example, two different attorney stakeholders have written:

*My primary concern is that requiring disclosure of settlements to the CSLB might chill contractors' willingness to settle claims out of fear that the CSLB would view it as an admission of wrongdoing even if the decision to settle with the consumer is to avoid a protracted dispute and a customer service-centric resolution. Often these settlements are confidential as well, providing the contractor with some comfort that the customer won't use it as a tool to try and tarnish the contractor's reputation especially if where the claims lacked merit or there are extenuating circumstances.*

\*\*

*Mass action construction defect lawsuits are essentially automatically filed on every subdivision once it hits 8-9 years old, and many of those subdivisions involve single family residential units. Almost all of these cases result in settlement, and is essentially a cost of doing business. For instance, I represent a rain gutter contractor that is, at any given time, required to defend 3-5 defect lawsuits (and usually gets out for \$250-\$500). To require these subcontractors to report each of these settlements*



*would force them to spend significant money to clear their name rather than settle these nuisance claims. Instead, property owners of these units that bring claims for defects should be required to report the fact that they have made a claim for defects, and owners should be forced to actually repair those health and safety items that they claim are defective prior to being permitted to rent the unit out to the public. Specific contractors that worked on the projects need not be identified in the event of a settlement. This would actually force owners to pick and choose what is truly claimed to be a defect, knowing that they will ultimately be required to fix it. It would also dissuade Plaintiff attorneys from filing mass actions for everything under the sun, as it would not be as profitable for these attorneys if much of the settlement has to actually be used to make the claimed repairs. Most of the settlement money does not actually go into the repair of conditions at the property.*

A counter response to the positions communicated above was given at a September 30, 2015 meeting of stakeholders with the BPELSG and CAB on the issue of SB 465 reporting for licensed contractors. An attorney stakeholder stated (*in response to a claim that the reporting of settlements could have no value to the board*):

*“Respectfully, that can’t be, that no settlement amount is potentially indicative of a licensing problem. ... [the] question of nuisance settlements [is] a very valid concern both for not having licensees unfairly, without justification ... [having] the board [get] complaints for settlements for which there is little or no potential probative value. But there are cases that are settled well beyond the nuisance value of cases. For example... the one contractor that settled \$22 million dollars of cases in three years, that is not nuisance value ... the inherent value of settlements at some point is worth the same dignity... as a random consumer complaint. And given the fact that [the Board would] conduct an entirely separate investigation, one because their burden of proof is higher, but two they’re not supposed to look at what happened between individual parties, they’re supposed to look at the risk to future consumers, [means that the settlement is] just a piece of paper that comes in saying maybe there’s something to look at here, give it the same dignity as when I scrawl onto a piece of paper to file a [consumer] complaint [with the CSLB]... The [job of the] CSLB, like all DCA boards, is to look at the competence of the individual licensee prospectively... to figure out ... on the basis of past behavior whether or not there is something in that that would require them to impair a license [in order] to prevent future consumers to be harmed... it’s never the case that every single lawsuit that can be brought is frivolous. This is something the boards may want to look at.”*



### QUESTION PRESENTED

The question posed for Board response by subparagraph (b) subdivision (1) of Business and Professions Code Section 7071.18 is whether the results of the study demonstrate that the board's ability to protect the public as described in Section 7000.6 would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for residential units.

### BOARD RECOMMENDATION

Generally, the Contractors State License Board (Board) believes that the ability to protect the public as described in Business and Professions Code Section 7000.6 would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for rental residential units. At its December 7, 2017 meeting, the Board specifically found that requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims is a good idea and would be a good investigative tool in the Board's "tool box."

### ENDNOTES

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<sup>1</sup> <https://www.irmi.com/online/insurance-glossary/default.aspx>

<sup>2</sup> <https://www.irmi.com/about/press-releases/nearly-2000-attend-37th-irmi-construction-risk-conference/>

<sup>3</sup> Goguen, David, J.D. "The Insurance Adjuster's 'Nuisance Value' of Your Claim." *All Law*. 2017.

