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I. MECHANICS' LIEN BASICS

Mechanics' liens in are statutory, and courts construe the right to mechanics' liens strictly.[1] Once the right is established, however, courts liberally construe lien statutes in favor of mechanics and materialmen.[2]

A. Requirements

Any person performing labor or furnishing material used in constructing, altering, improving, adding to, or repairing any structure or improvement upon land is entitled to file a mechanics' lien.[3] This includes general contractors, subcontractors and design firms.[4] Contracts between the owner and contractor shall be in writing when the amount to be paid thereunder exceeds five hundred dollars, and shall be subscribed by the parties thereto.[5] The only parties without lien rights are second-tier suppliers.[6]

Labor and materials of those entitled to file a mechanics' lien are lienable.[7] Tools are lienable if they are consumed (for example, sanding belts or saw blades).[8] Services performed by a superintendent are lienable.[9] Labor and materials for sidewalks, curbs, and gutters are lienable.[10] Labor performed and materials used off-site, such as fabricated steel, can likewise be lienable.[11] Fixtures are also lienable.[12] Work done by a lien claimant to correct his or her own errors is not lienable.[13] Attorneys' fees are not lienable.[14]

B. Enforcement and Foreclosure

The steps for perfecting a mechanics' lien are in C.R.S. §§ 38-22-109 and 110. A claimant must preserve the lien by serving the owner and general contractor a notice of intent to file at least ten days before recording a lien statement.[15] The sworn lien statement must be recorded after the ten-day waiting period, and include an affidavit of service.[16]

Day laborers must file lien statements after their last work and within two months of completing improvements.[17] All other claimants must file no later than four months after the day on which the last labor is performed or the last materials are furnished.[18]

A foreclosure lawsuit must start within six months after the claimant completes improvements or the date of project completion, whichever is later.[19] When all work upon a project has been abandoned for three months, completion is deemed to have occurred.[20] If construction continues more than a year after recording the statement of lien, a claimant must file an affidavit with the Clerk and Recorder's office within thirty days after the first anniversary date of recording and each year thereafter until construction is completed or foreclosure has started.[21]

Once a judgment enters in a foreclosure action, the court will order the sale of the property to satisfy all liens and costs of suit.[22] After the sale, the highest bidder is issued a certificate of purchase.[23]

C. Ability to Waive Lien Rights

Agreements to waive are not binding on third parties.[24] Agreements waiving lien rights must include a statement that all debts owed to any third party by the person waiving have been or will be timely paid.[25]

II. PUBLIC PROJECT CLAIMS

A. State and Local Public Work

Contractors who are awarded work of more than fifty thousand dollars for a public works project must secure a payment bond ensuring prompt payments to all persons supplying or furnishing labor, materials, machinery, tools or equipment used or performed in work provided for in such contract, and that the contractor will indemnify and hold harmless the public entity for any such payments.[26] Contractors awarded local contracts for more than fifty thousand dollars must provide a performance bond for not less than one-half the total amount payable.[27] The same requirement applies to state projects when a contractor in Colorado is awarded a contract for more than one hundred fifty thousand dollars.

1. Notices and Enforcement

Actions on payment and performance bonds shall be brought within six months after the completion of the work, although parties can agree to a longer period.[28]

B. Claims to Public Funds

1. Notices and Enforcement

A supplier to a contractor or subcontractor on a public works project whose claim has not been paid, at any time up to and including the time of final settlement for the work contracted to be done, may file a verified statement of claim with the public entity.[29] The public entity must

withhold payment to the contractor in sufficient funds, but these funds do not need to be withheld longer than ninety days following the date for final settlement as published, unless an action is commenced within that time to enforce the unpaid claim and a notice of *lis pendens* is filed with the contracting body.[30]

III. STATUTES OF LIMITATION AND REPOSE

A. Statute of Limitations

The statute of limitations for claims against construction and design professionals is two years from the date of accrual.[31] A claim accrues on the date that the claimant or a predecessor-in-interest "discover[s] or in the exercise of reasonable diligence should have discovered the physical manifestations of a defect … which ultimately causes the injury."[32] The two-year statute of limitations may not apply to some warranty and contract claims if they are not rooted in a defect.[33] In those situations, a three-year period may apply.[34]

1. Tolling

The running of the statute of limitations can be suspended. If a proper notice of claim is sent before a lawsuit, limitations does not expire until sixty days after the notice-of-claim process required by the Colorado Construction Defect Action Reform Act ("CDARA").[35] Colorado courts previously accepted tolling during the time a party attempts to make repairs.[36] However, the Colorado Supreme Court in *Smith v. Executive Custom Homes, Inc*., 230 P. 3d 1186 (Colo. 2010) rejected "the repair doctrine" because the CDARA process already provides for tolling.[37] Parties may also agree in writing to toll the statute of limitations.

