

ALERT

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COLORADO LEGISLATURE POISED TO ALTER LANDSCAPE OF INSURANCE COVERAGE FOR CONSTRUCTION DEFECTS

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Later this week the Colorado State Legislature is expected to pass HB 1394, a bill that will dramatically change the insurance coverage available for construction professionals arising out of faulty construction. The stated purpose of HB 1394 is to reverse *General Security Indem. Co. of America v. Mountain States Mut. Cas. Co.*, 205 P.3d 529 (Colo. App. 2009), which held that claims for damages arising from poor workmanship, standing alone, do not allege an accident that constitutes a covered "occurrence." HB 1394 purports to reverse *General Security* by declaring that all work of a construction professional that results in property damage to the construction professional's work itself (or to other work) is deemed to be an accident, unless that property damage is intended and expected by the construction professional.

While this change in the law alone should raise concerns for the insurance industry, HB 1394 also goes beyond its stated purpose by:

- Requiring courts to interpret liability insurance policies issued to construction professionals in conformance with the objective, reasonable expectations of the insured;
- Declaring that in construing the insured's objective, reasonable expectations, a court may consider "any writing concerning the insurance policy provision in dispute," which appears to be a legislative attempt to avoid the parole evidence rule;
- Declaring that a notice of defect to a construction professional required by C.R.S. § 13-20-803.5 triggers an insurer's duty to defend and requires the insurer to cooperate with the construction professional in the notice of claims process;

- Declaring void as against public policy any exclusion or limitation for claims in progress or pre-existing damages that are not, in fact, known by the insured prior to the issuance of the policy; and
- Making the statute retroactive.

If signed by the Governor in its present form, HB 1394 will dramatically change how construction defect claims in Colorado will need to be handled and assessed, and will change how policies issued to construction professionals doing work in Colorado need to be underwritten.

The attorneys of Cozen O'Connor will continue to keep our valued clients apprised of developments in this area. For a further analysis of this prospective legislation and its potential impact on the insurance industry, please contact Christopher S. Clemenson of Cozen O'Connor's Denver, Colorado office (clemenson@cozen.com or 720-479-3894).

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