


The Basics of Insurance Law for Construction Attorneys

By Duncan L. Griffiths & Christopher J. Griffiths

Introduction

It is hard to imagine a construction defect case that is not in some way tied to insurance. From the way a complaint is drafted, to the way in which the case is defended, to the amount that is ultimately paid by each defendant, insurance law and insurance coverage are at the heart of most construction cases. While most construction attorneys do not hold themselves out as practicing insurance law, it would be foolish for a construction attorney to ignore how pervasive and important the insurance issues in a construction case can be. After all, for the party bringing the construction defect claim, insurance coverage may be the most critical aspect of the case. The authors of this article have attended numerous mediations where construction-related topics are almost ignored, and insurance coverage for the construction defects in the case is the sole topic of conversation.

While the intersection between construction and insurance law can be very complex, understanding some of the basics can go a long way. Practitioners must understand some of the common arguments made by insurance carriers during construction cases because those arguments may redefine your litigation strategy. By understanding the basics, you can also determine when and how to engage insurance coverage counsel to assist you. Moreover, when you do hire insurance coverage counsel, you will be able to quickly and efficiently point them to the most important issues so that they can immediately provide your client with valuable advice.

1. General Guidance for Interpreting Insurance Policies

If you have rarely had occasion to review an insurance policy, the policies can be difficult to navigate because of their length and complexity. Here are some preliminary tips for efficiently working through the policies.

The first tip is to request all available policies for all applicable policy periods. In construction defect cases, this would include all policies in effect during construction and all policies in effect after construction was complete. For companies that continued to do business after a project was complete, one should typically expect as many as five to ten separate policies in one-year increments.

After obtaining the policies, the next step is to review the declarations page(s) of each policy. The declarations page(s) contains a wealth of important information about the policy, including:

1. the policy number and type of insurance;
2. the name of the insured(s);
3. the particular policy period;
4. the policy limits;
5. the deductible or self-insured retention; and
6. the policy premium amount.

With respect to the named insured, the reader should carefully consult Section II of the policy, which defines the entities and individuals who are insured under the policy such as partners, members, executive officers, and employees.

The declarations page(s) often contains other useful information about the policy. For example, it often includes a summary page that lists all applicable forms and endorsements that modify the standard policy. Knowing which endorsements have been included in the policy is critical because endorsements can materially alter the coverage of the policy. For example, a common endorsement that construction attorneys see is a condominium or townhome exclusion endorsement, which, depending on the circumstances, could exclude coverage under the policy. Another common example would be an endorsement that requires that the insured meet specific preconditions before the insurer's obligation to indemnify is triggered. For example, many policies require general contractors to have written contracts with all of their subcontractors, along with an agreement that the subcontractors carry the general contractor as an additional insured on their policies. Often these endorsements prescribe these requirements in great detail.

The bulk of a CGL insurance policy is comprised of two main sections—the insuring agreement and the exclusions. With respect to the insuring agreement, it is the insured's

burden to demonstrate that a claim meets the requirements of the insuring agreement. In construction cases, most disagreements about whether the insuring agreement's requirements have been met relate to whether there is "property damage" and whether it "occurred" during the "policy period." Once the conditions of the insuring agreement are met, the burden of proof shifts to the insurance carrier, and it must prove that one or more of the exclusions operate to limit or exclude coverage for the claim. That said, a court would ultimately be responsible for interpreting and applying the policy.

In most real-world cases and as a practical matter, the bulk of the insurance issues in a construction case go unresolved. Most of the time, each side assesses the scope of insurance coverage and postures itself using legal argument while working to resolve the claims. The insurance carrier will often agree to defend the case but will issue a reservation of rights letter to the insured that reserves the insurance carrier's right to dispute coverage later. The reservation of rights will typically also explain the insurance carrier's current position based on the information available to it. Reviewing the reservation of rights letter is an excellent way for practitioners to understand the insurance dynamics at issue in each case because the letter will typically include a detailed explanation about why there is no insurance coverage for the claim.

