

BURR ALERT

CGL Coverage and Your Project

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I. Commercial General Liability Insurance: An Overview

CGL insurance policies are designed to protect businesses from certain types of losses during the normal course of the businesses' operations.¹ Because of the significant risk of financial damages from lawsuits, which often exceed the dollar value of the project itself, CGL insurance is used by general contractors and subcontractors, suppliers, and both private and public project owners.² Many public owners, including the State of Mississippi, actually *require* contractors to have CGL coverage on their projects.

Risks covered by CGL policies fall into three categories. The first involves the risk that faulty workmanship in a *completed project* will be defective in some way and cause injury to someone or someone's property. The second type of risk, which is more divisive among the states, concerns the risk of defective workmanship that damages other parts of an ongoing project. There is also the additional question of whether the insurance will cover costs to the general contractor of repairing or replacing the defective work itself. This type of risk is commonly called "business risk," and the courts are divided as to whether or not it should be covered under a CGL policy.³

The standardized CGL policy has been around since 1940, the result of an effort by the insurance industry address what it determined were misunderstandings, coverage disputes, and excessive litigation that resulted from conflicting language in its members' policies.⁴ The standard policy form is drafted by the Insurance Services Office, Inc. (ISO).⁵ In fact, the ISO circulates memoranda that explain the intended coverage to its members who adopt the ISO's proposed language. Over the past few decades, ISO has revised the standard policy language several times, expanding insurance coverage and narrowing the exceptions to the coverage.⁶ These memoranda note that defective subcontractor work was always

¹ *United States Fire Ins. Co v. J.S.U.B.*, 979 So.2d 871, 877 (Fla. 2007).

² *Hathaway Dvlp. Co. v. American Empire Surplus Lines Ins. Co.*, 686 S.E.2d 855, 858 (Ga.App. 2009).

³ *Id.* See also *Architex Assoc. v. Scottsdale Ins. Co.*, 27 So.3d 1148, 1155 (Miss. 2010) (noting the "clear jurisdictional split" regarding coverage for defective work).

⁴ *J.S.U.B.*, 979 So.2d at 877-878.

⁵ *Lamar Hones, Inc. v. Mid-Continent Casualty Co.*, 242 S.W.3d 1, 5 (Tex. 2007).

⁶ *J.S.U.B.*, 979 So.2d at 878. See also *Architex*, 27 So.3d at 1155 (explaining how coverage is narrowed by exclusions)

intended to be covered, and is actually a chief incentive in marketing CGL insurance to general contractors. Since the majority of commercial insurers use the standard ISO policies, one might expect CGL insurance to be a relatively settled and uniform area of law. However, insurers continue to deny coverage in multiple states⁷ under the protection of exceedingly narrow interpretation of the policy. There is still a large amount of litigation over the content of CGL policies, and different states interpret the language of the policies (which is identical across states) to provide different levels of coverage.

II. Selected Sections of CGL Policy

The main provisions of a CGL policy that are of concern for a general contractor are: (1) whether certain activity constitutes an "occurrence" under the occurrence language of the policy and (2) the application of the "your work" exclusion to coverage under the policy.

The "occurrence" language is as follows:

- a. This insurance applies to "bodily injury and "property damage" only if:
 - 1. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
 - 2. The "bodily injury" or "property damage" occurs during the policy period.

"Property damage" is:

- 1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- 2. Loss of use of tangible property that is not physically injured....

An "occurrence" is "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

The most relevant exclusions to coverage, including the "your work" exclusion is worded as follows:

This insurance does *not* apply to:

- a. Expected or Intended Injury: "Bodily injury" or "property damage" expected or intended from the standpoint of the insured.

...

- j. Damage to Property⁸: "Property damage" to:

⁷ Arkansas, South Carolina are two such states, among others.

⁸ Paragraphs j(5) and j(6) are commonly referred to as the "business risk" section of the policy.

5. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

6. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph 6 of this exclusion does *not* apply to "property damage" included in the "products-completed operations hazard."

"Your work" is:

1. Work or operations performed by you or on your behalf; and
2. Materials, parts, or equipment furnished in connection with such work or operations.

