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Left Out in the Cold: Defense and Coverage Strategies for Parties Outside of a Wrap Policy

I. Concepts of the Wrap Policy

Overview of the Product and Who May be Insured

The wrap policy, also known as an OCIP (Owner Controlled Insurance Program), was developed to potentially provide insurance coverage for all the parties involved in the construction of the project whether it be a commercial project or a residential project. The wrap typically covers all relevant trades and sub trades who work on these projects. The owner of a project or the general contractor hired by the owner will obtain a wrap policy and the trades who are awarded contracts will then enroll so they are covered in case of a lawsuit being filed. The subcontracts will have specific provisions and requirements the trade must follow to be enrolled in the program. Although theoretically all trades should be enrolled, once a lawsuit is filed, determining who is enrolled or not can be challenging.

Potential Parties Not Enrolled in the Wrap

In many projects, there are certain parties who will not be enrolled in the wrap, primarily due to these parties contracting, for instance, directly with the owner prior to the wrap being issued or a general contractor being hired, and/or product manufacturers whose products are installed or incorporated into the project.

With respect to design professionals, such as architects and engineers, oftentimes these parties are retained by the owner to prepare the plans and specifications well before the general contractor even bids a job. Their contract is with the owner. Also, an owner may only retain the architect and then the architect contracts with a variety of subconsultants, such as the structural engineer and mechanical engineer. Additionally, for the design professionals, the primary coverage for these entities is an errors and omissions policy to cover their potential design errors, whereas a wrap is a general liability policy. Although a design professional may also have a general liability policy, typically it is the errors and omissions policy that will provide coverage.

With respect to product manufacturers, these companies will not have a contract per se with anyone, and some manufacturers will not even have knowledge its product was purchased for and installed in a specific project. The manufacturer then will not be potentially covered by the wrap, as it will not be insured under the same. Even if the manufacturer is aware its products, for instance, windows or roofing materials, are being purchased for a particular project, it normally would not be enrolled.

II. Design Professionals-- Liability and Coverage Issues

Liability of the Design Professional

The design professional will be sued when there are claims that the plans and specifications of a project were designed in error, such as a structural engineer that does not perform proper calculations or an architect of record that fails to note conflicts in design prepared by its subconsultants, as the architect will often contract directly with the other design professionals who will be needed to properly design all aspects of a project. State laws vary to some degree in proving a design professional is liable and fell below the standard of care.

California

A design professional is negligent when it/they fail to use the skill and care that a reasonably careful design professional would have used under similar circumstances. (Judicial Council of California Civil Jury Instructions (2022) ("CACI"), No. 600.) "The elements of a cause of action in tort for professional negligence are (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200 [superseded by statute on other grounds].)

"With respect to professionals, their specialized education and training do not serve to impose an increased duty of care but rather are considered additional ''circumstances' relevant to an overall assessment of what constitutes 'ordinary prudence' in a particular situation.'' 'Since the standard of care remains constant in terms of 'ordinary prudence,' denominating a cause of action as one for 'professional negligence' does not transmute its underlying character. For substantive purposes, it merely serves to establish the basis by which "ordinary prudence" will be calculated and the defendant's conduct evaluated.'" (*LAOSD Asbestos Cases* (2016) 5 Cal.App.5th 1022, 1050.)

A somewhat recent case addressing design professional liability is *Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP* (2014) 59 Cal.4th 568. In that case, a condominium HOA brought a construction design defect action against, *inter alia*, architectural firms, contending that defects made homes unsafe and uninhabitable during certain portions of the year due to high temperatures. The architecture firms demurred, and the trial court sustained the demurrer. The HOA appealed, and the Court of Appeal reversed. The California Supreme Court granted review, superseding the opinion of the Court of Appeal, and held that architects owed a duty to future homeowners relating to the design of the residential properties, extending to homeowners even though the architects do not build the project or "exercise ultimate control over construction and construction decisions."

From the decision:

> "[A]n architect owes a duty of care to future homeowners where the architect is a principal architect on the project—that is, the architect, in providing professional design services, is not subordinate to any other design professional—even if the architect does not actually build the project or exercise ultimate control over construction decisions." (*Id.* at 581.)