<http://www.alllaw.com/articles/nolo/personal-injury/insurance-adjusters-nuisance-value-your-claim.html>

<sup>4</sup> "Nuisance Settlement" within the definition of "Settlement." Black's Law Dictionary (10<sup>th</sup> ed. 2014).

<sup>5</sup> Peterson, Robert W. "Excess Liability: Reconsideration of California's Bad Faith Negligence Rule." *Stanford Law Review*. January 1996. 18 Stan. L. Rev. 475, at 482

<sup>6</sup> Hockley, Cliff. "Construction Defect Litigation." *Bluestone & Hockley Real Estate Services*. March 1, 2005.

<https://www.bluestonehockley.com/construction-defect-litigation/>

<sup>7</sup> Goguen, David, J.D. "The Insurance Adjuster's 'Nuisance Value' of Your Claim." *All Law*. 2017.

<http://www.alllaw.com/articles/nolo/personal-injury/insurance-adjusters-nuisance-value-your-claim.html>

<sup>8</sup> Hon H. Walter Croskey (Ret.), et, al. *California Practice Guide: Insurance Litigation*, Chapter 12. "Bad Faith", Subsection 12(B). August 2017 Update

<sup>9</sup> Goguen, David, J.D. "The Insurance Adjuster's 'Nuisance Value' of Your Claim." *All Law*. 2017.

<http://www.alllaw.com/articles/nolo/personal-injury/insurance-adjusters-nuisance-value-your-claim.html>

<sup>10</sup> <https://www.porterscott.com/experience/>; "At the client's request, the case was settled for nuisance value in lieu of trial."



- <sup>11</sup> <http://bdgfirm.com/construction-litigation/>; “A nuisance value, less than cost of defense, settlement was reached within six weeks of a pending trial date.”
- <sup>12</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 6.02, “Third-Party Coverage,” Subdivision (C). 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>13</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 11.01, “Introduction.” 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>14</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 6.01, “Fundamental Issues,” Subdivision (A). 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>15</sup> McMillian, Lance P. “The Nuisance Settlement ‘Problem’: The Elusive Truth and a Clarifying Proposal.” *American Journal of Trial Advocacy*. Fall, 2007. 31 Am. J. Trial Advoc. 221, at 222.
- <sup>16</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 6.01, “Fundamental Issues,” Subdivision (A). 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>17</sup> Names of insurers available upon request.
- <sup>18</sup> Justice Zerne P. Haning (Ret), et al. *California Practice Guide: Personal Injury*, Chapter 4. “Personal Injury Claim Settlements,” Section C, “Effective Settlement Negotiations.” September 2017, stating “nuisance value arguments are popular negotiation tactics. Often, these offers are made not because the claim lacks merit, but because the claims person is attempting to obtain a dramatically reduced demand. The lower the demand, the more flexibility the carrier has to settle at an amount below fair settlement value.”
- <sup>19</sup> Sichelman, Ted. Why Barring Settlement Bars Legitimate Suits: A Reply to Rosenberg and Shavell. *Cornell Journal of Law & Public Policy*, Fall 2008. Page 58
- <sup>20</sup> McMillian, Lance P. “The Nuisance Settlement ‘Problem’: The Elusive Truth and a Clarifying Proposal.” *American Journal of Trial Advocacy*. Fall, 2007. 31 Am. J. Trial Advoc. 221, at 222.
- <sup>21</sup> The International Risk Management Institute, Inc. “Construction Defect,” Accessed November 14, 2017. <https://www.irmi.com/online/insurance-glossary/terms/c/construction-defect.aspx>
- <sup>22</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 6.01, “Fundamental Issues,” Subdivision (B). 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>23</sup> Thornton, Jr., Timothy M. “Is There Insurance Coverage for Defective Construction?” *California Lawyer*, May 9, 2016. <http://www.callawyer.com/2016/05/is-there-insurance-coverage-for-defective-construction/>
- <sup>24</sup> Thornton, Jr., Timothy M. “Is There Insurance Coverage for Defective Construction?” *California Lawyer*, May 9, 2016. <http://www.callawyer.com/2016/05/is-there-insurance-coverage-for-defective-construction/>
- <sup>25</sup> Hon H. Walter Croskey (Ret.), et al. *California Practice Guide: Insurance Litigation*, Chapter 12. “Bad Faith”, Subsection 12(B). August 2017 Update.
- <sup>26</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 6.02, “Third-Party Coverage,” Subdivision (C). 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>27</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 6.02, “Third-Party Coverage,” Subdivision (C). 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>28</sup> Miller, Rachel. “The Miller Law Firm Recovers over \$18,000,000 for Six Oakland Homeowners Associations with Construction Defects.” *San Francisco Business Times*. October 24, 2017. [https://www.bizjournals.com/sanfrancisco/prnewswire/press\\_releases/Georgia/2017/10/24/SF23173?ana=prnews](https://www.bizjournals.com/sanfrancisco/prnewswire/press_releases/Georgia/2017/10/24/SF23173?ana=prnews)
- <sup>29</sup> McMillian, Lance P. “The Nuisance Settlement ‘Problem’: The Elusive Truth and a Clarifying Proposal.” *American Journal of Trial Advocacy*. Fall, 2007. 31 Am. J. Trial Advoc. 221, at 222.
- <sup>30</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 11.01, Subsection (B) “Expediting Settlement.” 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018
- <sup>31</sup> McMillian, Lance P. “The Nuisance Settlement ‘Problem’: The Elusive Truth and a Clarifying Proposal.” *American Journal of Trial Advocacy*. Fall, 2007. 31 Am. J. Trial Advoc. 221, at 222.
- <sup>32</sup> The documents were called, “Notice of Judgment Lien”; “Memorandum of Points and Authorities in Support of [Defendant’s] Motion for Determination of Good Faith Settlement;” and “Declaration of [Person] in Support of [Defendant’s] Motion for Determination of Good Faith Settlement.”