"Your work" includes":

1. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"....

The "products-completed operations hazard" includes:

1. All "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

...

b) work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- 1) When all of the work called for in your contract has been completed.
- 2) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.

I. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

III. Explanation of Policy Terms

Most litigation over CGL insurance coverage "boils down to a dispute first over the meaning of the word 'accident' within the definition of 'occurrence' and then the scope and application of the 'your work' exclusion."⁹ The cases and rules vary from state to state but in most southern states the courts hold that construction defects by subcontractors are covered under many circumstances. A summary of recent southern cases follows:

A. Texas

In *Lamar Homes, Inc. v. Mid-Continent Casualty Co.*¹⁰ a homeowner sued Lamar Homes and its subcontractor for defective work done on the home's foundation, which they discovered years after the completion of the construction. The Texas Supreme Court rejected the insurance company's contention that "the damages alleged...are direct economic damages flowing from Lamar's contractual undertaking and are 'conclusively presumed to have been foreseen.'"¹¹ The Court defined an accident as "a fortuitous, unexpected, and unintended event," including negligent acts and "claims for damage caused by an insured's defective performance or faulty workmanship."¹² The Court held that, as long as the damage caused was not intentional or reckless, i.e., had a high probability of occurring, it could be considered an accident, and thus an "occurrence," under the CGL policy. This includes the hiring of subcontractors to perform work.

The Texas Supreme Court also rejected the insurance company's contention that, since the damage was to work performed by the general contractor (through its subcontractor), coverage was excluded. The insurance company put forth two theories: first, that the suit was for damages arising out of a breach of contract, and that the policy only covered damages arising in tort; and second, that the "your work" exclusion applied. The Court first found that the plain language of the policy drew no distinction between contract and tort damages.¹³ Regarding the "your work" exclusion:

I. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

The Court found that the very existence of the "subcontractor exception" required the interpretation that "when a general contractor becomes liable for damage to work performed by a subcontractor-or for damage to the general contractor's own work arising out of a subcontractor's work-

⁹ *Architex*, 27 So.3d at 1155 (citing Deker, et al., *The Expansion of Insurance Coverage for Defective Construction*, 28 *Construction Lawyer* at 20).

¹⁰ 242 S.W.3d 1 (Tex. 2007).

¹¹ *Id.* at 8.

¹² *Id.* at 8-9.

¹³ *Id.* at 13.

the subcontractor exception preserves coverage that the 'your-work' exclusion would otherwise negate."¹⁴ This is true regardless of who currently owns the property.¹⁵

So, in *Lamar Homes*, the general contractor had coverage because there was an occurrence (the faulty, unintentional damage caused by the subcontractor), that caused property damage (the physical damage to the home, not just a diminution in the home's value) and no exclusions applied. Neither of the "business risk" exclusions (Paragraphs j(5) and j(6)) applied: j(5) only applies to on-going work, and j(6) also exempts work covered by the "products-completed operations hazard." Neither did Paragraph l, Damage to "Your Work," apply, because the subcontractor exception was in effect. In *Lamar Homes* the Texas Supreme Court announced what should be considered one of the more inclusive interpretations of coverage under CGL policies in the Southeastern United States.

B. Mississippi

A brief history of Mississippi's previous law on this coverage issue is in order. For decades, quite rightly, the Mississippi Supreme Court interpreted that there can be no insurance coverage when the conduct of the insured was intended. This interpretation fit nicely into the non-construction cases that went before Mississippi's Supreme Court, one involving an insured who intended to impose force-placed insurance on a loan agreement with its customer that resulted in emotional distress to the customer¹⁶ and another case where the insured shot at his brother-in-law to scare him but actually hit him in the foot.¹⁷ The result of both of these scenarios was an *intentional* act by the insured which caused an *unintended* consequence--mental anguish to a loan customer and a gunshot wound to a person that was never meant to be shot, respectively. The Mississippi Supreme Court determined that each scenario was not an accident and could therefore not be an occurrence under a CGL policy.

