

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

RONALD KREGER, SR.,

CIVIL ACTION

VERSUS

NO: 07-575

**GENERAL STEEL CORPORATION, GREGG
LANIER HOWELL, WORLDWIDE
CONCRETE AND STEEL ERECTIONS, L.L.C.**

SECTION: "C" (1)

ORDER AND REASONS

Before the Court is Colorado Casualty's Motion to Reconsider the denial of its Motion for Summary Judgment. (Rec. Doc. 575).

Colorado Casualty's motion repeats the arguments from the original motions. The only new argument is that Revised Second Amended Complaint (Rec. Doc. 473), which was not "in effect" at the time the last motion was briefed, dropped the specific claims for negligence. However, the Revised Second Amended Complaint includes several factual allegations that sound in negligence. In *Cyprus Amax Minerals Co. v. Lexington Ins. Co.*, 74 P.3d 294 (Colo. 2003), the Colorado Supreme Court made clear that the duty to defend applies when "the facts or claims alleged may arguably fall within the policy." *Id.* at 299. Indeed, in a later paragraph the court itself emphasized that if "*any facts or claims . . . might fall within the ambit of the policy, the insurer must tender a defense.*" *Id.* at 301 (emphasis in original).

Colorado Casualty also assumes that lack of sleep is not a bodily injury. Sleep deprivation is arguably physical, and based on the case law set out in the previous Order and Reasons (Rec. Doc. 568), it is a close enough call to trigger the duty to defend.

Accordingly,

IT IS ORDERED that Colorado Casualty's motion for reconsideration (Rec. Doc. 575) is DENIED. Oral argument on the motion, currently scheduled for November 18, 2009, is CANCELLED.

New Orleans, Louisiana, this 16th day of November, 2009.


HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE