



THE ALDRICH LAW OFFICE, P.C. YEAR-END NEWSLETTER DECEMBER 2010

THE ALDRICH TEAM GOES THE DISTANCE, WINNING \$11.8 MILLION JURY VERDICT IN CONSTRUCTION DEFECT TRIAL

In 2008, American Honda’s parts distribution and training facility in Gresham, Oregon experienced a roof collapse during a Christmas snowstorm. Thereafter, extensive design and construction defects were discovered throughout the facility. The Aldrich Law Office was retained to pursue claims against the project architect/engineer, the general contractor, the structural steel subcontractor and the special inspector on the project. The case presented significant legal and technical factual hurdles, including statute of limitation issues, causation issues, contract vs. tort issues, construction vs. design issues, property damage vs. defect issues (including present vs. future damage), comparative fault and contributory negligence issues, tilt-up construction and engineering issues, snow load analysis issues, repair costs, accounting issues and allocation and apportionment issues. The Aldrich Team was successful in navigating these issues and after nearly two years of litigation and unsuccessful mediations, the case proceeded to a jury trial in November 2010.

As this matter was one of significant and contested liability, defendants left nothing in the bag. Two defendants relied upon out of state counsel, one retaining a jury consultant and a “ringer” trial lawyer from Texas. After opening statements, the architect/engineer and the special inspector settled with American Honda. The trial then proceeded against the general contractor and steel subcontractor with Dean Aldrich at the helm, Todd Peck as first mate, Laurie Osborn as chief engineer, and Troy Moody of Naegeli as trial technologist and keeper of the “magic board.”

American Honda had seven expert witnesses testify on its behalf. These experts included Hamid Afghan, Bob Brown, Franz Rad, Wayne Tobiasson, Jeff Lewis, Gerry Williams, and Greg Marbett. This expert team was crucial to the result, and put in a large amount of time and hard work presenting the technical evidence and analyzing the issues for trial. The hard work, dedication, and support of American Honda representatives/witnesses were also an important part of achieving this victory.

Following a five-week trial and three days of deliberation, the jury returned a verdict in favor of American Honda for \$11.8 million in total damages – the largest construction defect jury verdict in Oregon. The defense contended that the jury should only award \$2.5 to \$3 million in total damages, if any damages at all. The Aldrich Team once again proved it was willing and capable of going the distance when the stakes are high, and will succeed in its mission.

YES, WE DO WINDOWS - JURY HOLDS WINDOW MANUFACTURER AND SUPPLIER ACCOUNTABLE FOR LEAKY WINDOWS AND BAD INSTALLATION INSTRUCTIONS

Dean Aldrich and Chris Grady represented owners of a home in the Portland West Hills with leaky windows. The homeowners filed a product defect and breach of warranty lawsuit against the window manufacturer and window supplier. After a nine day jury trial in Washington County in October 2010, the jury found that the homeowners’ windows and the window installation instructions were defective, and that the window manufacturer did not honor its warranty (and that the fine print warranty limitations and exclusions were not valid). The highest combined pretrial settlement offer from the window manufacturer and supplier was \$10,000. In the verdict, the jury awarded the homeowners \$573,956.43 in damages, plus the judge awarded an additional \$56,599.93 in prejudgment interest and costs, for a total award of \$630,556.36. The window folks attempted to blame the general contractor, framer, and siding subcontractor. The jury did not respond to these arguments. The result could not have been possible without the assistance of expert witness Jon Pietz and repair contractor witness Sean Gores. Troy Moody of Naegeli was also critical, ensuring effective trial technology to help communicate the issues and themes. It was a rewarding experience for the staff of the Aldrich Law Office to make a window manufacturer accountable to consumers for defective windows and defective installation instructions.

THE ALDRICH TEAM SECURES ANOTHER TRIAL VICTORY IN ONGOING LITIGATION OF CONDOMINIUM CONVERSION, A TRIAL VICTORY THAT APPLIES TO INSURANCE COVERAGE ISSUES THROUGHOUT OREGON

In the summer of 2008, the Aldrich Law Office obtained a \$2.3 million verdict for a 108-unit Association for deck repairs against the conversion developer. The Aldrich Team also obtained a net attorney fee award of approximately \$125,000 against the developer (gross attorney fee award for the Association was \$505,705.90).

After judgment was entered, the developer’s insurance company filed a related lawsuit claiming the Association’s award was not covered by insurance.

