

Have You Been Named in a Construction Defect Lawsuit and Your CGL Insurer Denied Coverage? Check Your ISO Classification!

The following article was provided by Carson Law Group, PLLC, a law firm based in Jackson, Mississippi, with a construction and commercial litigation and transactional practice.

One of the risks faced by a residential builder is that, following completion of construction, the homeowner may assert a claim against the builder for damage to the home caused by an alleged construction defect. One of the ways a builder manages the risk of such construction defect claims is by purchasing commercial general liability (“CGL”) insurance.

A builder’s CGL policy covers those sums the builder is legally obligated to pay as damages because of bodily injury or property damage caused by an “occurrence,” that is, damage that is accidental rather than being expected or intended by the builder, so long as the claim does not fall within any of the policy’s several “exclusions” from coverage.

When faced with a construction defect lawsuit, our builder clients are often surprised—and dismayed—when their CGL insurer denies coverage and refuses to defend the builder. However, builders shouldn’t take their insurer’s denial of coverage at face value. This article discusses a new argument we recently discovered that has been a game-changer for our builder clients who were denied coverage in construction defect cases.

Whether coverage exists always depends on the specific language of the particular CGL policy, and courts generally construe exclusions against insurers. This allows experienced coverage attorneys to, at times, successfully challenge declinations of coverage and, at a minimum, convince insurers to pay for the builder’s defense.

A typical CGL policy provides products-completed operations coverage, which is sought by businesses that face potential liability arising out of the products that they have sold or operations that they have completed. Products-completed operations coverage allows builders to obtain many years of coverage for a completed project. Over the years, insurers have added to their policies modifications and exclusions that limit their exposure for claims that fall under that coverage.

Exclusion (I) or the “your work” exclusion, will often exclude coverage for a latent defect claim against the builder. A standard “your work” exclusion provides:

This insurance does not apply to: . . . “[p]roperty damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This “your work” and similar exclusions are designed to limit coverage for business risks that are within the contractor’s own control; *e.g.*, a claim that the contractor caused damage to the contractor’s own work. These exclusions apply both to ongoing and completed projects, which can leave a builder unprotected from lawsuits for years after a project is completed.

However, builders who are classified on the declarations page with Code 91580 Contractors— Executive Supervisors or Executive Superintendents, may not be subject to the “your work” exclusion. 91580 is a common classification assigned to builders during insurance underwriting. This classification falls into what is referred to as “dagger class” or “plus sign class,” which indicates that Products and/or Completed Operations coverage is **included** as part of and not separate from the Premises/Operations coverage (emphasis added).

It has been noted that dagger” and “plus sign” classifications create confusion because of the seeming contradiction between policy wording and coverage rules.* The CGL policy seems to expressly exclude products and/or completed operations losses for “dagger” or “plus sign” classes. In the definitions section we find the following:

**“Products-completed operations hazard”: . . .b. Does not Include
“bodily Injury” or “property damage” arising out of: . . . (3)
Products or operations for which the classification, listed In the
Declarations or in a policy schedule, states that products-
completed operations are subject to the General Aggregate Limit.”**

This apparent exclusionary language, however, must be read in conjunction with the Insurance Services Office’s (ISO) Rule 25.F.1.:

Rule 25. CLASSIFICATIONS

F. Symbols

1. Plus Sign

A plus sign when shown in the Premium Base column under General Liability insurance in the Classification Table - means that coverage for Products and/or Completed Operations is included in the Premises/Operations coverage at no additional premium charge. When this situation applies, the classification described in the policy schedule or Declarations must state that:

“Products-completed operations are subject to the General Aggregate Limit” to provide Products and/or Completed Operations coverage(s).

When read together then, the exclusionary wording in the policy definition removes any product or operation loss subject to the “dagger” or “plus sign” classification from the definition of Products Completed Operations Hazard. Under the dagger or plus sign classification of Rule 25, coverage for products and/or operations is included in the premises operations coverage. Consequently, a loss can no longer be defined as a product completed loss, and as a result it is no longer subject to the “your work” exclusion.

Recall that the standard “your work” exclusion quoted above excludes coverage for “property damage” to “your work” “arising out of it or any part of it **and** included in the “products-completed operations

hazard”.” Here, we emphasize **“and”** because the “your work” exclusion applies only to property damage that is also included in the “products-completed operations hazard.” Since property damage claims arising under “plus sign” classifications are expressly excluded from the “products-completed operations hazard” (they are included in the premises/operations coverage) the “your work” exclusion simply does not apply. This means that, if your CGL insurer denies your construction defect claim based on the “your work” exclusion, do what the title of this article suggests: Check your ISO classification! If 91580 “Executive Supervisors or Executive Superintendents” is listed on your Declarations page, you may be in luck.

This new ISO classification-based coverage argument will likely also apply to other exclusions and endorsements that CGL insurers routinely rely on in denying coverage in construction defect cases. We recently successfully challenged a coverage denial based on the following “prior work” exclusionary endorsement:

“This insurance does not apply to ‘your products’ or ‘your work’ completed prior to” a certain date listed in the endorsement. . .

“Specifically, this insurance does not apply to. . . “property damage”. . . included in the ‘products-completed operations hazard’ and arising out of. . . ‘your work’ performed by or on behalf of you prior to the date shown above.”

Again, this endorsement incorporates the “products-completed operations hazard,” which allowed us to successfully argue that the exclusion was inapplicable to a builder classified as a 91580 “Executive Supervisor or Executive Superintendent.”

To our knowledge, this new ISO classification-based coverage argument has not yet been addressed by a court. Our recent successes with it have concluded with favorable settlements for our clients. Accordingly, for now, the ISO classification-based argument is a powerful new tool to challenge denials of coverage in construction defect cases where the builder is classified under 91580 “Executive Supervisors or Executive Superintendents.”

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*See “Dagger” or Plus Symbol Classes: What They Mean, Chris Boggs - [Virtual University | “Dagger” or Plus Symbol Classes: What They Mean](#)) (independentagent.com)