

Understanding Business Risk Exclusions: “That Particular Part” Does Not Mean the Entire Construction Project

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Summary

- Courts have adopted varying interpretations of “that particular part” in general liability policy exclusions (j)(5) and (j)(6), affecting coverage for construction defects.
- The narrow interpretation, aligning with ISO’s guidance, excludes only property damage to the specific components on which the insured was performing work.
- The broad interpretation excludes all damage to the insured’s work product caused by defective work, even if the damage extends beyond where the defective work occurred.
- Courts interpreting “that particular part” as ambiguous construe it in favor of the insured and apply a narrow interpretation.



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In connection with insurance coverage for construction defect claims, policyholders and insurers have litigated extensively the issue of whether construction defect claims for property damage to the project constitute “occurrences” triggering general liability (GL) coverage. This critical issue focuses on whether the conduct is accidental, which is necessary for satisfying the insuring agreement of the standard Insurance Services Office (ISO) GL policy. Typically, the GL policy requires that the bodily injury or property damage be caused by an “occurrence” and that the injury or damage occur during the policy period. Much of the litigation has focused on these preliminary key issues. ¹

Related to these seminal issues is whether any of the GL policy’s “business risk” exclusions apply to such construction defect claims. The most prominent of these exclusions is the so-called “your work” exclusion, which is exclusion (l) in the standard ISO GL policy. Significant case law has developed discussing the application of the “your work” exclusion in construction defect scenarios. In recent years, however, another of the so-called “business risk” exclusions has emerged as an important player in the context of securing GL coverage for construction defect claims—the “damage to property” exclusions commonly known as (j)(5) and (j)(6). These exclusions provide as follows:

2. Exclusions

This insurance does not apply to:

....

j. Damage To Property

“Property damage” to:

....

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it. ²

These exclusions are relevant only to property damage occurring during ongoing operations as opposed to completed operations. In other words, they relate to property damage occurring during the active construction phase of the project. Based on the plain language of the exclusions, it would seem that they exclude from coverage only a portion of any property damage sustained during construction. However, courts nationwide have adopted varying interpretations of this enigmatic “that particular part” language, pitting policyholders and insurers once again in a coverage battle. This article examines the application of these two exclusions to GL coverage for construction defect claims.

Court Interpretations of “That Particular Part” Vary Widely

There is a clear split of authority across jurisdictions regarding the interpretation of the phrase “that particular part” as used in the (j)(5) and (j)(6) exclusions in GL policies. Courts have interpreted this language in one of three ways: adopting a broad or narrow construction or concluding that the language is ambiguous, in which case it is construed against the insurer. Under the broad interpretation, “that particular part” excludes all damage to the insured’s work product caused by defective work, even if the damage extends beyond the portion of the property where the defective work occurred. ³ The narrow interpretation applies “that particular part” solely to the specific portion or segment of the property on which the insured was performing operations, allowing coverage for damage to other portions of the project. ⁴ In the third approach, courts find both interpretations of the exclusionary language reasonable, conclude that the language is ambiguous, and thus construe it in favor of the insured. ⁵

Narrow Interpretation of “That Particular Part”

Several courts, including the U.S. Courts of Appeals for the Fifth and Sixth Circuits, as well as the South Dakota Supreme Court, have adopted a narrow interpretation of the phrase “that particular part” contained in exclusions (j)(5) and (j)(6). Under this interpretation, the phrase “that particular part” excludes only property damage to the specific components on which the insured was performing work, as opposed to all property damage to the insured’s entire scope of work.

One of the fundamental tenets of insurance policy interpretation is that all words of an insurance policy should be construed to have meaning.⁶ If the words “that particular part” are to carry any import (as they should), it must be inferred that the exclusion applies only to a smaller component of a larger job scope. Otherwise, the words “particular part” would serve no purpose. Moreover, as aptly stated by one legal scholar:

The use of the word “particular” suggests that the exclusion should only apply to the smallest unit of division available to the work in question. This coverage approach is often called the “component parts” approach. Even in cases where work is being performed on a large, undivided, and undifferentiated piece of property, such as bare land, the “particular part” language seems too limiting to allow the entire property to fall within the exclusion. More appropriately, only the immediate area of the work where the property damage arises should fall within the exclusion. Certainly, the entire building or piece of real property being worked on cannot be the “particular part.”⁷