2. The Duty to Defend

An insurance carrier issuing a CGL policy has two primary duties: (1) the duty to defend and (2) the duty to indemnify. These two duties are separate and distinct.[1] The first of the two duties is the duty to defend. The duty to defend arises from contractual language contained in the insuring agreement that states that the insurance carrier will "have the right and duty to defend the insured against any 'suit' seeking those damages." To determine whether an insurance carrier is obligated to defend its insured, Colorado courts apply the "four corners" rule.[2] Under the "four corners" rule, an insurance carrier may only consider two documents in determining whether it has an obligation to defend its insured: (1) the complaint (or in a construction defect action, a notice of claim)[3] and (2) the insurance policy.[4] When the complaint or notice of claim alleges "any facts that might fall within the coverage of the policy… " the insurance carrier must provide a defense.[5] In plain terms, this means that the insurance carrier must look at the complaint, review the insurance policy, and determine whether any hypothetical outcome at trial would trigger its duty to indemnify its insured. If a hypothetical scenario exists, however small or insignificant, the insurance carrier must defend.

Attorneys representing plaintiffs should understand the requirements of an insurance carrier's duty to defend because in many cases the insurance carrier is the only one with any funds to pay a settlement or judgment. Moreover, many construction professionals and policyholders do not know the law concerning the duty to defend and are unable to articulate why their insurance carrier ought to defend them. Compounding that problem, the insurance carrier has not appointed the insured an attorney—leaving that insured without counsel or direction.

The fact that the insured is left without an attorney or any direction is the reason that Colorado courts so strictly enforce the duty to defend. If, however, practitioners encounter a scenario where the insurance carrier is refusing to defend its insured and the insured is doing nothing about it, he or she may want to consider writing a letter directly to the insurer explaining why the carrier may be violating the terms of its insurance policy. These kinds of letters often yield success in having counsel appointed and can ultimately lead to a favorable settlement.[6]

3. The Duty to Indemnify

The duty to indemnify an insured arises from the very first provision of the form CGL policy. That provision states that the insurance carrier "will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies." All the nuances of this phraseology would take up the space of several large books, but the most important components are that the "property damage" or "bodily injury" must be the result of an "occurrence" that takes place in the "coverage territory" and occurs during the "policy period."

Under the policy, the term "property damage" means "physical injury to tangible property, including all resulting loss of use of that property" or "loss of use of tangible property that is not physically injured." Under this language, an insured is covered for three types of damage: (1) physical injury to tangible property, (2) loss of use of tangible property that was physically injured, and (3) loss of use of tangible property that was not physically injured. What constitutes "property damage" would fill many of the large books mentioned above; however, what practitioners should know is that it is best to have actual, physical, tangible property that has been damaged in a physical way such as water intrusion or foundation cracking. In prosecuting a construction defect case, having examples of such property damage makes it very difficult for an insurance carrier to deny coverage.

Arguments over the term "occurrence" would also fill many of the

large books mentioned above alone. The term is defined under the policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The focus of numerous court decisions, law review articles, and treatises concerns the definition of the term "accident."[7] The policy does not define the term "accident, " and many courts have construed the term differently, resulting in conflicting decisions about what is and what is not covered by the form CGL policy. Colorado has resolved some of these issues as they relate to construction defect claims by enacting legislation that instructs courts to "presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident…."[8]

Finally, the "occurrence" must happen during the policy period. If the accident giving rise to an occurrence is an instantaneous accident of some sort like a construction crane falling into an adjacent building, the date of the occurrence is relatively easy to determine. However, the insurance policy defines an occurrence as an "accident" but also includes "continuous or repeated exposure to substantially the same general harmful conditions." What this means is that an occurrence can happen over time. Because insurance carriers typically issue insurance policies on a year-by-year basis, a continuous and repeated exposure could occur over a longer period. Courts and other commentators have discussed this topic for decades—arguing and discussing when the occurrence first occurred and whether one or more insurance carriers are responsible for the loss. What matters to practitioners is that a construction claim is often a continuous loss that may have happened over many years. Because of this, practitioners should ask for *all* insurance policies from the date construction began through the date a notice of claim is sent out. Moreover, because many insurance carriers will argue that they are only responsible for their proportionate share of the "time on the risk,"[9] it is important to establish which insurance carriers provided insurance for each year. Having all such policies will ensure that all of the relevant insurance carriers who might be implicated are indeed implicated—no matter what each insurance carrier argues later.

