# Colorado CGL Coverage A Demystified

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*This article analyzes Coverage A of the Commercial General Liability insurance policy.*

The Commercial General Liability (CGL) insurance policy is a standard-form business liability insurance policy that has been offered since 1940 and written primarily by the Insurance Services Office (ISO) since 1973.[1]

The CGL policy has three sections: Coverage A, Coverage B, and Coverage C. Coverage A provides occurrence-based insurance for bodily injury and property damage lawsuits. Coverage B provides named-tort insurance for personal and advertising injury lawsuits.[2] And Coverage C provides first-party insurance for premises-based medical expenses.

Coverage A is the most frequently used of the three CGL sections. As analyzed in this article, Coverage A insures lawsuits for accidental bodily injury or property damage, subject to numerous exclusions. The exclusions are primarily written to minimize coverage for business risks and claims covered by other liability policies. The net result is coverage for most Colorado lawsuits for construction defects, premises injuries, and negligent damage to third parties. And, if the products-completed operations hazard exclusion is removed, there is coverage for many product liability claims.

## Occurrence Requirement

CGL Coverage A is triggered by claims for tangible bodily injury or property damage caused by an "occurrence."[3] It "protects businesses from third party claims" for bodily injury or property damage "resulting from accidents."[4]

CGL policies define an "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."[5] However, CGL policies do not define the term "accident."

Colorado common law defines "accident" by whether the insured intended the harm to the plaintiff, not just by whether the insured intended to act. Damages are accidental when they are "unanticipated" or "unforeseeable."[6] In the construction context, an occurrence includes "unforeseeable damage" to non-defective property "arising from faulty workmanship."[7] In *Greystone Construction v. National Fire & Marine Insurance Co.*, the Tenth Circuit Court of Appeals held that because a contractor's "obligation to repair defective work is neither unexpected nor unforeseen," costs and damage to the contractor's work arising from repairing defective construction was not accidental.[8]

In *Hoang v. Assurance Co. of America*,[9] the Colorado Supreme Court held that defective workmanship causing unintended damage (water damage from poor construction) constituted an "occurrence" because it was an accident—an unexpected and unforeseen event.

Whether the occurrence trigger is satisfied is determined by the fortuitous nature of the acts and damage, not by the legal theory chosen by the plaintiff. Thus, in *Union Insurance v. Hottenstein*, the Colorado Court of Appeals stated that a breach of contract is "not generally an accident that constitutes a covered occurrence."[10] However, the court cited with approval cases that rejected establishing "a broad rule that claims sounding in contract are not occurrences," and instead called for looking to "the kind of claim asserted" to evaluate whether a breach of contract is or is not a covered occurrence.[11]

Some cases combine the concept of "accident" with the requirement of damage to third parties. For example, in *Village Homes of Colorado, Inc. v. Travelers Casualty & Surety Co.*, the court of appeals stated that an "accident" occurs only "when the insured's negligence results in bodily injury to someone else or damage to property owned by another."[12] However, this may have been a shorthand way of combining the occurrence trigger with the various exclusions that limit coverage for the insured's own damages.

In *General Security Indemnity Co. of Arizona v. Mountain States Mutual Casualty Co.*,[13] the court of appeals defined the term "accident" narrowly to exclude faulty workmanship, adopting the reasoning of many other states that fortuity is lacking when the actions are intentional. "A majority of . . . jurisdictions ha[ve] held that claims of poor workmanship, standing alone, are not occurrences that trigger coverage under CGL policies similar to those at issue here."[14]

In 2010, the Colorado General Assembly partially overruled *General Security* for construction insureds. CRS § 13-20-808 addresses some of the issues raised in *General Security* and provides that when considering commercial liability policies issued to "construction professionals," a court shall "presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured."[15]

Cases since the effective date of CRS § 13-20-808 have broadly applied the statute to construction litigation. For example, in *Colorado Pool Systems, Inc. v. Scottsdale Insurance Co.*,[16] the court of appeals held that the insured's defective work was presumed an "accident" unless the contractor intended the damage. Because the complaint alleged unintended damage, the insurer's duty to defend was triggered. This case is also useful for analyzing several Coverage A exclusions, as discussed below.

