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"Your Work": What is Excluded?

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I. Introduction

Generally, a Commercial General Liability insurance policy ("CGL") provides coverage for compensatory damages, such as bodily injury or property damage, arising out of the insured's business operations. Exclusion clauses, however, operate to exclude coverage in many circumstances, such as intentional acts, contractual liability, workers' compensation, employment injuries, product/work recall, automobile/watercraft/aircraft, pollution, insured's own property, damage to "your product," damage to "impaired property," and damage to "your work". This paper explores and discusses recent judicial treatment of the "your work" exclusion.

Referred to in some court decisions and policies as the "own work" exclusion, "work performed" exclusion, "defects" exclusion, and/or "faulty workmanship" exclusion, a typical "your work" exclusion **excludes coverage for property damage caused by the insured's faulty or defective workmanship.** The overall purpose of a "your work" exclusion is to prevent the CGL policy from acting as a guarantee of the insured's work. An insured who wishes to secure insurance for their workmanship should look to, for example, an errors and omissions insurance policy instead of a CGL policy.

A "your work" exclusion clause is often litigated in the context of construction liability insurance. The circumstances giving rise to consideration of the clause often follow a similar pattern:

1. The owner hires a contractor to construct the building.
2. The contractor subcontracts part of the construction work.
3. Either the contractor or subcontractor's faulty or defective workmanship causes damage.
4. The owner pays a third party to repair the damage, then sues the contractor for the repair costs. Alternatively, the contractor repairs the damage and incurs repair costs.
5. The contractor notifies and/or claims the repair costs from its CGL insurer.
6. The CGL insurer refuses to defend the contractor against the owner's action and/or denies coverage by maintaining that coverage is excluded by the "your work" exclusion clause.

Where a "your work" exclusion applies, coverage will be denied and the insurer's duty to defend does not arise. Whether the exclusion applies, however, is not always clear. Complex circumstances in recent jurisprudence are examined below.

II. Jurisprudence

A. *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*[1]

Progressive is the leading SCC decision for "your work" exclusion clauses in CGL policies. In this case, the British Columbia Housing Management Commission ("BC Housing") hired Progressive Homes Ltd. ("Progressive"), as general contractor, to build several housing complexes. After construction was completed, water leaked into the complexes and caused significant damage. BC Housing sued Progressive, claiming that the complexes were inadequately constructed. Progressive had secured multiple successive CGL insurance policies from Lombard General Insurance Co. ("Lombard"), but Lombard refused to defend Progressive on the basis that the claim was not covered.

[1] 2010 SCC 33, [2010] 2 SCR 245 [*Progressive*].

Holding that Lombard had a duty to defend Progressive, the SCC first summarized some general principles of insurance law:

- An insurer's duty to defend the insured arises where *alleged* facts in the pleadings, if proven to be true, would require the insurer to indemnify the insured.[2] If a claim falls outside the policy, either because it is not covered or because it is excluded by the "your work" exclusion (or any other exclusion clause), then the duty does not arise.
- If the language of the policy is unambiguous, then effect should be given to the language while reading the contract as a whole.[3]
- If the language of the policy is ambiguous, then general rules of contract construction should apply,[4] which includes preferring interpretations that are consistent with the parties' reasonable expectations so long as the interpretation is supported by the policy's wording. Also, interpretations that would lead to unrealistic results should be avoided. Lastly, similar insurance policies should be interpreted consistently.
- If the general rules of contract construction fail to resolve the ambiguity, then the policy will be construed against the insurer such that coverage provisions are interpreted broadly and exclusions clauses narrowly.[5] To rely on an exclusion clause, the insured must show that the exclusion "clearly and unambiguously" excludes coverage.[6]

The SCC also provided some guidance for considering "your work" exclusions. Unless the CGL policy provides otherwise:

- "Property damage" is not limited to damage to third party property.[7] Damage to the insured's own work is covered unless specifically excluded.
- Defective property itself *can* constitute "property damage."[8]
- Faulty or defective workmanship *can* be an "accident" or an "occurrence".[9] As CGL insurance is often occurrence-based, faulty or defective workmanship is covered unless specifically excluded.

