

CONNECTICUT SUPREME COURT RULES THAT DEFECTIVE CONSTRUCTION WORK CAN BE AN “OCCURRENCE” UNDER A CGL POLICY

On an issue of first impression, the Connecticut Supreme Court found in Capstone Building Corp. v. American Motorists Ins. Co., S.C. 18886, 2013 Conn. LEXIS 187 (June 11, 2013), that unintended construction defects may form the basis of an “occurrence” or “accident” under commercial general liability policies. The Court also found that damage to an insured’s nondefective work is “property damage” within a policy’s initial grant of coverage. Claims limited to damages for the replacement of defective components or poor workmanship, however, do not constitute “property damage” under the policy.

Capstone Building Corp. and Capstone Development Corp. (together, “Capstone”) sued their insurer, American Motorists Insurance Company (“AMIC”) seeking coverage for damages to buildings they constructed. Capstone Building and Capstone Development served, respectively, as the general contractor and the project developer for construction of a student housing complex at the University of Connecticut (“UConn”). UConn procured a commercial general liability policy through AMIC for the Hilltop project, which insured Capstone and their work.

The Hilltop project was completed in August, 2001. In 2004, UConn notified Capstone regarding alleged defects in the project. UConn discovered elevated levels of carbon monoxide in several areas of Hilltop and identified a number of other “defects and deficiencies” allegedly attributable to the Capstone’s work. Capstone, in turn, put AMIC on notice of the claim. AMIC denied the claim. Capstone subsequently sued AMIC in United States District Court for the Northern District of Alabama.

The Connecticut Supreme Court accepted a certified question from the district court as to whether damage to a project contracted to be built, which was caused by defective construction or faulty workmanship, may constitute “property damage” resulting from an “occurrence,” triggering coverage under a commercial general liability insurance policy.

The Court concluded that allegations of unintended defective construction work may constitute an “occurrence” under the policy. An “occurrence” is defined as an “accident” and the court found while the work may be deliberate act, if it is performed negligently, it can be an accident if the effect is not the intended or expected result from the perspective of the insured. As such, it may constitute an “occurrence” under the policy.

The Court held that defective work standing alone or repairs to that defective work do not constitute property damage. However, faulty workmanship or defective work that has damaged the otherwise nondefective completed project can be considered “property damage” under the policy.