4. Supplementary Payments

In addition to providing insurance coverage for money an insured becomes legally obligated to pay as damages, the form CGL policy provides coverage for additional costs that may be incurred as part of the defense of the "suit." Although the type and amount of supplementary payments that may be owed have changed over the years, the supplementary payment provision generally covers the insured for the costs and expenses of having to defend a "suit." A suit is defined broadly and includes lawsuits, arbitration proceedings, and other alternative dispute resolution proceedings. Typically, supplementary payments do not reduce the limits of insurance.

The supplementary payment provision is triggered as part of an insurance carrier's duty to defend—not its duty to indemnify.[10] This is because the policy's plain language states that the insurance carrier "will pay, with respect to any claim [it] investigate[s] or settle[s], or any 'suit' against an insured [it] **defend[s]**."[11] While insurance carriers have argued that their obligation to pay supplementary payments is extinguished upon a finding that it has no duty to indemnify its insured, Colorado courts have rejected that argument

because the supplementary payment provision is triggered as part of an insurance carrier's duty to defend—not its duty to indemnify.[12]

Plaintiff and policyholders' counsel should be aware that the pre-2006 versions of the CGL form includes coverage for "[a]ll costs taxed against the insured in the 'suit'" and that the term "costs taxed against the insured" has been interpreted by at least one Colorado trial court as including attorney fees.[13] In *Mt. Hawley Insurance Company v. Mountain View Homes III, LLC, et al.,* Judge Pratt concluded that attorney fees that are awarded as part of a contractual fee-shifting provision are characterized as "costs" and are therefore covered under the supplementary payment provision as a cost taxed against the insured.[14] The basis for attorney fees having been characterized as "costs" is a Colorado Supreme Court case called *Ferrell v. Glenwood Brokers, Ltd.* In *Ferrell,* the Court explained that when attorney fees are "simply the consequence of a contractual agreement to shift fees to a prevailing party, then they should be treated as 'costs,'…"[15] Because attorney fees are characterized as costs under *Ferrell*, Judge Pratt held that attorney fees awarded in favor of a claimant and against an insured are covered as supplementary payments.

The post-2006 CGL forms have changed the wording of the supplementary payment provision. It now states that the insurance carrier will pay "[a]ll **court** costs taxed against the insured in the 'suit'. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured." The addition of the word "court" before costs is presumably intended to limit the insurance carrier's responsibility for costs taxed against its insured; however, under C.R.C.P. 54(d) and C.R.S. § 13-16-122, Colorado courts have broad discretion to award almost any reasonable cost to the prevailing party.[16] In Colorado at least, adding the term "court" before "costs" likely has no substantive change. However, the addition of the limiting language concerning attorney fees probably does limit payments for attorney fees that are taxed against the insured as part of the suit unless those attorney fees are awarded as "damages."[17]

5. Property Damage Requirement ("Physical injury to tangible property").

As discussed above, CGL policies contain certain conditions that must be satisfied under the insuring agreement before an insurer has a duty to indemnify the insured. The standard insuring agreement applies to "bodily injury or property damage" that is caused by an "occurrence" during the policy period and within the coverage territory.[18] The issue of what constitutes "property damage" under a CGL policy is a constant battle between insurance carriers and the insureds. In large construction defect cases, the nature and extent of property damage is often one of the primary drivers influencing settlement negotiations. It is vital that the lawyers and mediators involved in construction cases understand the property damage requirement and adjust their strategies accordingly.