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[2] *Ibid* at para 19.
[3] *Ibid* at para 22.
[4] *Ibid* at para 23.
[5] *Ibid* at para 24.
[6] *Ibid* at para 51.
[7] *Ibid* at paras 35-37. Multiple CGL policies were at issue in *Progressive*. One policy defined "property damage" as "(1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an accident occurring during the policy period" (*ibid* at para 30). The other policies defined it as "a. Physical injury to tangible property, including all resulting loss of use of that property; or b. Loss of use of tangible property that is not physically injured" (*ibid*).
[8] *Ibid* at paras 38-40.
[9] *Ibid* at para 46. Multiple CGL policies were at issue in *Progressive*. One policy defined "accident" to include "continuous or repeated exposure to conditions which result in property damage neither expected nor intended from the standpoint of the Insured" (*ibid* at para 43). "Essentially the same definition" applied to "occurrence" in the other policies (*ibid*).

Ultimately, whether faulty or defective workmanship is covered by a CGL policy depends on the specific wording in the policy. It is important to note the SCC's interpretation of the following exclusion clause:

> "Property damage" to that particular part of "your work" arising out of it or any part of it and included in the "products-completed operations hazard".
>
> This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.[10]

The SCC explained that the above clause "…only excludes coverage for defective property. *Coverage would remain for resulting damage*."[11]

B. Interpretation of "Your Work" Exclusion Clauses in Recent Case Law Across the Country

Although *Progressive* has provided much-needed guidance to lower Courts,[12] whether a particular "your work" exclusion clause applies nevertheless depends upon the wording of the specific CGL policy. Accordingly, lower Courts follow *Progressive*, but their conclusions are ultimately based upon the CGL policies before them. Exploring recent case law reveals how Courts are interpreting "your work" exclusions clauses in light of *Progressive* and how these decisions generally inform the understanding of "your work" exclusions by insurers, adjusters and insureds.

1. Before determining whether the "your work" exclusion applies, one must first determine the initial scope of coverage. A subcontractor exception to the "your work" exclusion does not widen the scope of coverage.

Saskatchewan Government Insurance v. Patricia Hotel (1973) Ltd.[13] **(Saskatchewan)**

Patricia Hotel hired a contractor to demolish a building. The building collapsed onto and damaged an electrical sub-station owned by the City of Saskatoon. The City sued Patricia Hotel, who sought a court order to direct SGI to defend Patricia Hotel pursuant to its all-risk insurance policy. The policy contained the following:

> This insurance does not apply to:
> …
> (m) "Property damage" arising out of:
>
> …
> (3) The removal or weakening of support of any property, building or land whether such support be natural or otherwise.
>
> *This exclusion (m) does not apply:*

[10] *Ibid* at para 66.
[11] *Ibid* at para 68 [emphasis added].
[12] See Marcus B. Snowden & Mark G. Lichty, *Annotated Commercial General Liability Policy*, loose-leaf (consulted on September 12, 2015), (Toronto: Canada Law Book, 2014), ch 22 at 22-30 to 22-31.
[13] 2011 SKCA 70, [2011] ILR I-5160 [*Patricia Hotel*].

> *(a) To "property damage" arising out of worked performed on your behalf by any contractor or sub-contractor.*[14]

The lower Court's decision directing SGI to defend Patricia Hotel was overturned by the Saskatchewan Court of Appeal, which held that SGI's duty to defend was not engaged because the damage did not fall within the scope of coverage provided by the CGL policy. Coverage was limited to Patricia Hotel's operations, which on the Cover Page of the policy was indicated to be "Hotel, Night Club and Beer and Wine Store."[15] Since Patricia Hotel did not establish that the demolition was related to its operations, damage caused by the demolition was not covered by the policy.[16] The fact that the contractor was hired by a part owner of Patricia Hotel did not mean the demolition was related to its operations.[17] The Court of Appeal also noted that the building being demolished was not the hotel itself, was on a legally distinct parcel of land, was owned by another corporation, and the relationship between that corporation and Patricia Hotel was unknown. If the damage was caused by repair or maintenance work to the hotel itself, then SGI's duty to defend would have been engaged.

The Saskatchewan Court of Appeal also rejected Patricia Hotel's argument that the subcontractor exception in the exclusion clause applied so that the damage was covered.[18] An exception "…cannot create coverage where none would have existed otherwise… If [Patricia Hotel's] potential liability arises from activities outside the scope of [its operations], the fact that such activities involve property damage arising from work performed by a contractor cannot engage coverage under the Policy."[19]

2. If "subcontractor" is not defined, the subcontractor exception in a "your work" exclusion clause will likely be interpreted against the insurer.