Importantly, the Mississippi Supreme Court had never interpreted a CGL policy on a construction project. In 2003, the Fifth Circuit took its own crack at interpreting Mississippi construction law in *ACS Construction Co. v. CGU*,¹⁸ holding that defective subcontractor work could not be covered based on the reasoning of these non-construction cases, *Omnibank* and *Moulton*. The Court held that Mississippi law required a strict interpretation of contract language when the language is unambiguous. This means that in reviewing the "occurrence" language, the court was required to give each term of the contract its plain meaning and could not consider any evidence outside of the four corners of the contract in interpreting the meaning of the terms of the contract. The *ACS* court, which featured no Mississippi judges, gave no deference to the insurance companies' own interpretation of the policy, gave no consideration to the ISO circular memoranda issued to the insurer, and gave no consideration to the exclusion language of the policy, including the subcontractor exception to the "your work" exclusion. Any of these items would have competently informed the Court that the parties intended for subcontractor work to be covered.¹⁹ Instead, the *ACS* court determined that because the general

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 15.

¹⁶ *United States Fidelity & Guaranty Company v. Omnibank*, 812 So.2d 196 (Miss. 2002).

¹⁷ *Southern Farm Bureau Casualty Insurance Company v. Allard*, 611 So. 2d 966, 968-69 (Miss. 1992).

¹⁸ 332 F.3d 885 (5th Cir. 2003).

¹⁹ There are other subtle differences in *ACS* that for the sake of brevity will not be discussed in this article.

contractor *intended to hire* the subcontractor to perform work on a project, it could not be covered under the CGL policy. This was true whether or not the damage caused by the subcontractor was intended by the standpoint of the general contractor.

In *Architex Ass'n, Inc. v. Scottsdale Ins. Co.*,²⁰ the Mississippi Supreme Court was finally faced with applying its rule from the *Omnibank* and *Moulton* cases to a typical construction project. In *Architex*, the general contractor (Architex) was hired to build a hotel, and subsequently hired multiple subcontractors. The owner of the hotel later sued Architex, alleging, among other things, that no rebar had been placed in the foundation of the building (the foundation work was done by a subcontractor) and that leaks in the roof of the building had caused water to infiltrate the building causing mold and mildew. Architex informed their insurance company, which refused to defend them in the suit. The Mississippi Supreme Court held that, while "neither faulty or improper construction, nor defective workmanship (or gaining knowledge of same) constitutes an 'occurrence,'"²¹ Architex (the insured) was not directly responsible for the faulty workmanship, noting:

[I]f a roofing subcontractor negligently causes a roofing tile to fall, injuring a passerby, does such an inadvertent act on the part of the subcontractor automatically defeat coverage simply because the subcontractor was intentionally hired by the insured-general contractor? Could one legitimately argue, as a matter of law, that the "bodily injury" resulting therefrom was "expected or intended from the part of the insured?"²²

The Mississippi Supreme Court held that hiring a subcontractor does not constitute an intentional act for purposes of barring coverage. It also appears that the Court assumed that the "property damage" that resulted from the "occurrence" did not fall under any of the policy's exclusions.

C. Florida

In *United States Fire Ins. Co. v. J.S.U.B, Inc.*,²³ the Florida Supreme Court announced a new rule very similar to that of *Lamar Homes* and *Architex*. In *J.S.U.B.*, J.S.U.B. (the general contractor) was sued by several homeowners for damage to their foundations, drywall, and other interiors, the result of a subcontractor's use of substandard soil and improper soil compaction techniques.²⁴ The insurance company agreed to cover J.S.U.B. for the cost of repairing the homeowner's personal property, i.e., the wallpaper, but not the foundation or drywall, since that was part of the contractor's work and was excluded under the policy.

The Florida Supreme Court defined an "accident" in the same way as did the Texas and Mississippi Supreme Courts, as causing damage "that is neither expected or intended,"²⁵ rejecting a test

²⁰ 27 So.3d 1148 (Miss. 2010).

²¹ *Id.* at 1156.

²² *Id.* at 1161.

²³ 979 So.2d 871 (Fla. 2007).

²⁴ *Id.* at 875.