The narrow reading of “that particular part” also conforms to the interpretation advanced by ISO, the very entity that drafted the policy language at issue. ISO stated that “[w]here the damage caused by the insured in the performance of his operations goes beyond damage to the property on which he is working, *this section limits the exclusion to the particular part on which he is working.*”⁸ ISO proceeded to give specific examples of how the term “that particular part” limits the scope of the relevant exclusion:

[C]onsider an insured subcontractor who is erecting steel beams furnished to him by the general contractor. Having erected four steel beams, the subcontractor is in the process of erecting a fifth steel beam and this beam falls, resulting in damage to all five beams. “That particular part” of the property would be the fifth beam. As another example, if the insured were

an electrical subcontractor and, in process of installing a switch which was furnished to him, he damaged the switch which resulted in burning out the electrical system, the switch would be “that particular part” of the property.

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ISO offered additional examples, including “Contractor replaces relief valve on a pressure vessel. As he is testing the vessel, it bursts because the relief valve does not function.”¹⁰ ISO stated that the claim would be “Covered with respect to the pressure vessel. Only the valve (‘that particular part’) is excluded.”¹¹ Another example was “Painter is burning paint off a house with a torch and sets fire to the house.”¹² ISO concluded that the loss would be “Covered except for ‘that particular part’ to which the torch was applied.”¹³

ISO’s explanations and examples of how this language is applied demonstrate the narrow meaning that the phrase “that particular part” is intended to be given. Certain courts, however, ignore the intended meaning of these words, as explained by the very entity that drafted them. A sampling of decisions applying a narrow interpretation of exclusions (j)(5) and (j)(6) follows.

In *Fortney & Weygandt, Inc. v. American Manufacturers Mutual Insurance Co.*, the Sixth Circuit, applying Ohio law, interpreted the phrase “that particular part” in the context of coverage for the cost of replacing building parts on which the insured performed nondefective work, but which were replaced due to the insured’s defective work on another part of the building.¹⁴ The insured, Fortney, contracted to build a Golden Corral restaurant in Ohio. Before the restaurant opened, defectively laid foundation caused the soil around it to shift, damaging the building’s underground utility lines. The only solution was to demolish and rebuild the restaurant. Fortney’s GL insurer denied coverage, citing the policy’s (j)(6) exclusion.¹⁵

The Sixth Circuit held that (j)(6) narrowly excludes coverage for claims involving the cost of replacing or repairing property damage to parts of the property that were themselves the subject of the defective work but does not apply to other property damaged as a result of that defective work. The court explained that the phrase “that particular part” is “trebly restrictive, straining to the point of awkwardness to make clear that the exclusion applies only to building parts on which defective work was performed, and not to the building generally.”¹⁶ Defining “part” as “distinct component parts,” the court concluded that (j)(6) applies only to the repair or replacement of specific components (e.g., the foundation), not the whole building.¹⁷

Similarly, in *Mid-Continent Casualty Co. v. JHP Development, Inc.*, the Fifth Circuit, applying Texas law, addressed whether the (j)(6) exclusion bars coverage for the replacement or repair of nondefective property affected by defective work elsewhere.¹⁸ In the underlying action, the insured, JHP, contracted with TRC Condominiums to build a condominium but failed to properly waterproof the exterior, causing water damage to the interior finishes and wiring. As a result, TRC had to replace these components at a significant cost, despite JHP's work on them being nondefective. JHP sought coverage under its commercial general liability (CGL) policy with Mid-Continent, but the claim was denied based on the (j)(6) exclusion.¹⁹

The Fifth Circuit also adopted a narrow interpretation of the exclusion, holding that the phrase "that particular part" clarifies that the exclusion

bars coverage only for property damage to parts of a property that were themselves the subject of defective work by the insured; the exclusion does not bar coverage for damage to parts of a property that were the subject of only nondefective work by the insured and were damaged as a result of defective work by the insured on other parts of the property.²⁰

