

COLORADO

Construction Defect as Occurrence

United Fire & Casualty Co. v. Boulder Plaza Residential, LLC, 2010 WL 420046 (D.Colo. Feb. 1, 2010). There is an accident or occurrence when consequential property damage has been inflicted on a third party as a result of the poor workmanship. However, where claims were related to alleged improper installation of flooring by a subcontractor, the alleged damage to the flooring and loss of use of the flooring did not constitute consequential damages. In order to fall within the consequential damage exception, the damage must be to something other than the work product itself and “loss of use” of the work product is not sufficiently independent.

General Security Indemnity Co. of Arizona v. Mountain States Mutual Casualty Co., 205 P.3d 529 (Colo. App. 2009). Insurer had no duty to defend insured framing subcontractor against tort and breach of warranty claims because a claim for damages arising from poor workmanship, standing alone, does not allege an accident that constitutes a covered occurrence, regardless of the underlying legal theory pled. Broad allegations of “other losses” and “consequential damages,” without further identification of such damages, were insufficient to trigger duty to defend.

Greystone Construction, Inc. v. National Fire & Marine Ins. Co., 649 F.Supp.2d 1213 (D.Colo. 2009). There was no occurrence in a lawsuit brought by homeowners against the insured homebuilder where no damage to the homeowners’ personal property or to property of third parties was alleged. Faulty workmanship causing damage only to the constructed home does not constitute an occurrence.

American Family Mutual Ins. Co. v. Teamcorp., Inc., 659 F.Supp.2d 1115 (D.Colo. 2009). Complaint included allegations of an occurrence where the homeowners asserted that the insured’s negligent design and engineering work caused actual consequential damages, including a structurally unsound home and damage to the homeowners’ entire property, that required the home to be demolished and rebuilt.

General Security Indem. Co. v. Century Surety Co., 2009 WL 2407624 (D.Colo. Aug. 3, 2009). There was no occurrence where an insured real estate developer was alleged to have known of soil problems that resulted in damage to homes’ floors and foundations. The insured was alleged to have known of the soil problems and was aware that homes would be built on the property; therefore, the damage was not unexpected or unanticipated from its perspective.

Adair Group, Inc. v. St. Paul Fire & Marine, 477 F.3d 1186 (10th Cir. 2007). The defective workmanship of the insured general contractor’s subcontractors in breach of the general contract was not a covered occurrence under the CGL policy. The fact that the defective work was performed by the subcontractors, not by the insured general contractor, was unpersuasive, and the court stated that a CGL policy is not intended to provide an anticipatory guarantee of quality work in that a general contractor cannot turn

its failure to complete construction according to the contract into a covered occurrence by “bootstrapping on its subcontractor’s negligence.”

Hoang v. Assurance Co. of Am., 2005 WL 427936 (Colo. App. Feb. 24, 2005), *rev'd on other grounds*, 149 P.3d 798 (Colo. 2007). There was an occurrence when soil problems resulted in damage to several homes since the damage could not be expected or intended from the standpoint of the insured homebuilder.

Union Ins. Co. v. Hottenstein, 83 P.3d 1196 (Colo. App. 2003). Construction contractor's poor workmanship constituted a breach of contract for remodeling a house and was not an accident, and therefore not an occurrence.

Colard v. American Family Mut. Ins. Co., 709 P.2d 11 (Colo. App. 1985). Poor workmanship by the insured contractor was an occurrence where the result of the insured contractor's actions was neither expected nor intended.

Application of Property Damage Exclusions

McGowan v. State Farm Fire & Cas. Co., 100 P.3d 521 (Colo. App. 2004). The property damage due to structural defects in a house fell within the unambiguous Faulty Workmanship Exclusion, Exclusion j(6), in a homebuilder's CGL policy; the exception for property damage within the products-completed operations hazard contained in the Faulty Work Exclusion did not apply since the home had not yet been completed at the time of the occurrence.