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Ohio Supreme Court Rules Defective Work Claims Not Covered Losses Under Standard CGL Policies

On October 9, 2018, the Ohio Supreme Court ruled there is no coverage under a commercial general liability (CGL) policy for property damage caused by the defective work of subcontractors (*Ohio Northern University v. Charles Construction Services, Inc.*, 2018-Ohio-4057). In the court's view, a subcontractor's faulty work is not considered an "occurrence" under a CGL policy. Without an "occurrence," there can be no coverage under a typical CGL policy. This decision follows the court's previous ruling in *Westfield Ins. Co. v. Custom Agri Sys. Inc.*, 2012-Ohio-4712, where it held that the faulty work of a general contractor could not be considered an "occurrence" under a CGL policy. Thus in Ohio, it appears that contractors currently may not have insurance coverage for defective work claims under a standard CGL policy.

The Charles Construction matter arose out of the construction of a hotel and conference center at Ohio Northern University's campus. The university filed suit claiming defective construction caused a variety of damage to the project including water intrusion, alleged mold issues, and purported structural defects. Charles Construction, in turn, brought third-party complaints against various subcontractors responsible for the allegedly faulty work.

Charles Construction's insurance carrier agreed to defend the claims. Eventually, however, the carrier brought a declaratory judgment action claiming it neither had a duty to defend nor indemnify Charles Construction under the CGL policy. It argued defective work claims are not "occurrences" based on the *Westfield Ins. Co. v. Custom Agri Sys. Inc.* decision, even if subcontractors performed the work. The trial court agreed and granted the insurer summary judgment. The court of appeals, however, vacated that ruling, noting that the decision did not address various subcontractor-specific policy terms. These other terms created an ambiguity in the contract which had to be construed against the insurer.

The Ohio Supreme Court reversed the court of appeals' decision. In its view, there was no difference between defective work of an insured (i.e., the *Custom Agri Sys. Inc.* decision) or its subcontractor. In both cases, faulty construction was not "fortuitous" and, therefore, not an "occurrence." The court reached this decision despite terms in standard CGL policies that provide coverage for subcontractor work in certain circumstances. Ultimately, the court held insurers owe neither a defense nor indemnity to contractors for defective work claims under a standard CGL policy.

The potential impact of this decision on all participants in the construction industry is large; if a contractor has only a standard CGL policy, contractors may face uninsured claims for property damage or bodily injury, and owners may have less comfort in knowing there may be a source of funds to deal with defective work. There are options available to address the risk posed by this decision, however. Many insurance carriers, for example, offer endorsements that alter the definition of "occurrence" to include the contractor's and/or its subcontractor's work. Similarly, project owners may want to consider requiring such endorsements as part of the general contract's insurance requirements. If these endorsements are neither available nor sufficient, then additional risk mitigation strategies can be considered. In any case, it is important to examine existing coverages and address any potential gaps with your advisors.

For more information, please contact [Stephen Withee](#) or any attorney in Frost Brown Todd's [Construction Practice Group](#).

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