

Damage to Your Work by Subcontractor Ruling

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Recently, the Florida Supreme Court ruled that the standard post-1998 ISO General Liability policy does treat damage to a contractor's "work" if the damage was caused by a subcontractor working on the contractor's "work" as an occurrence, thereby opening up the policy for potential coverage. Before this ruling, only claims brought in District Two court (Charlotte, Collier, Desoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties) for this type of damage was considered an occurrence. In all other counties however, lower courts had ruled that damage to a contractor's "work" by a subcontractor was NOT an occurrence and therefore was not eligible for coverage.

What is meant by all of this? Say you are building a swimming pool and you have subcontracted out the shotcrete portion of the construction. The subcontractor finishes shooting the pool and a week later the pool shell collapses in on itself. This ruling clarifies that damage to the pool shell itself in this scenario could be considered an occurrence and therefore could be considered for coverage (previously it was not considered an occurrence). Conversely, any resultant damage (i.e. to the home) has always been considered an occurrence and was eligible for coverage. Bodily injury to third parties was always considered to be an occurrence. This ruling was only designed to clarify the "damage to your work" provision of the standard ISO general liability policy.

It remains to be seen how the insurance companies will respond to this ruling because it was never the intent of insurance companies to cover damage to a contractor's "work" caused by a subcontractor. Some carriers have indicated that they will be placing an exclusion on their general liability policies called "Damage to Work Performed by Subcontractors on Your Behalf" to clarify their policy intent. For more information on this and other insurance topics, please call your insurance agent.