Florida

In Florida, design professionals are only liable in negligence if their acts or omissions fall below the standard of similarly situated professionals in the community. Reasonable care on the part of a design professional is the care that a reasonably careful design professional would use under like circumstances. Negligence is doing something that a reasonably careful design professional would not do under like circumstances or failing to do something that a reasonably careful design professional would do under like circumstances. (Florida Standard Jury Instructions No. 402.5)

Under Florida Statutes section 558.0035, a design professional employed by a business entity or an agent of a business entity cannot be held individually liable for negligence if the contract is with the business entity and does not name the individual design professional, as long as this is clearly and prominently specified in the contract, the business entity maintains liability insurance required under the contract, and the damages are solely economic in nature and "do not extend to personal injuries or property not subject to the contract."

Nevada

A design professional in Nevada "is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities." (*Orcutt v. Miller*, 95 Nev. 408, 313 (Nev. 1979).) Professional negligence is defined in Nevada as "a deviation from the normal standard of professional care exercised generally by other members in the profession of architecture or residential design." (NRS 623.270(5)(c)(1).)

To assert a claim for professional negligence in Nevada, a plaintiff must prove the following elements: "(1) the duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." (*Morgano v. Smith*, 110 Nev. 1025, 1028 n.2 (Nev. 1994).

In Nevada, the economic loss rule, which shields a party from tort-based liability, applies to all commercial construction defect claims against design professionals grounded in negligence, including claims for contribution, apportionment, and indemnity. In *Halcrow, Inc. v. Eighth Judicial District Court,* 129 Nev. 394 (2013), the Supreme Court of Nevada applied the economic loss doctrine to bar claims by a steel installation subcontractor and its successor for negligent misrepresentation against an engineer/designer in context of construction project. From the decision:

> "[T]he economic loss doctrine is intended to mark 'the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby [generally] encourages citizens to avoid causing physical harm to others.'" (*Id.* at 399.)
>
> "[C]omplex construction contracts generally include provisions addressing economic losses…Therefore, the parties' 'disappointed economic expectations' are better determined by looking to the parties' intentions expressed in their agreements." (*Id.* at 401.)

Homeowners are not required to provide a NRS Chapter 40 prelitigation notice of claim to design professionals. (*Barrett v. Eighth Judicial District Court,* 130 Nev. 613, 618 (2014).)

Texas

Construction defect lawsuits against design professionals in Texas require certificates of merit, and the failure to provide the certificate subjects a lawsuit to dismissal. (Tex. Civ. Prac. & Rem. Code § 150.002; *TRW Engineers, Inc. v. Hussion Street Buildings, LLC*, 608 S.W.3d 317 (Tex. App.-Houston 2020).

Texas SB 219, recently enacted in 2021 and codified as Chapter 59 in the Texas Building & Commercial Cod, limits a contractor's liability pertaining to design defects arising out of contracts relating to the construction or repair of an improvement to real property:

> "A contractor is not responsible for the consequences of design defects in and may not warranty the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the contractor by a person other than the contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier." (Tex. Bus. & Com. Code Ann. § 59.051(a).)

Notably, any contractual provisions attempting to waive the protections in the statute are void. (Tex. Bus. & Com. Code Ann. § 59.003.)

Washington

Washington's "Right to Cure" statutes define the term "construction professional" to include architects and engineers, in addition to, *inter alia*, builders, contractors, and subcontractors. (RCW 64.50.010(4).) To prosecute a construction defect action, RCW 64.50.020 requires notice be provided to construction professionals at least 45 days prior to filing an action. Washington has no requirement for filing a certificate of merit.

In *Pointe at Westport Harbor Homeowners' Association v. Engineers Nw., Inc*., 193 Wash.App. 695 (2016), the Washington Court of Appeals held that an engineer's duty of care to developers and property owners "encompasses…the prevention of safety risks" even if neither personal injury nor property damage has resulted from claimed deficiencies. (*Id.* at 705.) In that case, a condominium homeowners' association sued, among others, a structural engineer for negligent design, alleging that the condominium building was rendered unreasonably dangerous to its occupants due to defects. The Court of Appeals held that the engineer owed an independent duty to take reasonable care to design a building that did not present any safety risks.