<sup>33</sup> Note, these three cases did not represent all of the civil cases and/or settlements that apparently involved this particular contractor; they were simply three of the largest. In addition, CSLB searches of this particular contractor did not locate all possibly significant lawsuits. For example, in at least one case, the contractor's insurance company paid a \$3.5 million settlement over a 109-unit Millbrae condominium complex built by this contractor, at which water infiltrated wooden support beams of dozens of balconies. The CSLB did not initially locate this information because the contractor was not named as a party in that lawsuit. See <http://www.times-standard.com/article/zz/20150704/NEWS/150708007>

<sup>34</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 5.03, "California." 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018

<sup>35</sup> Notably, if future legislation pursuant to this study remains limited to reporting related to "rental residential units," it is questionable whether SB 800 defect actions would apply, as SB 800 applies to all residential *homes* sold on or after January 1, 2003.

<sup>36</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 5.03, "California." 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018

<sup>37</sup> The Courts able to be researched using the third-party service were the California Supreme Court, the California Courts of Appeal, and the Superior Courts in Alameda, Butte, Contra Costa, Kern, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus and Ventura Counties. The service was unable to provide information for Marin County or Santa Barbara County.

<sup>38</sup> For example, the party name "Jane Smith" (by generic example) as a defendant in a construction defect civil case is unlikely to identify a California licensed contractor, for lack of identifying information in the dockets to identify the "Jane Smith" in the case title with any "Jane Smith" in CSLB records.

<sup>39</sup> For example, the party name "San Francisco Homes" (by generic example) as a defendant in a lawsuit that was filed in San Francisco Superior Court very likely identifies the same "San Francisco Homes" located as a licensee in CSLB records which has its business address in San Francisco, especially if there is only one licensed "San Francisco Homes" in CSLB records. In addition, it is unlikely that many of the defendants in a construction defect action that appear to match entities in CSLB license records would *not* be licensed contractors, as these civil actions involve construction, and a license is required to engage in construction in California. This methodology allowed for the matching of 463 contractors to the party names with reasonable certainty as to the identity of the contractors matched.

<sup>40</sup> It should be noted that individualized research on each of the 651 cases was not done to determine their current status (dismissed, active, settled, adjudicated, etc.). In addition, the individual dockets do not provide information about any number of the cross-defendants that may be involved in any number of the cases.