2. Reimbursement Claims

Reimbursement claims may be brought against a third party (such as a subcontractor) within ninety days of settlement or entry of judgment on the upstream claims.[38] Reimbursement claims may also be asserted before settlement or judgment of the upstream claims.[39]

B. Statute of Repose

The repose period for claims against construction and design professionals expires six to eight years from the date of substantial completion.[40] A cause of action cannot be brought more than six years after the date of substantial completion, unless the physical manifestation of a defect is discovered or should have been discovered within the fifth or sixth year, in which event the repose period is extended for another two years.[41]

The statute of repose is also subject to tolling for the CDARA notice-of-claim process.[42] Moreover, the statute of repose is tolled by the ninety-day statute of limitations for reimbursement claims. In other words, the statute of repose does not bar reimbursement claims against third parties if brought within 90 days from the date of settlement or judgment of the principal claims.[43] This can lead to a very long, effectively unlimited, repose period applying to reimbursement and indemnity actions.

IV. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

CDARA establishes a mandatory notice-of-claim process affording the construction or design professional a right of remedy before litigation. A claimant must send a written notice describing the defect "in reasonable detail . . . and any damages claimed to have been caused by the defect."[44] The respondent then has thirty days to inspect the property, after which they may offer to repair or propose a monetary settlement.[45] The claimant can accept or reject the repair offer or money, but unless a claimant accepts in writing within fifteen days, the offer is deemed rejected.[46]

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues

Commercial general liability ("CGL") policies provide indemnification when three threshold inquiries are answered: (1) the claim arises within the policy definitions, (2) coverage is triggered by the type of damage and the policy's effective dates, and (3) the basis of the claim is not specifically excluded. There remains a split of authority on whether property damage caused by a construction defect is an "occurrence." Generally, damage for the insured's own faulty work is excluded under the "business risk doctrine." However, if property damage to third parties results from faulty workmanship, CGL policies will often cover the loss. Colorado appellate courts have held sometimes that construction defects are covered "occurrences."[47] The wide breadth of these cases and their contradictory conclusions demonstrate that the particular facts of each case should be carefully examined.

In addition to qualifying as an "occurrence," damage from poor workmanship must also be "property damage." "Property damage" is "physical injury to tangible property, including all resulting loss of use thereof, or loss of use of tangible property which has not been physically injured." Only third-party property damage is intended to be covered. Various exclusions preclude the insured's own work from being considered covered "property damage," and the insured's own property is always excluded. Moreover, the definition of "property damage" does not include purely economic losses.[48]

B. Trigger of Coverage

Coverage is triggered when the claimant sustains actual damage, and not when the act or omission that caused such damage was committed.[49] The Supreme Court has held that a third party, other than the insured, must sustain actual damage within the policy period in order to recover under a CGL policy defining "occurrence" as an "accident."[50] However, the Court also ruled that plaintiffs "must have some legally recognizable injury to their interests during the policy period in order to recover."[51] Recent decisions make it clear that a third party who did not own the property during the policy period may have a viable claim as long as some property damage occurred during the policy period.[52]

Some cases involve continuous trigger over many policy periods. For example, gradual roof corrosion leading to a total collapse may continue through several policy periods.[53] Indemnity

for settlements or judgments in these types of cases is allocated according to time-on-risk and degree of risk assumed.[54]

Numerous exclusions can preclude coverage for claims arising out of construction defects. These include: the contractual liability exclusion; the owned property exclusion; the "your work" exclusions; the "your product" exclusion; the products-completed operations exclusion; the impaired property exclusion; the recall exclusion; and the alienated premises exclusion. Colorado courts construe these exclusions narrowly and have found coverage for construction defects in a wide range of circumstances.[55]

C. Allocation Among Insurers

Damages must be allocated according to time-on-risk and degree of risk assumed.[56] Where damages are not reasonably divisible and cannot be precisely attributed to successive policies, damages should be divided by the total number of years to yield sums fairly attributable to each year.[57]

VI. CONTRACTUAL INDEMNIFICATION

A. Anti-Indemnification Statute

Colorado does not allow contractual provisions designed to protect parties from their own negligence in construction.[58] Stated another way, Colorado law voids any provision in a construction agreement that requires a person to indemnify, insure or defend another person against liability for damage arising out of injury to persons or damage to property caused by the negligence or fault of the indemnitee or any third party under the indemnitee's control.[59]

