

**Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-1006.01 Jery Payne

**HOUSE BILL 10-1394**

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**HOUSE SPONSORSHIP**

**Rice,**

**SENATE SPONSORSHIP**

**Scheffel,**

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**House Committees**

Business Affairs and Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING COMMERCIAL LIABILITY INSURANCE POLICIES ISSUED TO**  
102 **CONSTRUCTION PROFESSIONALS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

In *General Security Indemnity Company of Arizona v. Mountain States Mutual Casualty Company*, 205 P.3d 529 (Colo. App. 2009), the court excluded claims for certain construction defects claims and imposed no obligation to defend in a contractor's professional liability insurance policy. **Section 1** of the bill imposes the following rules of contract

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

construction to guide a court in such cases:

- ! A court should presume that: Compliance with a construction professional's objective, reasonable expectations is intended; the entire policy is to be effective and read as a whole; a just and reasonable result is intended; ambiguity in a policy is to be construed in favor of coverage; a result that renders a part of coverage illusory is not intended; and the work of a construction professional that results in property damage is an accident unless the property damage is intended and expected by the insured.
- ! When weighing conflicting provisions, the court should construe the contract to favor coverage.
- ! The insurer bears the burden of proving that a policy provision limits or bars coverage.

**Section 2** prohibits a professional liability insurer from excluding or limiting coverage of acts arising before the policy was issued unless the insured knows of defects that have a likelihood to subject the insurer to damages and fails to disclose this to the insurer. A policy that conflicts with section 2 is unenforceable.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 8 of article 20 of title 13, Colorado Revised  
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
4 read:

5 **13-20-808. Insurance policies issued to construction**  
6 **professionals.** (1) (a) THE GENERAL ASSEMBLY FINDS AND DETERMINES  
7 THAT:

8 (I) THE INTERPRETATION OF INSURANCE POLICIES ISSUED TO  
9 CONSTRUCTION PROFESSIONALS IS OF VITAL IMPORTANCE TO THE  
10 ECONOMIC AND SOCIAL WELFARE OF THE CITIZENS OF COLORADO AND IN  
11 FURTHERING THE PURPOSES OF THIS PART 8.

12 (II) INSURANCE POLICIES ISSUED TO CONSTRUCTION  
13 PROFESSIONALS HAVE BECOME INCREASINGLY COMPLEX, OFTEN  
14 CONTAINING MULTIPLE, LENGTHY ENDORSEMENTS AND EXCLUSIONS

1 CONFLICTING WITH THE REASONABLE EXPECTATIONS OF THE INSURED.

2 (III) THE CORRECT INTERPRETATION OF COVERAGE FOR DAMAGES  
3 ARISING OUT OF CONSTRUCTION DEFECTS IS IN THE BEST INTEREST OF  
4 INSURERS, CONSTRUCTION PROFESSIONALS, AND PROPERTY OWNERS.

5 (b) THE GENERAL ASSEMBLY DECLARES THAT:

6 (I) THE POLICY OF COLORADO FAVORS THE INTERPRETATION OF  
7 INSURANCE COVERAGE BROADLY FOR THE INSURED.

8 (II) THE LONG-STANDING AND CONTINUING POLICY OF COLORADO  
9 FAVORS A BROAD INTERPRETATION OF AN INSURER'S DUTY TO DEFEND THE  
10 INSURED UNDER INSURANCE POLICIES AND THAT THIS DUTY IS A  
11 FIRST-PARTY BENEFIT TO AND CLAIM ON BEHALF OF THE INSURED.

12 (III) THE DECISION OF THE COLORADO COURT OF APPEALS IN  
13 *GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA V. MOUNTAIN STATES*  
14 *MUTUAL CASUALTY COMPANY*, 205 P.3d 529 (COLO. APP. 2009) DOES NOT  
15 PROPERLY CONSIDER A CONSTRUCTION PROFESSIONAL'S REASONABLE  
16 EXPECTATION THAT AN INSURER WOULD DEFEND THE CONSTRUCTION  
17 PROFESSIONAL AGAINST AN ACTION OR NOTICE OF CLAIM CONTEMPLATED  
18 BY THIS PART 8.

