



**2005 CALPASC MEMBER
LEGISLATIVE AND
REGULATORY
VALUE STATEMENT**

During 2004 and 2005, the California Professional Association of Specialty Contractors (CALPASC) provided valuable membership and advocacy services to protect members' businesses. In collaboration with the CALPASC local chapters, CALPASC accomplished legislative and regulatory goals on behalf of its members.

KEY SUCCESSES

Type I Indemnity— Through the legislative advocacy and grassroots efforts of CALPASC and the local chapters, combined with the coalitions of multiple trade groups, AB 758 (Calderon) passed the Assembly and Senate nearly unanimously and was signed by the Governor. AB 758 provides that, except as specified all agreements affecting any residential construction contract and amendments hereto entered into after January 1, 2006, that purports to indemnify the builder by a subcontractor against liability for claims of construction defects or other injury to property arising from, pertaining to, or relating to the negligence of the builder or the builder's other agents, servants, or independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, or for claims that are unrelated to the scope of work in the agreement, are unenforceable, as specified. Without the implementation of AB 758, trade contractors would continue to face increasing liability costs for construction defects unassociated with their work. Additionally, the passage of AB 758 results in a reduction of claims payments within a self-insured retention. Prior to AB 758, trade contractors endured significant costs to mitigate their exposure on liability claims for which they had no true liability, and claims costs far in excess of their own negligence. Through the passage of AB 758, members no longer have such exposure.

Annual Savings: CALPASC estimates future annual savings in insurance premiums for CALPASC members of \$168,000,000. Additionally, in self-insured retention claims payments, CALPASC estimates an annual savings of \$14,400,000 for CALPASC members.

Workers' Compensation Reform— California workers' compensation costs have been the highest in the nation – nearly twice the national average – causing jobs and businesses to be more profitable in states other than California. During 2004 and 2005, CALPASC supported the Administration and promoted the workers' compensation reform initiative to overhaul the workers' compensation system for California employers such as trade contractors. CALPASC activated its grassroots network of trade contractors while serving as a member of the workers' compensation action network that supported the California Recovery Team. In 2005, trade contractors saw the reformation of workers' compensation through a number of legislative and regulatory actions resulting in savings to California employers.

Actual Savings: CALPASC estimates an approximate 25% reduction in workers' compensation rates for an estimated total savings of \$61,250,000 for CALPASC members.

Fall Protection Standards —

Framing

CALPASC was a key participant in revising the framing standards for the construction industry. In conjunction with the California Framing Contractors Association, CALPASC served on the Cal/OSHA Advisory Committee. CALPASC coordinated with its members to work with Cal-OSHA's Research and Standards Division to develop regulations that trade contractors could support. The Advisory Committee accepted the recommendations of CALPASC and revised the current standard to 15 feet resulting in fewer workers' compensation claims and potential Cal/OSHA citations.

Actual Future Savings: Significant future reductions in workers' compensation costs and Cal/OSHA citations.

Roofing

CALPASC is currently working with Cal/OSHA to reduce roofing fall protection standards from 20 to 15 feet for production residential roofing. On behalf of its members, CALPASC petitioned the Cal/OSHA Standards Board to reduce roofing standards and is moving efficiently through the regulatory process. This rule change will result in lowering the number and severity of workers' compensation claims and potential Cal/OSHA citations.

Actual Future Savings: Significant future reductions in workers' compensation claims and Cal/OSHA citations.

Ergonomics — Working in conjunction with other professional associations, such as the California Framing Contractors Association, CALPASC helped to defeat the AFL/CIO's 2004 ergonomics proposal. The proposal would have implemented more oppressive ergonomic standards than those imposed by other states and the federal government. CALPASC opposed the proposal and, through a study of the Artisan Captive members' experiences, presented findings to the Cal/OSHA Advisory Committee demonstrating ergonomics represented minimal claims for the construction trade. CALPASC's critical opposition motivated the Cal/OSHA Board to drop the proposal.

Estimated Savings: CALPASC estimates savings of approximately \$7,000,000 annually in business and compliance costs to CALPASC members.

Hearing Conservation — In 2005, CALPASC opposed the "resurrection" of hearing conservation standards from a 1986 Cal/OSHA petition. In conjunction with the California Framing Contractors Association and the Association of General Contractors, CALPASC presented evidence to the Cal/OSHA Hearing Conservation Advisory Committee urging the continuation of the exemption of the construction trades from having to comply with certain hearing conservation standards such as testing and record keeping. Through their effective presentation to Cal/OSHA, the hearing conservation standards from the petition were not implemented.

Estimated Savings: CALPASC estimates savings of a minimum of \$7,000,000 annually in business and compliance costs to CALPASC members.

Heat Issues Regulations — After the suspension of AB 805, CALPASC worked with the Association of General Contractors, the California Framing Contractors Association and the California Chamber of Commerce to revise the proposed emergency regulations that protect employees from severe heat implications. During the first Cal/OSHA Advisory Committee meeting to address a permanent regulation, CALPASC was instrumental in providing a proposal that would separate heat illness prevention regulations for the construction industry. This proposal was presented just ahead of the all encompassing proposal by the proponents of AB 805, which expanded the emergency regulation to seven pages and included extra pay for piece workers who are taking a preventative recovery period, and 10 to 15 minute work breaks per hour during heat waves. CALPASC helped position the construction industry to fight this onerous proposal.

Estimated savings: CALPASC estimates significant savings to CALPASC members in the cost of compliance and Cal/OSHA citations

Amicus Briefs

Casey v. Overhead Door — Involved a builder attempting to assign its Type I Indemnity rights to the plaintiffs. CALPASC filed a key amicus brief. If the builder had been successful, it would have sharply increased costs to trade contractors to resolve construction defect cases.

Estimated Savings: **CALPASC estimates trade contractors' losses due to construction defect claims would have increased by 20%.**

Rosen v. State Farm — Involved a definition under California law that homeowners can recover for damages that have the “potential” to take place as signified by the testimony of one “expert,” but that damage has not yet occurred. If this case had succeeded, there could have been a tremendous extrapolation of the cost to resolve claims for damages plaintiff’s expert say “might” occur in the future.

Estimated Savings: **This ruling could have resulted in a 25% increase in construction defect claims costs.**

Mesa Vista South — Involved, among other things, a homeowner’s ability to recover damages that were not sustained within the 10-year statute but the plaintiff’s expert advised would happen eventually. CALPASC filed an amicus brief and, for this issue, the ruling was in favor of the construction industry.

Estimated Savings: **This ruling could have resulted in a 25% increase in construction defect claims costs.**

Hicks v. KB Home — Allowed a large group of homeowners to recover due to failure of the fibermesh in the concrete slab. The issue was, the fibermesh was an added value, and its failure did not impact the integrity of the slab. As this case involved 10,000 homes, it was of enormous consequence. The ruling eventually went against the homeowners.

Estimated Savings: **This case could have bankrupted many builders, trades and suppliers.**

Acosta/Chaidez v. Glenfed — Involves a court allowing a builder to be forced to accept liability beyond the 10-year statute for “fraud” perpetrated by some of its trade contractors. CALPASC was successful in eliminating the ability of builders to enforce an indemnity on the non-fraudulent trade contractors after the 10-year statute. However, the appellate ruling on the builder’s liability was allowed to stand. The ruling on the issue for trade contractors was not addressed by the appellate court. Since CALPASC brought the issue up in the amicus brief, we have an opportunity to defend our issue up to the State Supreme Court, if necessary.

Estimated Savings: **This case could result in almost never-ending liability if unchecked. CALPASC continues its attempts to eliminate this exposure for good.**

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