



“Repair Work” Endorsements and Punch List Work

by Jeremiah Welch

The recent white paper on Repair Work Endorsements by Jeremiah Welch, drew a storm of responses. Most were appreciative and included follow up questions, but there were those that lamented along the lines of: “How can that be? We’ve been doing it this way for years...”. For the skeptics, the best approach to test the premise of the paper (that most “repair work endorsements” are at best redundant with the PCO extension and at worst restrictive) is to try to formulate a scenario where coverage would be available under a “repair work endorsement” but not under a PCO extension.

Several folks asked about the impact of PCO extensions and repair work endorsements on “punch list” work. “Punch list” work presents a related but different problem. The first issue is understanding what is meant by the term “punch list”. You won’t find that term in an ISO CGL policy. You may find it defined in a construction contract and a Google search will yield several similar definitions. In general, our industry uses the term “punch list” to describe items identified toward the end of a project (often after the contractually defined point of “substantial completion”) which must be completed in order to fully comply with the contract requirements/scope. In short, “punch list” items are items necessary to complete the work.

The typical “repair work” endorsement does not cover “punch list” work. Most “repair work” endorsements define “repair work” to mean repair of completed work. The definitions do not include finishing uncompleted work. Similarly, an extension of coverage for the “products-completed operations hazard” will typically not cover finishing uncompleted work. In general, if there is ongoing “punch list” work, the best solution is to extend the policy period so that coverage for ongoing operations continues until the “punch list” work is finished.

(There is one potential exception where a PCO extension might cover uncompleted work (including punch list), which comes from the ISO definition of the PCO hazard. Where that particular part of the work has been put to its intended use it is deemed completed. Case law provides very little guidance about how narrowly or broadly “that particular part” is applied in this context. For example, if a floor has been occupied while final installation of a kitchen area is being completed, and an injury occurs in the kitchen area, I expect an insurer would argue that “that particular part” means the kitchen, and while the floor may have been put to its intended use generally, the kitchen, specifically, was not put to its intended use. I think the insurer would have a decent argument that coverage under the policy’s PCO extension was not available. In short, I would not recommend relying on a “put to its intended use” exception as a basis not to extend a policy period for uncompleted work.)

Now for a curveball. Sometimes “punch list” items, as defined above, are combined with pre-completion “repair work”. For example, during the completion of final finish work contractors scratch the floors. The floors have to be repaired before the owner accepts the project as finally complete. To date, no court case offers guidance on whether repair of the floors would be considered repair of completed work (and therefore covered under the PCO hazard) or repair of uncompleted work (and therefore not covered under the PCO hazard). I can see arguments in favor of either approach. If the work is not completed, neither a PCO extension nor a repair work endorsement will cover it because both cover only repair of completed work. In that case the solution would again be to ensure that the policy period is extended until the work is complete. But if the floor repair was deemed to be repair of completed work, it would be covered under the typical PCO extension. Again, we come to the result that the typical “repair work” endorsement adds nothing; we already had coverage under the PCO extension.

As such, it seems safe to conclude that “repair work endorsements” do not cover “punch list” work. Punch list work should be treated as “ongoing operations” and the policy period should be extended to accommodate it.

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