19 (IV) FOR THE PURPOSES OF GUIDING PENDING AND FUTURE  
20 ACTIONS INTERPRETING LIABILITY INSURANCE POLICIES ISSUED TO  
21 CONSTRUCTION PROFESSIONALS, WHAT HAS BEEN AND CONTINUES TO BE  
22 THE POLICY OF COLORADO IS HEREBY CLARIFIED AND CONFIRMED IN THE  
23 INTERPRETATION OF INSURANCE POLICIES THAT HAVE BEEN AND MAY BE  
24 ISSUED TO CONSTRUCTION PROFESSIONALS.

25 (2) FOR THE PURPOSES OF THIS SECTION:

26 (a) "INSURANCE" HAS THE SAME MEANING AS SET FORTH IN  
27 SECTION 10-1-102, C.R.S.

1 (b) "INSURER" HAS THE SAME MEANING AS SET FORTH IN SECTION  
2 10-1-102, C.R.S.

3 (c) "INSURANCE POLICY" MEANS A CONTRACT OF INSURANCE.

4 (3) IN INTERPRETING AN INSURANCE POLICY ISSUED TO A  
5 CONSTRUCTION PROFESSIONAL, A COURT SHALL PRESUME THAT:

6 (a) COMPLIANCE WITH A CONSTRUCTION PROFESSIONAL'S  
7 OBJECTIVE, REASONABLE EXPECTATIONS IS INTENDED;

8 (b) THE ENTIRE POLICY IS TO BE EFFECTIVE AND IS INTENDED TO BE  
9 READ HARMONIOUSLY AS A WHOLE;

10 (c) A JUST AND REASONABLE RESULT IS INTENDED;

11 (d) AMBIGUITY OR UNCERTAINTY IN THE INTERPRETATION OF A  
12 POLICY IS TO BE CONSTRUED IN FAVOR OF COVERAGE;

13 (e) AN INTERPRETATION THAT RENDERS A COVERAGE PROVISION  
14 ILLUSORY IS NOT INTENDED; AND

15 (f) THE WORK OF A CONSTRUCTION PROFESSIONAL THAT RESULTS  
16 IN PROPERTY DAMAGE, INCLUDING DAMAGE TO THE WORK ITSELF, OTHER  
17 WORK, OR PROPERTY, IS AN ACCIDENT UNLESS THE PROPERTY DAMAGE IS  
18 INTENDED AND EXPECTED FROM THE STANDPOINT OF THE INSURED.

19 (4) (a) IN CONSTRUING AN INSURANCE POLICY TO MEET A  
20 CONSTRUCTION PROFESSIONAL'S OBJECTIVE, REASONABLE EXPECTATIONS,  
21 THE COURT SHALL CONSIDER THE FOLLOWING:

22 (I) THE OBJECT SOUGHT TO BE OBTAINED BY THE CONSTRUCTION  
23 PROFESSIONAL IN THE PURCHASE OF THE INSURANCE POLICY; AND

24 (II) WHETHER A CONSTRUCTION DEFECT HAS RESULTED, DIRECTLY  
25 OR INDIRECTLY, IN BODILY INJURY, PROPERTY DAMAGE, OR LOSS OF THE  
26 USE OF PROPERTY.

27 (b) IN CONSTRUING AN INSURANCE POLICY TO MEET A

1 CONSTRUCTION PROFESSIONAL'S OBJECTIVE, REASONABLE EXPECTATIONS,  
2 A COURT MAY CONSIDER AND GIVE WEIGHT TO THE FOLLOWING:

3 (I) ANY WRITING GENERATED OR RELIED UPON BY THE INSURER OR  
4 ITS PARENT OR SUBSIDIARY COMPANY, AND ANY WRITING GENERATED BY  
5 AN INSURANCE RATING OR POLICY DRAFTING ORGANIZATION EXCEPT  
6 WRITINGS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE, SUCH AS THE  
7 INSURANCE SERVICES OFFICE, INC., OR ITS PREDECESSOR OR SUCCESSOR  
8 ORGANIZATION, THAT PERTAINS TO THE POLICY PROVISION IN DISPUTE;  
9 EXCEPT THAT THE WRITING SHALL NOT BE USED TO RESTRICT, LIMIT,  
10 EXCLUDE, OR CONDITION COVERAGE OR THE OBLIGATION OF THE INSURER  
11 BEYOND THAT WHICH IS REASONABLY INFERRED FROM THE WORDS USED  
12 IN THE INSURANCE CONTRACT; AND

13 (II) WRITINGS BY THE INSURER OR ITS PARENT OR SUBSIDIARY  
14 COMPANY CONCERNING COVERAGE.

