

## ***Nearly a year after the balcony collapse that killed 6 in Berkeley, What are regulators doing to improve oversight of firms with a history of construction defect settlements?***

### **Background**

On June 16, 2015, a balcony at Library Gardens Apartments in Berkeley, CA collapsed, killing six students and injuring seven others. The company that constructed the apartment complex, Segue Construction Company, had a history of questionable work. Notably, over the past three years, the company paid out \$26.5 million dollars in construction defect settlements. State law, however, does not require contractors to report defect settlements to the Contractors State License Board (CSLB).

In relation to other trade professions, licensees such as architects and engineers are required to report settlements and judgements to their appropriate regulator. While the Board for Professional Engineers, Land Surveyors, and Geologists receives roughly 60 settlement reports per year, the California Architects Board receives 29 settlement reports per year. Both boards underscore that there are minor, absorbable costs associated with this enforcement measure and underline that they conduct their own independent analysis of the settlement reports.

In response to this incident, the City of Berkeley tightened and approved new building standards. The City Council voted to require that new balconies be made of corrosion-resistant material and be ventilated to prevent a buildup of moisture. The council also mandated that all balconies be inspected within the next six months and every three years after that.

Additionally, an investigation by the CSLB underscores that five contractors involved in the balcony collapse were in “probable violation of law”. The CSLB has referred its investigation to the state Attorney General’s Office to determine whether to bring a case in administrative court, which could lead to suspension or revocation of the contractors’ licenses. CSLB reports:

*“What we’re investigating is did the contractors deviate from the accepted trade standards. CSLB’s investigation is still open. We are at a point where our enforcement staff have determined that a probable violation of California law has occurred that would lead to either the suspension or revocation of the licenses of the five contractors involved in the construction of the balcony.”<sup>1</sup>*

Last month, the Alameda County District Attorney’s Office concluded that there was insufficient evidence to bring criminal manslaughter charges against any one individual or company. Experts investigating the balcony believe that the primary reason the balcony collapsed was because water had been trapped in the balcony deck during construction, leading to extensive dry rot damage. The D.A.’s Office press release reports, “There appear to be many

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<sup>1</sup> Knobel, Lance. "Five Contractors Face Possible License Revocation in Berkeley Balcony Collapse Review." *Berkeleyside*. N.p., 11 Apr. 2016. Web. 20 Apr. 2016.

contributory causes of this encapsulation, including the types of material that were used (none of which are prohibited by building code) and the very wet weather Berkeley experienced during the months of construction. The responsibility for this failure likely extends to many of the parties involved in the construction or maintenance of the building.”

On April 19, 2016, the California Building Standards Commission formally voted to assemble an ad hoc committee to examine the facts of the case and determine whether the Building Standards Code needs to be updated. In July 2015, the Berkeley City Council sent a letter to the California Building Standards Commission urging the commission to revise California Building Standards Code to require steel reinforcements on all new balcony designs, after experts determined dry rot was the cause of the balcony collapse.

Attached are news articles and press releases detailing updates on the case and actions taken by various state agencies.

## **Where Do We Go From Here?**

In response to the Berkeley balcony collapse, Senators Hill and Hancock introduced SB 465, which is currently pending in the Assembly Committee on Business and Professions on reconsideration. This measure would require contractors to report certain settlements to CSLB and provide that these settlements be disclosed, under specific conditions, to the public. Over the past year, stakeholders, committee staff, and industry representatives have had discussions and stakeholder meetings on amendments to SB 465 to address opposition concerns.

Consumer advocates mainly assert that, upon receiving a settlement report, CSLB would conduct its own independent investigation to determine whether or not the licensee deviated from his or her practice. Additionally, proponents point to the fact that CSLB’s sister boards have these additional settlement reporting requirements. On the other hand, industry representatives mainly underscore that construction defect settlements are not a clear indication of fault, since contractors are held to strict liability. While the settlements may not be a clear indication of who is at fault, CSLB would review such information appropriately and at least be made aware of settlements. David Fogt, CSLB’s Chief of Enforcement, highlighted in an interview with the *Sacramento Bee* that, “Had we known about the suits and the underlying reasons for them, we would have absolutely taken action.”<sup>2</sup>

Given the competing analyses of what SB 465 should require, the panelists and other various stakeholders should explain to the Committee what steps need to be taken to ensure that CSLB has the proper information to license competent and trustworthy contractors. During the course of this oversight hearing, the Committee should reflect on the following questions:

- 1) If CSLB were not to receive construction defect settlements, then how might the regulator improve settlement transparency so that homeowners, building officials, and the general public are aware of previous contractor settlements?

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<sup>2</sup> "Balcony Collapse Points to Loophole in Law." *The Sacramento Bee*. N.p., 8 July 2015. Web. 20 Apr. 2016.

- 2) If CSLB's Chief of Enforcement has underscored that this information would be valuable to the Board's enforcement efforts, why has there been opposition to this measure - given that it would enable CSLB to take swift action against licensees who may not be complying with the law and pose a threat to public safety?
- 3) If modeling language after the Engineering and Architects settlement reporting requirements does satisfy all parties, what direction should SB 465 take to ensure that this information is disclosed to CSLB?

By creating a meaningful dialogue between industry and consumer representatives, the Legislature hopes to create a path where both parties can come together and decide what measures need to be taken to increase public safety.

If you have any questions, please do not hesitate to contact Mark Mendoza with the Senate Committee on Business, Professions, and Economic Development at [Mark.Mendoza@sen.ca.gov](mailto:Mark.Mendoza@sen.ca.gov) or (916) 651-1868.