²⁵ *Id.* at 878.

of "reasonably foreseeable" or "natural and probable consequences" for something more inclusive.²⁶ The Court noted that "the appropriate consideration [for determining if an "occurrence" took place] is whether the damage was expected or intended from the standpoint of the insured, not whose property was damaged":

If a defective masonry wall falls outward and damages a parked car, no one disputes the "occurrence" of "property damage," but if it falls inward and damages the floor, the insurers label that a non-occurrence or not property damage. Likewise, if the wall falls the day before the home buyer resells to a new owner, they contend it is not covered as a contract claim, but if it falls the day after resale, it is covered as a tort claim.²⁷

The Court rejected any distinction between contract and tort claims, or any distinction over who owns the property, as it related to the definition of "occurrence." Instead, the Court held that it was the "business risk" exclusions, not the initial coverage, that limited coverage. Thus, while "CGL policies generally do not cover contract claims arising out of the insured's defective work or product," this is the result of the policy exclusions.²⁸

The Court then differentiated between "property damage" that only involves the cost of repairing defective work and that involving the cost of repairing damage caused by defective work. The first is not a valid claim, but the latter is. In this case, however, it was the settling of the improperly compacted soil that caused the damage to the home's foundation, so the damage was more than just repairing or replacing improperly installed or done work.²⁹ With *J.S.U.B.*, the Florida Supreme Court joins Texas and Mississippi in overturning prior case law to expand the understanding, and the scope, of CGL insurance policies as they regard defective subcontractor work.

D. Georgia³⁰

Georgia has adopted a different rule than have Texas, Mississippi, and Florida. Although Georgia does not have one defining case like *Lamar Homes*, *Architex* or *J.S.U.B.*, it has set out a policy significantly distinct from that of the other states, with an interpretation of CGL policies more favorable to insurance companies than to general contractors. In *Bituminous Casualty Corp. v. Northern Ins. Co. of New York*,³¹ homeowners sued a contractor when, while he was installing a deck, a storm blew a tarp away and flooded the house. The court defined an accident as "an event which takes place without one's

²⁶ *Id.* at 883.

²⁷ *Id.* at 885.

²⁸ *Id.*

²⁹ Although not stated as explicitly, this appears to be the law in Texas and Mississippi as well. *Lamar Homes* noted that defective construction that just reduced the value of the home was not property damage. 242 S.W.3d at 10. In *Architex*, improper construction by itself is not considered "property damage." 27 So.3d at 1156. This also appears to be the rule in every state herein mentioned.

³⁰ The rule in Georgia is the rule that courts in South Carolina and Arkansas, among other states, also appear to follow.

³¹ 548 S.E.2d 495 (Ga.App. 2001).

foresight or expectation or design" as well as something that is unexpected and unintended.³² This definition is similar to the one the Florida Supreme Court explicitly rejected in *J.S.U.B.* In this case, the court held that the contractor was not covered for the damage to the home because of the "business risk" exclusions (j(5) and (6)); since the contractor was still working on the project, he was responsible for any damage to it, even if it was unintentional.

Georgia courts, unlike those in Texas or Florida, employ the tort/contract division. Any damages that can be deemed as coming from a breach of the construction contract, whether the "breach" was intentional or not, are held to not be covered by the insurance policy. It is only damage to "other property," a claim sounding in tort law, that makes an "occurrence."³³

This rule is true even when the faulty work is done by a subcontractor. In *McDonald Construction Co. v. Bituminous Casualty Corp.*,³⁴ a general contractor sought to recover from its CGL insurer costs expended to repair a subcontractor's defective installation of tiles. Without the repair the architect would not approve the project. The court rejected McDonald's claim that the defective tiles were "property damage," since McDonald was bound to complete the work under a contract, not to avoid any tort suit.³⁵ Regarding the subcontractor, the court held that, even if the defective tiles were considered "property damage" the general contractor had not become "legally obligated" to repair the work under a tort claim; instead, this duty sprung from a pre-existing contract, and thusly there was no coverage.³⁶ The court also drew the distinction, rejected by Texas and Florida, between damage to a third party and damage to the contractor, noting that "[w]hile it may be true that the same neglectful craftsmanship can be the cause of both a business expense of repair and a loss represented by [property] damage...the two consequences are vastly different in relation to sharing the cost of such risks as a matter of insurance..."³⁷