Most CGL policies follow a standard definition of "property damage" promulgated by the Insurance Services Office in the 1986 revised CGL form.[19] CGL policies often define "property damage" as "physical injury to tangible property, including all resulting loss of use of that property."[20] Some policies include the "loss of use of tangible property that is not physically injured" within the "property damage" definition.[21] Lawyers should always review the policy and consult the definitions because the CGL policy language changes over time and lawsuits often trigger older policies.

In the construction defect context, "physical injury to tangible property" or "loss of use of tangible property" can take many forms, and creative lawyers will be rewarded by presenting the evidence with the insurance requirements in mind. Here are some examples to consider:

Example 1: A roof leak due to the faulty installation of headwall flashing causes staining, deterioration, and damage to ceiling drywall in an upstairs bedroom. This is an obvious example of "physical injury to tangible property" and could also be considered "loss of use of tangible property" if the leak was severe enough that the owner could not use the bedroom.

Example 2: Poor grading and drainage on a property lead to ponding water, ice damming on pedestrian walkways and differential movement of concrete slabs that are heaving and settling. This typical example has multiple potential insurance issues. Is ponding water considered physical property damage? It certainly should be if the ponding water is causing damage to the concrete walkways. Perhaps the ponding water is damaging landscaping or trees? If the walkways are icing up in the wintertime, one could argue that the owners have lost the use of the property that could trigger the policy.

Example 3: An elevated wood-framed was not constructed properly and is structurally unsound, but has not actually failed. Again, this type of issue arises a lot where a construction element is structurally unsound, but does the deck really need to collapse before insurance will cover the property damage or injury that results? Lawyers should consider arguing that any evidence of the deck components pulling apart should be considered "physical damage" to the deck itself. Lawyers should also argue that the structurally unsafe deck results in a loss of use of the deck which is

often considered property damage under the policy.

Colorado law has also recently addressed another common issue that arises in construction defect cases related to access costs or "rip and tear" damages. In construction defect situations, the cost of accessing and repairing the defective work is often as much or more than the cost to fix the defective component. Consider a defectively installed window that is leaking into a home. The cost to access the window unit and replace it could involve removing and replacing brick, stone, trim, drywall, and possibly framing depending on the circumstances. These are significant costs and the Colorado Court of Appeals in *Colorado Pool Sys., Inc. v. Scottsdale Ins. Co*, recently addressed whether these "rip and tear" costs meet the definition of "property damage" sufficient to trigger coverage under the insuring agreement. In short, the Colorado Court of Appeals held that "rip and tear" damage to other non-defective work is covered under the insuring agreement.[22]

The *Colorado Pool Systems* case involved a defective swimming pool that was not constructed to the required specifications.[23] One issue was that the contractors installed the rebar too close to the surface.[24] Colorado Pool Systems, Inc. replaced the pool, which involved significant demolition and replacement of adjacent elements such as the concrete deck around the pool, adjacent sidewalks, a retaining wall and electrical conduits.[25] The insurance company refused to indemnify its insured for the work arguing that replacing defective work that has not caused "property damage" is insufficient to trigger the policy.[26] The Colorado Court of Appeals disagreed, but applied a distinct test for each element of the damage. With respect to the defective pool itself, the Court held that the "damage incurred in demolishing and replacing the pool itself" was not covered as "it resulted solely from [the insured's] obligation – necessarily expected – to replace defective work product."[27] However, the Court held that "consequential damages" in the form of "rip and tear damage to non-defective third-party work" is covered under the insuring agreement.[28] Specifically, the Court held that this type of "rip and tear" damage met the policy definition of "property damage."[29]

The *Colorado Pool Systems* decision raises an important issue that all lawyers practicing in the construction defect arena should be aware of moving forward. Under *Colorado Pool Systems*, the cost to access and repair defective work could be covered under the CGL policy even if the defective work itself has not caused property damage. In the underlying case, there was never any allegation that the pool leaked or otherwise caused property damage to other elements. The contractors elected to replace the pool because it was defective and not built to specification. The Court held that the "rip and tear" costs to access the defective pool constituted "property damage" in and of itself sufficient to trigger the policy. This conclusion applies to many other construction defect issues. In any case, where a defectively installed component has not failed or more specifically has not caused physical damage to another component, there is still room to argue that the access costs to remove and replace the defective component would be covered under the insured's policy. Since "rip and tear" damage can often amount to a significant portion of the overall repair cost, it is worthwhile to keep the argument in mind.