The statute also authorizes courts to consider the insured's objective reasonable expectations of coverage for construction litigation.[17] "In the realm of insurance policies issued to construction professionals, the Colorado legislature has provided that where a policy provision that appears to grant coverage conflicts with a policy provision limiting coverage, a court shall construe the insurance policy to favor coverage if reasonably and objectively possible."[18]

As discussed below, Coverage A requires one of two specific types of tangible damage caused by an occurrence: bodily injury or property damage. This reflects the insurance industry's intent to limit coverage to concrete, measurable harms rather than speculative or purely financial

losses, which are better addressed by other insurance products such as errors and omissions or directors and officers policies.

### Bodily Injury

Coverage A is triggered by "bodily injury" caused by an occurrence. The policy defines "bodily injury" in a somewhat circular fashion as "as bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time."[19]

Like most jurisdictions, Colorado follows the rule that "bodily injury" coverage does not extend to claims for pure emotional distress, without some tangible physical symptoms or causes. Thus, in *National Casualty Co v. Great Southwest Fire Insurance Co.*, the supreme court held there was no CGL "bodily injury" when the plaintiff "did not allege any physical injury, physical contact, or pain."[20]

Conversely, in *State Farm Fire & Casualty Co. v. Nikitow*,[21] the court of appeals held that there was coverage for "bodily injury" when the plaintiff's emotional distress was accompanied by "nausea" and "ongoing nightmares."

Federal courts have similarly held that in Colorado, mental injury or mental anguish standing alone does not constitute bodily injury within the meaning of CGL policies.[22] However, there is coverage for "bodily injury" when there are significant "physical manifestations of emotional distress."[23]

### Property Damage

Coverage A is also triggered by "property damage" caused by an occurrence. Property damage is defined in material part as "[p]hysical injury to tangible property, including all resulting loss of use of that property" or "[l]oss of use of tangible property that is not physically injured."[24]

In *Hoang*, the court found coverage for "loss of use" property damage claims by the homeowners and explained the rationale for that coverage being included in CGL policies.[25] Including "loss of use" reflects the intent to cover economic losses tied to the inability to use property, even absent physical damage.[26]

In most cases, coverage turns on the presence of material changes affecting tangible property. In *American Family Mutual Insurance Co. v. Teamcorp., Inc.*,[27] the US District Court for the District of Colorado found CGL property damage coverage for claims that a home was defectively constructed because the structure violated local zoning laws, the foundation was improperly poured, the structure was improperly located on the lot, the residence would be structurally unsound and therefore uninhabitable, and the entire structure needed to be torn down due to these problems. "[T]here is no requirement . . . that the property damage be the direct result of the insured's conduct."[28]

CGL policies are designed to protect insureds against third-party liability for harm caused by their actions, including the economic impact on third parties who cannot use their property due to the insured's negligence. However, as set forth below, the broad occurrence-based coverage is subject to many exclusions limiting coverage for particular business risks and claims covered by other commercial insurance liability policies.

### Exclusions

As analyzed below, the most commonly used Coverage A exclusions are for the insured's work, intentional damages, pollution, employment and workers' compensation, motor vehicle, real property operations, defective workmanship, and products-completed operations. Because of the breadth of the occurrence trigger, these exclusions as a practical matter govern most CGL coverage disputes.

#### *Insured's Work Exclusion*

The "your work" exclusion (exclusion l)[29] precludes coverage for "[p]roperty damage" to "your work" (1) arising out of your work or any part of it and (2) included in the products-completed operations hazard (PCOH). It has an exception for subcontractors and "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 exclusion prevents CGL policies from covering the cost of repairing or replacing the insured's own defective work after completion, as such risks are considered business risks better addressed by warranties, performance bonds, or builder's risk insurance. However, the exclusion does not bar coverage for damage to third-party property or non-defective parts of the insured's work caused by the defective work, especially if performed by a subcontractor.

In Colorado, the work exclusion is narrowly applied, and the subcontractor exception significantly limits its scope, allowing coverage for subcontractor-related damage under the PCOH. For example, in *Greystone Construction*, the Tenth Circuit addressed coverage for a general contractor seeking CGL coverage for construction defect claims involving homes that were damaged by soil expansion after completion, due to defective foundation work. The court analyzed whether the exclusion barred coverage for damage to the homes, which constituted the insured's "work" under the PCOH. The exclusion precluded coverage for property damage to the insured's completed work arising out of that work. However, the subcontractor exception applied because the defective foundation work was performed by subcontractors.[30] The exception negated the exclusion, allowing coverage for damage to the homes, including non-defective parts such as walls and interiors caused by the subcontractors' faulty work.

