

## **ERRONEOUS GRANTING OF SUMMARY JUDGEMENT FOR INSURER DOES NOT GIVE REASONABLE BASIS TO DENY COVERAGE AS A MATTER OF LAW**

April 14, 2011 | Law Alerts

*Lennar Homes of Ariz., Inc. v. Transamerica Ins. Co.*

Ct. Appeals, Div. One, April 14, 2011

Authored by the [JSH Appellate Team](#)

Lennar oversaw the development of 105 homes called Pinnacle Hill. Soon after homeowners moved in, they began to complain about construction problems. Several homeowners filed suit and others threatened litigation. Lennar tendered the claims to its commercial general liability insurers. Insurers filed a declaratory judgment action on coverage and Lennar counterclaimed. The insurers won summary judgment on the ground that the defects in the homes did not constitute an "occurrence" within the meaning of the policies. The court of appeals reversed, however, holding that the claims were sufficient to allege an "occurrence" under the policies.

About a year after the opinion was issued, the insurers again moved for summary judgment on Lennar's bad faith claim. Their motion rested solely on the proposition that, as a matter of law, the superior court's initial ruling in their favor on the occurrence issue established that the insurers had a reasonable basis for denying coverage. The court rejected the proposition that the prior (erroneous) ruling in the insurer's favor meant the claim was "fairly debatable" as a matter of law. Whether the reasonableness of an insurer's coverage position may be determined as a matter of law depends on the nature of the dispute and other factors, including whether extraneous evidence bears on the meaning of the contested policy language. Here, whether the insurers acted reasonably in challenging Lennar's claims based on the meaning of the word "occurrence" in the policies was a question for the jury to resolve. The trial court's initial ruling might be relevant to that question, but the insurers' subjective beliefs about the coverage positions they took was a question of fact to be determined by the jury.

The court also held that an insurer that objects to coverage may not disregard its normal claims-handling responsibilities while the coverage issue remains unresolved.