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Tenth Circuit Weighs In On Continuing Saga Of What Construction Defects Are An Occurrence Under Colorado CGL Policies

By Scott C. Sandberg

As previously reported in *Under Construction*, in 2009 the Colorado Court of Appeals held in *General Security v. Mountain States Mutual* that "a claim for damages arising from poor workmanship, standing alone, does not allege an accident that constitutes a covered occurrence." This holding was controversial in the construction industry because it went beyond traditional commercial general liability policy exclusions of a contractor's faulty workmanship to bar coverage for all property damage caused by a contractor's faulty workmanship. Colorado's General Assembly responded to *General Security* in 2010 by enacting C.R.S. § 13-20-808, which requires courts to interpret all insurance policies "currently in existence … broadly in favor of

coverage." Whether C.R.S. § 13-20-808 applied retroactively was left unanswered.

On November 1, 2011, the United States Court of Appeals for the Tenth Circuit held in *Greystone Const., Inc. v. National Fire & Marine Ins. Co*. that the statute operated only prospectively. However, the Court went further and rejected the Colorado Court of Appeals' holding in *General Security*, predicting that the Colorado Supreme Court would hold that "injuries flowing from improper or faulty workmanship constitute an occurrence so long as the resulting damage is to nondefective property, and is caused without expectation or foresight." While C.R.S. § 13-20-808 undeniably imposes this requirement on all policies issued after the effective date of the statute in 2010, the Colorado Supreme Court has not yet addressed the conflict between the *General Security* and *Greystone* courts concerning pre-effective date policies.

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