Damage to third-party property caused by the insured's completed work was addressed in *Colorado Pool Systems*, where the plaintiff claimed that a contractor's defective construction of a swimming pool caused damage to the pool and surrounding homeowner landscaping. The court held that the exclusion barred coverage for property damage to the pool itself, as the pool was the contractor's "work" under the PCOH, and the damage arose from the contractor's defective work. The exclusion applied because the pool was completed and the damage was to the insured's own work, not third-party property.[31] However, the exclusion did not bar coverage for damage to surrounding property, as this was not the insured's "work."

Another example is *Teamcorp., Inc.*, where the court ruled that the work exclusion barred coverage for damage to the retaining wall itself, as it was the subcontractor's "work" under the PCOH, and the damage arose from the defective installation.[32] The exclusion applied to the completed work (the wall) because the damage was directly tied to the subcontractor's faulty

work. However, the exclusion did not bar coverage for damage to adjacent third-party land and structures, as this was not the insured's "work."

### *Expected or Intended Damages Exclusion*

The CGL policy excludes coverage for bodily injury or property damage that is "expected or intended from the standpoint of the insured" (exclusion a). In contrast to the occurrence requirement of accidental conduct, this exclusion focuses solely on the intent to cause damage.

The exclusion applies when the insured intended to harm the plaintiff. In *American Family Mutual Insurance Co. v. Johnson*, an insured was sued for intentionally assaulting a woman. The supreme court held that the intentional damage exclusion applied because the insured subjectively intended to cause the bodily injury.[33] Since the complaint alleged intentional damage, there was no duty to indemnify.[34]

The intentional damage exclusion applies to inherently intentional bodily injuries. For example, in *Fire Insurance Exchange v. Sullivan*, an insured was sued for intentionally assaulting the plaintiff, causing bodily injury. The court of appeals held that the exclusion barred coverage because the insured's assault was a deliberate act, and the resulting bodily injuries were intended or substantially certain to occur.[35]

Conversely, in *Colorado Pool Systems*, the court held that the intentional damage exclusion did not apply in a negligence case.[36] The insurer failed to meet its burden of proving that the insured intended the damage.

### *Pollution Exclusion*

The standard form of the pollution exclusion was introduced in 1970, when it became a mandatory endorsement to the 1966 revision of the CGL. It later became part of the 1973 revision of the CGL. Facing greater potential liability as a result of new federal environmental laws, many insurers adopted the standard exclusion in an effort to limit their liability.[37]

The standard pollution exclusion has an exception for "sudden and accidental" releases of pollutants. Since the early 1980s, many insurers have included "absolute" pollution exclusions in their CGL policies, eliminating the exception for "sudden and accidental" releases.

The pollution exclusion (exclusion f) bars coverage for gradual pollution, such as long-term waste disposal, and the "sudden and accidental" exception rarely applies in Colorado. For example, in *City of Englewood v. Commercial Union Assurance Companies*,[38] the court of appeals addressed the standard pollution exclusion in a case involving municipalities seeking coverage for liability arising from the disposal of sewage sludge at a landfill. The pollution exclusion applied to bodily injury or property damage arising out of the discharge of "pollutants," defined as irritants, contaminants, or waste.[39] The sewage sludge constituted a "pollutant" under the policy's definition, as it was waste material that contaminated the environment. The "sudden and accidental" exception would not apply if the disposal of sludge was not sudden.[40]

The pollution exclusion is not limited to traditional pollution scenarios. In *Blackhawk-Central City Sanitation District v. American Guarantee and Liability Insurance Co.*,[41] the Tenth Circuit applied Colorado law to both the limited pollution exclusion and the absolute pollution exclusion. A sanitation district insured sought CGL coverage for cleanup costs related to the discharge of treated wastewater into a creek, which violated environmental regulations. The CGL policy defined pollutants as including "waste" and "contaminants," and the court held that the wastewater, even if treated, was a pollutant because it contained harmful substances that contaminated the creek. The court also held that the absolute pollution exclusion applied because the discharge was a release of a pollutant into the environment, regardless of whether it was intentional or compliant with regulations.

### *Workers' Compensation and Employment Exclusions*

The workers' compensation exclusion (exclusion d) bars coverage for "[a]ny obligation of the insured under a workers' compensation, disability benefits, or unemployment compensation law or any similar law." The exclusion ensures that CGL policies do not cover claims for workplace injuries or benefits that fall under workers' compensation laws, which are governed by a separate statutory scheme and insurance system in Colorado.