6. Ongoing Operations (Exclusion j) vs. Completed Operations (PCOH).

CGL policies have specific limitations for property damage caused by the insured. The policies contain important distinctions between property damage that occurs during construction and property damage that occurs after. The policy analysis is confusing because it begins with a general exclusion (Exclusion j) that excludes property damage under a variety of circumstances, most of which relate to property damage that occurs during construction. However, most policies contain an exception to Exclusion j for property damage included in the "products-completed operations hazard" ("PCOH"). The PCOH is defined in standard CGL policies, but in general terms, it applies to property damage or bodily injury that occurs after the construction professional completes his or her work or after the improvement is complete. The exception does not apply to work that has not been completed or abandoned, and it also does not apply to products that are still in the physical possession of the insured.[30] The PCOH is triggered when any one of five circumstances occur;

1) the contract scope of work is complete;
2) the work at a particular job site is complete;
3) when the work done at a job site is put to its intended use;
4) when the insured refuses to continue work or is terminated; or
5) when all of the insured's work in connection with a residential or commercial building is complete.[31]

If the insured's work is in progress and the PCOH does not apply, there is still coverage for property damage that results from ongoing operations. Exclusions j(5) and j(6) were previously known as the "performing operations exclusion" and the "faulty workmanship exclusion" before the 1986 changes to the standard form CGL policy.[32] There has been significant litigation over the

interpretation and application of Exclusions j(5) and j(6). Many insurance carriers argue that j(5) and j(6) operate to exclude all property damage for construction defects that occur during ongoing operations. If the insured's work is in progress and the PCOH does not apply, there is still coverage for property damage that results from ongoing operations. Exclusions j(5) and j(6) were previously known as the "performing operations exclusion" and the "faulty workmanship exclusion" before the 1986 changes to the standard form CGL policy.[32] There has been significant litigation over the interpretation and application of Exclusions j(5) and j(6). Many insurance carriers argue that j(5) and j(6) operate to exclude all property damage for construction defects that occur during ongoing operations. They commonly rely on the Tenth Circuit Court of Appeals decision in Advantage Homebuilding, LLC, v. Maryland Casualty, Co.,[33] which held that Exclusions j(5) and j(6) exclude all damages as "a direct and consequential result" of faulty workmanship. Based on the interpretation of the Court in Advantage Homebuilding, Exclusions j(5) and j(6) would arguably exclude coverage for any damage resulting from the insured's work during construction, even if the property damage related to other non-defective work.

However, there were always two significant problems with the Advantage Homebuilding decision. First, the phrase "as a direct and consequential result" of the insured's faulty workmanship is nowhere in the plain language of Exclusions j(5) or j(6). Second, the Court's interpretation is in conflict with many past ISO publications that contemplate broader coverage and treat Exclusions j(5) and j(6) in a far more limited fashion.[34] Since the Advantage Homebuilding decision in 2006, there have been many new cases throughout the country, including the Colorado Court of Appeals decision in Stresscon Corp. v. Travelers Property Casualty Co.,[35] which take the opposite position. These cases generally hold that j(5) and j(6) do not exclude coverage for property damage to other building components as a result of the insured's work.[36] For example, if there was roof leak during construction but after the roof was completed, the damage to any interior finishes as a result of the leak could be covered.[37]

It is beneficial for lawyers to understand Exclusion j and the difference between ongoing operations and completed operations. The most important takeaway is that Exclusion j applies to bar coverage for particular property damage unless and until the products-completed operations hazard is triggered. Once the PCOH is triggered, many types of property damage are covered under the policy that likely would not be covered during ongoing operations. In addition, it is not uncommon for CGL policies to include an endorsement that excludes the PCOH exception. In this situation, lawyers should consider whether there are any arguments to be made that the damage occurred during the ongoing operations period and whether there is any argument around Exclusions j(5) and j(6).