The two Ontario cases below were decided before *Progressive*, but have been included since: (i) the SCC had implicitly adopted the Ontario Court of Appeal's approach to "your work" exclusions; and (ii) they provide important guidance to the subcontractor exception commonly found in "your work" exclusion clauses.

Bridgewood Building Corp. (Riverfield) v. Lombard General Insurance Co. of Canada[20] **(Ontario)**

Defective concrete supplied by a subcontractor caused structural defects in homes built by Bridgewood. Bridgewood repaired the damage and claimed the costs of repair from Lombard. Lombard refused to indemnify Bridgewood and argued that CGL policies are not intended to cover business risks. More specifically, Lombard argued that insurance proceeds should not be used to pay for repairing and/or replacing poorly constructed products as this would allow contractors and subcontractors to be paid twice: an initial payment for its work and a subsequent payment, from the insurer, to repair or replace the work. Bridgewood argued that

[14] *Ibid* at para 5 [emphasis added].
[15] *Ibid* at para 26.
[16] *Ibid* at paras 26-29.
[17] *Ibid* at paras 30-31.
[18] *Ibid* at para 29.
[19] *Ibid* at para 29.
[20] [2006] ILR I-4498, 266 DLR (4th) 182 [*Bridgewood*], leave to appeal to SCC refused, [2006] SCCA No 204. *Bridgewood* was cited favourably in *Progressive*, *supra* note 1, at para 35, albeit not in regards to the subcontractor exception.

the exclusion clause does not apply because it contained a subcontractor exception. The exclusion clause in question stated:

> This insurance does not apply to:
>
> …..
>
> j. "Property damage" to
>
> 1) that particular part of "your work",
>
> 2) that particular part of machinery or equipment forming a part of "your work" described in 1) above, or
>
> 3) component or constituent of "your work" described in 1) above, whether such component or constituent is a separate physical part or an integral element of "your work",
>
> that is defective or actively malfunctions. This exclusion applies only to "property damage" to "your work" included in the "products-completed operations hazard".
>
> *This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor*. [21]

Affirming the lower Court decision and holding that the subcontractor exception applies, the Ontario Court of Appeal observed that interpreting the exception does not depend on general principles of what CGL policies should or should not cover, but on the wording found in the policy itself. The Court of Appeal was critical of Lombard:

> [I]f insurance companies do not wish to indemnify general contractors for the shortcomings of their subcontractors, they need only say so in clear and unambiguous language in their policies. As [Bridgewood] has pointed out, standard industry endorsements designed to accomplish just that have been available since December 1, 2001. The insurance industry drafted those endorsements to remove coverage for faulty work by subcontractors… Lombard does not challenge this. And yet, for reasons known only to itself, it has not chosen to incorporate these endorsements into its CGL policies.[22]

Axa Insurance (Canada) v. Ani-Wall Concrete Forming Inc.[23] **(Ontario)**

Ani-Wall used concrete mixed and supplied by a third party to construct footings and foundation walls for homes. The concrete turned out to be defective, which forced builders to repair or replace the footings and foundation walls at considerable cost. The builders sued Ani-Wall. AXA refused to indemnify Ani-Wall under the CGL policy and argued, *inter alia*, that the "your work" exclusion applied. Ani-Wall argued that the exclusion did not apply because it included a subcontractor exception:

> This insurance does not apply to:
>
> j) "Property damage" to that part of "your work" arising out of it or any part of it where the cause of the damage is a defect in "your work".

[21] *Bridgewood*, *supra* note 19, at para 11 [emphasis in original].
[22] *Ibid* at para 21.
[23] 2008 ONCA 563, [2008] ILR I-4719 [*Ani-Wall*].

> This exclusion only applies to:
> ….
> (ii) that part of "your work" which is defective.
>
> *This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor*.[24]

AXA claimed that the third party was a "supplier", not a sub-contractor. The lower Court disagreed, holding that the third party was a sub-contractor such that the exception applied. The Ontario Court of Appeal upheld the lower Court's decision, but acknowledged that "…this case is close to the line."[25] The Court of Appeal reasoned that Ani-Wall triggered the subcontractor exception when it subcontracted its obligation to supply concrete, pursuant to Ani-Wall's contract with the builders, to the third party.[26] As in *Bridgewood*, the Court of Appeal criticized the insurer:

> [I]f insurers want to lay down hard and fast criteria, they can do so by defining the word 'subcontractor' to their choosing. Insured persons who pay substantial premiums would then know where they stand and would not be left guessing about the extent of the coverage available to them. To date, for reasons unknown, AXA has chosen not to define the word 'subcontractor' in the policy. Unless and until it does so, I believe the word should be construed broadly, lest it become a trap for the unwary.[27]

3. Arguments that faulty or defective workmanship was not an "occurrence" or not an "accident", and thus not covered by occurrence-based CGL policies, are unlikely to be successful.