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In February of 2010, Dean Aldrich took this second lawsuit to trial with the assistance of insurance coverage counsel, Mike Farnell of Parsons Farnell & Grein. The Aldrich team was also assisted by experts Ariel Levy, George Tsongas, and Greg Bosaz. The Association prevailed on the insurance coverage claim, received an additional attorney fee award of \$414,350, and an award of post-judgment interest, resulting in a net award of over \$2.8 million. This extraordinarily difficult case involved many complex insurance coverage issues, including issues never before decided by an Oregon court. The issues included developer coverage under a condominium policy, known loss exclusion, mold and fungus exclusions, allocation of covered and uncovered loss, and recovery of the underlying attorney fee award under the supplementary payments provision. The results of this case have already had significant impact on construction defect and coverage cases throughout Oregon.

THREE ARBITRATION VICTORIES FOR TEAM UTOPIA: PAYMENT CLAIM, DEFECT CLAIM, ATTORNEY FEE AWARD

The owners of Utopia Winery in Newberg discovered construction defects immediately upon moving into their new home at the winery in September 2007. The owners immediately contacted the builder to discuss repairs, who in turn, demanded \$80,000 more in addition to the full contract price which had already been paid. After two years of unsuccessful attempts to resolve the issues, the owners retained the Aldrich Law Office to provide a defense for the payment claim and to pursue the construction defect claim in binding arbitration. The Aldrich Team was also assisted by dedicated experts who were willing to go the extra mile, including Graal Larkin (accountant), Robert Harp (defect consultant), John Pedden (repair contractor), Jeff Millis (repair contractor), and Elton Ko (floor expert).

In July 2010, the payment claims were arbitrated with Dean Aldrich and Molly Allison defending the owners against the contractor's claim for nonpayment of the additional \$80,000, while also asserting a counterclaim against the builder for failure to provide a proper accounting of the construction costs under the AIA contract. The owners prevailed on the accounting payment claim and the builder was only awarded \$4,001 for costs that fell outside of the contract. After extensive briefing and oral arguments by Ms. Allison, the owners were also determined to be the prevailing party and were awarded \$110,000 for attorney fees and costs for the accounting claim.

In September 2010, Ms. Allison arbitrated the construction defect claim. The owners were ultimately awarded \$125,000, of which \$20,000 was awarded to compensate the owners for the cost of investigation into the defects.

Utopia has delicious and award winning wines. Get yours at www.utopiawine.com.

NEW RESOLUTION STRATEGY LEADS TO SUCCESSFUL SETTLEMENT IN LIVE/WORK TOWNHOME LITIGATION

Kevin Eike represented the Association of Unit Owners and individual unit owners at Orenco Station Live/Work Townhomes, a unique 6-building, 28-unit multi-use townhome development, consisting of commercial, retail, and residential units. This case is the pinnacle of a new litigation strategy developed by Mr. Eike whereby, during the course of litigation, repairs are completed on a single test building to establish necessary repair scope and costs. The defect, damage, and repair cost information gained from the test building is then applied to the remaining buildings. This approach was successful in this case in refuting claims by the developer and general contractor that the buildings could be

properly and completely repaired for a small fraction of the cost it actually took to properly accomplish repairs.

The case was resolved at mediation in June, 2010. The result was a settlement of \$1,675,000, which was over three times the amount the developer/builder team claimed would be sufficient to fully repair the buildings. Once settlement monies were received, repairs to the remaining buildings at Orenco Live/Work were completed.

CAULK IS NOT THE ANSWER

Dean Aldrich represented the Streetcar Lofts Condominiums Owner's Association in pursuing design and construction defect claims against the architect, developer and general contractor of this signature condominium project in Portland's Pearl District. Following the building's construction in 2001, many of the condominium owners experienced water intrusion into their units from a myriad of design and construction defects, but the developer contractor, and architect claimed they had fixed all problems and that caulking maintenance by the HOA was the answer.

In June 2010, after significant legal wrangling on the eve of trial, including three days of pretrial hearings, including arguments over a hyperlinked timeline developed by paralegal Laurie Osborn, and the demonstrated expertise of expert Ariel Levy at a Rule 104 hearing on statistical evidence, investigative scope, and property damage as it relates to a concrete and steel building (including present vs. future damage), the Aldrich Team was successful in forcing a settlement from defendants. The Aldrich Team obtained a \$2.1+ million settlement (more than four times what the defense had contended was necessary for repairs), which allowed the building to finally be properly repaired, resolving once and for all the water intrusion issues with the condominiums.

HOMEOWNER'S ASSOCIATION DISMISSED ON SUMMARY JUDGMENT IN LANDSLIDE CLAIM, ESCAPES \$3.7 MILLION LIABILITY

Marylhurst Homeowners' Association was sued for damages stemming from a landslide on Association property. Dean Aldrich defended the HOA against the claims, which exposed them to \$3.7 million in damages. A week before trial in June 2010, the Aldrich Team was successful in obtaining dismissal of all claims against the Association on summary judgment, avoiding potential catastrophic exposure to the client.

