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*Practice Group(s):*  
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## Connecticut Supreme Court Determines Damage Caused by Unintended Faulty Work Constitutes Property Damage Resulting from an “Occurrence” Under Standard Commercial General Liability Policy

**By Frederic J. Giordano and Ashley L. Turner**

Jurisdictions are split over whether defective construction can give rise to an occurrence under commercial general liability insurance policies. Some jurisdictions have held that faulty workmanship cannot constitute the basis for an occurrence because it is not the type of risk intended to be insured by commercial general liability policies or lacks the fortuity necessary to be considered an accident. In contrast, other jurisdictions have held that faulty workmanship may constitute the basis for an occurrence because it is unintended. The Connecticut Supreme Court joined those courts holding that faulty workmanship may give rise to an occurrence in the recent decision *Capstone Building Corp. v. American Motorists Ins. Co.*, SC 18886, 2013 WL 2396276 (Conn. June 11, 2013) (“*Capstone*”).

Capstone Development Corporation and Capstone Building Corporation (collectively, “Plaintiffs”) served as developer and general contractor, respectively, for a construction project (the “Project”) for the University of Connecticut (“UConn”). UConn supplied insurance for the Project under an owner controlled insurance program (“OCIP”) from American Motorists Insurance Company’s (“AMICO”) predecessor in interest. The OCIP included a commercial general liability policy (the “Policy”) on a standardized form that tracked the language of the 1986 revisions by the Insurance Services Office, Inc. The Policy’s general insuring agreement provided coverage for “damages resulting from ‘bodily injury’ or ‘property damage’ if the bodily injury or property damage is caused by an ‘occurrence’ that takes place in the ‘coverage territory’ and occurs during the ‘coverage period.’” The Policy defined “occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” The Policy further defined “property damage” as “[p]hysical injury to tangible property, including loss of use of that property” and “[l]oss of use of property that is not physically injured.” The Policy did not define “accident.”

Several years after the Project was completed, UConn discovered alleged defects in the construction and sought damages from Plaintiffs in mediation. UConn alleged that the Plaintiffs breached their agreement with UConn by “failing to properly implement construction plans and had been negligent and deficient in the construction process.” Plaintiffs requested coverage from AMICO under the Policy for UConn’s claims. AMICO denied coverage, stating there was no coverage for damage to Plaintiffs’ own work. Plaintiffs settled UConn’s claims and filed separate state court actions against AMICO in Alabama State Court, which AMICO removed to the United States District Court for the Northern District of Alabama and the District Court consolidated.

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Because the issue had not been decided under Connecticut law, the District Court asked the Connecticut Supreme Court on certification to determine, among other things, whether damage to a previously completed construction project, caused by defective construction or faulty workmanship, can constitute property damage resulting from an occurrence. AMICO argued that “defective work lacks the element of ‘fortuity’ necessary for an accident.” The Court disagreed. The Court looked to its holdings in prior cases to determine that “an accident is an event that is unintended from the perspective of the insured.” The Court went on to note that “the motive of the acting party is determinative of whether an act was intentional or accidental.” The Court held that negligent work is unintentional from the point of view of the insured and, therefore, should be covered under the CGL Policy.

The Court’s analysis did not end after it determined that faulty workmanship can constitute the basis for an occurrence, as it noted that property damage must result from such an occurrence in order to trigger coverage under the Policy. The Court then examined the Policy’s definition of “property damage” and concluded that physical injury to, or loss of use of, the insured’s property is within the Policy’s initial insuring grant. Significantly, the Court held that damage to other portions of an insured’s work caused by its defective work constitutes property damage (“water and mold damage to portions of the insured’s project, beyond the defective work itself, would qualify as ‘physical injury to tangible property’”). *Id.* at \*7. Faulty workmanship standing alone, however, does not constitute property damage, and coverage does extend to the cost to repair defective work itself.

The Court completed its analysis by examining whether various policy exclusions might apply to eliminate coverage even though the claims triggered the insuring agreement. In particular, the Court examined the “your work” exclusion, which bars coverage for property damage to an insured’s own work, but does not apply if the insured’s own work was damaged by a subcontractor’s work. The Court held that the entire project was Capstone’s work and, therefore, coverage was initially barred by the exclusion, but that the “subcontractor exception” would restore coverage for any property damage caused by subcontractors.

*Capstone* eliminates uncertainty as to whether and when coverage exists under Connecticut law for property damage caused by faulty construction under standard-type CGL policies. Although application in any particular case may be fact-sensitive, the Connecticut Supreme Court established firm benchmarks, and policyholders facing construction-related claims under policies governed by Connecticut law should understand these rules to assess how to maximize their insurance recovery.

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