<sup>41</sup> The documents for this section were found using a variety of sources: the third-party legal research service, CSLB files, and generalized research.

<sup>42</sup> This criteria is significant to whether CSLB could conduct an investigation of any licensee named in any such action in order to determine if administrative legal action is appropriate, pursuant to Business and Professions Code Section 7091(b)(1).

<sup>43</sup> This chart does not include the settlement documents exhibited at Exhibit 2.

<sup>44</sup> The author is aware that this study is limited by its terms to "rental residential units;" however, upon researching settlement information using a variety of sources, it was discovered that conducting searches limited to type of structure could not feasibly be accomplished. The goal instead was to obtain as much construction defect settlement information as possible.

<sup>45</sup> The original settlement summary identifies the settlement as confidential in nature, an 8-figure settlement amount awarded to plaintiff against an unidentified defendant builder (likely licensed).

<sup>46</sup> The Defendant's name in these cases matches a number of similarly named licensed contractors, all part of the same entity, in CSLB systems. The inability to directly match names is likely the result of the licensee using a variant of their licensed name style. See Business and Professions Code Section 7059.1(b).

<sup>47</sup> This means that the settlement summaries reviewed did not include the date of construction. It can be inferred that, to the extent many of the summaries reviewed reflected cases filed under the SB 800 "Fix It" Act (which has a 10 year statute of limitations with certain exceptions), that the action was filed within 10 years.



<sup>48</sup> Despite identification of a general contractor defendant in this settlement summary, multiple cross-defendant licensed contractors also paid damages in this case. Not all settlement summaries included cross-defendants.

<sup>49</sup> Defendant unlicensed contractor fraudulently represented licensure.

<sup>50</sup> See endnote number 46 as to contractor name styles.

<sup>51</sup> In a conversation with a legal research attorney representing the third party research service (which is a well-known international company), the representative stated, “verdicts and settlements are not considered to be an official resource for legal research nor a legal authority,” unlike, for example court case opinions, which are primary legal authority, or legal journals and restatements of the law, which are secondary legal authority. The representative further stated, “we [the service] either have the information or we don’t – if someone gets a settlement they tend to only report it if they are happy about it; if it’s a ‘middle of the road’ [settlement] it’s not likely to be reported. Some sources report everything they get and others do not at all - and a lot of them are confidential.”

<sup>52</sup> It should be noted that CSLB directly asked two different stakeholder attorneys involved in construction litigation for copies of their construction-defect related settlements. Both declined.

<sup>53</sup> Based on the results of this search, there is no evidence that the results were actually limited to defects upon actual “rental residential units,” but rather to settlement information that contained any of those three words, generally.

<sup>54</sup> See endnote number 46 as to contractor name styles.

<sup>55</sup> Defendant licensed contractor in this action, despite not being found liable for construction defect, did appear to have violated various provisions of the Contractor’s Law that were not at issue in this civil case.

<sup>56</sup> Bankrupt developer found liable for breach of contract; licensed contractor found not liable, awarded costs and fees.

<sup>57</sup> Costs of permits awarded to licensed contractor for plaintiff’s breach of prior settlement agreement.

<sup>58</sup> The third-party legal research service was searched for arbitrations involving construction defect after December 31, 2015. Six arbitration cases were located. When they were reviewed, all documents included the words “construction defect” in some fashion, but only two of the documents directly involved an actual claim for construction defect. The third arbitration entry in this chart was based on information from another source that was not a full arbitration opinion (unlike the documents represented by 1 and 2 in this chart).

<sup>59</sup> The arbitration award in this case, despite being located using the third-party research service, was already in CSLB records for this particular licensee as a judgment against the licensee pursuant to Business and Professions Code Section 7071.17

<sup>60</sup> See endnote 43 as to which documents this chart does not include. In addition, the two judgments reflected in this chart were located by the CSLB Licensing Division Judgments Unit, which processes judgments pursuant to Business and Professions Code Section 7071.17. The judgments were located by chance, as CSLB does not have a feasible way to search existing records in a manner that would determine that judgments applied to any particular license pursuant to Business and Professions Code Section 7071.17 involved an action for construction defect. See also endnote 59 for another mention of Business and Professions Code Section 7071.17.