WEST LINN HOMEOWNERS RECOVER AGAINST BUILDER OF CUSTOM DREAM HOME

In 2005, homeowners in West Linn hired a general contractor to construct their dream home. Within a year, they were experiencing significant water intrusion issues. The builder came back and attempted repairs, but the repairs were unsuccessful. The homeowners hired Dean Aldrich to represent them in pursuing construction defect claims against the builder of their custom home. The Aldrich Team worked with the defense in selecting a repair contractor, and battling over the repair scope, with expert Chris Baidenmann looking out for the long-term interests of the homeowners and their home. Repairs were significant and included complete removal and replacement of siding, removal and reconstruction of all windows and doors, and reconstruction of five decks on this four-story home. Aldrich obtained a settlement of \$549,500, full recovery of repair costs+, at a judicial settlement conference just prior to trial in March of 2010.



WASHINGTON HOMEOWNERS ACHIEVE SETTLEMENT AFTER INSURANCE COMPANY FORCED TO PRODUCE DAMAGING REPAIR DOCUMENTS AND PROVIDE DEPOSITION OF ADJUSTER

The Aldrich Law Office represented a family with a home located on gorgeous beach front property in Long Beach, Washington. Significant construction defects existed throughout the home. Repairs included replacement of the cedar shingle siding, windows, and the roof, portions of which blew off during litigation. Chris Grady and Dean Aldrich won a significant discovery motion gaining access to documents withheld by the general contractor's insurance company, and a deposition of the adjuster. Soon after winning the discovery motion, the case settled for \$441,000, providing necessary funding for full repairs.

CONDOMINIUM OWNERS WIN DESPITE BUILDER'S HOLLOW INSURANCE AND STUBBORN SUBCONTRACTOR

Kevin Eike represented the Association of Unit Owners at Linden Village Condominiums, a 30-unit, 15-building condo complex in Milwaukie. The ultimate result was settlement on the eve of trial for an amount which was sufficient to perform all necessary repairs, but it didn't come easy. The Aldrich Team was faced with numerous hurdles to get the case to the finish line, including complex defense motion practice, insurance coverage exclusion hurdles, and a framing subcontractor who was unwilling to settle. After multiple mediations, Linden Village was successful in settling with the developer, who subsequently went to trial against the framing subcontractor. During that trial in January 2010, the developer hired Mr. Eike as an expert witness to testify, which resulted in a verdict against the framer of more than double all previous settlement offers. After repairs were completed at Linden Village, the owners threw a neighborhood BBQ for all owners, the legal team, the property manager, and the repair contractor to celebrate a job well done.

\$1.5 MILLION SETTLEMENT IN FIVE MONTHS: ALDERBROOK HOA USES ALDRICH TEAM FOR EXPEDITED RESOLUTION

The Alderbrook Home Owners Association retained the Aldrich Law Office in September 2009 to take over a languishing construction defect claim. The claim was successfully resolved five months later, in January 2010, for \$1.5 million on the eve of arbitration. Dean Aldrich developed an accelerated and aggressive litigation/arbitration protocol, and repair analysis protocol, to successfully wrap the project up quickly and cost effectively. The successful and speedy resolution was due in large part to the hard work of the homeowners, as well as the expert, Mark Rose (who prepared a complete set of repair drawings and specifications and utilized a formal sealed competitive bid process to accurately identify the repair costs during the process). Because of the Aldrich protocols, full repairs (complete tear-off and window replacement) were able to commence directly after settlement as the repairs were designed and funded, and the repair contractor bid had been accepted.

KEVIN GOES THE EXTRA MILE, GETTING JUSTICE IN SOUTHERN OREGON

Kevin Eike represented two separate home owners who lived in Cedar Brook, an over age 55 planned community located just east of Grants Pass. During the real estate boom of the mid 2000s, a California developer bought this 28-lot subdivision and promised buyers 24-hour security, a clubhouse, and a new nearby medical facility. After building out half of the 28 lots, the developer lost funding and ran scared from the project, leaving owners well short of what they were promised. To add insult to injury, the homes

were improperly constructed and could not be sold. In both cases, Mr. Eike was able to work with clients, adverse counsel from southern Oregon, and a Josephine County retired judge mediator to negotiate favorable resolutions, providing clients with much needed resources to fix their homes.

FOREST HEIGHTS HOMEOWNERS GAIN SUCCESSFUL SETTLEMENT IN CHALLENGING CASE

Dean Aldrich and Molly Allison represented West Hills homeowners, who came to the Aldrich Law Office seeking resolution to extensive construction defects throughout their home. This case had many obstacles, including comparative fault defenses based on the clients having served as their own general contractor during construction, and an insurance carrier who threatened to pull coverage because a defendant subcontractor/insured was not cooperating. The Aldrich Team was able to secure very favorable settlements from all defendants. Aldrich also used a blended fee arrangement to minimize and manage legal expense and risk for the homeowners.

