



Does Your General Liability Policy Cover Construction Defects?

by Kelly Gindele

kgindele@dbllaw.com

Courts across the country are increasingly denying policyholders coverage for construction defect claims. Construction companies need to ensure that their policies sufficiently protect them against construction defects claims. Often, defects can result in multi-million dollar claims. Without appropriate coverage, a company risks paying for such claims, or at least a substantial part of the claim, out of its own pocket.

Whether a policy will cover a construction defect claim usually hinges on two questions. First, did the defect meet the definition of an "occurrence" under the policy? Second, was there any resulting property damage that falls within the business risk or property damage exclusions contained within the policy?

In both Kentucky and Ohio, current case law reviews the first question in terms of intent. The courts look to whether the insured intended the result. Where the insured's work causes an unforeseen and unintended event to occur (i.e., an "accident"), there is an occurrence under the policy.

Once the court finds an occurrence, it then looks for an exception to coverage. Construction defect claims resulting in property damage may often be excluded from typical commercial general liability policies (the "Your Work" or "Operations/Faulty Workmanship" exclusions). Under the "Your Work" exclusion, there is no coverage for property damage to the contractor's work if caused by such work unless the damages arose from work performed by a subcontractor. Further, the "Operations/Faulty Workmanship" exclusion bars property damage to real property on which the contractor or any of its subcontractors worked, if the property damage arises out of that work. These exclusions work to effectively exclude nearly all property damage claims resulting from a construction defect.

Even if the claim is an "occurrence" and is not excluded, contractors need to ensure they have sufficient limits. The typical general liability policy may only provide \$1 million in coverage, which could likely be inadequate. Further, insurers generally try to limit coverage for defect claims to one year. Construction defects may not be found in a year's time. A contractor may wish to purchase alternative policies, such as completed operations coverage, to shield against potential holes in its coverage.

Due to the complexity of construction insurance policies and claims, contractors should hire an insurance company with extensive experience in this field. Further, a qualified broker should be involved to help the contractor purchase the right policies with the appropriate limits. Finally, hiring independent legal counsel with insurance knowledge can help the contractor to minimize its risk. Legal counsel can advise as to policy needs, review proposed policies, and represent the contractor in pursuing coverage for claims, if necessary. Without proper analysis and review by qualified individuals, a contractor could easily find itself with limited or even no coverage when it needs it most.