<sup>61</sup> See endnote 39 for how CSLB matched licensee names to case dockets to a “reasonable certainty”

<sup>62</sup> The 10% is derived from the 48 of the 651 civil actions that likely identified any one of a number of licensed contractors. It may be assumed that the number is higher than 10% if one accepts the premise that if there is a civil action involving construction defect in California, it very likely involves a licensed contractor. See endnote 39.

<sup>63</sup> This total requires making a number of assumptions. The fact (reported via endnote 13) that 95% of construction defect actions settle (619 is approximately 95% of 651); (2) that 651 construction defect actions since January 2016 located by CSLB is an accurate figure; (3) that the vast majority of the 651 actions involved licensees at all [who would be obliged to report to CSLB]; (4) that the vast majority of the 651 actions were not dismissed; (5) assuming that an unknown number of the 651 actions involved only one licensed contractor and that an unknown number of the 651 actions involved many licensed contractors, that an arbitrary average of 2 licensed contractors [who would be obliged to report their settlements] are involved in each of the 619 actions (619 x 2 = 1,238).

<sup>64</sup> Business and Professions Code Sections 7000 – 7168

<sup>65</sup> See Business and Professions Code Section 7000



- <sup>66</sup> Deukmejian, George. Attorney General's Opinion No. 81-619 – January 20, 1982. (65 Ops. Cal. Atty. Gen. 25). Citing *Lewis & Queen v. W. M. Ballsons* (1957) 48 Cal.2d 141, 149; *Steinbrenner v. Waterbury (J. A.) Constr. Co.* (1963) 212 Cal. App. 661, 666.)
- <sup>67</sup> See Business and Professions Code Sections 7000.5, 7010.
- <sup>68</sup> See Business and Professions Code Section 7011
- <sup>69</sup> Deukmejian, George. Attorney General's Opinion No. 81-619 – January 20, 1982. (65 Ops. Cal. Atty. Gen. 25)
- <sup>70</sup> See Business and Professions Code Section 7095.
- <sup>71</sup> Deukmejian, George. Attorney General's Opinion No. 81-619 – January 20, 1982. (65 Ops. Cal. Atty. Gen. 25)
- <sup>72</sup> See Business and Professions Code Sections 7109, 7110.
- <sup>73</sup> Deukmejian, George. Attorney General's Opinion No. 81-619 – January 20, 1982. (65 Ops. Cal. Atty. Gen. 25)
- <sup>74</sup> See Business and Professions Code 7091
- <sup>75</sup> See Business and Professions Code 7095. An alternative procedure is authorized whereby the registrar merely issues a 'citation' which 'may contain an order of correction fixing a reasonable time for correction of the violation and may contain an assessment of a civil penalty.' See Business and Professions Code Section 7099. See also Deukmejian, George. Attorney General's Opinion No. 81-619 – January 20, 1982. (65 Ops. Cal. Atty. Gen. 25)
- <sup>76</sup> Deukmejian, George. Attorney General's Opinion No. 81-619 – January 20, 1982. (65 Ops. Cal. Atty. Gen. 25)
- <sup>77</sup> Dingess, John R.; Horner, Kari M. Dingess, Foster, Luciana, Davidson & Chleboski, LLP. "The Law of Construction Defects and Failures." August, 2012. Page 1. [www.dfflegal.com](http://www.dfflegal.com).
- <sup>78</sup> Civil Code Section 2782(h) defines "construction defect" as a "violation of the standards set forth in Sections 896 and 897", which refer to different defects that violate SB 800, the Homebuilder "Fix It" Construction Resolution Law.
- <sup>79</sup> See the SB 800 Homebuilder "Fix It" Construction Resolution Law in Civil Code Sections 895 through 945.5, and also endnote number 35.
- <sup>80</sup> See Evidence Code Section 115
- <sup>81</sup> See Business and Professions Code Section 7090
- <sup>82</sup> Michael Asimow, Michael J. Strumwasser, Herbert F. Bolz and Laurine E. Tuleja. The Rutter Group California Practice Guide – Administrative Law; Tier 1 Adjudication: Hearing and Posthearing Stages, Chapter 9-B. July 2016 Update.
- <sup>83</sup> Definition of "patent." Black's Law Dictionary (10<sup>th</sup> ed. 2014).
- <sup>84</sup> Definition of "latent." Black's Law Dictionary (10<sup>th</sup> ed. 2014).
- <sup>85</sup> See Title 16, Division 8, Section 861.5 of the California Code of Regulations
- <sup>86</sup> Daniel E. Lungren, Attorney General, and Ron Russo, Supervising Deputy Attorney General, in a letter to the CSLB Registrar dated August 18, 1992.
- <sup>87</sup> Daniel E. Lungren, Attorney General, and Ron Russo, Supervising Deputy Attorney General, in a letter to the CSLB Registrar dated August 18, 1992, also stating that the contract date would be irrelevant as would the date escrow closes would be irrelevant to this analysis.
- <sup>88</sup> See Business and Professions Code Section 7019
- <sup>89</sup> See Business and Professions Code Section 7011.7
- <sup>90</sup> The authority for the CSLB registrar to do so would be delegated under Section 7 of the Government Code, pursuant to the powers conferred upon the Director of the Department of Consumer Affairs, as head of the Department of Consumer Affairs by Article 2 of Chapter 2 of Part 1, Division 3, Title 2 of the California Government Code (sections 11180 and following).
- <sup>91</sup> See page 4 of the accusation to revoke this contractor's license <https://www2.cslb.ca.gov/CompletedPDF/Accusations/N2015-483/N2015-483-20161129-Accusation.pdf>
- <sup>92</sup> For example, witnessed in the descriptions of the civil action data, possible violations included failure to pull permits (Business and Professions Code Section 7110), charging excessive down (Business and Professions Code Section 7159.5), operating out of name style (Business and Professions Code Section 7059.1), operating out of classification (Business and Professions Code Section 7116), and others.
- <sup>93</sup> Licensees who are subject to disciplinary action without investigation may be the result of criminal or civil actions which have already been adjudicated, for which CSLB has authority to take disciplinary action without