The anti-indemnification statute includes a number of qualifications.[60] For example, it does not affect any provision that requires a person to indemnify and insure another person for an amount which is no greater than the "degree or percentage of negligence or fault attributable to the indemnitor or the indemnitor's agents, representatives, subcontractors or suppliers."[61] Nor does it affect the doctrine of *respondeat superior*, vicarious liability or other nondelegable duties, or impact liability for the negligence of an at-fault party.[62] It also does not affect the exclusive remedy of the workers' compensation statute.[63]

The anti-indemnification statute does not void provisions requiring the provision of additional insured coverage to the extent it provides "coverage to the indemnitee for liability due to the acts or omissions of the indemnitor."[64] However, any provision that requires the purchase of additional insured coverage for damages not caused by the fault of the party providing the insurance is void.[65]

B. Common Law Indemnification

Common law indemnity was largely abolished in Colorado by the enactment of the Uniform Contribution Among Tortfeasors Act.[66] However, the Court left open the possibility "in situations where the party seeking indemnity is vicariously liable or is without fault."[67] A duty to

indemnify only arises when there is a pre-existing legal relationship.[68] When there is a right to indemnification, a contribution claim is barred.[69]

C. Statute Of Limitations and Repose

In construction cases, indemnitees are not *required* to commence a claim for indemnification or contribution until the claims against the primary defendants are "settled" or "final judgment is entered."[70] Thereafter, indemnitees have ninety days.[71] The Supreme Court has clarified, however, that indemnitees need not wait.[72] This ninety-day statute does not apply to subrogation claims by insurance companies.[73]

VII. CONTINGENT PAYMENT AGREEMENTS

A. Enforceability

Colorado recognizes the validity of pay-*if*-paid provisions in construction contracts. However, such provisions must unequivocally express the party's intent to establish a condition precedent to payment. Alternatively, a pay-*when*-paid clause is an unconditional promise by the general contractor to pay a subcontractor even if the owner does not pay or becomes insolvent.[74]

VIII. SCOPE OF DAMAGE RECOVERY

A. Personal Injury Damages vs. Construction Defect Damages

CDARA places limits on the categories and amounts of recoverable damages.[75] Claimants in Colorado can recover no more than "actual damages." Actual damages are *the lesser of:*

1) the fair market value of the property without the alleged defect; or,
2) the reasonable cost to repair the alleged defect; or
3) the replacement cost of the property.

together with:

4) relocation costs, if any;
5) economic costs related to loss of use (residential property only);
6) interest;
7) cost of suit; and,
8) attorney's fees (but only if provided by statute or contract).[76]

Under this definition if the fair market value of the property without the defect is $500,000, the cost to replace the property is $250,000, and the cost to repair is $750,000, the claimant's "actual damages" in a construction defect lawsuit would be limited to $250,000.

CDARA's damages caps do not apply when the claim results in "bodily injury or wrongful death," or a "risk of bodily injury or death to . . . the occupants of the residential real property."[77] CDARA also has noneconomic damages caps which apply to "action[s] asserting personal injury or bodily injury as a result of a construction defect in which damages for noneconomic loss or injury or derivative noneconomic loss or injury may be awarded."[78]

B. Other Damages and Attorney's Fees

In most instances, a CDARA claimant will not be able to recover more than "actual damages." However, CDARA contains an exception to the "actual damages" limit if two conditions are met. First, the claimant must prove a violation of the Colorado Consumer Protection Act ("CCPA"). Second, the value of the construction professional's offer to remedy or last offer of settlement must be less than eighty-five percent of the amount later awarded as actual damages.[79] In addition, if in violating the CCPA the construction professional acted fraudulently, willfully, knowingly, or intentionally, the claimant may be awarded treble damages and attorney's fees, which are subject to a combined cap of $250,000.[80]

A CCPA plaintiff does not have to incur out-of-pocket losses to have suffered an actual injury.[81] Because the statute shifts fees and costs to the violator, an award of fees is more akin to costs than damages.[82] Also, if the construction professional does not substantially comply with the terms of an accepted offer to repair or settle, or if the construction professional fails to respond to a notice of claim and the claimant later proves a CCPA violation, the construction professional is subject to treble damages.[83]

C. Delay and Disruption Damages

There are other types of construction-related litigation that may not involve defects, such as when delays result. "No damages for delay" clauses are enforceable, but they are to be strictly construed against the owner and numerous exceptions apply.[84] For residential construction, under the Homeowner Protection Act, contractual limitations on rights, remedies, and damages are void as against public policy.[85]

