

# A Potential Big Win for Real Estate Developers in Illinois: CGL Coverage for Property Damage from Defective Work

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Illinois may have just opened a new door for developers and owners for insurance coverage when it comes to defective construction work and commercial general liability (“CGL”) coverage. Based on the recent Illinois Supreme Court ruling in [\*Acuity v. M/I Homes of Chicago, LLC\*, 2023 IL 129087](#), insurance companies may now have a duty to defend under CGL policies with respect to defective work and certain property damage caused by the same.

Up until late last year, Illinois courts historically held that CGL policies would only cover an “occurrence” of defective work when the defective work causes property damage to something other than the work itself.[1] The reasoning for this line of thought was that either (1) faulty work is a risk of doing business and should therefore not be covered,[2] or (2) damages caused by defective work would fall under the category of an economic loss as opposed to property damage.[3]

In *Acuity*, the Illinois Supreme Court held that insurance companies may have a duty to defend an insured in cases where an accident leads to defective work, and damage due to defective work performed by a subcontractor may be covered under CGL insurance, but the ultimate determination as to whether there is a duty to defend will be determined by reviewing other language and exclusions of the insurance policy.

The issue at the center of this case was whether a subcontractor’s substandard work was considered an “occurrence” of “property damage” as defined in the subcontractor’s CGL policy, which was provided by Acuity. The developer in this case, M/I Homes of Chicago, LLC (“M/I Homes”), hired the subcontractor to perform exterior work on townhomes in a development. M/I Homes alleged that the subcontractor’s work was faulty, which eventually caused interior wall damage due to leaks and moisture from the defective exterior work.

As written in the Acuity CGL policy, CGL insurance would only apply where an “occurrence” of “property damage” occurred. Acuity argued that construction defects that would result in property damage should be excluded from CGL coverage because CGL coverage is not intended to repair defective work or obtain damages within the insured’s scope of work. The Supreme Court acknowledged Acuity’s argument but differentiated it from what is written in the CGL policy itself,

which the Supreme Court determined covered some construction defects that result in property damage.

The Supreme Court turned to the language of the CGL policy itself for guidance. An “occurrence” in this case was defined in the CGL policy as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” An “accident” was not defined in the CGL policy, so the Court considered the plain meaning, which is “an unforeseen occurrence.” In this case, the subcontractor’s faulty work was not intended, anticipated, or expected, nor was the damage to the interior of the townhomes. Thus, the Supreme Court ruled that the damage to the interior of the townhomes could potentially be covered under the CGL policy because the faulty exterior work was an occurrence of property damage. The Supreme Court remanded the case for the lower courts to consider whether any other policy exclusions would preclude such damages under the CGL policy.

This ruling has the potential for wide-ranging impacts for developers, contractors, subcontractors, and insurers in Illinois. Now insurance companies may have a duty to defend an insured in claims involving unintentional faulty work that lead to property damage within the insured’s scope of work. Insurance companies will need to shift their focus to other potential policy exclusions, rather than focusing on such damage as excluded under the general grant of coverage provided by the policy.

## FOOTNOTES

[1] See Paragraph 23 of the Opinion.

[2] See Acuity’s assertion in Paragraph 49 of the Opinion.

[3] See Paragraph 23 of the Opinion.

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