BENTON COUNTY HOMEOWNERS GET FULL RECOVERY OF REPAIR COSTS, AND REIMBURSEMENT OF ATTORNEY FEES

In June 2010, relying on the victory in Hilltop (which held that attorney fees can be covered by insurance policies), the Aldrich Team was able to obtain full recovery of repair costs, plus substantial reimbursement of attorney fees, for homeowners in Albany. Repair contractor Sean Gores was instrumental in the recovery.

2010 LITIGATION RESOLUTIONS

In addition to the above case descriptions, the following is a complete list of cases which were taken to jury or bench trials, arbitrated, settled or resolved in 2010. A heartfelt thank you goes out to our clients and to our consultants, repair contractors, and all others who played an integral part in making each of these a success.

- Alderbrook Home Owners Association, Inc.
- American Honda Motor Co., Inc.
- Association of Unit Owners of Hilltop Condominiums at Uptown
- Association of Unit Owners at Linden Village Condominiums
- Behrndt
- Bjerede
- Cain
- Calcagno
- Franssen
- Glocar
- Goodrich
- Harp
- Hillier
- Lanphere
- Meados
- Mullins
- Naito
- Orenco Station Town Center Live/Work Townhomes Owners Association
- Robertson
- Seaside Factory Outlet
- Streetcar Lofts Condominium Homeowner's Association
- Taylor
- Warnshuis



CONTRACT PREPARATION AND NEGOTIATION

This year, the Aldrich Team has prepared and negotiated contracts for clients, including property owners, contractors, and design professionals in both private and public sectors. Important issues include up to date and specific revisions to standard AIA form documents, incorporation of AGC consensus documents, original contract language and complete contracts, indemnity language, change orders, insurance documents, lien and bond forms and releases, warranty documents, and contract documents related to defect repairs, historic renovation and affordable housing.

Significant contract work included:

- Aldrich negotiated a repair contract for an affordable housing project with serious HVAC and insulation issues. Aldrich was able to obtain a contract with the original contractor to come back and repair the issues at no cost to the owner, as well as reimburse consultant and attorney fees
- Contracts with architect and contractor for construction of an affordable housing project for persons in recovery, consisting of five units in three buildings, plus common areas
- Prepared and negotiated numerous repair contracts, change orders, warranty documents, and releases for owners, contractors, and design professionals involved in renovation, repair, and restoration work for public and private projects, from small projects to multi-million dollar projects

CONSTRUCTION LAW PUBLICATIONS AND PRESENTATIONS

In late 2010, Dean Aldrich, with the assistance of Sarah Kutil, our genius law clerk, completed a comprehensive revision to the Oregon State Bar Association Construction Law BarBook. The BarBook provides a detailed overview of construction defect law issues in Oregon and is relied upon by legal practitioners throughout Oregon. It was a great honor for the Oregon State Bar Association to look to Dean Aldrich for expertise in updating and revising this important publication.

CLE presentations by Dean Aldrich in 2010 include:

- Evolving World of Construction Defects – “Owners’ Role” (4/2/10)
- Oregon Construction Defect Law Update (4/21/10)
- Unique Construction-Related Issues and Development – Oregon Construction Law (9/23/10)
- Pacific Northwest Coverage and Current Trends (Western Region Construction Defect Conference in San Diego) (9/24/10)

NEW FACES AT ALDRICH LAW OFFICE



Todd Peck

Todd made his name representing clients in construction disputes and complex commercial litigation. He adds both experience and wise cracks to the Aldrich Law Office.



Chris Grady

Chris came from an insurance defense firm and has experience in product liability actions. In September, Chris’ family welcomed a baby girl.



Molly Allison

Molly also came from an insurance defense firm and has experience in fraud actions. Molly enjoys karaoke, weightlifting, and watching Finding Nemo for the 800th time with her two-year-old.

SUPER LAWYER IN OUR MIDST

Chris Grady was selected as a Super Lawyer Oregon Rising Star 2010. Keep an eye out for Chris when passing phone booths or men in tights (especially when they also wear capes).

DEAN ALDRICH APPOINTED TO MILNE BOARD OF DIRECTORS

In 2010, Dean was appointed to the Milne Construction Board of Directors. Milne Construction Co. is an international construction company founded in Portland in 1953.

The Board also includes Dave Dahl, President of Milne Construction Co., Wayne Drinkward of Hoffman Construction Co., and George Webb of Harmer Steel Co.

THE LAST WORD

The Aldrich Law Office wishes you, your families, your businesses, and your clients and customers the very best in 2011 – embrace and conquer this new year (there will only be one 2011 in our lifetimes). And when you have hard work, make it fun.



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