

Wronging A Right? South Carolina And Hawai'i Legislatures Pass Laws To Overturn Construction Defect Coverage Common Law

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South Carolina and Hawai'i have now joined Colorado and Arkansas as two of four states that have passed legislation aimed at broadening the definition of "occurrence" under commercial general liability (CGL) policies as it relates to construction defect claims.

South Carolina

In January 2011, the South Carolina Supreme Court held that faulty work, as well as the natural and expected consequences of faulty work (*i.e.*, damage caused by one contractor's work to another contractor's work), is not a covered "occurrence" under a CGL policy. *Crossman Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 2011 WL 93716 (S.C. 2011). Immediately after the *Crossman* decision was issued, members of the South Carolina Senate proposed bill "S. 431," which proposed to overturn the *Crossman* decision and statutorily redefine the term "occurrence" to include, within that definition, the consequences of defective work.

On May 17, the South Carolina Legislature passed S. 431 and the governor signed it into law. The bill will be codified as South Carolina Code § 38-61-70. This new section to the South Carolina Code redefines the term "occurrence" specifically with respect to insurance issued to construction professionals for liabilities arising from construction related work. The legislation redefines the term "occurrence" to include property damage or bodily injury arising out of faulty workmanship. Notably, the statute applies to any pending or future dispute over coverage and applies to all CGL policies issued in the past, currently in existence, or issued in the future.

Hawai'i

In May 2010, a Hawai'i appeals court similarly held that faulty work does not constitute an "occurrence." *Group Builders, Inc. v.*

Admiral Ins. Co., 123 Hawai'i 142, 231 P.3d 67 (2010). That court held that neither a breach of contract claim alleging shoddy performance, nor tort-based claims derivative of a breach of contract claim, are covered under a CGL policy. Like the South Carolina legislature, in January of this year members of the Hawai'i Senate proposed bill "S.B. 1192." This bill, similar to the South Carolina bill, proposed to overturn the *Group Builders* decision and statutorily redefine "occurrence" to include, within that definition, defective work.

In early May of this year, the bill, introduced in the House as "H.B. 924," passed the legislature and is now pending before the governor who is expected to sign the measure into law. Like the South Carolina statute, the Hawai'i statute redefines the term "occurrence," with respect to insurance issued to construction professionals for liability arising from construction related work, to include property damage arising out of defective work, applies to pending or future insurance disputes, and applies to all CGL policies issued and in effect as of the date that the statute becomes law.

The South Carolina and Hawai'i legislation impacts existing contractual relationships in both of these states. Anyone who is currently handling a construction defect insurance claim in South Carolina or Hawai'i should be aware of this new legislation and carefully analyze what impact these new statutes may have on construction defect claims.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact William F. Knowles (wknowles@cozen.com, 206-224-1289) or Brendan Winslow-Nason (bwinslow-nason@cozen.com, 206-373-7252).