

International Construction Endeavors – The Risks Associated with Multinational Insurance

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Standard commercial general liability (“CGL”) policies cover bodily injury and property damage caused by an “occurrence,” which is in turn defined as an “accident.” For claims arising out of defective construction, courts have applied different interpretations of the “occurrence” definition.

There are many nuances among the states on this issue, although generally most fall into one of three analytical camps:

- (1) Some states hold that defective or faulty workmanship is an “occurrence,” provided the construction contractor did not intend to cause damage. This analytical framework reserves the analysis concerning whether certain aspects or items of damage (for example, the faulty work itself) are uncovered due to exclusionary provisions.
- (2) Many states have held that defective or faulty workmanship which causes damage to other work or property is an “occurrence.” This framework can often lead to coverage for most damage that results from the faulty work – for example, the cost to replace wet dry wall as a result of faulty window installation. However, the analysis may be complicated by court interpretation of what constitutes “other work or property.” For general contractors in some states, the entire construction project might be considered their work, leaving them without coverage despite the fact that, at first glance, the case law seems favorable.
- (3) Finally, a small number of states find that defective or faulty workmanship is never an “occurrence.” Courts taking this approach typically cite to one of two rationales: either the contractor was contractually obligated to provide work free from defect; or the contractor should have foreseen that it would be responsible for correcting defects in its work. Courts will often cite to the concept that correcting deficient work is a “business risk” for contractors which is not intended to be covered by insurance.

The map on the following page identifies how each state has analyzed the issue of whether defective construction qualifies as an “occurrence.” A state colored dark blue indicates that the jurisdiction’s highest court has found defective construction to be an “occurrence.” These states, almost universally, follow the reasoning set forth in number 1, above. States with statutes to the same effect are likewise shaded dark blue, and the statute identified in the table under Relevant Authority.

A state colored dark red, conversely, indicates that the jurisdiction’s highest court has held that defective construction is never an occurrence. These states generally follow the framework set forth in number 3, above.

Light blue and light red shading show trends, based on lower court or federal court authority. In these jurisdictions, courts may take the “middle of the road” approach set out in number 2, above. Often, in these states, whether the insured has coverage is dependent upon other factors, such as whether the court views the entire project as the contractor’s work.

Lastly, where caselaw and/or statutes are conflicting or unclear, the state is shaded yellow.

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For more information or questions on exhaustion strategies, please contact us at coverage@sdvlaw.com.