

## CGL POLICY COVERAGE FOR DEFECTIVE WORK BY A SUBCONTRACTOR

Construction Law Section

Section Chairs: William Cary Wright, Esq., Carlton Fields and Neal Sivyer, Esq., Sivyer Barlow & Watson, P.A.



**“The implications of this case will likely be far-reaching, as this is the first time an appellate court in Florida has allowed a general contractor to receive coverage from its CGL policy for the defective work of a subcontractor.”**

**F**lorida courts have historically taken the position that Comprehensive General Liability (hereafter “CGL”) insurance policies do not cover defective work performed by a general contractor or by a subcontractor on a general contractor’s behalf. *LaMarche v. Shelby Mutual Insurance Co.*, 390 So. 2d 325 (Fla.

1980). Surprisingly, even after the standard CGL policy language was changed to include a subcontractor exception, courts continued to follow *LaMarche* and hold that a general contractor could not recover from the policy for the defective work of a subcontractor. *Lassiter Constr. Co. v. Am. States Ins. Co.*, 699 So. 2d 768 (Fla. 4th DCA 1997). Recently, there was a dramatic departure from this position in *J.S.U.B., Inc. v. United States Fire Ins. Co.*, 30 Fla. L. Weekly D 774 (Fla. 2d DCA 2005). This departure is a consequence of the Second

DCA’s giving effect to policy language that was not contained in the policy at issue in *LaMarche*.

The standard CGL policy for a general contractor contains a “Damage to Your Work” exclusion, which excludes from policy coverage defective work performed by the general contractor. This standard CGL policy also contains an exception, which states that “[t]his exclusion does not apply if the damaged work or the work out of which the damage arises

*Continued on page 17*



Joe Simmons and Debra Douglas of API with Steve Gardner and Truett Gardner



ADMINISTRATIVE PARTNERS, INC.

When The Gardner Law Group formed a new law firm, they hired API to handle the transition.

“API made a complex process very simple,” said Steve Gardner.

*If starting your own firm is your dream, API can help you from idea to inception.*

201 E. Kennedy Blvd., Suite 850, Tampa, FL 33602  
Tel: 813-221-0376 Fax: 813-221-0380

Start up budgets ♦ Projected Revenues ♦ Cash Flow Analysis  
Banking and Financing Arrangements ♦ Office Space ♦ Technology  
Telephone and Data Services ♦ Equipment Purchases/Leases ♦ Vendor Negotiation  
Bookkeeping & Accounting Services ♦ Legal Recruiting & Placement

Continued from page 16

was performed on your behalf by a subcontractor." *J.S.U.B.* at \*4. Despite its plain language and apparent absence of ambiguity, Florida courts had been ignoring the subcontractor exception to the "Damage to Your Work" policy exclusion for years. Finally, the Second DCA in *J.S.U.B.* took note of the exception and held that a general contractor's CGL policy does, in fact, cover defective work performed by a subcontractor. There, the insurer argued that the policy doesn't allow for coverage and, therefore, that the exclusions and exceptions cannot create such coverage. However, the *J.S.U.B.* court agreed with the appellant's

contention that "the policies must be read as a whole and no part of the policies should be viewed as having no effect at all." *Id.* at \*17. The court held that if it were to adopt the insurer's argument, then the subcontractor exception would be completely ignored and have no effect at all. After finding that the policy as a whole provided coverage for the defective work, the court then determined that the "Damage to Your Work" exclusion did not apply because of the exception for work performed by a subcontractor.

The implications of this case will likely be far-reaching, as this is the first time an appellate court in Florida has allowed a general contractor to receive coverage from its CGL policy for the

defective work of a subcontractor. Since subcontractors often perform a large amount of work for general contractors, this decision should have a substantial impact on the industry. With the *J.S.U.B.* decision, a Florida court finally followed the apparent intent of the policy. It remains to be seen what the future implications of the *J.S.U.B.* decision are in both Florida and the rest of the nation.

*Author: William Cary Wright, Esq., Carlton Fields. The author would like to acknowledge the significant contributions of Ryan Carey, summer associate from the University of Miami, in the preparation of the article.*

The power of experience® [www.fowlerwhite.com](http://www.fowlerwhite.com)



**FOWLER WHITE  
BOGGS BANKER**  
ATTORNEYS AT LAW

We are pleased to announce that

**Melissa Miller Thalji**

has been board certified as a  
Circuit Civil Mediator by the Supreme Court of Florida

Ms. Thalji practices in the firm's Commercial  
Litigation Practice and Mediation Groups.

For assistance with litigation or  
relating to:

**PROBATE &  
TRUSTS AND ESTATE  
DISPUTES AND LITIGATION**

please contact:

Paul R. Pizzo                      Melissa Miller Thalji  
(813) 222-1113                      (813) 222-1113  
pizzo@fowlerwhite.com                      mthalji@fowlerwhite.com

501 East Kennedy Blvd., Suite 1700  
Tampa, Florida 33602  
(813) 228-7411 Phone  
(813) 229-8313 Fax  
info@fowlerwhite.com

A full-service law firm

TAMPA • ST. PETERSBURG • FORT MYERS • TALLAHASSEE • ORLANDO • NAPLES • WEST PALM BEACH • BONITA SPRINGS • JACKSONVILLE