IN THE NEWS

Michigan Construction Industry benefits from Butzel Long's role in Michigan Supreme Court Ruling on Commercial General Liability Coverage

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DETROIT, Mich. – The Michigan Supreme Court issued a unanimous opinion on June 29, 2020, in a case with favorable wide-ranging implications for construction contractors who routinely purchase Commercial General Liability (CGL) insurance.

In a break from more than 30 years of established law, the Court held unintended or unanticipated faulty workmanship by a subcontractor which damages the General Contractor's work product, may constitute an "accident" and therefore be an "occurrence" triggering insurance coverage for the costs of repairs to correct the subcontractor's faulty work.

Butzel Long's role

Butzel Long's Construction and Appellate Practice groups were engaged by the Michigan Infrastructure and Transportation Association to file an amicus curiae brief, which is a brief filed by an interested group of persons or companies when a matter of importance for a large group comes before the Court.

Butzel Long attorneys Eric Flessland, Kurtis T. Wilder, and Michael Griffie wrote the amicus curiae brief demonstrating the correct interpretation and application of the insurance policy and urging the Court to take up this insurance coverage question of such importance to the construction industry. The Michigan Supreme Court granted leave to appeal and heard oral arguments in April. **The Michigan Supreme Court agreed with Butzel Long's positions concerning insurance coverage in this important ruling.**

Background

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In *Skanska USA Building v MAP Mechanical Contractors, Inc.*, Skanska served as the construction manager and contracted with MAP to install a steam boiler for the Mid-Michigan Medical Center. MAP accidentally installed some of the expansion joints backward which lead to over $1 million in damages to concrete, steel, and the heating system itself. Skanska paid for these repairs and sued Amerisure under a CGL policy seeking recovery. Consistent with prior law, Skanska's claims against the insurance company were rejected, and the Court of Appeals affirmed the trial court's ruling. The Court of Appeals reasoned that although Skanska could seek coverage for any damage its work did to a third party's property, it could not recover for damage to its own work. That Court concluded there was no "coverage" under the CGL policy because the only damage was to Skanska's own work product, which did not constitute an "accident." Skanska sought leave to appeal that ruling to the Michigan Supreme Court.

Michigan Supreme Court Decision

Writing in a unanimous opinion for the Court, Chief Justice McCormack said, "Under the current standard language of CGL policies, an 'accident' may include unintentionally faulty subcontractor work that damages an insured's work product. Accordingly, Skanska may be able to recover under the Amerisure policy the cost of repairs Skanska incurred when it corrected faulty work performed by MAP in the renovation of the medical center … [G]iven the plain meaning of the word 'accident', we conclude that faulty subcontractor work that was unintended by the insured may constitute an 'accident' (and thus an 'occurrence') under a CGL policy."

Before this decision, Michigan courts had ruled that defective work resulting in a claim against the contractor because of injury to a third party or damage to a third party's property is "unforeseeable," and therefore a covered "occurrence," but the same defective work that results in a claim against the contractor because of damage to the completed project is "foreseeable" and not covered.

"This distinction made the definition of 'occurrence' in the initial grant of coverage dependent upon which property was damaged," said Eric Flessland, Butzel Long attorney who represents heavy construction contractors and their trade associations in the public and private sector. "However, the Court correctly noted that distinction is contrary to the plain language of the CGL policy in use today, and limited that old rule to the 1973 version of CGL policies that are no longer used by the insurance industry. Unintended faulty workmanship that damages the insured's work product constitutes an 'occurrence'. Whether there is coverage depends upon applying the exclusions and exceptions to the exclusions in the CGL policies."

"The impact of this ruling on the construction industry cannot be overstated," he added. "If a subcontractor performs poorly and accidentally causes property damage to completed work, the General Contractor's CGL insurance carrier now may be required to pay for the loss – even if the loss is only to the General Contractor's own work."