

## WHEN THE PROJECT IS COMPLETED

Policies can ensure coverage after construction ends

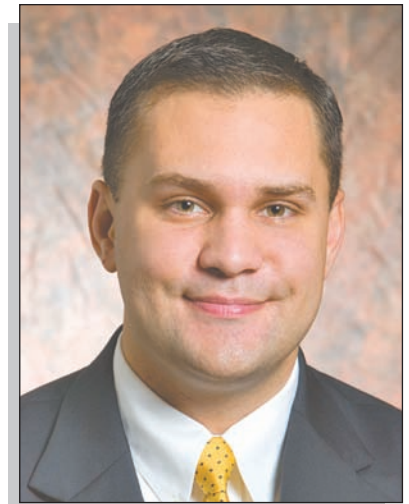
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Many things can go wrong after a construction project has been turned over to the owner. The most common problem is property damage because of allegedly faulty work. That is why a major component of insurance coverage for any project is the completed operations coverage provided by the commercial general liability (CGL) policy. The CGL policy's completed operations coverage pays for any property damage a contractor may be liable for if damage takes place once the contractor has finished its work or the project has been put to its intended use. Most importantly, however, the completed operations coverage provided by the policy is far more expansive for contractors and construction managers than the coverage provided for property damage caused by construction defects during ongoing operations.

The CGL's ongoing operations coverage excludes damage to that particular part being worked on if the work was performed incorrectly. The CGL completed operations coverage, however, covers any damage attributed to defective work done by subcontractors. The difference is based upon the different exclusions in the CGL policy applying to ongoing operations versus completed operations claims.

### 'Subcontractor Exception'

Determining whether a claim falls under completed operations coverage rather



than ongoing operations and whether the subcontractor exception applies is not always easy. There are two major issues when dealing with completed operations claims under CGL policies: (1) identifying when the property damage took place and (2) determining whether the "subcontractor exception" provides coverage.

The standard CGL policy provides that completed operations coverage "includes all 'bodily injury' and 'property damage' occurring away from premises you own or rent and rising out of 'your product' or 'your work'...." The policy further defines the completed operations period to mean the *earlier* of the following:

- When *all* the named insured's work as required in a contract has been finished.
- When all the work at a job site has been completed if the named insured's

contract requires work under the same contract but at another job site.

- When that part of the work done at a job has been put to its intended use by someone other than another contractor or subcontractor working on the same project.

Thus, if any property damage takes place after the earlier of the above events, the insured should look to completed operations coverage. The most common mistake or misperception is to conclude that because the mistake or error in judgment causing the defective work took place during ongoing operations, it is an ongoing operations claim. As stated in the CGL policy, however, the determining factor is when the property damage takes place.

### 'Your Work' Exclusion

The broad completed operations coverage provided by the CGL policy is limited by Exclusion 1, entitled the "Your Work" exclusion. The exclusion precludes

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coverage for:

- “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 extent to which the “Your Work” exclusion limits coverage is often debated, and some insurers adjust claims to deny or interpret the subcontractor exception more narrowly than stated or intended. Specifically, some carriers take the position that the subcontractor exception only restores coverage if the work that was damaged was performed by subcontractors. In the Insurance Services Office (ISO) circular entitled “Broad Form Property Damage Coverage Explained,” ISO explains how the “Your Work” exclusion and subcontractor exception apply: “This exclusion in endorsement ADV.-3006, which modifies the corresponding policy exclusion, provides broad form completed operations property damage coverage by excluding only damages caused by the named insured to his own work. Thus: 1) The insured would have *no* coverage for damage to his work arising out of his work. 2) The insured would have coverage for damage to his work arising out of a subcontractor’s work. 3) The insured would have coverage for damage to a subcontractor’s work arising out of the subcontractor’s work. 4) The

insured would have coverage for damage to a subcontractor’s work, or if the insured is a subcontractor to a general contractor’s work or another subcontractor’s work, arising out of the insured’s work.”

Thus, contrary to the positions of some insurers, the subcontractor exception restores coverage if the property damage arises out of the subcontractor’s work in any way. Although Connecticut does not appear to have addressed the subcontractor exception, other jurisdictions support this interpretation.

### **Possible Complications**

Although completed operations coverage is standard in most CGL policies, it is sometimes excluded. Thus, contractors should check the specific policy to make sure that they have completed operations coverage and that the associated limits of coverage are sufficient.

Completed operations coverage is usually not a problem with a contractor’s corporate insurance program, which continually provides completed operations coverage for all projects which the insured previously completed. However, when project specific insurance policies are used, completed operations issues can be complicated.

Some projects are so big and involve so many contractors that it is easier for the owner or general contractor to sponsor an insurance program specific to that project. These are commonly known as wrap-up policies (usually either as an owner

controlled insurance program (OCIP) or a contractor controlled insurance policy (CCIP), depending on whether the owner or contractor sponsors the insurance program). The major issue with completed operations coverage in wrap-ups is providing the coverage for a sufficient period of time after the project is completed.

Normally the proper completed operations coverage period should be the same as the relevant statute of limitations or statute of repose, thus ensuring that timely claims are covered under the wrap-up. If the wrap-up program does not provide completed operations coverage for the necessary period, then the insured must make certain that its own corporate insurance program picks up where the wrap-up leaves off.

Especially important is making sure that the corporate insurance CGL policy does not include a wrap-up exclusion excluding coverage for any project once covered by a wrap-up policy. In such a case, the insured would have no coverage for any time between the end of the completed operations period and the time at which the bringing of claims is barred.

Completed operations coverage is critical to owners and contractors. Ensuring that the proper coverage is provided by your insurance programs and that the insurer is properly adjusting your claims is not always easy. However, with specific attention to the issue, contractors can worry less about liability arising from completed projects. ■