This is not to say that a general contractor can never recover from a CGL insurer. "To the contrary, while construction defects constituting a breach of contract are not covered by CGL policies, negligently performed faulty workmanship that damages other property may constitute an 'occurrence'..."³⁸ In *Sawhorse, Inc. v. Southern Guaranty Ins. Co. of GA*,³⁹ a general contractor and his subcontractor, while adding a second story onto a one-story house, damaged both stories of the house. The court held that while the CGL policy excluded any damage to the second story, it did not necessarily exclude damage to the first story, since that was not being worked on. In *Hathaway*, a subcontractor working for Hathaway installed faulty plumbing in three building projects. Hathaway then sued the subcontractor and, after obtaining a default judgment, sued its insurer to recover damages. Since Hathaway had sued its subcontractor for negligence, not breach of contract, there was an "occurrence"

³² *Id.* at 533.

³³ *Custom Planning & Dvlp, Inc. v. American National Fire Ins. Co.*, 270 Ga.App. 8, 11 (2004).

³⁴ 279 Ga.App. 757 (2006).

³⁵ *Id.* at 762.

³⁶ *Id.* at 763.

³⁷ *Id.* at 761.

³⁸ *Hathaway Dvlp. Co. v. American Empire Surplus Lines Ins. Co.*, 686 S.E.2d 855, 860 (Ga.App. 2009).

³⁹ 604 S.E.2d 541 (Ga.App. 2004).

under the policy.⁴⁰ The court also held that there was no exclusion under the "business risk" exceptions to the policy, which provided in relevant part:

5. That *particular part* of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
6. That *particular part* of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

The court noted that the phrase "particular part" is narrower for subcontractors than it is for general contractors, since a subcontractor normally works only on one area of a project.⁴¹ The leaking pipes had to be replaced but also caused other damage to the home; thus "the CGL policy does not cover the costs to replace the defective workmanship...but does cover the costs to repair damage to other property caused by the defective workmanship."⁴²

The Georgia rule, then, does not operate that differently than the rule in other states, although it is premised on a different understanding of CGL insurance policies. In all the states it is still necessary to cause damage to "other property" beyond the work itself; the only significant difference is the limitation that Georgia places in the form of its tort/contract distinction, which is not found in the other states.

E. Alabama

The case law in Alabama regarding subcontractor damages under CGL policies is undeveloped compared to other Southeastern states. The issue has been settled, or static, since the 1980s, and considering the changes in the ISO forms since then, it is unclear how well the current law would hold up.

In *United States Fidelity & Guaranty Co. v. National Tank & Machine Works, Inc.*,⁴³ National Tank contracted to provide six lifelines (telescoping poles designed to reach people in the water from the edge) to a company building swimming pools. When a swimmer began having trouble, an employee attempted to use the lifeline to save him, but it fell apart, and the swimmer drowned. The swimmer's estate brought suit against National Tank. The Alabama Supreme Court found a duty to defend because the estate had alleged negligence against National Tank for delivering the wrong product, which fell under the term "occurrence." Similarly, the "projects-completed" exclusion did not apply, since the "proper" equipment had not been supplied or installed.⁴⁴

Two years later, in *Moss v. Champion Ins. Co.*,⁴⁵ the Court issued a clearer statement of the extent to which negligence could constitute an "occurrence." A roofing contractor was sued by a

⁴⁰ *Hathaway*, 686 S.E.2d at 861.

⁴¹ *Id.* at 862.

⁴² *Id.* at 863.

⁴³ 402 So.2d 925 (Ala. 1981).

⁴⁴ *Id.* at 927-28. The term "accident" was defined the same here as in all other non-Georgia policies.