The employment-related exclusion (exclusion e) bars coverage for "[b]odily injury" to an "employee" of the insured arising out of and in the course of employment by the insured or performing duties related to the conduct of the insured's business." This exclusion is designed to prevent CGL policies from covering workplace injuries that should be addressed by employment practices liability or employer's liability insurance and bars coverage for or benefits to employees, their spouses, children, parents, or siblings.

### *Motor Vehicle Exclusion*

The motor vehicle exclusion (exclusion g) applies to bodily injury or property damage "arising out of the ownership, maintenance, use or entrustment to others of any aircraft, 'auto' or watercraft owned or operated by or rented or loaned to any insured." Use includes operation and "loading or unloading."[42]

The motor vehicle exclusion is designed to minimize overlap with commercial motor vehicle coverages. In *American Family Mutual Insurance Co. v. Allen*,[43] the insured's employee caused a car accident while driving a company vehicle, causing bodily injury. The supreme court held that the motor vehicle exclusion applied, emphasizing that the exclusion encompasses accidents arising from the operation of any "auto" owned or operated by the insured. The CGL policy was not intended to cover vehicle-related liabilities, which require separate auto insurance. Therefore, the insurer had no duty to defend.

The motor vehicle exclusion is a mechanism to exclude auto-related liabilities from CGL coverage, but its application may be overshadowed by other exclusions in complex cases. For example, in *City of Englewood*, the court focused on the pollution exclusion. The court analyzed whether the CGL policy covered liabilities arising from activities that could involve vehicles (transportation of sludge).[44] The court's reasoning suggested that the motor vehicle exclusion would apply to bar coverage for bodily injury or property damage directly tied to the use of autos, reinforcing the exclusion's role

in limiting CGL coverage to non-auto-related liabilities, although the court did not reach that issue.

### *Real Property Operations Exclusion*

The real property operations exclusion (exclusion j(5)) precludes coverage for "[p]roperty damage to 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." The exclusion only applies if the insured or its contractors are performing operations or have performed work on the "actual property that is damaged."[45]

In *Advantage Homebuilding, LLC v. Maryland Casualty Co.*, the Tenth Circuit held that exclusion j(5) "'applies only to damage from ongoing work, and not damage after completion.'"[46] Thus, in *Colorado Pool Systems*, the court declined to address the insurer's argument that exclusion j(5) applied, since the relevant work was complete, and the insurer had failed to raise j(5) at the trial court level.[47] Instead, the court analyzed coverage based on the existence of an occurrence.[48]

Thus, the exclusion has limited use in construction defect claims where damage arises after control is relinquished. In *Greystone Construction*, the Tenth Circuit analyzed coverage based on the "your work" exclusion.[49] The parties apparently did not address exclusion j(5) because the damage occurred after the insured's construction operations were completed, not during active work on the homes.

### *Faulty Workmanship Exclusion*

The faulty workmanship exclusion (exclusion j(6)) precludes coverage for "[p]roperty damage to that particular part of any property that must be restored, repaired, or replaced because your work was incorrectly performed on it."

The "faulty workmanship" exclusion corresponds to non-fortuitous errors in the insured's work. In *McGowan v. State Farm Fire & Casualty Co.*, the court of appeals applied the exclusion to bar coverage for a construction claim for expenditures plaintiffs had to make to repair the damage caused by the insured's faulty and incomplete work.[50] The court noted that "[c]omprehensive general liability policies normally exclude coverage for faulty workmanship based on the rationale that poor workmanship is considered a business risk to be borne by the policyholder, rather than a 'fortuitous event' entitling the insured to coverage."[51]

Although exclusion j(6) is "inartfully drafted," it was "intended to exclude coverage for the cost of restoring, repairing or replacing faulty workmanship on the part of the insured, its contractors, and subcontractors."[52] However, the express exception to exclusion j(6) allows an insured to recover consequential damages that arise out of its faulty workmanship after the work is completed.[53]

The exclusion bars coverage for damage to the insured's defective work that requires repair or replacement but is narrowly applied and does not apply to consequential damage to third-party property. In *Colorado Pool Systems*, the court examined whether the faulty workmanship exclusion barred coverage for damage to the pool. The exclusion applied to the cost of repairing or replacing the pool itself because the damage resulted from the insured's defective construction work on the pool.[54] But because the exclusion is limited to "that particular part" of the property on which the defective work was performed, it did not bar coverage for damage to surrounding property caused by the faulty pool construction.

