

CGL Insurance Coverage for Defective Work of Subcontractors

Related Attorneys

Mitchell A. Tobias

CLIENT ALERT | 8.10.2016

Supreme Courts in two more states, Iowa and New Jersey, have recently ruled that CGL insurance provides coverage for damage to the completed project itself caused by defective work of subcontractors.

The Supreme Court of New Jersey's August 4, 2016, decision in *Cypress Point Condo. Assoc., Inc. v. Adria Towers, L.L.C., et al.* held that "continuous repeat exposure" to water leaks, causing damage to a condominium complex and resulting from a subcontractor's defective work, was covered by the general contractor's CGL policy. The Court noted the differences between the 1973 and 1986 standard policy language and the intent of the changes to provide this coverage.

The Supreme Court of Iowa's June 10, 2016, decision in *National Surety Corp. v. Westlake Investments, LLC*, Case No. 14-1274, likewise reviewed the history of CGL coverage, focusing on the definition of "occurrence" in light of the "completed operations" provision, and determined that "defective work performed by an insured's subcontractor may constitute an occurrence under the policy."

The Ohio Supreme Court has not definitively spoken on the matter but lower courts have sometimes interpreted the 2012 decision, *Westfield v. Custom Agri. Systems, Inc.*, 133 Ohio St.3d 476, as denying this type of coverage. Vorys construction lawyers are currently pursuing an appeal on a client's behalf in Ohio advocating a position consistent with the New Jersey and Iowa decisions.