15 (5) IF AN INSURANCE POLICY PROVISION THAT APPEARS TO GRANT  
16 OR RESTORE COVERAGE CONFLICTS WITH AN INSURANCE POLICY  
17 PROVISION THAT APPEARS TO EXCLUDE OR LIMIT COVERAGE, THE COURT  
18 SHALL CONSTRUE THE INSURANCE POLICY TO FAVOR COVERAGE IF  
19 REASONABLY AND OBJECTIVELY POSSIBLE.

20 (6) IF AN INSURER DISCLAIMS OR LIMITS COVERAGE UNDER AN  
21 INSURANCE POLICY ISSUED TO A CONSTRUCTION PROFESSIONAL, THE  
22 INSURER SHALL BEAR THE BURDEN OF PROVING BY A PREPONDERANCE OF  
23 THE EVIDENCE THAT:

24 (a) ANY POLICY'S LIMITATION, EXCLUSION, OR CONDITION IN THE  
25 INSURANCE POLICY BARS OR LIMITS COVERAGE FOR THE INSURED'S LEGAL  
26 LIABILITY IN AN ACTION OR NOTICE OF CLAIM CONCERNING A  
27 CONSTRUCTION DEFECT; AND

1 (b) ANY EXCEPTION TO THE LIMITATION, EXCLUSION, OR  
2 CONDITION IN THE INSURANCE POLICY DOES NOT RESTORE COVERAGE  
3 UNDER THE POLICY.

4 (7) (a) AN INSURER'S DUTY TO DEFEND A CONSTRUCTION  
5 PROFESSIONAL OR OTHER INSURED UNDER A LIABILITY INSURANCE POLICY  
6 ISSUED TO A CONSTRUCTION PROFESSIONAL SHALL BE TRIGGERED:

7 (I) BY A POTENTIALLY COVERED LIABILITY DESCRIBED IN THE  
8 NOTICE OF CLAIM MADE PURSUANT TO SECTION 13-20-803.5; OR

9 (II) BY A POTENTIALLY COVERED LIABILITY DESCRIBED IN THE  
10 COMPLAINT, CROSS -CLAIM, COUNTERCLAIM, OR THIRD-PARTY CLAIM FILED  
11 IN AN ACTION AGAINST THE CONSTRUCTION PROFESSIONAL CONCERNING  
12 A CONSTRUCTION DEFECT.

13 (b) AN INSURER SHALL NOT DENY ITS DEFENSE OF AN INSURED  
14 CONSTRUCTION PROFESSIONAL UNLESS AUTHORIZED BY LAW. AN INSURER  
15 SHALL NOT WITHDRAW ITS DEFENSE OF AN INSURED CONSTRUCTION  
16 PROFESSIONAL UNLESS AUTHORIZED BY LAW AND UNLESS THE INSURER  
17 HAS RESERVED THE RIGHT IN WRITING WHEN ACCEPTING THE DEFENSE  
18 OBLIGATION.

19 **SECTION 2.** Part 1 of article 4 of title 10, Colorado Revised  
20 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
21 read:

22 **10-4-110.4. Exclusion - claims involving loss in progress not**  
23 **known to insured.** (1) FOR PURPOSES OF THIS SECTION, "ACTUAL  
24 KNOWLEDGE" MEANS THE ACTUAL KNOWLEDGE OF ONLY:

25 (a) A CORPORATE OFFICER, LIMITED LIABILITY COMPANY  
26 MANAGER, PRINCIPAL, PARTNER, OR OWNER OF THE INSURED  
27 CONSTRUCTION PROFESSIONAL; OR

1 (b) A PERSON RESPONSIBLE FOR INSURANCE MATTERS ON BEHALF  
2 OF THE INSURED CONSTRUCTION PROFESSIONAL.