7. "Your Work" Exclusion

Anyone involved in construction defect litigation and its related insurance issues has or will learn about the "Your Work" exclusion. The exclusion, which is one of many, can be found in the exclusion section of the policy under exclusion L. It states that the "insurance does not apply to: . . . 'property damage' to 'your work' arising out of it or any part of it and included in the 'products-completed operations hazard.'" The exclusion does have an exception, however, which states that "[t]his exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor." Although the policy defines the term "your work" very specifically, for purposes of this article and most practitioners, "your work" refers to the construction work performed by the **named** insured. It refers to the construction work of the **named** insured—as opposed to any "additional insured"—because the very first portion of the form CGL policy explains that the term "you" or "your" "refer to the Named Insured shown in the declarations…."

In general, if the damage alleged in the suit is the named insured's work, then the "your work" exclusion may bar coverage unless a subcontractor performed that work. What practitioners need to know, however, is that even in circumstances where the named insured's work may be excluded under the policy, other adjacent work may be covered because the insured's defective work caused resulting damage to other, adjacent work.[33] Moreover, the insured's own work may even be covered too if it must be removed to access the damaged, adjacent work. In that circumstance, the insured's defective work is being removed simply to access the adjacent, damaged work rather than because is it defective itself.[34]

Construction law practitioners can expect insurance coverage attorneys to discuss the "your work" exclusion at length. Knowing all of the various arguments that could be made along with the counterarguments may be critical during negotiations or mediation. Although there are times where the "your work" exclusion validly applies, the authors of this article have seen coverage attorneys representing insurance carriers take positions that are much broader than what the exclusion actually excludes. If you are concerned that an insurance carrier's coverage attorney is

taking an unreasonable position, you may want to advise your client to hire their own insurance coverage attorney.

Conclusion

Insurance coverage for construction defects is complex. Construction attorneys would be well-advised to understand some of the basics so that they can perform a preliminary analysis of insurance policies and determine whether any insurance coverage issues may arise. Knowing some of the basics will allow you to determine when and how to bring in an insurance coverage attorney, as well as help shape your litigation strategy. ▲▲▲

Duncan Griffiths is a partner of Benson, Kerrane, Storz & Nelson. He has experience with construction defect litigation and insurance. He represents a diverse client base that includes homeowners associations, special districts, commercial building owners, schools, medical centers, mixed use, industrial buildings and marijuana grow facilities as well as single family homes and infrastructure.

Christopher Griffiths focuses on representing homeowners, commercial building owners and owner associations in actions for construction defects and insurance recovery. Chris has experience in the insurance coverage arena where he has been involved in first-party and third-party insurance disputes.

They can be reached at 720-898-9680.

Endnotes:

[1] *See, e.g., Hecla Min. Co. v. New Hampshire Ins. Co.,* 811 P.2d 1083, 1086 (Colo. 1991).

[2] *See, e.g., TCD, Inc. v. Am. Fam. Mut. Ins. Co.*, 296 P.3d 255, 2592012 COA 65, ¶ 22 (Colo. App. 2012).

[3] Colorado has a somewhat unique statute that instructs courts to require that an insurance carrier defend a "notice of claim made pursuant to Section 13-20-803.5" as well as a complaint. *See* C.R.S. § 13-20-808(7)(a)(I).

[4] *TCD*, ¶¶ 20-22.

[5] *Hecla*, 811 P.2d at 1089.

[6] This strategy is particularly useful in circumstances where the insured company is without any known owners. The authors of this article have sued entities whose owners are now deceased and the only way to get the entity a defense is to communicate with the entity's insurance carrier directly.

[7] *See, e.g., Gen. Sec. Indem. Co. of Ariz. v. Mountain States Mut. Cas. Co.*, 205 P.3d 529, 533 (Colo. App. 2009) (discussing the definition of the term "accident").

[8] *See* C.R.S. § 13-20-808(3).

