Reading Commercial General Liability (CGL) policies can feel a lot like tracking a flowchart or solving an LSAT logic game. There are covered claims, exclusions to coverage, and then exceptions to those exclusions. Not to mention endorsements.

One of the more common provisions is the “Your Work” exclusion. A typical CGL policy will exclude damages if the work is defective. Policies will not cover costs to replace defective work. However, such policies normally include an exception to the “Your Work” exclusion if the work was performed by a subcontractor.

Beware, however, of the oft-dreaded endorsement that can negate a policy term. Similar to the “Your Work” exclusion, many CGL policies contain a “Your Product” exclusion that operates in a related manner. For instance, a CGL policy for a door supplier would not cover the cost to replace a defective door. One of the questions that arises but has not been thoroughly addressed by Florida courts is how to define “Your Work,” when the product has been installed and altered in the process.

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Recently, the Second District Court of Appeals, in Liberty Mut. Fire Ins. Co. v. MI Windows & Doors, Inc., 2013 WL 4734045*2 (Fla. 2d DCA Sept. 4, 2013), held that the standard for determining whether the “Your Work” exclusion applies is whether the nature and function of the product has been changed.

In MI Windows, MI manufactured and sold sliding glass doors to a contractor who agreed to install the windows in five condominium projects along the Alabama coast. The contractor then subcontracted out the installation to third parties. Id. at *1. In two out of five projects, the doors were installed with no change. However, in the other three projects, installers used transoms along the top of the doors. This apparently weakened the structural integrity of the doors. MI had to pay more than $3 million to settle defective-product lawsuits. Id.

MI sought coverage under its CGL policy, but its carrier, Liberty, cited the “Your Product” exclusion and denied the claim. The lower court granted summary judgment in MI’s favor, ruling that the “Your Product” exclusion did not apply because the addition of the transoms significantly changed the doors.

The Second District Court of Appeals reversed the lower court’s decision and held that the “Your Product” exclusion applied because there was no “alchemy” that changed the original product. Put simply, because the sliding doors were installed for their intended purpose, and operated as sliding doors, the “Your Product” exclusion applied, thereby precluding coverage.

Every CGL policy is different, and it is unclear how the courts will enforce the multitude of exclusions, exceptions, and endorsements, so it is very important to read and re-read the entire CGL policy to best inform clients on what coverage may be available.

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