

## CONSTRUCTION ALERT

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**Tom Nocar**

614.227.2031

tnocar@porterwright.com

**Ryan Sherman**

614.227.2184

rsherman@porterwright.com

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### Ohio Supreme Court: CGL policy does not cover subcontractor's faulty workmanship



Ohio contractors beware: your commercial general liability (CGL) insurance policy probably does not cover faulty workmanship performed by you or your subcontractors. Courts in many states have concluded that CGL insurance policies cover property damages arising from faulty workmanship unless such coverage was specifically *excluded* from the policy. However, the Ohio Supreme Court, in two recent decisions, has rejected that approach. To insure against defective construction and faulty workmanship in Ohio, you must specifically *include* the coverage in your policy.

Claims against an insured's CGL policy are triggered by an occurrence—when an accidental or fortuitous event has occurred resulting in bodily injury and/or property damage. Recently, however, the Ohio Supreme Court has determined that faulty workmanship isn't accidental or fortuitous.

In 2012, the Court held that a claim filed by a contractor under its CGL insurance policy for property damage caused by the contractor's own faulty workmanship was not an occurrence such that the CGL policy would cover the loss. In [\*Westfield Ins. Co. v. Custom Agri Sys., Inc.\*](#), the Court decided

## CONSTRUCTION ALERT

that an occurrence must occur by accident or by chance. The contractor's own faulty work, the Court held, was not accidental, but was instead a known business risk assumed by the contractor from the outset. Business risks are not covered under a CGL insurance policy.

On Oct. 9, 2018, [Ohio N. Univ. v. Charles Constr. Servs.](#), the Supreme Court of Ohio extended its *Custom Agri* precedent to subcontractor's work declaring that any faulty workmanship, whether performed by the contractor-insured or its subcontractors, is not an occurrence that would trigger CGL insurance coverage. As a result, CGL policies in Ohio generally do not insure against faulty workmanship or defective construction performed by the general contractor or its subcontractors.

So, what is a contractor to do? Additional insurance may not be the answer. Caution must be exercised in purchasing supplemental insurance that is intended to cover faulty work. In *Charles Constr.*, the insured-contractor, in addition to its CGL policy, bought a products-completed operations-hazard (PCOH) insurance policy to expressly cover faulty work performed by its subcontractor on the project. The Court, however, applying the same "known business risk" standard, determined that, like the CGL policy, the PCOH policy was not triggered without an accidental occurrence.

As a result of these decisions, there is a risk that faulty workmanship on your project is uninsured. Be sure to check your policies to determine whether the coverage you've purchased includes the coverage you need. Consider insisting upon an endorsement rider to your CGL insurance policy that redefines an insurable occurrence to include coverage for faulty workmanship and defective construction.

For more information please contact [Tom Nocar](#), [Ryan Sherman](#) or any member of Porter Wright's [Construction Practice Group](#).