



**COZEN
O'CONNOR**[®]

www.cozen.com

PRINCIPAL OFFICE:

PHILADELPHIA
(215) 665-2000
(800) 523-2900

NEW YORK MIDTOWN
(212) 509-9400
(800) 437-7040

ATLANTA
(404) 572-2000
(800) 890-1393

NEWARK
(973) 286-1200
(888) 200-9521

CHARLOTTE
(704) 376-3400
(800) 762-3575

SANTA FE
(505) 820-3346
(866) 231-0144

CHERRY HILL
(856) 910-5000
(800) 989-0499

SAN DIEGO *
(619) 234-1700
(800) 782-3366

CHICAGO
(312) 382-3100
(877) 992-6036

SAN FRANCISCO *
(415) 617-6100
(800) 818-0165

DALLAS
(214) 462-3000
(800) 448-1207

SEATTLE
(206) 340-1000
(800) 423-1950

DENVER
(720) 479-3900
(877) 467-0305

TORONTO
(416) 361-3200
(888) 727-9948

HOUSTON
(832) 214-3900
(800) 448-8502

TRENTON
(609) 989-8620

LONDON
011 44 20 7864
2000

WASHINGTON, D.C.
(202) 912-4800
(800) 540-1355

LOS ANGELES *
(213) 892-7900
(800) 563-1027

W. CONSHOHOCKEN
(610) 941-5000
(800) 379-0695

MIAMI
(305) 704-5940
(800) 215-2137

WILMINGTON
(302) 295-2000
(888) 207-2440

NEW YORK DOWNTOWN
(212) 509-9400
(800) 437-7040

500 Attorneys - 23 Offices

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

*By: Joseph F. Bermudez, Christopher S. Clemenson,
Jason D. Melichar and Suzanne Meintzer*

COZEN O'CONNOR
707 17th Street, Suite 3100 • Denver, CO, 80202
Phone: (720) 479-3900 • Fax: (720) 479-3890
jbermudez@cozen.com • cclemenson@cozen.com
jmelichar@cozen.com • smeintzer@cozen.com

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*.

* Celebrating 20 years in California *

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 obtain 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.