

The "Your Work Exclusion"—A Curious View

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In *Owners Ins. Co. v. Jim Carr Homebuilders LLC* (released March 28, 2014), the Alabama Supreme Court said, in regard to the commercial general liability (CGL) "Damage to Your Work Exclusion" (exclusion I.), "Simply put, the 'your work' exclusion applies if and only if the Policy's declarations fail to show any coverage for 'products-completed operations.'" Stated differently, the court found that the purchase of products-completed operations "nullifies and renders inapplicable the 'your work' exclusion here."

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The court's finding is rooted in its interpretation of the definition of the "products-completed operations hazard" in the CGL policy. Specifically, the court considered the definition of "the products-completed operations hazard" found in the CGL policy, first acknowledging that for the products-completed operations hazard to apply, products must have left the insured's possession or the work must have been completed. The court then focused on what is *not* within the products-completed operations hazard of the CGL—any *classification* shown on the *declarations* that states that the products-completed operations are included.

Classification Description

Certain CGL classifications have only an incidental products or completed operations exposure. An example is a Girl Scout council. The Insurance Services Office, Inc. (ISO), *Commercial Lines Manual* uses the following classification description for a Girl Scout council.

41001 Boy or Girl Scout Councils
Class Code: 41001
Premium Base: Products/Completed Operations are included

The phrase "Products/Completed Operations are Included" is precisely what is being referenced in the definition of the products-completed operations hazard. If the Girl Scout council has a products exposure, that products exposure will not be considered within the products-completed operations hazard definition.

Products/Completed Operations Are Included

The CGL coverage implications to a person or organization whose ISO classification states products-completed operations are included may be illustrated by an example. The local Girl Scout council is sued for bodily injury suffered by a person who allegedly became seriously ill after consuming Girl Scout cookies sold by that council. Based on a standard CGL policy, the insurer will defend the complaint and pay damages on behalf of the Girl Scout council if it is found legally liable for the bodily injury.

In other words, the classification description does not eliminate coverage—the insurer will still defend and pay as it would any other covered claim—but the claim will *not* be considered a products claim, as the classification description has *specifically removed* any products or completed operations claim from the products-completed operations hazard.

The consequence of the classification description "products-completed operations included" for the Girl Scout council is that the CGL policy's general aggregate limit will apply to a claim that would otherwise fall within the products-completed operations aggregate limit. Therefore, the Girl Scout council has the benefit of only one aggregate limit (the general aggregate limit) and not two aggregate limits (the general aggregate limit and the products-completed operations aggregate limit).

In fact, the insurer for the Girl Scout council will not enter any dollar limit on the declarations page in the space designated for the products-completed operations aggregate limit. Instead, the insurer would enter "included" or similar wording where a dollar limit is usually inserted.

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The court's interpretation of the CGL's definition of the "products-completed operations hazard" was curious to say the least. In its coverage analysis, the court did not review the *classification description* provided on the declarations page to see if the classification specifically stated that the products-completed operation was included (as it was in the classification description used in the Girl Scout council example). The court instead looked at the declarations page to find whether the CGL policy provided *any coverage* for products and completed operations.

This approach to coverage analysis appears in part to be based on the court's mistaken observation that completed operations coverage was "supplemental coverage" and is "not insured against by the standard CGL policy."¹ As a limit was listed on the CGL policy declarations under the "Products-Completed Operations Aggregate" heading, the court correctly concluded that the policyholder had purchased products and completed operations coverage.

Merely by the fact the CGL policy included products and completed operations coverage on the declarations page, the court assumed, rather surprisingly and without explanation, that the completed operations claim that was the basis of the coverage dispute *fell outside* of the CGL definition of the "products-completed operations hazard." Apparently, the court gave no effect to the beginning of the phrase "... for which the classification shown on the declarations ..." but focused solely on the last part of the phrase: "... the Declarations, states that the products-completed operations are included." In the court's view, if the declarations stated that products-completed operations coverage was included—as evidenced by insertion of a limit for the products-completed operations aggregate limit—any completed operations claims could *not* be within the products-completed operations hazard definition of the CGL policy.

As the "your work" exclusion applied only to work in the "products-completed operations hazard," and the claim in dispute did not, in the court's view, fall within the products-completed operations hazard, exclusion I., "your work," did not apply. The court found, "If the declarations show coverage for 'products-completed operations,' then the 'your work' exclusion does not apply."

Conclusion

While the concept of products-completed operations coverage can be a confusing one, the problems with the court's interpretation are apparent. According to the court's holdings, the "your work" exclusion (exclusion I.) does not apply to any CGL policy when that CGL includes products-completed operations coverage. It follows, then, that the only time the "your work" exclusion could apply is when the CGL does *not* include any coverage for products and completed operations.

Of course, if a CGL does *not* provide any products and completed operations coverage, the "your work" exclusion would not apply because no bodily injury and property damage that falls within the products-completed operations hazard is covered in the first instance. There would be no need to

exclude *certain types* of completed operations property damage claims if *all* property damage claims for products and completed operations are already excluded.

By the court's reasoning, the inevitable conclusion is that the "your work" exclusion in the CGL policy would *never* apply under any circumstances. The court's holding renders the "your work" exclusion utterly meaningless.

If full effect had been given to the entire definition of the products-completed operations hazard, the *classification description* found in the declarations would have been the court's focus—not whether the CGL declarations showed that products and completed coverage had been purchased. In this case, the CGL policy included the following classification descriptions on the declarations.

Classification

Code 91580 Contractors—Executive Supervisors or Executive Superintendents

Code 91583 Contractors-Subcontracted Work—In Connection with Building Construction, Reconstruction, Repair or Erection of One or Two Family Dwellings

It is quite evident that the classification descriptions on the declarations did not state "Products/completed operations are included." Therefore, the completed operations claim in dispute did indeed fall within the products-completed operations hazard and was therefore subject to exclusion I., "Damage to Your Work."

¹The court stated in a footnote, "The standard CGL policy referred to in this opinion is the standardized form used in the construction industry and tracks the language of the 1986 revisions by the Insurance Services Office, Inc."

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