California Kitchens & Bath Ltd. v. AXA Canada Inc.[28] **(Ontario)**

California Kitchens hired subcontractors to install kitchen cabinets in the owner's home. The subcontractors were not aware of the safety codes and failed to install the sink properly. The owners had to replace the entire kitchen then sued California Kitchens. California Kitchens had secured a general liability insurance policy with AXA which contained provisions similar to those found in a CGL policy. AXA refused to defend California Kitchens and argued, among other things, that: (i) the defective design and installation was not an "occurrence" or "accident"; and (ii) defective workmanship is not fortuitous and, therefore, cannot be an accident. Holding that AXA owed a duty to defend California Kitchens, the Ontario Superior Court of Justice quickly rejected both arguments by citing *Progressive*.[29]

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[24] *Ibid* at para 9 [emphasis added].
[25] *Ibid* at para 20.
[26] *Ibid*.
[27] *Ibid* at para 17. The "hard and fast" criteria were three criteria, from American case law, which AXA argued should be used to differentiate between a "subcontractor" and a "supplier." The three criteria are: (i) the product supplied should be custom made according to specifications identified in the prime contract; (ii) the supplier should provide on-site installation or supervision services; and (iii) the product supplied should form an integral or substantial part of the prime contract (*ibid* at para 13). The Court of Appeal neither rejected nor accepted these criteria, but noted that applying them in this case would still lead to the conclusion that the third party was a subcontractor.
[28] 2010 ONSC 6125, 97 CLR (3d) 94 [*California Kitchens*].
[29] *Ibid* at paras 13-17.

PCL Constructors Canada Inc. v. Encon Group[30] **(Ontario)**

As general contractor for a condominium construction project, PCL secured wrap-up liability insurance from Temple Insurance Company ("Temple"). After construction was completed, the condo corporation sued PCL for alleged defects and deficiencies in construction. Temple refused to defend PCL and argued that the policy was intended to cover PCL's tortious liability to third parties, "…not to cover the cost of repairing [PCL's] own defective work."[31] Temple also relied upon the following exclusion clause:

> This policy does not apply to any liability…for: Injury to, or destruction of, or loss of use of… that particular part of any work performed by or on behalf of the insured, if such work is deemed unsafe, inadequate, faulty or unsatisfactory because of any known or suspected defect or deficiency therein. Any expense incurred by the insured for the inspection, withdrawal, repair or replacement of such work, or loss of use of such work is not reimbursable by this policy and is not a subject of cover hereunder.[32]

Holding that Temple had a duty to defend PCL, the Ontario Superior Court of Justice gave effect to the plain meaning of the policy's wording. Specifically, the policy's definition for "property damage," which was "physical injury to or destruction of tangible property caused by an *occurrence*… which means an accident, including continuous or repeated exposure to conditions, which result in bodily injury or property damage,"[33] did not restrict coverage to particular types of property damage.

4. Showing that the "your work" exclusion "clearly and unambiguously" excludes coverage is difficult, especially in duty-to-defend cases.

Returning to *PCL*,[34] the Ontario Superior Court of Justice also concluded that the "your work" exclusion only applied to defective work done by PCL such that PCL could not recover "for fixing *the particular part* of *its* work on the condominium project."[35] Since the condo corporation's Statement of Claim against PCL did not clearly specify who performed the deficient work or even what the deficient work was, "at least some of the claims can be interpreted in a manner to bring them within coverage under the policy"[36] with the result that Temple's duty to defend PCL was engaged.

