

# SC Supreme Court Finds Insurance Coverage in Construction Defect Case

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## CONSTRUCTION LAW *Alert*

The S.C. Supreme Court has clarified the issue of CGL coverage for damages associated with construction defects in a way that should prove helpful to contractors and owners.

As you may know, in January 2011 the SC Supreme Court issued its opinion in the Crossman case and found that water intrusion resulting from construction defects did not have "fortuity underpinnings" and was the natural consequence of the construction defect. Therefore, the Court found that the water intrusion resulting from a construction defect was not an occurrence under the policy and there was no coverage.



After rehearing the case, the Court issued a new opinion ("Crossman II") finding coverage. The Court held that the definition of occurrence as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions" was ambiguous and that the term should be construed against the insurer. The Court summarized its holding as follows:

"In sum, we clarify that negligent or defective construction resulting in damage to otherwise non-defective components may constitute "property damage," but the defective construction would not. We find the expanded definition of "occurrence" is ambiguous and must be construed in favor of the insured, and the facts of the instant case trigger the insuring language of [the policies]. "

*Crossman II at 24*

The Court's decision in Crossman II was unanimous and likely settles the issue, but the opinion did leave open the possibility of a different result depending upon the exclusions and endorsements that may be attached to the particular CGL policy.

The Court further held that the proper method to allocate damages among insurers in a case involving progressive property damage "is to assign each triggered insurer a pro rata portion of the loss based on that insurer's time on the risk."

## What Should Owners and Contractors Do?

Because the court left open the possibility that it could reach a different result depending upon the types of exclusions or endorsements that may be at issue, contractors and owners should pay particular attention to the exclusions and endorsements that may be included on the CGL policies on which they rely.

If you have any questions, please contact [John Davidson](#) (803-540-2023).