Frankenmuth Insurance Adds Endorsement to Clarify 'Damage to Your Work' Exclusion

Recently, the insurance industry has experienced an uptick in court cases across several states that have produced varying court opinions as to whether or not defective construction is considered an occurrence.

Many of the court cases have ruled that "faulty work" completed by a subcontractor does not constitute a fortuitous event or is considered defective construction; therefore, it does not trigger an "occurrence." If the courts state that "faulty work" does not constitute an "occurrence," then the coverage language never comes into play, which limits the intent of commercial general liability policies – a vital form of protection for businesses.

Here's what the current Commercial General Liability Policy Form states:

- **CG0001 (04/13): Section I. 2. Exclusions I. 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."*

- **CG0001 (04/13): EXCEPTION to Section I. 2. Exclusion I. Damage to Your Work** – *"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."*

At Frankenmuth Insurance, we are committed to serving our policyholders with fast, fair claims service, and working with our agency partners to help minimize the impact of discrepancies in how these court rulings are reached state-by-state. That's why we are pleased to introduce a new endorsement not only to provide coverage, but also to promote consistency and certainty in the outcome of these specific claims situations.

This new endorsement, our "Your Work" Coverage Extension, clarifies that we will pay for:

- "Damages which you become legally obligated to pay because of 'property damage' that is":
  - o "To 'your work' if the damaged work, or the work out of which the damage arises, was performed on your behalf by a subcontractor;" **OR**
  - o "To property other than 'your work,' if the 'property damage' is caused by or results from 'your work'"
- If such "property damage":
  - o "Consists of physical injury to tangible property, including loss of use of that property;" **AND**
  - o "Is included within the 'products-completed operations hazard'"
- However, we will not pay for:
  - o "Property damage" that was a result of willful, wanton or intentional misconduct;" **OR**
  - o to "defective or faulty work."

In addition, we defined defective or faulty work to include:

- "Defective or faulty work" means work that fails to meet or comply with applicable building code(s), fails to meet or comply with industry standards, is not fit as constructed for its intended use, or does not meet or comply with a contract's plan or specifications. "Defective or faulty work" is not physical injury to tangible property."

To download and review the endorsements, please click the links below:

- 18198 (11-18) – CGL
- 18199 (11-18) – BOP
- 18204 (11-18) – Umbrella

This new endorsement will be automatically added to any risk with a contractor's class code on a BOP or CGL and Umbrella in your state and attached to policies with an effective date of July 1, 2019 (or following the implementation of our new system). The coverage will be optional in North Carolina.

We believe these enhancements will make it even easier to do business with Frankenmuth Insurance. To learn more about this issue, we encourage you to read the IRMI article titled, "Construction Defect and Occurrence: Still Crazy after All These Years."

For questions, please feel free to contact your field manager or underwriter.

Please note*: This communication is for educational purposes only and does not constitute legal advice, nor does it promise insurance coverage for a specific claim or circumstance. It also may not reflect all the nuances of case law in a state, and those laws continue to evolve. The insurance policy controls how coverage will apply in specific claims situations.*