

## Construction Defects

Whether the matter at issue involves a large loss construction-related subrogation claim – such as a catastrophic condominium loss – or a residential construction loss, our lawyers have the experience to assist you with handling your complex claim. Our subrogation team works with you to promptly investigate the loss and identify possible targets no matter whether the loss at issue results from a fire, water loss, collapse, the removal of lateral support or an equipment failure or an explosion.

As part of our subrogation investigation, we work with a nationwide panel of experts and analyze possible defenses. In construction cases, where there are frequently multiple tiers of contractors, the parties often use American Institute of Architects (AIA) contracts that expressly address subrogation claims. Our lawyers routinely analyze these clauses and, consequently, they understand the nuances of these form contracts' terms and can determine whether the applicable jurisdiction applies these clauses to, for example, post-construction losses or losses to non-work or adjacent property. We are proud to have been involved in one of the leading cases addressing the scope of an AIA subrogation waiver clause (*John L. Mattingly Constr. Co. v. Hartford Underwriters Ins. Co.*, 999 A.2d 1066 (Md. 2010)), where the court, agreeing with our position, found that the phrase “the Work” in the AIA contract clause at issue was ambiguous and, thus, the defendant was not entitled to summary judgment.

In addition to having experience analyzing waiver of subrogation clauses, our lawyers have experience with, among other things, the following:

- arguments based on the insurer being a mere volunteer;
- defense contentions that equitable principles apply to conventional subrogation claims and, thus, the insured should be made whole before the insurer;
- disputes based on the economic loss doctrine;
- arguments contending that a lawsuit should be dismissed in favor of arbitration;
- determining whether a waiver of subrogation or other clause is unenforceable as against public policy;
- analyzing whether the applicable jurisdiction's Right to Repair Act, Residential Construction Liability Act or similar statute impacts the construction defect claim at issue;
- evaluating whether, in addition to contractual claims, an insurer can pursue claims based on state consumer protection or Deceptive Trade Practices Act laws; and

### PRACTICE CONTACT

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### RELATED PRACTICES

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Self-Insured Retention  
Subrogation  
Transit/Cargo  
Water Loss  
Workers' Compensation Subrogation

- determining how a state's statute of repose impacts the claim and whether, in cases involving multiple contractors, there are different accrual dates.

Whether your case involves a waiver of subrogation clause, the economic loss doctrine or another construction-related issue, you can be sure that White and Williams stays informed on construction-related developments taking place around the nation. In addition to keeping its lawyers informed on these issues, our subrogation department frequently provides updates regarding construction-related trends and cases in its blog, Subrogation Strategist, which we hope that you follow.

## REPRESENTATIVE MATTERS

Settled a case against a contractor - who hired a subcontractor and did roof replacement work at a school, work that led to a leak and caused damage to the school's auditorium - for \$800,000

Litigated and secured seven-figure settlement in a case against a contractor hired to install a ceiling, including securing partial summary judgment against the contractor on the issue of liability

Pursued a plumbing contractor to recover damages in a case involving a coupling failure and the breach of a steam pipe, which resulted in a settlement in the mid six-figures

Litigated a \$2 million subrogation claim arising from collapse of television station transmission tower in Pennsylvania

Litigated a \$2 million structural collapse case at a hydroelectric plant in New York involving highly specialized construction design and implementation issues

Litigated a \$1.9 million subrogation claim arising from roof failure in Delaware

Obtained a \$1.45 million recovery from a plumbing contractor for a water loss occurring at an apartment complex in Pittsburgh, PA

Obtained a recovery in excess of \$1 million for the insurers of a condominium association and multiple condominium unit owners from a general contractor and subcontractor in a case involving a sprinkler discharge in Boston, MA

Litigated a \$1 million subrogation claim arising from partial roof collapse in New Jersey

Litigated a construction defect, roof collapse case involving multiple parties, waiver of subrogation clauses and arbitration provisions

Litigated subrogation claims involving the defective construction of homes, condominium buildings, and commercial buildings, as well as the defective construction of plumbing systems, fireplaces/chimneys and boats

Litigated subrogation claims involving improper construction management and claims involving defective building envelope construction

Litigated a \$300,000 subrogation claim involving a partial building collapse in New Jersey

Recovered in excess of \$300,000 from a product manufacturer where a defective hospital refrigeration unit resulted in the loss of \$350,000 worth of chemotherapy drugs