CGL POLICY COVERAGE FOR DEFECTIVE WORK BY A SUBCONTRACTOR

Construction Law Section

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Florida 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

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.

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