D. Economic Loss Doctrine

The economic loss rule bars tort claims where the duty alleged to have been breached is contractual and the resulting damages are solely economic. Stated another way, "a party suffering economic loss from the breach of an express or implied contractual duty may not assert a tort claim for such a breach absent an independent duty of care under tort law."[86] Independent duties are also owed to homeowners.[87]

F. Interest

Prejudgment interest is a matter of contract and statute. Parties are free to provide for prejudgment interest within their contracts and the only limitation upon such provisions is that they avoid usury.[88] To compute the effective interest rate for the purpose of section 5-12-103, the rate must be calculated by determining the total annual rate that a borrower is subjected to during a given extension of credit. A forbearance must be totaled and annualized. Such includable interest must then be combined with any interest that continued to accrue pursuant to the original loan terms to determine the effective rate of interest, subject to the 45 percent ceiling.[89]

Where parties have not addressed prejudgment interest in their contract, 8% prejudgment interest for repairs may still be recovered.[90] In construction defect actions, claimants can only recover prejudgment interest on repair dollars already spent.[91]

IX. CASE LAW AND LEGISLATION UPDATES

Legislative Updates:

A. C.R.S. § 13-21-111.5 (1.5)

This allows direct claims against an employer or principal who acknowledges vicarious liability for an employee or agent's negligence, reversing the holding in *Ferrer v. Okbamicael*, 390 P.3d 836 (Colo. 2017).

B. C.R.S. § 38-46-101 *et seq.*

This statute creates a cap of 5% on retainages in private contracts.

Case Law Updates:

A. Warembourg v. Excel Electric, Inc.[92]

The Court of Appeals decided *Warembourg v. Excel Electric, Inc.* The case was brought by a flooring subcontractor electrocuted at a construction site against the electrical contractor that installed a temporary electrical box. The Court determined that the case was not a construction defect case, but instead, was governed by the Colorado Premises Liability Act, C.R.S. § 13-21-115, and therefore, the general cap on noneconomic damages applied.[93] Further, the court stated that because the electrical contractor intended to remove the box at the end of construction, it was not an "improvement to real property,"[94] thus the CDARA noneconomic damages cap did not apply.

B. *LB Rose Ranch, LLC v. Hansen Constr., Inc.*[95]

The Court of Appeals held that a release received by defendant from plaintiffs did not discharge Rose's contribution liability under C.R.S. § 13-50.5-105(1)(b). The case was initiated by homeowners alleging damages caused by construction and design defects in twenty single-family homes. The arbitrator awarded damages, finding all defendants jointly caused them. Rose, separate from the arbitration, proceeded to a jury trial at which the jury found all defendants jointly and severally liable. In particular, the jury found that Rose "consciously conspired and deliberately pursued with [Hansen and others] a common plan or scheme to engage in conduct that was negligent, that involved a negligent misrepresentation or nondisclosure, or which was a breach of [their] fiduciary duties."

After judgment, Rose settled with plaintiffs and Hansen satisfied the arbitration award won by plaintiffs. Hansen then sought a contribution judgment against Rose for the common liability found by the arbitrator. The district court, applying the jury's findings, concluded that Rose had

to pay Hansen 30% of the joint liability. The law in question was the Uniform Contribution Among Tortfeasors Act, adopted to "permit the equitable apportionment of damages among the tortfeasors responsible for those damages."[96] The contribution act codifies a tortfeasor's right of contribution from another tortfeasor when both become "jointly or severally liable in tort" for the same injury to persons or property.[97] The contribution right "exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share."[98]

"An important aspect of the contribution act is that contribution can be sought from tortfeasors not joined in the prior action."[99] This follows because the phrase "liable in tort" in section 13-50.5-102(1) refers to a party's "exposure to a civil action" and not to the existence of a final judgment in tort.[100] But "[a]ny finding of a degree or percentage of fault or negligence of a nonparty shall not constitute a presumptive or conclusive finding as to such nonparty for the purposes of a prior or subsequent action involving that nonparty."[101] Instead, in the separate action for contribution, the nonparty may relitigate the extent to which it is responsible for the plaintiff's injuries.[102]

The court found that in satisfying the arbitration judgment, Hansen paid all of the common liability it shared with Rose. That payment exceeded Hansen's 18% pro rata share found by the arbitrator and discharged Rose's 30% share found by the jury. Therefore, Hansen was entitled to contribution from Rose. Because a tortfeasor cannot be bound by a fact finder's determination of fault in an action to which the tortfeasor was not a party,[103] Rose could be liable to the homeowners only for the damages found by the jury, and Hansen could be liable only for the damages found by the arbitrator.