further investigation or adjudication. See for example Business and Professions Code Section 7123 (conviction of a crime substantially related to the qualifications, functions and duties of a contractor).

<sup>94</sup> Abulaziz & Grossbart News. “*Emphasizing All Phases of Construction Law.*” Vol. VII, No. 2. Summer of 1995.

<sup>95</sup> Gibbs, Kenneth C., et al. California Construction Law. 17th Edition. Aspen Publishers, 2011. Page 203.

<sup>96</sup> Gibbs, Kenneth C., et al. California Construction Law. 17th Edition. Aspen Publishers, 2011. Page 203.

<sup>97</sup> Gibbs, Kenneth C., et al. California Construction Law. 17th Edition. Aspen Publishers, 2011. Page 203.

<sup>98</sup> Gibbs, Kenneth C., et al. California Construction Law. 17th Edition. Aspen Publishers, 2011. Page 206.

<sup>99</sup> Gibbs, Kenneth C., et al. California Construction Law. 17th Edition. Aspen Publishers, 2011. Page 206-207.

<sup>100</sup> Abulaziz & Grossbart News. “*Emphasizing All Phases of Construction Law.*” Vol. VII, No. 2. Summer of 1995.

<sup>101</sup> See endnote 13 for the assessment that 95% construction defect litigation ends in settlement.

<sup>102</sup> California Construction Law Reporter, Article 1. “Epitome”, September 2017.

<sup>103</sup> See Business and Professions Code Section 7026

<sup>104</sup> “Prime Contractors Have Key Responsibility in Subcontractor Bids and Business Practices.” August 31, 2009.