[9] The term "time on the risk" generally refers to the number of years that an insurance carrier provided insurance to an insured for over the course of a particular loss and therefore the insurance carrier's proportionate obligation to its insured. However, the term "time on the risk" assumes that an insurance carrier's obligation to its insured is indeed proportionate, which is not always the case. Moreover, the way in which the "time" and the "risk" are calculated is a topic that is often debated and beyond the scope of this article.

[10] *See Mt. Hawley Ins. Co. v. Casson Duncan Constr., Inc.,* 2016 COA 164, ¶ 23.

[11] *See id.* at ¶ 20.

[12] *See id.*

[13] *See Mt. Hawley Ins. Co. v. Mountain View Homes III, LLC, et al.,* Arapahoe County District Court, Judge Pratt, 14CV32329 (September 3, 2014).

[14] *See id.* at 17-18.

[15] *Ferrell v. Glenwood Brokers, Ltd.,* 848 P.2d 936, 941–42 (Colo. 1993)

[16] *See, e.g., Cherry Creek Sch. Dist. No. 5 v. Voelker by Voelker,* 859 P.2d 805, 813 (Colo. 1993) (holding that the list of costs that a trial court may impose is merely illustrative and that any cost "reasonably necessary" for the development of the case may be recovered); C.R.S. § 13-16-122.

[17] In the context of a construction defect case, the Construction Defect Action Reform Act defines the term "Actual Damages" as including reasonable attorney fees. *See* C.R.S. § 13-20-802.5(2).

[18] See standard form Commercial General Liability Coverage Form, Section I – Coverage A.

[19] *See Colorado Pool Sys., Inc. v. Scottsdale Ins. Co.*, 317 P.3d 1262, 1268 (Colo. App. 2012) (citing 1986 Revisions to CGL Broad Form, Insurance Services Office, Inc.)

[20] *Id.*

[21] *Id.*

[22] *Id.* at 1271.

[23] *Id.* at 1266.

[24] *Id.*

[25] *Id.* at 1271.

[26] *Id.* at 1267.

[27] *Id.* at 1271.

[28] *Id.*

[29] *Id.*

[30] *See* CGL Standard Form, Section IV, Definition 19 – Products-Completed Operations Hazard.

[31] *Id.*

[32] Insurance Services Office, Inc., Circular No. General Liability GL 79-12, "Broad Form Property Damage Coverage Explained," Jan. 29, 1979.

[33] *Advantage Homebuilding, LLC, v. Maryland Casualty, Co*., 470 F.3d 1003, 1011-1012 (10th Cir. 2006).

[34] *See, e.g.,* Scott C. Turner, Insurance Coverage of Construction Disputes § 29:2 (2nd Ed., November 2014) (citing National Bureau of Casualty Underwriters Circular Letter #1025, dated May 7, 1957); Turner, *supra* at § 32:6, (citing Insurance Services Office, Inc., Circular No. General Liability GL 79-12, *Broad Form Property Damage Coverage Explained*, Jan. 29, 1979. (explanatory brackets included by Scott C. Turner)).

[35] *Stresscon Corp. v. Travelers Property Casualty Co.*, 2013 WL 4874352 (Colo. App. 2013).

[36] *See, e.g., Mid-Continental Cas. Co. v. JHP Dev., Inc.,* 557 F.3d 207, 214 (5th Cir. 2009); *Fortney & Weygandt, Inc. v Am. Mfrs. Mut. Ins. Co.*, 595 F.3d 308, 311 (6th Cir. 2010).

[37] This is the underlying fact pattern in *Advantage Homebuilding, LLC, v. Maryland Cas. Co.,* 470 P.3d at 1011-1012.

[38] *See, e.g.,* § 33:12. Damage to other property that is not the insured's work, Insurance Coverage of Construction Disputes § 33:12 (2d ed.) ("As such, property damage that is not to the insured's own work falls outside the scope of the exclusion and remains covered.")

[39] For much more reading on this topic, *see* § 33:14. Your work exclusion does not apply to "rip and tear damage" to the insured's own, defective work, Turner, *supra* note 3 at § 33:14 (2d ed.)