C. *In re Franklin Drilling v. Lawrence Construction.*[104]

The Court of Appeals held that mere violations of the trust fund statute were not sufficient by themselves to prove civil theft. While proving that a defendant knowingly obtained, retained, or exercised control over anything of value of another without authorization can be shown by violation of the trust fund statute, a claimant must also prove either intent to deprive the other person permanently of the use or benefit of the thing of value, or that the defendant knowingly used, concealed, or abandoned the thing of value in such manner as to deprive the other person permanently of its use or benefit.

"The 'knowingly uses' element does *not* require that the defendant have a 'conscious objective to deprive another person of the use or benefit of the construction trust funds, but instead requires the [defendant] to be aware that his manner of using the trust funds is practically certain to result in depriving another person of the use or benefit of the funds.'"[105]

A key issue the court of appeals grappled with, is the fact that the trust fund statute does not require segregated accounts, but rather permits funds to be comingled with other funds. Because money is inherently fungible, it may not be obvious when the funds held in trust were misused. In cases where a contractor is insolvent, the trust fund statute can be a valuable weapon for pursuing personal liability against parties responsible for dissipating the funds (typically a principal of the contractor).

D. *Curry v. Zag Built, LLC.*[106]

This case examined the impact of the notice of claim process on the statute of limitations under CDARA. Defendants built a house for the Currys, who then noticed cracks in drywall and sagging doors. In June 2015, the Currys filed a timely complaint. However, they did not serve Zag Built with that complaint until May 2016. The Court of Appeals held that Rule 4(m) does not require an automatic dismissal if the plaintiff does not serve the defendant within 63 days. Rather, the court must provide the plaintiff with: 1) notice that it is contemplating dismissing the case; and 2) an opportunity to show good cause why the court should not dismiss the case.

Zag Built further argued that summary judgment was appropriate because the Currys did not send a notice of claim under CDARA until after the statute of limitations had run. The court of appeals held that: 1) the statute of limitations stops running once a case is commenced by filing a complaint; and 2) CDARA's notice of claim process is not a prerequisite to filing a lawsuit. If a plaintiff files a complaint before completing the notice-of-claim process, the case is stayed until the plaintiff completes the process.

D. *Whiting-Turner Contracting Co. v. Guarantee Company of North America USA.*[107]

In *Whiting-Turner*, the Court of Appeals interpreted conditions precedent in a performance bond. Whiting-Turner required Klempco to furnish a performance bond and Klempco obtained it from GCNA. The bonds specified three conditions precedent that Whiting-Turner would have to satisfy to trigger GCNA's obligations as surety, one of which was to pay the balance of the contract price. The "balance of the contract price" was defined as the total amount payable by Whiting-Turner to Klempco "after all proper adjustments have been made ... reduced by all valid and proper payments made to or on behalf of [Klempco] under the [Subcontract]."

Klempco fell behind and stopped paying its sub-subcontractors, directing Whiting-Turner to assume responsibility for the work. Klempco demobilized and Whiting-Turner requested advice from GCNA, but GCNA did not respond. Later, GCNA did not respond to Whiting-Turner's demands to honor its performance bond. Whiting-Turner then provided GCNA with its calculation of the balance of the contract price, which included deductions for payments to sub-subcontractors, leaving a negative balance.

In the subsequent lawsuit, GCNA asserted that Whiting-Turner failed to comply with the condition precedent by miscalculating the balance of the contract price. The trial court found that Klempco breached the subcontract, Whiting-Turner complied with the condition precedent, and GCNA breached the performance bond. The appeals court then held: 1) no language in the performance bond or the subcontract barred Whiting-Turner from reducing the balance of the contract price by the amount of its post-termination payments to unpaid sub-subcontractors; 2) Whiting-Turner and Klempco agreed to reduce Klempco's payment; and 3) Whiting-Turner correctly subtracted the back charge from the balance of the contract price.

ENDNOTES

[1] C.R.S. §§ 38-22-101 through 133.