3 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, AN  
4 INSURER SHALL NOT ISSUE A LIABILITY INSURANCE POLICY TO A  
5 CONSTRUCTION PROFESSIONAL THAT INCLUDES A PROVISION THAT  
6 EXCLUDES OR LIMITS COVERAGE UNDER THE POLICY FOR ONE OR MORE  
7 CLAIMS ARISING FROM BODILY INJURY, PROPERTY DAMAGE, ADVERTISING  
8 INJURY, OR PERSONAL INJURY THAT OCCURRED BEFORE THE INCEPTION  
9 DATE OF THE POLICY AND IS OTHERWISE AFFORDED COVERAGE BY THE  
10 POLICY.

11 (3) AN INSURER SHALL NOT ISSUE A LIABILITY INSURANCE POLICY  
12 TO A CONSTRUCTION PROFESSIONAL THAT EXCLUDES OR LIMITS COVERAGE  
13 UNDER THE POLICY FOR ONE OR MORE CLAIMS ARISING FROM BODILY  
14 INJURY, PROPERTY DAMAGE, ADVERTISING INJURY, OR PERSONAL INJURY  
15 THAT OCCURRED BEFORE THE INCEPTION DATE OF THE POLICY UNLESS THE  
16 EXCLUSION OR LIMITATION APPLIES TO THE FOLLOWING:

17 (a) THE INSURED HAD ACTUAL KNOWLEDGE BEFORE THE  
18 INCEPTION DATE OF THE POLICY OF THE MANIFESTATION OF THE BODILY  
19 INJURY, PROPERTY DAMAGE, ADVERTISING INJURY, OR PERSONAL INJURY;

20 (b) THE INSURED HAD ACTUAL KNOWLEDGE BEFORE THE  
21 INCEPTION DATE OF THE POLICY OF THE REASONABLE LIKELIHOOD THAT  
22 THE INSURED HAS A LEGAL OBLIGATION TO PAY DAMAGES TO ANOTHER  
23 PERSON BECAUSE OF A LOSS ARISING OUT OF THE BODILY INJURY,  
24 PROPERTY DAMAGE, ADVERTISING INJURY, OR PERSONAL INJURY; AND

25 (c) THE INSURED KNOWINGLY FAILED TO DISCLOSE KNOWLEDGE  
26 DESCRIBED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (1) IN  
27 RESPONSE TO THE INSURER'S WRITTEN REQUEST FOR THE INFORMATION

1 BEFORE THE INSURER ISSUED THE POLICY.

2 (4) IN AN ACTION ARISING OUT OF AN INSURANCE POLICY  
3 PROVISION DESCRIBED IN THIS SECTION, THE INSURER SHALL BEAR THE  
4 BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE:

5 (a) THAT THE INSURANCE POLICY PROVISION IS NOT SUBJECT TO  
6 SUBSECTION (2) OF THIS SECTION; AND

7 (b) THE MATERIAL FACTS DESCRIBED BY PARAGRAPHS (a) TO (c)  
8 OF SUBSECTION (3) OF THIS SECTION.

9 (5) ANY PROVISION IN AN INSURANCE POLICY ISSUED IN VIOLATION  
10 OF THIS SECTION IS VOID AND UNENFORCEABLE AS AGAINST PUBLIC  
11 POLICY. A COURT SHALL CONSTRUE AN INSURANCE POLICY CONTAINING  
12 A PROVISION THAT IS UNENFORCEABLE UNDER THIS SECTION AS IF THE  
13 PROVISION WAS NOT A PART OF THE POLICY WHEN THE POLICY WAS ISSUED.

14 (6) THIS SECTION APPLIES ONLY TO INSURANCE POLICIES THAT  
15 COVER THE WORK OF A CONSTRUCTION PROFESSIONAL.

16 **SECTION 3. Applicability.** This act applies to all insurance  
17 policies currently in existence or issued on or after the effective date of  
18 this act.

19 **SECTION 4. Safety clause.** The general assembly hereby finds,  
20 determines, and declares that this act is necessary for the immediate  
21 preservation of the public peace, health, and safety.