The court concluded that "[t]he plain meaning of the exclusion . . . is that property damage only to parts of the property that were themselves the subjects of the defective work is excluded."²¹ The court reasoned that "[t]he narrowing 'that particular part' language is used to distinguish the damaged property that was itself the subject of the defective work from other damaged property that was either the subject of nondefective work by the insured or that was not worked on by the insured at all."²² Accordingly, the court determined that (j)(6) applied only to damage to the exterior portions of the building that the contractor failed to properly water-seal, not to the interior portions that were damaged by water.²³

Finally, *ACUITY v. Burd & Smith Construction, Inc.*, involved an underlying construction dispute where the contractor, Burd & Smith, contracted to replace the roof of an apartment building.²⁴ During the roof replacement, Burd & Smith failed to protect the building from rainstorms, causing significant damage to the building's interior, resulting in a lawsuit. Burd & Smith's GL insurer filed suit, seeking a declaration that the policy did not cover the underlying action because the "damage to property" exclusions (k)(5) and (k)(6) barred coverage.²⁵

The North Dakota Supreme Court applied a narrow interpretation of the exclusions, finding them clear and unambiguous. The court noted that although some terms in the exclusions were undefined, their meaning was clear due to the modifying language “that particular part.” ²⁶ The court assigned ordinary meanings to “particular” and “part,” defining “particular” as “of, relating to, or being a single person or thing” and “one unit or element among others,” and “part” as “one of the often indefinite or unequal subdivisions into which something is or is regarded as divided and which together constitute the whole.” ²⁷ The court concluded that, when read together, the language

limit[s] the scope of the exclusions to the particular part of real property on which the insured is performing operations, if the property damage arises out of those operations, and to the particular part of any property that must be restored, repaired, or replaced because the insured’s work was incorrectly performed on it. ²⁸

Thus, the exclusions applied to the insured’s roof repairs but not to interior damage. ²⁹

Broad Interpretation of “That Particular Part”

Under the broad interpretation, “that particular part” excludes all damage to the insured’s work product caused by the insured’s defective work, even if the damage exceeds the portion of the property where the defective work occurred. Massachusetts and New York courts have adopted the broad interpretation of exclusions (j)(5) and (j)(6).

The problem with the broad interpretation of this exclusionary language is that it violates certain fundamental principles of insurance policy interpretation. First, words in a policy are to be accorded their plain, ordinary meaning. ³⁰ “Particular,” as used in ordinary parlance, refers to a single thing or denotes an individual member. ³¹ It’s hard to imagine a plain interpretation where “that particular part” of a construction project refers to the entire project.

Second, exclusions in insurance policies are to be narrowly construed to avoid exclusions swallowing the coverage granted in the first place. ³² Thus, courts adopting a broad interpretation of (j)(5) and (j)(6) explicitly violate this fundamental rule of policy interpretation.

Finally, insurance policies are to “be construed from the perspective of a reasonable layperson in the position of the purchaser of the policy” and not from the perspective of

experienced insurance company underwriters or legal counsel.³³ As such, a reasonable layperson would not expect the phrase “particular part” to apply to the entire construction project.

In *Jet Line Services, Inc. v. American Employers Insurance Co.*, for example, the Massachusetts Supreme Judicial Court interpreted “that particular part” broadly, finding that the exclusionary language applied to the entire unit of property, not just a portion of it.³⁴ In this case, Jet Line, a general contractor specializing in cleaning large petroleum storage tanks, was cleaning the bottom section of an underground tank when an explosion occurred, damaging the tank. Jet Line’s GL insurer denied coverage under a broad form endorsement that excluded damage “‘to that particular part of any property . . . upon which operations are being performed’ by the insured ‘at the time of the property damage arising out of such operations.’”³⁵

Although Jet Line was only performing work on the bottom of the tank at the time of the explosion, the court concluded that this provision referred to the entire tank and not just the bottom of the tank because “Jet Line was retained to clean the entire tank, and it was the entire tank on which operations were being performed within the meaning of the policy language.”³⁶ The court reasoned that “[w]here, as here, the insured was retained to perform work on an entire unit of property, and not just a portion of it, the applicability of the exclusion to damage to the entire unit is even more apparent than in cases in which the insured was retained to work on only a part of the unit.”³⁷