[2] *Lindemann v. Belden Consol. Mining & Milling Co.*, 65 P. 403 (Colo. App. 1901); *Richter Plumbing and Heating v. Rademacher*, 729 P.2d 1009 (Colo. App. 1986); *People v. Adams*, 243 P.3d 256, 262 (Colo. 2010).
[3] C.R.S. § 38-22-101.
[4] *Am. Irrigation Co. v. Fadenrecht*, 489 P.2d 1060 (Colo. App. 1971); *3190 Corp. v. Gould*, 431 P.2d 466 (Colo. 1967).
[5] C.R.S. § 38-22-101(3).
[6] *Schneider v. J.W. Metz Lumber Co.*, 715 P.2d 329, 331-333 (Colo. 1986).
[7] C.R.S. § 38-22-101.
[8] C.R.S. § 38-22-101.
[9] *Fisher v. Hanna*, 47 P. 303 (Colo. App. 1896).
[10] C.R.S. § 38-22-101.
[11] *Kobayashi v. Meehleis Steel Co.*, 472 P.2d 724 (Colo. App. 1970).
[12] *See, e.g., Strapp v. Carb-Ice Corp.*, 224 P.2d 935 (Colo. App. 1950); *See Schmidt Constr. Co. v. Fast*, 776 P.2d 1175 (Colo. App. 1989).
[13] *Tabor v. Armstrong*, 12 P. 157 (Colo. 1886).
[14] *Laurence J. Rich & Assocs. v. First Interstate Mortg. Co.*, 807 P.2d 1199 (Colo. App. 1990).
[15] C.R.S. § 38-22-109(3).
[16] *Id*.
[17] C.R.S. § 38-22-109(4).
[18] C.R.S. § 38-22-109(5).
[19] C.R.S. § 38-22-110.
[20] C.R.S. § 38-22-109(7).
[21] C.R.S. § 38-22-109(8)..
[22] C.R.S. § 38-22-114(1).
[23] *See, e.g., Ferguson Enters v. Keybuild Solutions, Inc.*, 275 P.3d 741, 755 (Colo. App. 2011).
[24] C.R.S. § 38-22-119(1).
[25] C.R.S. § 38-22-119(2).
[26] C.R.S. § 38-26-105.
[27] C.R.S. § 38-26-106.
[28] *Montezuma Plumbing & Heating, Inc. v. Housing Auth.,* 651 P.2d 426 (Colo. App. 1982). Criticized by *Pat's Constr. Serv. v. Ins. Co. of the W.,* 141 P.3d 885 (Colo. App. 2005), on the contention regarding whether failure to meet statutory requirements under public works contracts precludes claims under common law. Relies on *General Electric Co. v. Webco Construction Co.,* 164 Colo. 232, 433 P.2d 760 (1967) (holding that the statutory six-month limitation in public works bond actions prevails over the common law limitation).
[29] C.R.S. § 38-26-107(1).
[30] C.R.S. § 38-26-107(2).
[31] C.R.S. §§ 13-80-102, 13-80-104(1)(a).
[32] C.R.S. § 13-80-104(1)(b)(I).; *Smith v. Executive Custom Homes, Inc*., 230 P. 3d 1186, 1189 (Colo. 2010); *United Fire Group v. Powers Electric, Inc*., 240 P. 3d 569, 571-72 (Colo. App. 2010) (accrual of claim begins when physical manifestation of a defect appears).
[33] *Broomfield Senior Living Owner, LLC v. R.G. Brinkmann Co.,* 413 P.3d 219, 226 (Colo. App. 2017) ("CDARA does not govern *all* claims brought against construction professionals. Indeed, the accrual language of § 13-80-104(1)(b) 'was never intended to limit claims for breach of warranties to repair and replace.' Moreover…whether Broomfield's breach of contract claim falls within CDARA and accrues upon the discovery of the physical manifestation of a defect under § 13-80-104(1)(b)(I) or outside of CDARA and accrues upon the discovery of the defect itself under § 13-80-108(6) depends on the nature of the allegations in the complaint.")
[34] C.R.S. §§ 13-80-101(1)(a), 13-80-108(6).
[35] C.R.S. §§ 13-20-803.5, 13-20-805.
[36] *E.g.*, *Curraugh Queensland Mining, Ltd. v. Dresser Industries, Inc*., 55 P. 3d 235, 239-40 (Colo. App. 2002); *Highline Village Associates v. Hersh Cos*., 996 P. 2d 250, 253 (Colo. App. 1999), *aff'd, in part, and rev'd, in part, on other grounds*, *Hersh Cos*. *v. Highline Village Associates*, 30 P. 3d 221 (Colo. 2001).
[37] *Smith*, 230 P. 3d at 1192.
[38] C.R.S. § 13-80-104(b)(II)(B).
[39] *CLPF-Parkridge One, L.P. v. Harwell Investments, Inc.*, 105 P. 3d 658, 664 (Colo. 2005).
[40] C.R.S. § 13-80-104(1)(a).
[41] C.R.S. § 13-80-104(2).