Coverage Issues for the Design Professional

Burning Limits

A "burning limits" (aka "self-consuming" or "eroding limits") policy is one under which, pursuant to the policy provisions, the indemnification limit is reduced dollar-for-dollar by defense costs until zero is reached and the duty to defend is then terminated. An example of a "self-consuming" or "burning limits" provision is: "We will pay the amounts incurred under this section [i.e., defense costs] but any such payments shall reduce the limits of liability of this policy as stated in the declaration." (See, e.g., *Aerojet-General Corp. v. Transport Indem. Co.* (1997) 17 Cal. 4th 38, 76-77 [where the policy limits are reduced by defense costs, the insurer's duty terminates when it has paid out the full limits in defense even if no settlement or judgment has been reached].)

Are these provisions enforceable? It depends on the jurisdiction and type of policy. Several states have prohibited the inclusion of "burning limits" limits provisions in certain types of insurance policies. For

example, in New York, subject to various exceptions, "[n]o liability insurance policy...shall be issued or renewed...that...reduces the limits of liability stated in the policy by legal defense costs." (N.Y. Comp. Codes R. & Regs. tit. 11 § 71.2.) However, the statute goes on to provide that regardless of any enumerated exception, no liability insurance policy containing a diminishing limits provision shall be issued for motor vehicle liability insurance.

SIR/High Deductible

With the continued hardening of the commercial insurance market, corporate insurance buyers are exploring ways to mitigate the adverse impact of limited insurer capacities and escalating costs. This includes the consideration of the insured retaining a larger portion of risk using high self-insured retentions or deductibles in return for a lower premium. First-dollar coverage has become a luxury that many commercial insureds can no longer afford.

What is the difference between an SIR and deductible? Insurance policies written with deductibles provide that the insurer will pay the defense and indemnity costs in connection with a covered claim, and then charge or bill back the deductible amount to the insured. The "deductible" is a sum that is subtracted from the insurer's indemnity and/or defense obligation under the policy. The responsibility for the defense and settlement of each claim rests solely with the insurer, and the insurer maintains control over the entire claim process. In contrast, policies with self-insured retentions typically place the responsibility for claims handling, including the investigation, settlement, and payment of claims, in the hands of the insured. Under a policy with a SIR, the insured is usually required to pay the defense and other allocated expense costs as well as indemnity payments until the amount of the retention has been exhausted. Once the SIR has been exhausted, the insurer responds to the loss and assumes control of the claim. In practical effect, an SIR makes the named insured the primary insurer to the extent of the SIR.

The general rule is that only payments made that are covered by the policy should be applied to satisfy the SIR or deductible. The purpose of an SIR or deductible is to have the insured share the risk that has been undertaken by the insurer. A payment for a non-covered risk should not apply to satisfy the portion of the insured risk retained by the insured. (*General Star Nat. Ins. Corp. v. World Oil Co*. (C.D.Cal. 1997), 973 F. Supp. 943, 948; *Mercury Ins. Co. of Florida v. Emergency Physicians of Cent*. (Fla.App. 2015) 182 So. 3d 661, 667, review denied, 2016 WL 5640245 (Fla. 2016); and *Zurich American Ins. Co. v. Centex Corp*. (N.D. Tex. 2016) 373 F. Supp.3d 692, 700.)

Consent To Settle

A consent to settle clause generally requires that an insurer obtain its insured's consent before settling a claim, where the insured's consent shall not be unreasonably withheld. These clauses are included in most professional liability policies and are often found within a policy's defense and settlement provisions. In the professional liability context, even though a proposed settlement amount may be relatively low, the insured may feel that the reputational risk may not justify the settlement amount. While common in professional liability policies, these clauses are less likely to be found in general liability policies, where insurers typically have the discretion to settle in good faith as they see fit.

Some professional liability policies provide that the insurer cannot settle without the consent of the insured, but that if the insured refuses to consent to a settlement recommended by the insurer, the insurer's liability cannot exceed the amount for which the claim would have settled (plus the costs and expenses incurred as of the date of the failure to settle). It has properly been held that this provision

applies only to settlements that would have resulted in the insured being released. (See, e.g., *Security Ins. Co. of Hartford v. Schipporeit, Inc* (7th Cir. 1995, Illinois law) 69 F.3d 1377, 1383.)

