

Significant Change in Colorado Law Impacts Traditional Coverage Interpretation of Commercial General Liability Insurance Policies

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RECENT SUBSTANTIVE CHANGES TO COLORADO LAW have significantly impacted the dynamics of construction defect claims, coverage and litigation in the state. The Colorado legislature and Governor William Ritter enacted House Bill 10-1394 into law on May 21, 2010. The legislation is entitled "Concerning Commercial Liability Insurance Policies Issued to Construction Professionals." The law not only took immediate effect from the date of its signing, but it also has retroactive application.

Traditional Commercial General Liability ("CGL") Policies, the type which most contractors and construction professionals hold to cover damage resulting from negligent work, require property damage to exist on a property other than the construction site in order to trigger an "occurrence" or "accident" for negligently performed construction work. For example, under traditional insurance practice, an improperly installed drainage system which flooded the project in question would not be entitled to CGL coverage. However, if the flooding impacted an adjacent home or business, the damage to the adjacent property would satisfy the damage to property requirement. The requirement of property damage as a condition of coverage has long spawned litigation over this requirement in an effort to bring a CGL Policy to the table for settlement. The recent change to Colorado law imposes a more relaxed standard which will

result in coverage being available much more frequently under CGL policies.

The new Colorado law requires that CGL Policies be interpreted under a presumption that any property damage caused by a contractor, including damage to the work done by a contractor, is an "accident", thus triggering coverage under a CGL Policy. The new law makes it unnecessary for there to be damage to a neighboring property in order to bring about coverage under a CGL Policy. This change makes it more likely that negligent or unsatisfactory construction work will be pursued by Project owners.

While this law primarily affects various builders and trades professionals, it may also require a review of CGL Policies purchased by design professionals who act as project

manager or who undertake project work in a design/build capacity in Colorado. Accordingly, architects, engineers, and surveyors who work in Colorado should revisit their CGL Policies with their brokers to make certain that adequate coverage is in place. While the new law is in the process of being appealed, that is a lengthy process which will likely involve several court rulings.

Despite the fact that CGL Policy premiums for companies performing design and construction work in Colorado will undoubtedly increase markedly in light of the State's legislature broadening applicability of CGL Policy coverage, having adequate insurance available is now increasingly important. Plaintiff firms are guaranteed to pursue a wider spectrum of claims against entities involved in a construction project in light of the new law.

The broader spectrum of claims will result in the greater likelihood of litigation, and this is yet another reason for companies doing business in Colorado to work with their broker to make certain that issues of adequate policy coverage, premium amounts, and deductible amounts are considered in a balanced and detailed fashion. Construction professionals doing business in Colorado should also discuss the implications of the new law with their corporate counsel or business law attorney so that there is a solid understanding at a company's management level on how the new law effects a company's risk management and loss prevention objectives, as well as the risk and potential exposure for Projects undertaken in Colorado. ■