

## COURTHOUSE SQUARE LITIGATION TIMELINE

### Events/filings

- 09/27/00      Date of Substantial Completion Certificate
- 10/19/00      County, Transit sign Substantial Completion Certificate accepting construction
- 09/16/03      David Evans review of existing construction to determine whether potential North Block development can be accommodated
- 11/29/05      Tolling Agreement signed – Transit, Arbuckle Costic Architects, County are parties
- 10/27/06      Initial complaint filed against Arbuckle and Pence Kelly Construction, Inc. (now LLC) (General Contractor) – pavers claim only
- 12/12/06      First Amended Complaint filed – adds floor slab claims
- 12/26/06      David Evans memo evaluation of floors, suggesting further investigation
- 02/23/07      Arbuckle files Answer, Cross-claim (Indemnity and Contribution against Pence)
- 02/28/07      Pence files Crossclaim (Indemnity and Contribution against Arbuckle) and Third Party Complaint, bringing in subcontractors
- 05/02/07      Second Amended Complaint filed – adds ceiling grid allegations
- 11/29/07      2 years from date of Tolling Agreement (ORS 12.135)
- 12/11/07      Arbuckle files 4<sup>th</sup>-party Complaint against Century West
- 02/08          Issuance of David Evans Structural Evaluation Report
- 03/20/08      *Harris v. Suniga* court decision
- 05/05/08      Mediation session – expert meeting
- 10/09/08      Third Amended Complaint filed – including direct negligence claim against Century West
- 11/14/08      Court dismisses contribution claims, leaves in indemnity claims against Century West; Pence files appeal

01/20/09 Obtain 5 options of cost estimates for building repairs from SD Deacon

01/28/09 Richards Engineering letter indicating deflection appears to have ceased; conclusion of deflection cause is that slab design did not meet industry standard of care

02/03/09 First mediation session – no meaningful offer from Century West or Pence Kelly; Arbuckle expresses potential interest in settling for remaining policy limits (approx \$695,000)

03/23/09 David Evans opinion that the building is safe to occupy

05/20/09 Conditional acceptance of Arbuckle’s policy limits settlement offer plus assignment of Indemnity claims against Century West

09/01/09 Court determines Arbuckle and Pence’s Indemnity claims against Century West are not ripe, dismisses them without prejudice; court sets firm trial date of 07/13/10

10/30/09 Miller Consulting Engineers’ letter stating building is safe to occupy and in no danger of collapse

01/06/10 Settlement finalized with Arbuckle for \$695,117.80 and assignment of claims

02/22/10 Receipt/analysis of Pence’s expert’s opinion: slabs have adequate structural capacity to carry the loading; conclusion for slab deflection cause is design defect

02/23/10 Mediation session with Pence Kelly and construction subcontractors; tentative settlement agreement reached, including assignment of Pence’s Indemnity claims against Century West:

Pence/Kelly: \$900,000  
F.D. Thomas: \$60,000  
Schonert: \$65,000  
Ceco: \$50,000  
C&J Rebar: \$50,000  
Oregon Cascade: \$44,000  
**TOTAL: \$1,169,000**

**Total recovery to date = \$1,864,117.80**

02/24/10 BOC approves contract with SERA Architects and Miller for development of remediation options

04/10 Final language of settlement agreement with construction defendants determined, and signing of final agreement begun

05/11/10 Fourth Amended Complaint filed asserting all Indemnity claims against Century West

06/30/10 SERA/Miller deliver opinion the bus mall may be in imminent danger of collapse due to excessive dead load on columns

07/02/10 Transit closes bus mall

07/26/10 SERA/Miller deliver preliminary report to joint meeting of Marion County BOC and Transit Board of Directors indicating building is dangerous, but not imminently so

07/30/10 City of Salem issues Dangerous Building Notice requiring evacuation within 60 days

09/01/10 Court letter indicating lack of jurisdiction if Pence's earlier appeal is pending

09/24/10 Mediation session with Century West, no progress made

09/27/10 10 years from date of Certificate of Substantial Completion

09/27/10 Notice of voluntary dismissal of appeal filed by County and Transit to eliminate any jurisdictional issue

09/27/10 Complaint filed against Carlson Testing for negligence, breach of contract

09/28/10 Evacuation of building completed

10/12/10 Appeal dismissal entered by Court of Appeals

10/18/10 10 years from written acceptance of construction and approval of Substantial Completion Certificate

### **Limitations on actions**

ORS 12.135 Statute barring actions arising from certain listed activities relating to construction filed (a) more than 2 years from discovery of; or (b) more than 10 years after date of substantial completion – applies to claims by public bodies as well as private owners

03/20/08 *Harris v. Suniga* decision on limitation of scope of economic loss doctrine in property damage cases, allowing direct owner negligence claims for damage to property absent existence of direct contract

## **Limitations on recovery**

### **Policy limits:**

- Arbuckle \$1 million (burning/wasting policy – limits are reduced by amounts spent on defense and settlement of claims occurring during policy coverage period)
- Pence \$1 million
- Century West \$1 million (burning/wasting policy)

### **Other assets:**

- Arbuckle No significant assets located in asset search; local company
- Pence Limited Liability Corporation, some limited assets; local company
- Century West No significant assets located in asset search; local company