Similarly, in *Admiral Insurance Co. v. Tocci Building Corp.*, the U.S. Court of Appeals for the First Circuit, applying Massachusetts law, analyzed the phrase “that particular part” in the (j)(6) exclusion to determine whether a general contractor’s GL policy covers damage to a nondefective part of a project caused by a subcontractor’s defective work elsewhere on the project.³⁸ In the underlying case, Tocci contracted with Toll JM EB Residential Urban Renewal to serve as the general contractor for an apartment complex project.³⁹ Toll filed suit against Tocci, alleging faulty workmanship, including, among other things, a defective roof, inadequate sheathing, and improper soil fill.⁴⁰ Tocci sought coverage under its GL policy—not for the cost of repairing or replacing the defective work itself, but for the resultant property damage caused by its subcontractors’ defective work.⁴¹

Relying on *Jet Line*, where Massachusetts’s highest court broadly interpreted “that particular part” to encompass an entire unit of property on which an insured was retained to work, the First Circuit found that the same reasoning applies to the (j)(6) exclusion.⁴² Because Tocci was retained as the general contractor for the entire project, not just a portion of it, and responsible for overseeing the subcontractors’ work, the court

concluded that “that particular part” extended to the entire project “where Tocci was the general contractor charged with supervising and managing the project as a whole.” ⁴³ The court further emphasized that this interpretation aligns with Massachusetts case law, which distinguishes GL coverage for tort liability for physical damage to others from contractual liability for defective work. ⁴⁴

Applying similar reasoning, a New York appellate court’s decision in *George A. Fuller Co. v. U.S. Fidelity & Guaranty Co.* reinforced a broad interpretation of exclusions (j)(5) and (j)(6), holding that a general contractor’s work product encompasses the entire building and that “that particular part” applies to the entire structure. ⁴⁵ In the underlying matter, Epurio, the property owner, hired Fuller as the construction manager and general contractor for a building project in Manhattan. Fuller subcontracted the flooring and curtain wall installation and was responsible for installing a water metering system. Epurio later sued Fuller, alleging defective work that led to water damage in the building. Fuller sought coverage from its GL insurer, but the insurer disclaimed coverage, citing exclusions (j)(5) and (j)(6). ⁴⁶

Interpreting these exclusions, the court explained that the policy “does not insure against faulty workmanship in the work product itself but rather faulty workmanship in the work product which creates a legal liability by causing bodily injury or property damage to something other than the work product.” ⁴⁷ In other words, the policy only covered liability for damage to property other than the work product itself. The court broadly defined the general contractor’s work product as the entire building, concluding that the exclusionary language barred coverage for any damage to the building resulting from the defective construction. ⁴⁸

Interpretation of “That Particular Part” as Ambiguous

Alternatively, many courts, including the Supreme Courts of New Hampshire, Missouri, Connecticut, and Kentucky, as well as the U.S. Court of Appeals for the Tenth Circuit, have found both broad and narrow interpretations of the (j)(5) and (j)(6) exclusions to be reasonable. Consequently, they have deemed the language ambiguous and, following the rule of construing ambiguities in favor of the insured, have applied a narrow interpretation.

In *Cogswell Farm Condominium Ass’n v. Tower Group, Inc.*, the New Hampshire Supreme Court considered whether the (j)(6) exclusion barred coverage for a negligent construction claim. ⁴⁹ In the underlying action, Cogswell sued Lemery Building Company for breach of contract, alleging defective weather barrier construction that led to water damage within

the condominium units. Cogswell sought a declaratory judgment against Lemery's GL insurers, arguing for coverage, while the insurers contended that the claims were either not covered or excluded under (j)(6).⁵⁰

The New Hampshire Supreme Court held that exclusion (j)(6) was ambiguous, finding that it could be interpreted broadly to exclude all damage to the insured's work product caused by defective work or narrowly to exclude only the damage to the specific parts of the property where the defective work was performed.⁵¹ Because both interpretations were reasonable, the court construed the exclusion against the insurer, holding that exclusion (j)(6) "bars coverage for property damage to the defectively construed portions of the condominium units . . . ; however, [it] does not bar coverage for damage to those portions of the units that were not defectively constructed . . . but were damaged as a result of the defective work."⁵²