### *Products-Completed Operations Exclusion/Coverage*

The standard CGL has an exclusion for "products-completed operations hazard." This excludes all bodily injury and property damage occurring away from premises you own or rent and arising out of your product or your work except (1) products still in the insured's physical possession or (2) work that has either not yet been completed or has been abandoned.

This PCOH exclusion is sometimes confused with positive coverage for products-completed operations because the exclusion can be removed through payment of additional premiums. However, the removal of the exclusion does not create additional coverage beyond that provided for in the coverage provisions.[55]

Under Colorado law, the PCOH exception to the faulty workmanship exclusion in a masonry contractor's CGL policy did not apply to the building owner's claim against the insured for negligent construction, where the insured had not yet completed one step in construction called for by the contract—namely, acid washing of masonry walls. Completion of all other steps in construction did not render construction complete under the exception; substantial completion was insufficient.[56]

## Conclusion

CGL Coverage A has broad occurrence-based coverage for tangible property damage and bodily injury, subject to many particular exclusions corresponding mainly to business risks and to other liability insurance policies. The result is coverage for most premises claims, most construction claims, most products claims (without the PCOH exclusion), and many other claims of accidental bodily injury and property damage. CL

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### NOTES

1. *See* Weimer et al., *CGL Policy Handbook* xvii (3d ed. Wolters Kluwer 2019 and supplements). While a few insurers customize their CGL policy language, most adhere to the ISO language. When referencing the "CGL" policy, this article analyzes the standard ISO language.

2. Coverage B was examined in Weimer, "Colorado CGL Coverage B Demystified," 53 *Colo. Law.* 44 (Mar. 2024), https://cl.cobar.org/features/colorado-cgl-coverage-b-demystified.

3. ISO Form CG 00 01 04 13 (Commercial General Liability Coverage Form—Occurrence Basis) (ISO Form), the relevant language is found in Section I, Coverage A, item 1. ISO citations in this article are to this CGL Form.

4. *Hoang v. Assurance Co. of Am.*, 149 P.3d 798, 802 (Colo. 2007). The *Hoang* court referred to third-party claims for "personal injury or property damage resulting from accidents," but the court was likely using "personal injury" as a nontechnical way to refer to "bodily injury" because "personal injury" coverage in the CGL policy is found in Coverage B, and that coverage does not require an occurrence or accident.

5. ISO Form, Section V—Definitions, item 13.

6. *Greystone Constr., Inc. v. Nat'l Fire & Marine Ins. Co.*, 661 F.3d 1272, 1285 (10th Cir. 2011), *as amended on reh'g in part* (Dec. 23, 2011).

7. *Id.* at 1282.

8. *Id.* at 1286.

9. *Hoang*, 149 P.3d 798.

10. *Union Ins. Co. v. Hottenstein*, 83 P.3d 1196, 1201 (Colo.App. 2003).

11. *Id.* at 1202.

12. *Vill. Homes of Colo., Inc. v. Travelers Cas. & Sur. Co.*, 148 P.3d 293, 298 (Colo.App. 2006).

13. *Gen. Sec. Indem. Co. of Ariz. v. Mountain States Mut. Cas. Co.*, 205 P.3d 529, 534 (Colo. App. 2009).

14. *Id.* at 535.

15. CRS § 13-20-808(3). The statute applies to all insurance policies in existence as of, or issued on or after, the law's effective date, May 21, 2010. Laws 2010, Ch. 253, § 3.

16. *Colo. Pool Sys., Inc. v. Scottsdale Ins. Co.*, 317 P.3d 1262 (Colo.App. 2012).

17. CRS § 13-20-808(4)(b).

18. *Auto-Owners Ins. Co. v. High Country Coatings, Inc.*, 388 F.Supp.3d 1328, 1333 (D. Colo. 2019) (citing CRS § 13-20-808(5)).

19. ISO Form, Section V—Definitions, item 3.

20. *Nat'l Cas. Co v. Great Sw. Fire Ins. Co.*, 833 P.2d 741, 747 (Colo. 1992).

21. *State Farm Fire & Cas. Co. v. Nikitow*, 924 P.2d 1084, 1089 (Colo.App. 1995).

22. *Nat'l Union Fire Ins. Co. v. Dish Network, L.L.C.*, 445 F. Supp. 3d 1191, 1209 (D.Colo. 2020).

