



A Legal Support System for Home Inspectors

BOOM! The lawsuit was served by the sheriff just before church on Sunday; you are being sued for \$43,000 over a basement and roof problem in a home you inspected last year. You vaguely remember the inspection. Why didn't they follow the complaint procedure in your contract? They should have contacted you first. Can't we just discuss this? Ouch!

You quickly scan the legal complaint. You know the "expert" witness on the other side is a questionable character – you have heard those rumors from other

inspectors that this rogue expert will make you look like a real dope and a sloppy inspector. You dig out your inspection report and see that you had identified issues with the roof and basement.

But maybe you were not clear enough... maybe your words could have been more specific... maybe...?

What do you do? Give an attorney \$3,000 to \$5,000 to put up a defense? Contact your insurance company? Say a prayer while you are at church? Demand arbitration? How much time will this take? Can they really sue you? Why did

they skip over the arbitration clause in your contract?

You could get help from the Wisconsin Association of Home Inspectors. The WAHI Legal Support system (WLS) helps with legal issues, strategy, lawsuits and arbitration claims. Working as a group, we can effectively provide legal support to our members – cohesive defense strategies, background on previous actions, and general guidance and resource to your legal team. We can also provide historical information on experts and defenses.

Background

The home inspection industry is a relatively new business. The first home inspections were performed in the 1960s, and the American Society of Home Inspectors (ASHI) was formed in 1976. Since then, other associations have been formed, and we have created various association standards of practice for the performance of home inspections.

These standards help protect home inspectors by establishing a reasonable standard of practice or acceptable care. They can limit a home inspector's liability. In Wisconsin, specific performance standards have also been established by legislation and by the Department of Licensing and Regulation.



But these standards don't stop the legal action. In Wisconsin there is no limit on a legal claim within two years of the inspection.

Because home inspectors are relatively new on the scene, they are often targets of legal action. There are fewer test cases and limited precedence or historical references. In addition, new issues appear in our business, such as mold, asbestos and well contamination.

For many years, our WAHI members have been frustrated by frivolous lawsuits and arbitration claims. A frivolous claim is expensive to defend and to settle. We know that some of these claims may be based on inaccurate or misleading information, and as individuals we have discussed possible methods of pooling our resources and knowledge for a better defense. We suspect that questionable experts and contractors trump up claims.

WAHI's board and members have discussed this problem at length without finding a method to help our members and the industry as a whole. We've talked about the problems and wished we could take advantage of our strength in numbers. In recent years, WAHI board discussions pointed toward a system to help identify frivolous claims and a legal method of pooling information and helping our members.

Goals

During 2005, the WAHI board had discussions with attorney Roy Wagner. We drafted goals for a WAHI Legal Support system and asked Roy Wagner to create an outline to respond to our concerns about marginal/frivolous cases. Based on our board discussions, the WLS goals are:

1. Establish a clearinghouse of claims against WAHI members.
2. Keep records on problem experts and contractors, and on issues within the legal community.

3. Offer resources to home inspectors in defending marginal/frivolous claims.
4. Offer resources to attorneys defending home inspectors.
5. Establish an aggressive strategy that can be used by home inspectors and their attorneys in defending against frivolous actions.
6. Provide initial WAHI-paid legal assistance when claims are presented.
7. Communicate with members to collect information about marginal/frivolous claims for our database.
8. Monitor rogue experts and review aggressive tactics to counteract them.
9. Establish a system that empowers aggressive defense in the face of marginal/frivolous claims to benefit the organization, members, and board members.
10. Provide confidentiality to members participating in the system.
11. Provide statewide support to members.

Status

In November 2005, the WAHI board approved a proposal from Roy Wagner that provided a cost-effective approach to our goals. Roy Wagner will serve as the legal counsel for WAHI WLS. We believe we have a system that will support home inspectors and our organization as a whole. We are now ready to implement the system, and we need input from all members to establish a database and provide information for the organization to support members who may be victims of marginal/frivolous claims.

The board established a WLS committee to follow through on the system with members and Roy Wagner: Tom Feiza, Tom Monaghan and Mark Thomas. We have also established a WLS liaison – Tom Feiza and Tom Monaghan.