In *MTI, Inc. v. Employers Insurance Co. of Wausau*, the Tenth Circuit, applying Oklahoma law, analyzed the phrase "that particular part" in exclusions (j)(5) and (j)(6), an issue the Oklahoma Supreme Court had not previously addressed.⁵³ The case arose when MTI, while repairing cooling towers for Western Farmers Electric Cooperative (WFEC), removed the anchor bolts from Tower 1 without replacing them or providing temporary support. High winds caused the tower to lean, resulting in extensive damage and requiring its complete removal. After MTI's insurer denied coverage for the costs of removing and replacing the entire tower, MTI settled with WFEC, which then sought reimbursement under MTI's policy.⁵⁴

The Tenth Circuit found the phrase "that particular part" susceptible to more than one reasonable construction: It could refer to the distinct component upon which an insured works or to all parts ultimately impacted by that work.⁵⁵ Given this ambiguity, the court resolved it in favor of the insured, applying the principle that ambiguities should be construed "most favorably to the insured and against the insurance carrier."⁵⁶

Accordingly, it adopted a narrow interpretation, holding that the exclusion extends only to the distinct components upon which work was performed—in this case, the anchor bolts.⁵⁷

Nevertheless, the Tenth Circuit emphasized that "[e]ven under this definition, determining the 'particular part' on which an insured works 'will vary with the facts and circumstances of each particular case.'" ⁵⁸ It noted that, in some situations, a larger unit, such as an entire structure, could qualify as the "particular part."⁵⁹ The court also observed that other courts have found the exclusions applicable when the insured was hired to work on the entire structure.⁶⁰

Adopting a similar reasoning, *Columbia Mutual Insurance Co. v. Schauf* stems from an underlying action for damages caused by a fire started by the insured while cleaning a paint sprayer.⁶¹ The insured was hired to paint all interior and exterior surfaces of a home. After using a spraying compressor to paint the kitchen cabinets, the insured began cleaning the compressor inside the house, which resulted in a fire that caused extensive damage to the house. The painter's insurer argued that the policy provided no coverage for the damage due to the (k)(5) exclusion contained in the policy.⁶²

In an issue of first impression, the Supreme Court of Missouri addressed the scope of the exclusion. While the court acknowledged that "[b]y using the words *particular part*, the provision evidences the intent to narrow the scope of the exclusion as much as possible," it also recognized that "applying the exclusion to real property . . . is far from easy [because] [h]ouses and buildings can be divided into so many parts that attempting to determine which part or parts are the subject of the insured's operations can produce several reasonable conclusions."⁶³ The court reasoned that "that particular part" could refer either to the area where the insured worked or the specific part being worked on when the damage occurred. The court held that when two reasonable constructions of an exclusion exist, the narrower one must apply. Consequently, the court concluded that the exclusion only applies to the specific part of the property the insured was working on when the damage occurred. Therefore, the exclusion applied only to the kitchen cabinets the insured had worked on, and not to the fire damage to the rest of the house.⁶⁴

In *Nash Street, LLC v. Main Street America Assurance Co.*, a homeowner filed a direct action against its general contractor's GL insurer to recover a judgment in an underlying negligence case.⁶⁵ In the underlying action, Nash Street, the property owner, contracted with New Beginnings Residential Renovations to perform house renovations, including site grading and foundation work that required the house to be lifted off its foundation and placed on temporary cribbing. While a subcontractor was lifting the house, the house slipped off the cribbing and collapsed, causing extensive damage to the home. Nash Street was awarded a judgment against the contractor for the damage to the home and subsequently filed a direct action against New Beginnings' GL insurer to recover the judgment. The insurer contended that two "business risk" exclusions, (k)(5) and (k)(6), barred coverage.⁶⁶

Interpreting the phrase "that particular part," the Connecticut Supreme Court referred to Connecticut precedent in contract interpretation. It found that Connecticut law favors a narrow interpretation of exclusions. In light of this, and the lack of Connecticut appellate authority on point, the court reasoned that a narrow interpretation could apply, meaning that "that particular part" would refer only to the portion of the project where the

defective work occurred (i.e., the foundation), rather than the entire house.⁶⁷ However, the court noted that it was plausible to find the exclusion ambiguous, given that several sister supreme courts had done so, and in light of Connecticut's rule, it could construe the provision in favor of the insured, meaning it would cover all damages.⁶⁸ While the court did not settle on a definitive interpretation, it ruled that, regardless of which interpretation applied, exclusions (k)(5) and (k)(6) did not relieve the insurer from defending New Beginnings in the underlying action and remanded the matter for further proceedings.⁶⁹

