



Defective Work: Is It Covered?

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Construction projects seldom proceed without commercial general liability (CGL) insurance. Obtaining CGL coverage is one of the easy decisions in the construction process. These policies generally cover bodily injuries and property damage arising out of the premises, operations, products, and completed operations. But exactly how broad are CGL policies?

In *Westfield Insurance Company v. Custom Agri Systems, Inc.*, the Ohio Supreme Court addressed whether Ohio law extends CGL coverage to defective construction work where the policy does not specifically exclude it. The Court held that CGL policies do not cover defective work. The reasoning is that only accidental occurrences should be covered. In *JTO, Inc. v. State Auto Mutual Insurance Co.*, the court explained that accidental occurrences, unlike defective work, are “‘fortuitous’; and ‘fortuity’ depends on ‘whether the contractor controlled the process leading to the damages and whether the damages were anticipated.’” CGL policies do not insure the construction work itself, but rather, the risks and losses that stem from that work.

But CGL policies do not cover all risks and losses resulting from defective work. Ohio case law provides that economic losses stemming from defective work are not property damages or accidents covered by CGL policies. In *Younglove Construction, LLC v. PSD Development, LLC*, the Northern District of Ohio faced a situation where a defect in a steel grain bin led to loss of storage space. In addition, the owner was unable to purchase corn at optimal seasonal prices. When the subcontractor was sued for its defective work, the subcontractor turned to its insurance company. The insurance company objected, arguing that its policy did not cover the damages at issue. The court analyzed whether the CGL policy included collateral or consequential damages from such defective work. Although the policy did cover collateral and consequential damages, the court held that the policy did not cover economic losses that directly related to the work. These damages are part of the owner’s business risks, which can and should be controlled by management. CGL policies aim to provide coverage for “unanticipated consequential damages,” not business risks.

It is important for project participants to know what the projects’ CGL policies cover. Professional liability insurance and other policies help to fill the gap left open for defective work in CGL policies. For more information, please contact Kelli A. Kleisinger, [a Cincinnati associate in the Construction Law Practice Group at Dressman Benzinger LaVelle psc.](#) Kelli can be reached at (513) 357-5283 or via email at kkleisinger@dbllaw.com.