The enforcement and interpretation of consent to settle clauses vary from state to state, especially as to the "reasonableness" of an insured's refusal to consent to settlement. (See, e.g., *Rawan v. Continental Casualty Co.* (2019) 483 Mass. 654 [Supreme Judicial Court ruled that consent to settle clauses in professional liability policies do not conflict with an insurer's statutory obligation to effectuate a prompt settlement under Mass. G.L. c. 176D, § 3(9)(f), once liability has been clearly established; the onus is on the insured, not the insurer, if the insured obstinately refuses to settle a claim]; *Carlile v. Farmers Ins. Exchange* (1985) 173 Cal.App.3d 975, 977 [insurer is not liable for damages for failure to attempt in good faith to settle a third party claim when the insured refuses to consent to settlement and such consent is a prerequisite under the insurance policy provisions].)

What Policies Apply

a. CGL Coverage v. Professional Liability Coverage

CGL affords comprehensive insurance coverage, such as premises and operations liability, protective liability, broad form property damage liability, etc., to protect against liability arising out of "bodily injury" and "property damage" to third parties caused by an "occurrence" ("accident") and "personal and advertising injury" (injury arising out of commission of specified offenses, injury which is rarely involved in a construction defect claim against a design professional).

Professional Liability (E&O) covers liability arising from the mistakes inherent in the practice of the particular profession or business and usually applies not only to "bodily injury" and "property damage" claims, but also to claims including pure economic loss.

b. Is The Coverage Written On "Occurrence" Or "Claims-Made" Basis – What Triggers Coverage?

Generally, Professional Liability Coverage is written on a claim made basis and CGL coverage is "occurrence"-based.

III. Liability of the Product Manufacturer

The laws that apply to builders, subcontractors, and design professionals are not the same in many respects for the product manufacturer. Manufacturers, including suppliers and distributors, have unique exposure created by strict liability, breach of warranty, and negligent design and manufacturing. Typically, a manufacturer will be sued for a defect in design of the product, in the manufacturing of the product installed, or a failure to warn about the product. Again, the states vary on the scope of potential liability of manufacturers.

California

In California, a plaintiff must show all the following to prove a strict liability claim against a product manufacturer: (1) Plaintiff was harmed by a product that was distributed, manufactured, or sold; and (2) the product contained (a) a manufacturing defect; *or* (b) a design defect; *or* (c) a warning defect. CACI 1200 Plaintiff must also prove that if there was a defect, the defect was a substantial factor in causing Plaintiff's injury. CACI 1201.

"[W]here a plaintiff alleges a product is defective, proof that the product has malfunctioned is essential to establish liability for an injury *caused by the defect*." (*Khan v. Shiley Inc.* (1990) 217 Cal.App.3d 848, 855 [italics original].).

"[S]trict liability should not be imposed upon a manufacturer when injury results from a use of its product that is not reasonably foreseeable." (*Cronin v. J.B.E. Olson Corp.* (1972) 8 Cal.3d 121, 126.)

Florida

For strict liability in Florida, a product is considered to have a manufacturing or design defect "if it is in a condition unreasonably dangerous to the user and the product is expected to and does reach the user or consumer without substantial change affecting that condition." A product is unreasonably dangerous due to manufacturing defect when it is different from its intended design and fails to perform as safely as the intended design would have performed and is unreasonable dangerous due to a design defect if the product fails to perform as safely as an ordinary consumer would expect when used as intended or when used in a manner reasonably foreseeable by the manufacturer, and/or the risk of danger in the design outweighs the benefits. (Florida Standard Jury Instructions No. 403.7.)

In addition to the product designer and/or manufacturer, any distributor, importer, or seller in the chain of distribution may be liable for damages caused by a defective product. (*Samuel Friedland Family Enterprises v. Amoroso*, 630 So. 2d 1067 (Fla. 1994); *Rivera v. Baby Trend, Inc.,* 914 So. 2d 1102 (Fla. 4th DCA 2005); *Porter v. Rosenberg,* 650 So. 2d 79 (Fla. 4th DCA 1995).)

Nevada

Ordinarily, construction defect claims in Nevada are governed by NRS Chapter 40, including its prelitigation/right to repair procedures, however this does not necessarily apply to product manufacturers or suppliers. In *Barrett v. Eighth Judicial District Court,* 130 Nev. 613 (2014), homeowners in a subdivision provided NRS Chapter 40 notice to the general contractor that there were defective plumbing parts in the residences. The general contractor then forwarded the notice to its subcontractors and suppliers, including a plumbing supplier, who initially declined to make repairs, asserting it was not a supplier under Chapter 40.

