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Construction-Defect Trends Vary by Jurisdiction, but They All Point to More Expensive and Creative Claims, *CLM News, ft. Joseph Miele*

Joseph Miele, partner at the Kaufman Dolowich & Voluck Florida office, was featured in an article by Phil Gusman published in the latest CLM Newsletter - Ask The Expert series.

Q: What is the most impactful construction-defect coverage trend you're seeing, and how is it affecting the construction-insurance landscape overall?

A: Current trends vary by jurisdiction. But, there are two predominate trends in construction claims. Policyholders are routinely seeking "rip and tear" costs to secure coverage for property damage that would not otherwise be covered. For example, a balcony was defectively constructed such that water intrusion damaged an adjacent garage. Typically, the garage damage would be a covered loss but not the "work" of the defective balcony. If it is necessary to remove and replace the balcony to make the repairs to the garage, those costs are typically found to be covered.

The second trend is creating coverage for costs to prevent damage from occurring or to stop damage that has already begun to occur. For example, a contractor defectively installs windows in an office building. Water intrusion damages interior carpeting and drywall. Typically, the damaged carpeting and drywall are covered costs but the window repair costs aren't. However, some courts are finding coverage for the costs to repair the windows under the theory that it must be done to prevent further covered damage. The difficulty with this argument is that, unlike the balcony/garage example, it is not necessary to repair the windows to effectuate repairs of the already damaged carpet and drywall.

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