⁴⁵ 442 So.2d 26 (Ala. 1983).

homeowner for damage to her attic and ceiling when rain fell on her uncovered, under-construction roof. It had been raining consistently before and during the construction period. The Court held that "the term 'accident' in [a CGL] policy does not necessarily exclude human fault called negligence."⁴⁶ Although the case does not mention subcontractors directly, it does note that "[t]he fact that the roof was exposed for a period of time by the *employees* of this roofing contractor does not...automatically cause him to lose his insurance coverage, any more than his own negligence would do so."⁴⁷ As long as there was no intent to cause damage *or* the contractor had taken reasonable steps to prevent damage, he was covered under the insurance policy.⁴⁸ This case was decided before the subcontractor exception to the "Damage to 'Your Work'" exclusion became standard, but it is reasonable to assume that Alabama courts would follow similar logic and rule consistently with the courts of Texas, Florida, and Mississippi, i.e., that the when there is damage to "other property"⁴⁹ caused by negligent work the CGL policy is applicable. All this to say that the Alabama Supreme Court appears ripe to make a comprehensive determination of coverage for the defective work of a subcontractor under a general contractor's CGL policy. Until that day comes, however, contractors should be prepared to deal with insurers who are reluctant to cover claims for damages of this sort.

IV. Conclusion

Although there are slight differences among states, the basics of CGL coverage for the damage caused by subcontractors should be clear: it must be accidental and done to property other than property currently being worked on or owned by the contractor. The following is a list of things to remember when considering subcontractor coverage under a CGL insurance policy:

1. **Read your policy carefully.** The current standard "subcontractor exception" began around 1986 as a supplement to the standard policy, and some insurance companies are beginning to offer a similar supplement *removing this exception* and charging less premiums to the general contractor. Be careful when reading your policy to make note of all the terms and exclusions and make sure the insurer does not take out the subcontractor exception.
2. **If possible, require that all of your subcontractors have CGL insurance.** Never hesitate to bring more insurance into a project.
3. **If sued, notify your insurance company immediately.** Although not discussed in this short article, a large area of contention between insureds and insurers concerns proper notification of potential claims. Be sure to make your insurance company aware as soon as possible of any claims against you, including all relevant facts not included in the complaint. Provide this information per any procedures the policy requires.

⁴⁶ *Id.* at 28.

⁴⁷ *Id.* at 29 (emphasis in original).

⁴⁸ *Id.*

⁴⁹ *United States Fidelity and Guaranty Co. v. Bonitz Insulation Co. of AL*, 424 So.2d 569, 573 (Ala. 1982) ("We think there can be no doubt that, if the occurrence or accident causes damage to some *other* property than the insured's product, the insured's liability for such damage becomes the liability of the insurer under the policy").

4. **Be prepared to be denied.** The case law cited herein is only a fraction of the suits filed every year by policy-holders attempting to get coverage, either defense or indemnity, from their insurer. It should come as no surprise that insurers will test unsettled law and deny coverage if given the opportunity. Become familiar with your policy so that you can explain specifically why you are covered to your adjuster. Create a record. Be diligent in informing your insurance company of the claim against you, including anything else that you think they need to know. Lastly, follow up with them until they give you a definitive answer as to what actions they are taking with regard to your claim.
5. **Remember that for a finding of coverage, it is better to sue and be sued in tort.** If your state is a direct action state, such as Georgia, one technique to recover insurance might be to include your subcontractor's insurance carrier directly in the lawsuit against your subcontractor for defective work. Also, do not be afraid to include your insurance carrier in a suit by filing a declaratory judgment of coverage, effectively "beating them to the punch" before they file a declaratory judgment suit against you.
6. **Be pointed in discovery if you are in litigation with your insurer.** Remember to request the ISO circular memoranda that your insurer relies upon in issuing your policy. Another important discovery request should request that the insurance company identify how it has previously dealt with similar claims in your state. Insurance companies also usually have an internal document or spreadsheet that identifies how they perceive the current law on coverage in each state. This document will obviously be worthwhile evidence in a coverage action.

For more information, contact:

John M. Lassiter | Construction Litigation and Commercial Litigation Groups | Burr & Forman LLP

The Heritage Building | 401 East Capitol Street | Suite 100 | Jackson, Mississippi | 39201

jlassite@burr.com | (P) 601-709-3432 | (F) 601-355-5150

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