The homeowners then sued the general contractor, who filed a third-party complaint against its subcontractors, including a plumbing subcontractor, who filed its own fourth-party complaint against the supplier. In turn, the supplier moved to dismiss, alleging it had not been provided notice under Chapter 40. The trial court entered an order requiring the plumbing subcontractor to provide prelitigation notice to the supplier, and after the notice was provided the supplier then made repairs. The homeowners filed a writ arguing that neither they nor the plumbing subcontractor was required to give the supplier notice under Chapter 40. The Nevada Supreme Court agreed and held that prelitigation notice was not required to be provided to the supplier, holding that subcontractors are not defined as claimants in Chapter 40 (claimants are required to give notice) and therefore not required to give notice, and that homeowners/claimants "may" give notice to suppliers, but are not required to.

From the decision:

> "The homeowners here argue that, while NRS Chapter 40 compels the contractor to forward any notices of defect to the subcontractors and suppliers or forgo suit against those subcontractors and suppliers, the chapter does not require either the claimant

homeowners or the subcontractors to give prelitigation notice to another subcontractor or supplier like Uponor. We agree." (*Id.* at 616.)

"We conclude that neither NRS 40.645 nor any other provision require that claimant homeowners or subcontractors give notice to other subcontractors, suppliers, or design professionals prior to commencing or adding an action against them." (*Id.* at 618.)

Texas

Chapter 82 of the Texas Civil Practice & Remedies Code governs product liability claims in Texas. Under Chapter 82 and subject to some exceptions, a product manufacturer is obligated to indemnify and hold harmless a product seller for losses arising out of product liability actions. (Tex. Civ. Prac. & Rem. Code § 82.002 ["A manufacturer shall indemnify and hold harmless a seller against loss arising out of a products liability action, except for any loss caused by the seller's negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering the product, for which the seller is independently liable."].)

Under Chapter 82, a "seller" is defined as "a person who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption a product or any component part thereof." The purpose of the statute is to "protect innocent sellers by assigning responsibility for the burden of products-liability litigation to product manufacturers." (*Centerpoint Builders GP, LLC v. Trussway, LTD*., 496 S.W.3d 33, 36 (2016.).)

However, general contractors are not defined as "sellers" for purposes of Chapter 82. (*Id*.) In *Centerpoint Builders GP, supra*, an independent subcontractor brought a products liability action against the general contractor and truss manufacturer for injuries sustained when the independent subcontractor stepped onto truss that broke and collapsed. The manufacturer filed a cross-action against the general contractor, and the general contractor filed a crossclaim against manufacturer. The trial court ruled that the general contractor qualified as a truss "seller" eligible to seek indemnity from manufacturer. The parties jointly appealed, and the Court of Appeal reversed, rendering judgment for the manufacturer on the indemnity claim. The general contractor petitioned the Texas Supreme Court for review, and, in a matter of first impression, the Supreme Court held that the general contractor was not a "seller" of trusses entitled to indemnity from manufacturer. In so holding, the Supreme Court reached the "determination that general contractors typically are not 'engaged in the business of' selling or distributing the materials used in constructing a particular improvement." (*Id.* at 39.)

Washington

Product manufacturers are not covered by Washington's "Right to Cure" statutes addressing construction defects. Instead, product liability actions are covered by the Washington Product Liability Act, codified as RCW Chapter 7.72. Under Chapter 7.72, "[a] product manufacturer is subject to liability…if the claimant's harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed or not reasonably safe because adequate warnings or instructions were not provided." (RCW 7.72.030.) Strict liability applies when "the claimant's harm was proximately caused by the fact that the product was not reasonably safe in construction or not reasonably safe because it did not conform to the manufacturer's express warranty or to the implied warranties under Title 62A RCW." (*Id.*)

The Washington Supreme Court held that the test for inadequate design is based on a strict liability standard rather than negligence. (*Soproni v. Polygon Apartment Partners,* 137 Wn.2d 319 (1999).) In that case, the mother of a toddler who fell out of a bedroom window in an apartment complex brought a products liability action against the window manufacturer. The trial court granted summary judgment for manufacturer, and the mother appealed. The Court of Appeals affirmed the summary judgment, and the mother petitioned for Washington Supreme Court review. The Supreme Court reversed the appellate decision upholding the summary judgment ruling and held that: (1) a lack of warnings was not the proximate cause of the accident; (2) evidence that the window complied with building and fire codes did not foreclose a design defect claim; and (3) a genuine issue of material fact as to the feasibility of an alternative design precluded summary judgment on design defect claims.