23. *Am. Fire and Cas. Co. v. BCORP Canterbury at Riverwalk, LLC*, 282 F.App'x 643 (10th Cir. 2008) (Colorado law).

24. ISO Form, Section V—Definitions, item 17.

25. *Hoang*, 149 P.3d 798.

26. While the court did not explicitly isolate "loss of use" as a standalone damage claim in its discussion, it implicitly included it within the scope of covered "property damage" by affirming the trial court's inclusion of damages beyond physical repairs, such as those related to the homeowners' inability to fully use their homes. *Id.* at 801.

27. *Am. Fam. Mut. Ins. Co. v. Teamcorp., Inc.*, 659 F.Supp.2d 1115 (D.Colo. 2009).

28. *Id.* at 1131.

29. Many cases refer to the exclusions by their terminology in the CGL ISO policy, which lists exclusions a through n.

30. *Greystone Constr.*, 661 F.3d at 1286–87 (Colorado law).

31. *Colo. Pool Sys.*, 317 P.3d at 1271.

32. *Teamcorp., Inc.*, 659 F.Supp.2d at 1134–35.

33. *Am. Fam. Mut. Ins. Co. v. Johnson*, 816 P.2d 952, 956–57 (Colo. 1991).

34. The duty to defend is all or nothing, and it is broadly construed. "If the complaint alleges even one claim that is arguably covered by the policy, the insurer must defend its insured against all claims presented in the complaint." *Carl's Italian Rest. v. Truck Ins. Exch.*, 183 P.3d 636, 639 (Colo.App. 2007). The duty to indemnify is narrower and is based on the actual facts established at trial. *See Fire Ins. Exchange v. Bentley*, 953 P.2d 1297, 1300 (Colo. App. 1998) (citations omitted) ("The duty to defend is broader than the duty to indemnify. If the underlying complaint asserts more than one claim, a duty to defend against all claims asserted arises if any one of them is arguably a risk covered by the pertinent policy.").

35. *Fire Ins. Exch. v. Sullivan*, 224 P.3d 348, 350–53 (Colo.App. 2009) (applying *Fire Ins. Exch. v. Bentley*, 953 P.2d 1297 (Colo.App. 1998)).

36. *Colo. Pool Sys.*, 317 P.3d at 1270.

37. *See, e.g.*, *US Fid. & Guar. Co. v. Morrison Grain Co.*, 734 F.Supp. 437, 445 (D.Kan. 1990).

38. *City of Englewood v. Com. Union Assurance Cos.*, 940 P.2d 948 (Colo.App. 1996), *aff'd in part*, 984 P.2d 606 (Colo. 1999).

39. *Id.* at 954.

40. *Id.* at 955.

41. *Blackhawk-Central City Sanitation Dist. v. Am. Guar. and Liab. Ins. Co.*, 214 F.3d 1183 (10th Cir. 2000) (Colorado law).

42. The full language of the motor vehicle exclusion is much more detailed, but the language cited here is the principal language used in most cases.

43. *Am. Fam. Mut. Ins. Co. v. Allen*, 102 P.3d 333 (Colo. 2004).

44. *City of Englewood*, 940 P.2d at 952.

45. *Teamcorp., Inc.*, 659 F.Supp.2d at 1133.

46. *Advantage Homebuilding, LLC v. Maryland Cas. Co.*, 470 F.3d 1003, 1011 (10th Cir. 2006) (quoting Cunningham and Fischer, "Insurance Coverage in Construction—The Unanswered Question," 33 *Tort & Ins. L.J.* 1063, 1093 (Summer 1998)).

47. *Colo. Pool Sys.*, 317 P.3d at 1271.

48. *Id.*

49. *Greystone Constr.*, 661 F.3d at 1289–90.

50. *McGowan v. State Farm Fire & Cas. Co.*, 100 P.3d 521, 525 (Colo.App. 2004).

51. *Id.*

52. *Advantage Homebuilding*, 470 F.3d at 1011 (Kansas law).

53. *Id.* at 1012.

54. *Colo. Pool Sys.*, 317 P.3d at 1271.

55. *VBF, Inc. v. Chubb Grp. of Ins. Cos.*, 263 F.3d 1226, 1232 (10th Cir. 2001) (Oklahoma law).

56. *Farmington Cas. Co v. Duggan*, 417 F.3d 1141, 1144 (10th Cir. 2005) (Colorado law).