[42] C.R.S. § 13-20-805.
[43] *Goodman v. Heritage Builders, Inc., 390 P.3d 398 (Colo. 2017).*
[44] C.R.S. §§ 13-20-802.5(5), 13-20-803.5(1).
[45] C.R.S. § 13-20-803.5(3).
[46] C.R.S. § 13-20-803.5(4).
[47] *Colard v. Am. Family Mut. Ins. Co.,* 709 P.2d 11 (Colo. App. 1985); *Hoang v. Monterra Homes*, No. 99CV2425 (Jefferson County Dist. Ct., Colo. Nov. 13, 2002); *Hoang v. Assurance Co. of Am.*, 149 P.3d 798 (Colo. 2007).
[48] *See, e.g., Lamar Truck Plaza, Inc. v. Sentry Ins*., 757 P.2d 1143 (Colo. App. 1988), *partially overruled by*, *Hoang*, 149 P.3d 798.
[49] *See Samuelson v. Douhirt*, 529 P.2d 631 (Colo. 1974).
[50] *Browder v. U.S.F. & G.*, 893 P.2d 132 (Colo. 1995), *partially overruled on other grounds*, *Hoang*, 149 P.3d 798.
[51] *Id.*
[52] *Hoang*, 149 P.3d 798; *Travelers Cas. & Sur. Co. v. Village Homes of Colo*.155 P.3d 369 (Colo. 2007)
[53] *Am. Employers Ins. Co. v. Pinkard Constr. Co.,* 806 P.2d 954 (Colo. App. 1990).
[54] *Pub. Serv. Co. v. Wallis & Cos.,* 986 P.2d 924 (Colo. 1999).
[55] *Gerrity Co., Inc. v. CIGNA Prop. Cas. Ins. Co*., 860 P.2d 606 (Colo. App. 1993); *Weger v. United Fire & Cas. Co*., 796 P.2d 72 (Colo. App. 1990); *Hoang*, No. 99CV2425 (Jefferson County Dist. Ct., Colo. Nov. 13, 2002); *Browder v. U.S.F. & G*., 893 P.2d 132 (Colo. 1995); *1700 Lincoln Ltd. v. Denver Marble & Tile Co., Inc*., 741 P.2d 1270 (Colo. App. 1987); *McGowan v. State Farm Fire & Cas. Co.*, 100 P.3d 521 (Colo. App. 2004); *Ohio Cas. Ins. Co. v. Imperial Contractors, Inc.,* 765 P.2d 1060 (Colo. App. 1988); *Hoang,* 149 P.3d 798; *Friedland v. Travelers*, 105 P.3d 639 (Colo. 2005).
[56] *Public Service Company of Colorado v. Wallis and Companies*, 986 P.2d 924, 941 (Colo. 1999).
[57] *Id.*
[58] C.R.S. § 13-21-111.5(6).
[59] C.R.S. § 13-21-111.5(6)(b).
[60] C.R.S. § 13-21-111.5(6)(c)-(f).
[61]C.R.S. § 13-21-111.5(6)(c).
[62]C.R.S. § 13-21-111.5(6)(f)(I), (II).
[63] C.R.S. § 13-21-111.5(6)(f)(III). Further express exceptions include agreements concerning:
- builder's risk insurance (C.R.S. § 13-21-111.5(6)(d)(II));
- property owned or operated by railroad, sanitation district, water district, water and sanitation district, municipal water enterprise, water conservancy district, water conservation district or metropolitan sewage disposal district (C.R.S. § 13-21-111.5(6)(e)(II)(A)); and,
- property leased or rented (C.R.S. § 13-21-111.5(6)(e)(II)(B)).