Co-operators General Insurance Co. v. Wawanesa Mutual Insurance Co.[37] **(Nova Scotia)**

Eric White Construction Limited ("White Construction") subcontracted with Mark Wile Plumbing & Heating ("Wile Plumbing") to install a water tank on a cottage property. Wile Plumbing had secured a CGL policy with the Co-operators. An inspection seven years later revealed that the tank had fallen and struck a fuel oil line. The resulting oil spill caused significant damage. Intact Insurance Company ("Intact") advanced a claim on behalf of White Construction, claiming

[30] 2010 ONSC 5911, [2010] ILR I-5064 [*PCL*].
[31] *Ibid* at para 13.
[32] *Ibid* at para 9 [emphasis omitted].
[33] *Ibid* at para 21 [emphasis in original].
[34] *Supra* note 30.
[35] *Ibid* at para 30 [emphasis in original].
[36] *Ibid* at para 24.
[37] 2014 NSSC 23, [2014] ILR I-5574 [*Co-operators*].

that Wile Plumbing was negligent by improperly installing or fastening the tank and ensuring that it was properly supported. Co-operators denied that it had a duty to defend Wile Plumbing because, among other things, any property damage must have been related to Wile Plumbing's work and would fall within the "your work" exclusion found in the policy:

> The exclusions under the policy include the following:
>
> …..
>
> h. "Property damage" to:
>
> > 6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.[38]

Holding that the Co-operators had a duty to defend Wile Plumbing, the Nova Scotia Supreme Court reasoned, in part, that Co-operators failed to show that the exclusion "clearly and unambiguously" excluded coverage.[39] The Court observed that, as the issue was whether Co-operators' duty to defend arose and not whether the damage is covered, "[e]vidence is not available to the Court in assessing the duty to defend. [The Court] must consider the *possibility of coverage relying only on the pleadings as drafted*."[40] Had the issue been determining coverage, the Court would have been able to consider more evidence.[41]

5. Where the cost of rectifying faulty or defective workmanship is excluded, damage that resulted from the faulty or defective workmanship *might* be covered.

Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Co.[42] **(B.C.)**

The insured agreed to design and construct an eight-story reinforced concrete structure. The insured subcontracted the construction work, which included building the concrete framework and placing and finishing concrete slabs. When the slabs were almost completed, it was discovered that some slabs over-deflected and cracked. Although the slabs passed structural integrity tests, the uneven floors were functionally deficient. The insured repaired the slabs at great cost and claimed the repair costs under its "course of construction" insurance policy, which was intended "…to afford coverage for damage to property that was in a partially finished state."[43] One of the insurers' bases for denying coverage was the following exclusion clause:

> [A]ll costs rendered necessary by defects of material workmanship, design, plan, or specification, and should damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to said damage.[44]

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[38] *Ibid* at para 7.
[39] *Ibid* at paras 22-24.
[40] *Ibid* at para 24 [emphasis added]
[41] *Ibid*.
[42] 2015 BCCA 347, [2015] BCWLD 5448 [*Acciona*].
[43] *Ibid* at para 55.
[44] *Ibid* at para 11.

Holding that coverage was not excluded, the trial judge had made several critical findings of fact: (i) the "defects in material workmanship" were improper formwork and shoring/reshoring procedures by which the slabs were created; and (ii) the "damage" was the slabs' over-deflection and cracking.[45] The British Columbia Court of Appeal upheld the lower Court's decision and affirmed the trial judge's reasoning: the clause excluded costs rendered necessary by defects, but was limited to the costs that would have been incurred to rectify the improper formwork and shoring/reshoring procedures. Accordingly, the exclusion clause did not exclude the cost of repairing the damaged slabs.[46]

Bulldog Bag Ltd. v. AXA Pacific Insurance Co.[47] **(B.C.)**

Sure-Gro Inc. ("Sure-Gro") packaged its products in printed plastic bags manufactured by Bulldog. Sure-Gro discovered that the bags' ink was coming off and returned unused bags. As for already-packaged bags, Sure-Gro salvaged 90% of the product by removing it from the bags and repackaging it in new bags. Sure-Gro sued Bulldog for the salvage costs; Bulldog settled with Sure-Gro. Bulldog then claimed the loss from its insurer AXA under its CGL policy. On appeal, AXA argued that salvage costs were not covered because property damage to "goods or products manufactured or sold by [Sure-Gro]" was excluded.[48]

Noting that the lower Court's decision "…can no longer be supported…"[49] as it was decided prior to *Progressive*, the British Columbia Court of Appeal held that the "plain wording" of the exclusion clause meant it applied only to Bulldog's bags, i.e. - damage to Bulldog's bags is excluded.[50] Since the basis for Bulldog's claim against AXA was the salvage costs incurred by Sure-Gro, and as the exclusion clause does not apply to the salvage costs, AXA must indemnify Bulldog. The Court of Appeal found support for this conclusion in the SCC's interpretation of the "your work" exclusion clause[51] where coverage for defective property was excluded, but coverage remained for resulting damage.[52]

Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.[53] **(Alberta)**

The insureds retained Bristol Cleaning ("Bristol") to clean the windows of a tower under construction by the insureds. During cleaning, Bristol damaged the windows by using inappropriate tools and methods. The windows had to be replaced. Previously, the insureds had obtained an "All Risks" policy that covered all "direct physical loss or damage"[54], but excluded "[t]he cost of making good faulty workmanship, construction materials or design unless physical damage not otherwise excluded by this policy results, in which event this policy shall insure such resulting damage."[55]

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[45] *Ibid* at para 59.
[46] The insured had claimed nearly $15 million from the insurer. The Court of Appeal affirmed the lower Court's dismissal of certain portions of the claim, such as "increased subcontractor costs" and "management fee," for reasons unrelated to "your work" exclusion clauses (*ibid* at para 22).
[47] 2011 BCCA 178, [2011] ILR I-5135 [*Bulldog*].
[48] *Ibid* at para 6.
[49] *Ibid* at para 25.
[50] *Ibid* at paras 32-33.
[51] See text accompanying footnote 11.
[52] *Ibid* at para 34.
[53] 2015 ABCA 121, [2015] ILR I-5714, leave to appeal to SCC requested [*Ledcor*].
[54] *Ibid* at para 3.
[55] *Ibid* at para 4.

The insurer relied on the exclusion to deny coverage, arguing that the cost for replacing the windows was the cost of making good Bristol's faulty workmanship. The insureds argued that: (i) the exclusion does not apply because Bristol's cleaning was not "workmanship" as it did not create new products; and (ii) even if the exclusion clause applied, the cost for replacing the windows was "resulting damage", not "making good faulty workmanship".

The lower Court decision, holding that damage to the windows was covered by the policy, was overturned by the Alberta Court of Appeal. Firstly, nothing in the policy indicated that "workmanship", and thus the exclusion, should be limited to situations where a new product is created.[56] Secondly, whether damage is excluded because it is "the cost of making good faulty workmanship" or is covered because it falls within the "resulting damage" exception to the exclusion should be determined by the physical or systemic connectedness test: "…damage which is physically or systemically connected to the very work being carried on is not covered."[57] Applying this test depends on the following factors:

> (a) The extent or degree to which the damage was to a portion of the project actually being worked on at the time, or was collateral damage to other areas. The test will be relatively easy to apply when the damage is caused directly by the work to the very object being worked on. There may be cases where several parts of the project work together as one system. Work on one part of the system may cause damage to another part, but repairing that damage might still properly be characterized as the cost of making good faulty workmanship if there is sufficient systemic connectedness;
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> (b) The nature of the work being done, how the damage related to the way that work is normally done, and the extent to which the damage is a natural or foreseeable consequence of the work itself. If the damage is a foreseeable consequence of an error in the ordinary incidents of the work, then it presumptively results from bad workmanship; and
>
> (c) Whether the damage was within the purview of normal risks of poor workmanship, or whether it was unexpected and fortuitous.[58]

The Court of Appeal held that the exclusion clause applied because the cost of replacement was "making good the faulty workmanship."[59] The Court of Appeal reasoned that the damage was caused directly by Bristol's cleaning, was not accidental or fortuitous, and the "scraping and wiping forces that caused the damage" was intentional.[60]

III. Conclusion

Ultimately, whether a particular "your work" exclusion clause applies depends upon the wording of the specific CGL policy and the circumstances at hand. Guidance provided by recent case law should not be accepted without question and is no substitute for examining, in detail, an insured's claim.

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[56] *Ibid* at para 32.
[57] *Ibid* at para 57.
[58] *Ibid* at para 50.
[59] *Ibid* at para 52.
[60] *Ibid*.

It is important to note that the insureds in *Ledcor* have sought leave to appeal to the SCC. If leave is granted, a new leading decision on "your work" exclusion clauses will be forthcoming and the SCC will have to decide whether to adopt or reject the physical or systemic connectedness test espoused by the Alberta Court of Appeal. If leave is not granted, insurers and insureds may find it difficult to reconcile *Ledcor* with *Acciona* and *Bulldog*, decisions by the British Columbia Court of Appeal which took a different approach to applying "your work" exclusion clauses to faulty and defective workmanship.