

COMMERCIAL GENERAL LIABILITY POLICIES DO NOT COVER THE INSURED'S DEFECTIVE WORK, OR MISREPRESENTATIONS

Contractors should have policies of commercial general liability insurance which cover a contractor's liability for damages to third parties. In Stuart v. Weisflog's Showroom Gallery, Inc., decided by the Wisconsin Supreme Court in July, 2008, the question arose whether a home improvement contractor's commercial general liability policy covered the contractor's liability for misrepresentations that the design would comply with building codes. The Wisconsin Supreme Court held that damages stemming from a contractor's misrepresentations were not covered under the contractor's CGL policy and the "your work" business risk exclusion in the CGL policy precluded coverage for damages caused by the contractor's misrepresentations and negligence.

The important aspect of the Supreme Court's decision in Stuart v. Weisflog's Showroom Gallery relates to the degree to which a contractor can rely upon a CGL policy to cover damages awarded to a dissatisfied owner of a construction project. Most contractors do not engage in misrepresentations regarding their work, either as to whether their work will be consistent with building codes or in other respects. Nonetheless, for those contractors who have misrepresented the quality of their work, the Supreme Court advises them in this case that they should not expect their CGL insurance carrier to respond to those misrepresentation damages.

The more pertinent part of the Court's decision as it applies to electrical contractors is the part that relates to the "your work" business risk exclusion that is contained in the CGL policy. In the Stuart v. Weisflog's Showroom Gallery case, the contractor had purchased a CGL policy from American Family, who argued that the following exclusion applied denying insurance coverage:

"1. Damage to Your Work

‘Property damage’ to ‘your work’ arising out of it or any part of it and included in the “products-completed operations hazard.’

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.”

The Wisconsin Supreme Court agreed that the exclusion was applicable but noted that American Family had failed to complete its argument explaining why it was applicable. The Court said it was necessary to look at the policy’s definition of “products-completed operations hazard” which provided:

“‘Products-completed operations hazard’ includes all ‘bodily injury’ and ‘property damage’ occurring away from premises you own or rent and arising out of ‘your product’ or ‘your work’ except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.”

The Court felt it was clear from the terms of this exclusion that the “your work” exclusion applied to property damage arising out of the contractor’s work where that work occurred away from the premises owned or rented by the person doing the work, i.e., on the job site itself. In other words, the Court concluded that the “your work” exclusion operated to exclude coverage for damages arising out of negligent construction on the job site. Therefore, when an electrical contractor is negligent in the performance of its work and that negligence causes economic losses to the project owner, the electrical contractor cannot look to its CGL policy to cover the defense or insurance indemnity arising out of the owner’s claim for damages. The reason is that the CGL policy contains an exclusion of its coverage where the damages arise out of the insured contractor’s own work on the job site.

Interestingly, the CGL policy does cover damage caused to construction projects by subcontractors of the insured. In other words, the CGL policy does cover prime contractor

damages resulting from its subcontractors' negligent work performance.

I have argued similar cases to the Wisconsin Supreme Court in the past and I understand that to the average contractor the intricacies of insurance coverage can be exasperating. You should remember that NECA does provide you with free access to my office for questions that arise not only out of construction but out of insurance policy issues involving construction. I will be happy to receive your questions regarding insurance policies as well as construction issues.