[64] C.R.S. § 13-21-111.5(6)(d)(I).
[65] C.R.S. § 13-21-111.5(6)(d)(I).
[66] *Brochner v. Western Insurance Co.*, 724 P. 2d 1293, 1298-99 (Colo. 1986).
[67] *Brochner*, 724 P. 2d at 1298, n.6.
[68] *Johnson Realty v. Bender*, 39 P. 3d 1215, 1218 (Colo. App. 2001).
[69] C.R.S. § 13-50.5-102(6).
[70] C.R.S. § 13-80-104(1)(b)(II)(A). The Colorado Court of Appeals has determined that this provision applies to either the resolution of a dispute which results in a final judgment or the settlement of an action or claim of liability which a third-party could or actually did commence against the claimant. *Richmond American Homes of Colorado, Inc. v. Steel Floors, LLC*, 187 P. 3d 1199, 1205 (Colo. App. 2008).
[71] C.R.S. § 13-80-104(1)(b)(II)(B).
[72] *CLPF-Parkridge One, L.P.*, 105 P. 3d at 664-65.
[73] *Fire Insurance Exchange v. Monty's Heating & Air Condition*, 179 P.3d 43 (Colo. App. 2007).
[74] *Main Elec., Ltd v. Printz Servs. Corp*., 980 P.2d 522, 524 (Colo. 1999).
[75] C.R.S. § 13-20-806.
[76] C.R.S. § 13-20-802.5(2).
[77] C.R.S. § 13-20-804(1).
[78] C.R.S. § 13-20-806(4)(a).
[79] C.R.S. § 13-20-806(1).
[80] C.R.S. §§ 6-1-113(2)(a)(III); 6-1-113(2)(b); 6-1-113(2.3); 13-20-806(3).
[81] *Shekarchian v. Maxx Auto Recovery, Inc*., 487 P.3d 1026 (Colo. App. 2019).

[82] *Martinez v. LHM Corp.,* 490 P.3d 708 (Colo. App. 2020).
[83] C.R.S. § 13-20-806(2), (3), (4).
[84] *Tricon Kent Co. v. Lafarge North Am., Inc*., 186 P.3d 155 (Colo. App. 2008).
[85] C.R.S. § 13-20-806(7); *Broomfield Senior Living Owner, LLC v. R.G. Brinkmann Co.,* 413 P.3d 219, 225 (Colo. App. 2017).
[86] *Town of Alma v. AZCO Construction, Inc.,* 10 P.3d 1256, 1264 (Colo. 2000); *Grynberg v. Agri Tech, Inc*., 10 P.3d 1267, 1269 (Colo. 2000).
[87] *SK Peightal Engineers, Ltd. v. Mid Valley Real Solutions V, LLC*, 342 P.3d 868 (Colo. 2015).
[88] C.R.S. § 5-12-103(1).
[89] *Blooming Terrace No. 1, LLC v. KH Blake St.,* 2019 CO 58, 444 P.3d 749.
[90] C.R.S. § 5-12-102.
[91] *Goodyear Tire & Rubber Co. v. Holmes*, 193 P.3d 821, 828-30 (Colo. 2008).
[92] *Warembourg v. Excel Electric, Inc.*, 471 P.3d 1213, 1233 (Colo. App. 2020).
[93] *See* C.R.S. § 13-20-802.
[94] *See* C.R.S. § 13-20-802.5(1).
[95] *LB Rose Ranch, LLC v. Hansen Constr., Inc*., 477 P.3d 739 (Colo. App. 2019).
[96] *Kussman v. City & Cty. of Denver*, 706 P.2d 776, 778 (Colo. 1985).
[97] C.R.S. § 13-50.5-102(1).
[98] C.R.S. § 13-50.5-102(2).
[99] *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton,* 662 P.2d 1056, 1063 (Colo. 1983*)*; *see Graber v. Westaway*, 809 P.2d 1126, 1128 (Colo. App. 1991) (Section 13-50.5-102 "does not prohibit a defendant found liable in tort from subsequently litigating the several liability of other tortfeasors.").
[100] *Frackelton,* 662 P.2d at 1063.
[101] C.R.S. § 13-21-111.5(3)(a).
[102] *See Frackelton*, 662 P.2d at 1063; *see also Watters v. Pelican Int'l, Inc*., 706 F. Supp. 1452, 1456 (D. Colo. 1989) ("Presumably, a non-party may persuade a subsequent jury that in fact she was not liable for plaintiff's injuries.").
[103] *See Frackelton*, 662 P.2d at 1061-63; *see also Patten v. Knutzen*, 646 F. Supp. 427, 430 (D. Colo. 1986); cf. *Ross v. Old Republic Ins. Co*., 134 P.3d 505, 510 (Colo. App. 2006) ("[P]ersons not parties to a judicial proceeding cannot be bound by the court's action therein."), *aff'd in part and rev'd in part on other grounds*, 180 P.3d 427 (Colo. 2008).
[104] *Franklin Drilling & Blasting, Inc. v. Lawrence Constr. Co*., 463 P.3d 883 (Colo. App. 2018).
[105] *Id*. at *P23.
[106] *Curry v. Zag Built LLC*, 433 P.3d 125 (Colo. App. 2018).
[107] *Whiting-Turner Contr. Co. v. Guar. Co. of N. Am.* USA, 440 P.3d 1282 (Colo. App. 2019).