Contractors State License Board. [http://www.cslb.ca.gov/Media\\_Room/Industry\\_Bulletins/2009/August\\_31.aspx](http://www.cslb.ca.gov/Media_Room/Industry_Bulletins/2009/August_31.aspx)

<sup>105</sup> McNely, Warren. Board Member, Chairman of the Enforcement Committee. Memorandum, “Prime Contractor vs Subcontractor Issue.” Contractors State License Board. March 8, 1982.

<sup>106</sup> Indeed, this is what occurred during the CSLB investigation that resulted in the revocation of the license of the prime contractor responsible for the construction of the building at which a balcony tragically collapsed in Berkeley. There were multiple subcontractors on the project ostensibly involved in the construction of the balcony, but the prime contractor was the licensee upon which CSLB took administrative action. See endnote 91 for the accusation document. This assessment of primary responsibility of course would not be the case in a civil court of law, in which there are often multiple cross defendants and divisions of responsibility and liability.

<sup>107</sup> Acret, James, et al. *California Construction Contracts, Defects, and Litigation*. November 2016 Update.

Continuing Education of the Bar, Oakland, California. Attorney Editor Philip Weverka. Section 10.9, “Construction Defects.”

<sup>108</sup> Acret, James, et al. *California Construction Contracts, Defects, and Litigation*. November 2016 Update.

Continuing Education of the Bar, Oakland, California. Attorney Editor Philip Weverka. Section 10.9, “Construction Defects.”

<sup>109</sup> Acret, James, et al. *California Construction Contracts, Defects, and Litigation*. November 2016 Update.

Continuing Education of the Bar, Oakland, California. Attorney Editor Philip Weverka. Section 10.9, “Construction Defects.”

<sup>110</sup> Qixing Yuan vs. The Legends at Willow Creek LP. Sacramento Superior Court Case Number 34-2015-00186315-CU-PO-GDS, filed 11/04/2015 is currently set for jury trial on May 8, 2018. Multiple licensed contractors appear to be defendants and the causes of action are wrongful death (negligence) and premises liability.

<sup>111</sup> That prime contractor is a defendant in the civil case described in endnote 106. The license of this contractor has been expired with CSLB since 1999.

<sup>112</sup> Acret, James, et al. *California Construction Contracts, Defects, and Litigation*. November 2016 Update.

Continuing Education of the Bar, Oakland, California. Attorney Editor Philip Weverka. Section 10.9, “Construction Defects.”

<sup>113</sup> See the analysis in the previous section of this study for a discussion of latent and patent defects.

<sup>114</sup> Cases of construction defect injury or death appear to make news headlines when they occur; for example (1) three injured after deck collapses in San Francisco in January 2015 – unclear whether a civil lawsuit or licensed contractor involved <http://abc7news.com/news/3-injured-after-deck-collapsed-at-san-francisco-home/490881/>;

(2) one killed and several injured when balcony collapses during party at San Francisco residential unit in February 1996, charges against licensed contractor who was also the builder’s owner;

<https://www.exponent.com/experience/san-francisco-balcony-collapse/?pageSize=NaN&pageNum=0&loadAllByPageSize=true> (3) multiple injuries when deck collapses during party in Santa Barbara – property owner settles for \$1,600,000, unclear if contractor involved

<https://slodeckinspector.com/2016/11/29/property-mgt-company-pays-1600000-00-to-settle-balcony-collapse-lawsuit/>; (4) Folsom stairway collapse resulting in death, and discussed elsewhere in this study



<http://fox40.com/2015/07/08/folsom-stairway-collapse-investigation/>; (5) see <https://www.cpmlegal.com/practices-balcony-collapse-litigation.html> for summaries of four more cases of injuries from building failures prior to the year 2004 in San Mateo, San Francisco, and Orange Counties. Of course, these headlines cannot provide meaningful data about how often injury or death occurs as a result of construction defect and that are not reported in headlines.

<sup>115</sup> This statement of course excludes any injury or death to the employees of a contractor as a result of workplace hazards, (which is an entirely separate yet equally significant and potentially more common issue).

<sup>116</sup> Negligence, wrongful death, premises liability, for example, are causes of action in the tragic Folsom stairway collapse. See endnote 110.