How the System Works and How You Can Help

1. WLS Committee and Liaisons

WLS committee members are Tom Feiza, Tom Monaghan and Mark Thomas. Both Toms are also liaisons. These assignments may change over time and as the WAHI board makes appointments to this committee. The committee is responsible for oversight of the WLS program.

WLS liaisons provide confidential contacts with WAHI members who have been sued or subject to arbitration in the past or may be sued in the future. We realize that WAHI members may be reluctant to divulge past or future claims experience to avoid hurting their reputation. Therefore, the WLS liaison maintains a confidentiality agreement to safeguard the confidences of WAHI claim defendants. The committee or liaisons will never release the names of WAHI members working with the system.

The WLS liaison will be the point of initial contact between WAHI members and WLS. The WLS liaison will contact the membership, explain the program and solicit members who have been subject to claims to identify themselves confidentially. The purpose is to harvest information (adverse experts, owner attorneys, successful/unsuccessful strategies, etc.) for a future resource. Members with future claims will contact the liaison, explain the claim and provide basic documentation. The liaison will evaluate the information and refer it to WLS legal counsel.

2. Confidentiality

All information will be kept in total confidence by the liaison. The liaison serves as an initial screening and entry point into the system and refers problems to legal counsel. The liaison maintains no records of members or claims.

The liaison will also screen claims for validity and potential problems. We all

must understand that while claims are a sensitive and critical issue for WAHI members, even legitimate claims may achieve limited benefits by being reviewed.

3. Function of WLS Legal Counsel

- Legal counsel will harvest information about claims, experts and legal actions.
- Legal counsel will maintain records; this information may be protected under the Attorney Work Product Doctrine and may be subject to attorney-client privilege.
- Legal counsel would inventory information on past cases.
- Legal counsel will harvest information on future claim defendants and provide claim support service, which may assist future cases.

4. Establish Database from Old Claims

After referral from the liaison, legal counsel will review documents related to old claims and create a database. This will include information on questionable claims, legal experts with marginal credentials or unreasonable positions, and general information on types of claims and parties involved.

5. WLS Legal Counsel Claim Review – New Claims

After a referral from the liaison, the WAHI member with the claim would work directly with WAHI WLS legal counsel. Legal counsel will provide the following service (at no charge):

- Preliminary evaluation of the claim.
- Preliminary evaluation of economic feasibility and justification for referral to WAHI member's errors and omissions (E&O) insurance coverage if available. Consideration will be given to potential liability and damages to determine whether defendants should handle claims individually even though they have E&O coverage available.
- Assist WAHI claim defendants in processing and referral to an E&O

coverage insurance carrier for a defense, if appropriate.

- If no E&O coverage is available, evaluate legal defense options, including attorney referral to experienced defense counsel.

6. Litigation Support Services

WLS legal counsel will provide WAHI claim defendants and their counsel with access to WLS information and resources. Actual legal defense would be provided independently by WAHI claim defendant's own counsel. This could include the following:

- Review, evaluation and feedback of claimant and claimant's attorney.
- Review and evaluation of claimant's expert witnesses, including support information regarding prior reports, depositions recorded, impeachment, and credibility.

- Referral to qualified experts on damage evaluation and testimony.
- Evaluation of settlement prospects and programming.

7. Caution: Not All Claims Belong in WLS

WLS is designed to assist against marginal/frivolous legal action. We all need to understand that home inspectors can make mistakes, and there will be claims that should be settled or defended by the home inspector, and the WLS resources may not be as beneficial. This sensitive issue needs to be carefully approached by all involved in the process.

WAHI will provide a more general level of support to all members, but WAHI WLS will be less beneficial to members who have made a mistake and face liability.

Summary

It is the goal of the WLS program to offer individual WAHI members the fruits of collective efforts, in addition to providing aggressive defense in response to marginal/frivolous claims, claimant's attorneys or expert witnesses who may inappropriately target WAHI inspectors.

WAHI needs your help. If you have been subjected in the past to a marginal/frivolous claim, please refer that information to the WLS liaisons. If you are subject to a new marginal/frivolous claim, contact the WLS liaisons.

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