COLORADO COURT OF APPEALS HOLDS “ONGOING OPERATIONS” ADDITIONAL INSURED COVERAGE DOES NOT COVER GENERAL CONTRACTOR FOR COMPLETED OPERATIONS DAMAGES

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On August 9, 2007, the Colorado Court of Appeals held that a CG 20 10 (10/93) endorsement does not provide coverage to a general contractor for claims arising out of its subcontractor’s completed work or operations. Weitz Company, LLC v. Mid-Century Insurance Company, Colo. Ct. App., Case No. 06CA0163 (August 9, 2007).

In Weitz, a general contractor (Weitz) subcontracted with a mechanical subcontractor for work on an office building it was constructing. The subcontract required the subcontractor to procure commercial general liability insurance listing the general contractor as an additional insured “using additional insured endorsement (CG 20 10), edition date 10 / 93, or its equivalent,” and further required the subcontractor to continue such insurance for a period of two years after final payment. The subcontractor procured the requisite insurance with a CG 20 10 (10/93) endorsement listing Weitz as an additional insured, “but only with respect to liability arising out of your [the subcontractor’s] ongoing operations performed for that insured.”

The subcontractor commenced its work in late-1998 and was completed with its work by June 1999. The property owner discovered property damage related to water intrusion in November 1999 and notified Weitz. Weitz tendered the property owner’s claim to the subcontractor’s insurer (Mid-Century) seeking coverage. Mid-Century denied coverage, asserting that completed operations coverage was not available under its endorsement. Weitz thereafter settled the property owner’s claim and commenced a bad faith lawsuit against Mid-Century.
On appeal from a trial court ruling in favor of Mid-Century, the Colorado Court of Appeals examined the policy language and found that the phrase “ongoing operations” was unambiguous, and could not be construed to apply to completed operations. The Court critically examined both Pardee Construction Co. v. Insurance Co. of the West, 92 Cal. Rptr. 2d 443 (Cal. App. 2000), and Valley Ins. Co. v. Wellington Cheswick, LLC, 2006 WL 3030282 (W.D. Wash. 2006) (unpublished), vacated, 2007 WL 1531674 (W.D. Wash. 2007) (unpublished), and distinguished both. With respect to Pardee, the Weitz court noted that the subcontractor policies at issue there were not limited to “ongoing operations,” but instead specified “operations” as well as “all operations.” The Weitz court found this distinction significant since the term “ongoing” connotes work in progress, not completed work. Similarly, the Weitz court rejected the Valley Insurance court’s analysis because the Valley Insurance court failed to read “ongoing operations” as a phrase or to construe the phrase in the context of the policy as a whole.

Based on its holding that “ongoing operations” coverage did not apply to completed work or operations, the Court dismissed Weitz’s additional claims for bad faith and violation of the Colorado Consumer Protection Act, finding that absent coverage there was no bad faith or CCPA violation.

The Weitz decision may have a significant impact on pending and future construction defect cases in Colorado. General contractors will likely begin to assert claims for breach of contract against subcontractor-insureds in situations where the subcontractors were required to obtained completed operations coverage, but where their insurers issued CG 20 10 (10/93)-type endorsements. This, in turn, could lead subcontractors to make claims against their insurers where the subcontractors requested that their policies be endorsed with completed operations coverage for their additional insureds, but where such coverage was not provided. It remains to be seen whether such claims will be successful.

For a further analysis of the Weitz decision and its impact on construction industry insurers, please contact Joe Bermudez, Chris Clemenson, Jason Melichar or Suzanne Meintzer of Cozen O’Connor’s Denver, Colorado office. Cozen O’Connor is a nationally recognized leader in representing the insurance industry in all coverage areas, including construction defect matters.