<sup>117</sup> Cameron, Jr., John G. *A Practitioner's Guide to Construction Law*. American Law Institute-American Bar Association Committee on Continuing Professional Education. Third Printing, 2003. Section 18.05, "Tort Based Recovery," stating, "While owner-contractor disputes will ordinarily arise in the context of an action for breach of contract or breach of warranty, circumstances do exist where a contractor could be responsible to an owner for strict liability or the negligent performance of its duties. Courts have recently considered whether a strict liability theory may be used to recover damages from a contractor."

<sup>118</sup> As well as for breach of contract, fraud or violation of statute. See Civil Code Section 943(a).

<sup>119</sup> Tribune Wire Reports. Chicago Tribune. "Estimated 6,500 injured in deck and porch collapses since 2003." November 27, 2017. <http://www.chicagotribune.com/news/nationworld/ct-deck-collapses-20150618-story.html>

<sup>120</sup> Tribune Wire Reports. Chicago Tribune. "Estimated 6,500 injured in deck and porch collapses since 2003." November 27, 2017. <http://www.chicagotribune.com/news/nationworld/ct-deck-collapses-20150618-story.html>

<sup>121</sup> Tribune Wire Reports. Chicago Tribune. "Estimated 6,500 injured in deck and porch collapses since 2003." November 27, 2017. <http://www.chicagotribune.com/news/nationworld/ct-deck-collapses-20150618-story.html>

<sup>122</sup> Miller, Thomas E., et al. *Handling Construction Defect Claims: Western States*, Section 2.04, "Prelitigation Considerations" (that medical reports and bills to confirm injuries goes to damages). 4<sup>th</sup> Edition 2018 Cumulative Supplement. Aspen Publishers. 2018

<sup>123</sup> See Title 16, Division 8, Section 871 of the California Code of Regulations. The eight factors to be considered are (1) Nature and severity of the act(s), offenses, or crime(s) under consideration; (2) Actual or potential harm to the public; (3) Performed work that was potentially hazardous to the health, safety, or general welfare of the public; (4) Prior disciplinary record; (5) Number and/or variety of current violations; (6) Mitigation evidence; (7) Rehabilitation evidence; (8) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.

<sup>124</sup> Interviews were conducted with representatives from each board in order to compile the information and a number of the statements included in this section.

<sup>125</sup> The section provides that a licensee shall report to the board in writing within 90 days the occurrence of the conviction of a licensee of any felony, a crime substantially related to the functions and duties of an engineer, a civil action settlement or administrative action resulting in a settlement against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the settlement is greater than fifty thousand dollars (\$50,000), or a civil action judgment or binding arbitration award or administrative action resulting in a judgment or binding arbitration award against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the judgment or binding arbitration award is twenty-five thousand dollars (\$25,000) or greater.

<sup>126</sup> The language of Section 8776 is substantially the same as Section 6770 (see endnote 111)

<sup>127</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>128</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>129</sup> Comment made by CAB Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015, stating that "our experience is similar but our history is different."



<sup>130</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>131</sup> Comment made by CAB Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015, now 3% since that statement was made.

<sup>132</sup> Comment made by CAB Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>133</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>134</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>135</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>136</sup> Comment made by CAB Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>137</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>138</sup> Comment made by CAB Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015.

<sup>139</sup> See generally Business and Professions Code Sections 6750 through 6766 for the issuance of licenses to engineers and Sections 8740 through 8752 for the issuance of licenses to land surveyors and Sections 7840 through 7855 for the issuance of licenses to geologists and geophysicists; and Business and Professions Code Sections 5550 through 5558 for the issuance of licenses to architects.

<sup>140</sup> See Business and Professions Code Section 7065 and 7068.

<sup>141</sup> Comment made by BPELSG Assistant Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015, "tends to deal with building plans"

<sup>142</sup> Comment made by CAB Executive Officer at a stakeholder meeting on the topic of SB 465 held at CSLB on September 30, 2015, "involves the design process and plan review"

<sup>143</sup> See discussion of section 3 of this study for more about departure from standards.

<sup>144</sup> See Business and Professions Code Section 7096