



CONSTRUCTION



*Bulletin 2010-4: Considerations for Home Construction Contractors Handling Insurance Work*



*By Steven J. Foley*

The Departments of Commerce and Labor and Industry published Bulletin 2010-4 (the Bulletin) in 2010 to address complaints of consumers and the insurance industry regarding perceived abusive practices being done by building contractors. In particular, consumers were concerned about contract language that required payment even if the homeowner did not pick that contractor to do the repairs. Insurers complained about some contractors asserting the right to negotiate coverage terms on behalf of the insured/homeowner, including the right of appraisal. Simply put, insurers did not want contractors assuming the role of claims adjusters.

Almost a year has passed since its publication, yet contractors remain confused as to how to comport with the Bulletin. To clarify the scope, the departments followed up by providing answers to frequently asked questions (FAQs). The FAQs stress that the bulletin relies on existing Minnesota law and that aside from limited situations described in the bulletin was not intended to “regulate, amend or otherwise interfere with any contractual relationship between a contractor and a consumer.”

*Price Agreeable Contracts*


A price agreeable contract states that the homeowner agrees to allow the contractor to perform whatever repair work the homeowner’s insurance company agrees to cover, for the price that the insurer agrees to pay. Most of these contracts also contain a provision that cancels the contract if the contractor and insurer cannot reach an agreement. The Bulletin does not prohibit price agreeable contracts. However, it qualifies the acceptable language that can be used. Accordingly, it should be clear to the homeowner that that the contract authorizes the contractor to do the work. In turn, it should also be clear that the contract does not merely permit the contractor to examine the homeowner’s property or discuss the matter with the insurance company.

*The Main Takeaway from Bulletin 2010-4: a Contractor Shall not Assume the Role of a Claims Adjuster*

While price agreeable contracts can still be used, contractors must remove language from contracts and advertising materials which can be construed as the contractor offering services of a licensed public adjuster—someone who negotiates a claim settlement on a homeowner’s behalf and may require licensing as a public adjuster. Therefore, contractors should remove the following and any similar statements from their contracts that involve negotiating terms of insurance coverage on behalf of the homeowner:

- Contractor will act as the homeowner’s representative or agent in negotiating an insurer

- Contractor will negotiate the insurance claim with the insurance company on the homeowner's behalf
- Contractor represents the homeowner or is adjusting the claim
- Contractor will represent your best interests when meeting the insurance adjuster
- Homeowner gives full authority to contractor to negotiate with homeowner's insurance company to pay for any damages

Despite these restrictions, contractors can still negotiate the scope of work with their customer and the price for the work. In addition, the contractor can identify for the insurer and make the insurer aware of damage that may have not been included in the initial scope and settlement offer. Nothing in the Bulletin provides a new basis to limit direct discussions between the parties on the scope and cost of repairs. 

## *The Construction Industry Is Found To Have the Highest Number of Traumatic Brain Injuries of American Workplaces*



*By Carol R. M. Moss*


When someone describes a traumatic brain injury (TBI), most people think of athletes such as those in the NFL or baseball players like Justin Morneau. Thankfully, gone are the days when concussions were seen as minor annoyances and kudos were given to athletes who immediately got back in the game.

Unfortunately, much of the media focus on TBIs has been centered on athletes instead of the many everyday people who suffer from this type of injury. A recent study by the American Journal of Preventative Medicine found that the construction industry has the highest number of traumatic brain injuries in United States workplaces.

A TBI is caused by a blow or jolt to the head or a penetrating head injury that disrupts the normal function of the brain. Common symptoms of a TBI include but are not limited to chronic fatigue, difficulties recalling words, change in personality, memory problems, difficulties concentrating or being attentive, and headaches.

The following is some basic information to give our clients in the construction industry a better idea of what TBIs are and to debunk some common misconceptions.

1. The full extent of a TBI may not be known until the person attempts to return to normal, everyday activities. If a person is recovering from multiple injuries, difficulties from a TBI may not be clear during the initial recovery time. It is often the people who are closest to the injured person who recognize the signs of a TBI.
2. A person does not have to lose consciousness in order to suffer a TBI. One study found that 35% of people with a TBI did not lose consciousness.
3. A person does not have to have suffered a blow to the head in order to sustain a TBI. Medical researchers have found that a rapid acceleration or deceleration of the head, which forces the brain to move back and forth in the skull, can also cause a TBI. These rapid movements can pull apart nerve fibers and damage brain tissue.
4. A description of a "mild" or "minor" brain injury should not minimize the significance of a TBI. What physicians describe as a "mild TBI" can still be a permanent injury resulting in headaches, loss of balance, fatigue, and visual disturbances on a daily basis. These chronic symptoms can have a significant impact on a person's home and work life.
5. Unlike a broken leg on an x-ray, TBIs are often not diagnosed using traditional medical testing. A person may have a TBI even if medical diagnostic tests, such as an MRI or CT scan, are read as being normal.

At Hellmuth & Johnson, PLLC, we represent many people who have suffered a traumatic brain injury as a result of a personal injury or medical malpractice. We work closely with the Brain Injury Association of Minnesota ([www.braininjurymn.org](http://www.braininjurymn.org)) to ensure our clients have access to services need to treat and live with a brain injury. 

## *H&J News*

Hellmuth & Johnson is pleased to announce that five of our attorneys were selected for inclusion in 2011 Minnesota *Super Lawyers*®— David G. Hellmuth, Chad A. Johnson, Gary G. Fuchs, J. Robert Keena and Blake R. Nelson. In addition, four of our attorneys were named 2011 Minnesota *Rising Stars*® – Edward E. Beckmann, Matthew J. Franken, Joel A. Hilgendorf and Kathleen M. Loucks.

This newsletter provides general information on legal matters, and should not be relied upon as legal advice. A qualified attorney must analyze the relevant facts and apply the applicable law to provide specific legal advice. If you require legal advice or want additional information regarding the services we offer, please contact David Hellmuth at 952-941-4005 or [dhellmuth@hjlawfirm.com](mailto:dhellmuth@hjlawfirm.com).



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