**Michigan Supreme Court Holds that Subcontractor's Unintentional Defective Work Constitutes an "Accident" and "Occurrence" Granting Construction Manager CGL Coverage**

In *Skanska USA Building Inc v MAP Mechanical Contractors, Inc,* (Michigan Supreme Court, Docket Nos. 159510-159511, June 29, 2020) the Michigan Supreme Court held, in a unanimous decision, that a subcontractor's unintentional defective work is an "accident" and, therefore, an "occurrence" covered under a Commercial General Liability (CGL) policy, allowing insurance coverage for the costs incurred by the construction manager to repair the subcontractor's defective work. The Supreme Court's decision settles a decades-old dispute between general contractors and CGL carriers regarding the plain, standard language of current CGL policies, and limited the often-quoted *Hawkeye-Security Ins Co v Vector Constr Co*, 185 Mich App 369 (1990), which insurers relied upon to deny coverage, to claims involving pre-1986 CGL policies.

Skanska USA Building Inc. ("Skanska") filed suit in Midland Circuit Court against its subcontractor M.A.P. Mechanical Contractors, Inc. ("MAP"), and MAP's CGL carrier, Amerisure Insurance Company ("Amerisure"), seeking coverage under an Amerisure policy for the cost of repairs Skanska performed to correct defective work MAP performed while renovating a Midland medical center. Skanska, acting as the construction manager, subcontracted the heating and cooling to MAP. Skanska and the medical center were named as additional insureds on the CGL policy. In 2009, MAP performed work on the medical center's heating system; two years later, Skanska determined that MAP had installed some of the expansion joints backward, resulting in damage to concrete, steel, and the heating system. Skanska repaired and replaced the damaged property. Skanska submitted a claim to Amerisure for the costs and Amerisure denied the claim. Skanska filed suit, and Amerisure moved for summary disposition, asserting, in part, that MAP's defective work was not a covered "occurrence." The trial court denied the parties' respective motions for summary disposition and on appeal, the Court of Appeals reversed the trial court's orders and remanded the case for entry of summary disposition in favor of Amerisure, concluding that there was no "occurrence" under the CGL policy because the only damage was to Skanska's own work product, which did not constitute an "accident."

On subsequent appeal to the Michigan Supreme Court, the Court held that under the clear language of the current CGL policy, an "accident" could include unintentionally faulty subcontractor work that damages an insured's work product. Accordingly, Skanska could recover its costs to repair MAP's faulty work under the Amerisure policy.

The Court held that an "accident" (which was not defined in the policy) is "an undefined contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected." Faulty work by a contractor falls within the definition of "accident" that is, it may happen by chance, is outside the usual course of things and is neither anticipated nor naturally to be expected. To hold any other way, would render meaningless the language of the policy which precludes coverage for an insured on its own work product, but contains an exception for work which is performed by

a subcontractor on the insured's behalf. Accordingly, the Court, under the plain reading of the policy (contrary to the long-standing 1990 decision in *Hawkeye*) held that a subcontractor's defective work constituted an accident, and that Skanska's costs to remediate the work was covered under the CGL policy.

The Court's Opinion represents a major shift in the applicability of CGL policies to defective construction work, and AGC member contractors would be well advised to review their policies to determine if the policy language is like that in the Skanska case, and to discuss this issue with their attorney.

The AGC of Michigan and AGC of America, through Jay Berger of Clark Hill PLC and Patrick Wielinski of Cokinos, submitted an Amicus Brief to the Supreme Court seeking the result which the Court granted.