Until recently, Indiana law did not require a general contractor’s general liability insurance policy (“CGL”) to cover unexpected faulty workmanship performed by a subcontractor. However, a recent Indiana Supreme Court decision, Sheehan Construction Company, Inc. v. Continental Casualty Company, may require coverage (depending on the policy language) and increase the risk that a general contractor will attempt to blame its subcontractors for any alleged faulty workmanship. The facts of the Sheehan Construction case are typical for residential faulty workmanship claims. The homes were built by a general contractor that utilized subcontractors for certain portions of the work. Homeowners then began experiencing leaks that were allegedly caused by the faulty workmanship of the subcontractors.

The homeowners sued the general contractor for the leaks and damages to their homes. The general contractor sought coverage under its CGL policy and its subcontractor’s CGL policies pursuant to the indemnification provisions and being named additional insured under the subcontractor’s insurance policies. The homeowners in this action alleged that these problems were caused by the faulty workmanship of the general contractor’s subcontractors. The homeowners specifically alleged that the subcontractors failed to install proper flashing and caulking around windows, failed to install a weather-resistant barrier behind the brick veneer of the homes, improperly installed shingles and vents and inadequately ventilated for crawl spaces.

The Indiana Supreme Court agreed with other states’ courts in finding that improper or faulty workmanship “does constitute an accident so long as the resulting damage was an event that occurs without expectation or foresight.” Therefore, many CGL policies covering projects in Indiana may now cover a general contractor for faulty workmanship performed by one of its subcontractors. However, a general contractor or subcontractor is still unlikely to expect insurance coverage for its own work.

As a result of this important decision, subcontractors should be aware that general contractors may be more likely to seek to shift liability to subcontractors by claiming that the damage was caused by a subcontractor’s work. In addition, insurance carriers may initiate subrogation claims against subcontractors to recover payment made under CGL policies. Ultimately, this may increase subcontractors’ litigation costs or increase the risk of a subcontractor bearing liability for faulty workmanship. Although Sheehan does not touch on subcontractors’ insurance policies, the case should encourage consideration of contract provisions to protect subcontractors from subrogation claims or other claims by the third party insurers attempting to recover policy payouts.

If you have any question concerning the issues discussed in this article, please contact Aaron Rose or Brad Wilt, attorneys in Bingham McHale LLP’s Construction Law Department.