IV. Coverage Issues for the Product Manufacturer

Vendors Endorsements

Vendors' endorsements cover the vendors' liability arising out of their role in passing the manufacturer's product on to customers. (*Senco of Florida, Inc. v. Continental Cas. Co.* (Fla.App. 1983) 440 So. 2d 625; *Mitchell v. Stop & Shop Companies, Inc.* (Mass.App. 1996) 672 N.E.2d 544 (1996).) They do not cover vendors for their own negligence. (*Hartford Fire Ins. Co. v. St. Paul Surplus Lines Ins. Co*. (7th Cir. 2002, applying California law) 280 F.3d 744.)

Lack Of Resulting Property Damage

The prevailing view nationwide appears to be that, where a product manufacturer or supplier forwards to a contractor a defective product which is installed in the construction by the contractor, but the defective product does not cause damage to "other property," there is no "physical injury to tangible property." Absent "physical injury to tangible property" or a loss of use of tangible property that was not physically injured, there is no "property damage" and therefore no "property damage" under a CGL policy. (See, e.g., *F & H Const. v. ITT Hartford Ins. Co. of Midwest* (2004) 118 Cal. App. 4th 364.) Notably, a key defense for a product manufacturer is the economic loss rule, which provides that claims against a manufacturer where the product only damaged itself rest in contractual warranty claims for repair, not in tort/strict liability. The measure of damages arguably is only what it costs to repair or replace the damaged product.

Rip and Tear Expenses

"Rip and tear" damages are the costs of removal and replacement of non-defective property required to repair defective work, also known as "get to" damages. For example, if an insured contractor installs a defective pipe which is hidden behind a non-defective wall, some, or all the walls may need to be taken apart to access the pipe. Are these costs covered "property damage" as defined in a CGL policy? Some courts have found that "rip and tear" expenses are not covered. (See, e.g., *Regional Steel Corp. v. Liberty Surplus Ins. Corp.* (2014) 226 Cal. App.4th 1377 [no underlying "property damage" where concrete removed because of inappropriately installed seismic ties]; *NAS Surety Group v. Precision Wood Products, Inc.* (M.D.N.C. 2003) 271 F. Supp. 2d 776 [voluntary act of ripping and tearing into non-defective property as part of repair regarding defective cabinets and millwork was not an "occurrence"["accident"].].) Other courts have found coverage for these expenses. (See, e.g., *Colorado Pool Systems, Inc. v. Scottsdale Ins. Co*. (Colo.App. 2012) 317 P.3d 1262 [costs incurred in demolishing and replacing defective pool itself were not covered, but rip and tear damage to non-defective third-party work was covered because it was consequential damage resulting from an "accident"]; *Dewitt*

Constr. Inc. v. Charter Oak Fire Ins. Co., (9th Cir. 2002) 307 F.3d 1127 [improperly constructed concrete piles; removal and destruction of other subcontractors' work to correct the defective piles constituted covered "property damage"].)

Your Work Exclusion v. Your Product

Where the insured is a product manufacturer or supplier which merely supplied a product incorporated into the construction and did not perform operations on the construction project, the standard CGL exclusion for "property damage" to "your work" does not apply, as "your work" is limited to (1) work or operations performed by you or on your behalf; and (2) materials, parts or equipment furnished in connection with such work or operations. Instead, the "property damage" to "your product" exclusion is the pertinent CGL exclusion as "your product" includes goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by your or others trading under your name. The exclusion only applies to "property damage" to the product itself, in contrast to "property damage"" to other property. (See, e.g., *Travelers Property Casualty Company of America v. Allwire, Inc.* (C.D. Cal. 2020) 508 F.Supp.3d 736, 740 [contractor's claims against insured that manufactured allegedly defective electric cables that contractor installed into power substations did not come within the exclusion as contractor's alleged injuries arose from damage to substations due to allegedly defective cable, not merely to insured's cable itself]; *MI Windows & Doors, LLC v. Liberty Mut. Fire Ins. Co*. (M. Fla. 2015) 123 F.Supp.3d 1332, 1333 [defense and indemnity owed to insured window and door manufacturer for defective products that caused water damage to other property].)