

# Residential Construction Coverage Issues Experience



K&L Gates has significant experience helping homebuilders, developers, landowners, and product manufacturers protect themselves from risks that arise from residential home construction projects. We have counseled these parties on the front side regarding procuring general liability and umbrella/excess insurance coverage and identifying and evaluating the important terms, conditions, and exclusions in these policies. K&L Gates also has helped draft contractual provisions designed to transfer risk, by way of indemnification and insurance, in accordance with the parties' intentions and in

compliance with state laws. On the claim side, we have successfully handled numerous litigated and non-litigated matters seeking insurance coverage for residential construction-related bodily injury and property damage claims. Our involvement has ranged from counseling clients informally on their carriers' coverage positions, to noticing claims and guiding the claims process, to responding to and challenging reservation of rights and denial letters, to litigating fully cases where insurers have wrongfully denied coverage and resisted our pre-litigation resolution efforts. K&L Gates has handled cases seeking insurance coverage for liabilities arising from alleged serious personal injury to construction workers during construction and to homeowners after closing. We further have handled cases seeking insurance coverage for liabilities arising from allegedly defective building products and alleged construction defects, including, but not limited to, deficiencies in roofing, siding, framing, flashing, plumbing, grading, drainage, decking, window installation, insulating, and waterproofing. We have handled claims under both first-party property/builder's risk policies and third-party liability policies, with extensive experience securing coverage for policyholders named as additional insureds on other entities' liability insurance policies.

Representative recent engagements include:

- Representing developer of New York City residential high rise in connection with seeking insurance coverage under its commercial general liability insurance policy, and as an additional insured under its subcontractors' commercial general liability policies, for claims by adjacent buildings for alleged property damage caused during construction of client's building.
- Representation of realty trust in competing declaratory judgment actions regarding insurance coverage potentially available to pay for property damage to realty trust's apartment complex.
- Representing condominium developer in pursuit of insurance coverage under OCIP for a lawsuit by a condominium association alleging property damage resulting from purported construction defects.
- Revising contractual indemnification and insurance provisions in a national residential homebuilder's standard construction contract to better position the homebuilder to enforce indemnification requirements and to secure insurance coverage for claims arising from

subcontractors' work as an additional insured under the subcontractors' insurance policies. We helped the client adopt state-specific contracts tailored to each jurisdiction based on its anti-indemnification statute and case law.

- Recovery of defense costs, indemnity coverage in place, and legal fees expended in coverage action for a residential homebuilder as an additional insured on a subcontractor's general liability insurance policy for a serious personal injury action brought by the subcontractor's employee.
- Securing, without litigation, a complete defense by counsel of choice for a residential homebuilder as an additional insured on a subcontractor's general liability insurance policy for serious personal injury action brought by a sub-subcontractor's employee.
- Arranging defense by independent counsel of a policyholder's choosing, instead of carrier-appointed panel defense counsel, in matters where insurers have reserved rights and state law establishes right to independent counsel.
- Representation of a general contractor in litigation seeking coverage from its general liability insurer for a lawsuit by a condominium homeowner's association alleging progressive property damage caused by various construction defects.
- Representation of a landowner in litigation seeking coverage for the landowner as an additional insured on a general contractor's liability policy for lawsuits by three workers allegedly injured in a construction accident.
- Recovery of defense costs and settlement payment from a general contractor's general liability insurer for a lawsuit alleging property damage caused by various construction defects over a number of years.
- Arranging a defense by independent counsel of a homebuilder's choice under subcontractor's general liability insurance policy and complete settlement of underlying case by the subcontractor's carrier, without contribution from homebuilder, on grounds that construction contract between homebuilder and subcontractor qualified as an "insured contract" under subcontractor's policy.
- Securing, without litigation, defense of a developer from its general liability insurer in separate litigations alleging multimillion-dollar damages arising from various construction defects in condominiums.
- Helping homebuilder secure defense as an additional insured in numerous cases under its subcontractors' general liability insurance policies.