Finally, in *Bituminous Casualty Corp. v. Kenway Contracting, Inc.*, homeowners hired Kenway to remove an attached carport, concrete pad, and driveway in order to convert the house into a commercial unit.⁷⁰ However, an employee of Kenway mistakenly demolished more than half of the residential structure. Kenway's GL insurer, BBC, denied the claim, citing exclusions (j)(5) and (j)(6).⁷¹

The court found the language in the exclusions ambiguous, recognizing that the provisions could be interpreted broadly or narrowly.⁷² Applying the principle that ambiguities are construed against the drafter, the court ruled that exclusions (j)(5) and (j)(6) did not bar coverage.⁷³

Conclusion

Courts nationwide continue to struggle with exclusions (j)(5) and (j)(6) in the context of construction defect claims. The plain language of these exclusions requires a narrow interpretation of "that particular part" consistent with common sense and the basic rules of insurance policy interpretation. Courts get into trouble applying these exclusions when, despite the plain language at issue, they are influenced by contractual obligations in the underlying trade contracts or other legal arguments propounded by the insurance industry that are not pertinent to the exclusionary language at issue. As a result, policyholders and insurers continue to litigate the appropriate scope of these exclusions in the context of construction defect claims.

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Endnotes

1. For a 50-state survey of case law on whether construction defect claims constitute occurrences under GL policies, see *Defective Construction as an "Occurrence,"* SAXE DOERNBERGER & VITA, P.C. (Sep. 19, 2024), <https://www.sdvlaw.com/surveys/defective-construction-as-an-occurrence/>.
2. Ins. Servs. Off., Inc. [ISO], Commercial General Liability Coverage Form, CG 00 01 04 13, § I(A)(2) (j) (2012).
3. See, e.g., *Jet Line Servs., Inc. v. Am. Emps. Ins. Co.*, 537 N.E.2d 107, 111 (Mass. 1989) (concluding that all damage to the tank caused by the explosion was excluded from coverage, even though the contractor was cleaning only the bottom of the tank at the time of the explosion).
4. See, e.g., *Mid-Continent Cas. Co. v. JHP Dev., Inc.*, 557 F.3d 207, 215, 217 (5th Cir. 2009) (holding that the CGL policy's (j)(6) exclusion for property damage to "that particular part" only barred coverage for the damage to the part of the condominium project that was itself the subject of the defective work that caused property damage).
5. See, e.g., *Cogswell Farm Condo. Ass'n v. Tower Grp., Inc.*, 110 A.3d 822, 825–26, 828 (N.H. 2015) (holding that although the (j)(6) exclusion is subject to more than one reasonable interpretation, the resulting ambiguity must be construed against the carrier; therefore, while exclusion (j)(6) bars coverage for property damage to the defectively constructed portions of the condominium units, it does not bar coverage for damage to those portions of the units that were not defectively constructed by the building company but were damaged as a result of the defective work).
6. See *Downs v. Nat'l Cas. Co.*, 152 A.2d 316, 319 (Conn. 1959) ("Every provision is to be given effect, . . . and no word or clause eliminated as meaningless, or disregarded as inoperative, if any reasonable meaning consistent with the other parts of the policy can be given to it.").
7. See SCOTT C. TURNER, *INSURANCE COVERAGE OF CONSTRUCTION DISPUTES* § 31:5 (2d ed. 2001).
8. ISO, *Broad Form Property Damage Coverage Explained*, Circular GL-79 12 (Jan. 29, 1979) (emphasis added).
9. *Id.* at 5.
10. *Id.* at 8.
11. *Id.*
12. *Id.*
13. *Id.*
14. 595 F.3d 308, 310 (6th Cir. 2010).
15. *Id.* at 309–10.

16. *Id.* at 311.

17. *Id.*

18. 557 F.3d 207, 211–12 (5th Cir. 2009).

19. *Id.* at 210.

20. *Id.* at 215.

21. *Id.*

22. *Id.*

23. *Id.* at 217.

24. 721 N.W.2d 33, 34 (N.D. 2006).

25. *Id.* at 35. Note that the exclusions are listed as (k)(5) and (k)(6) but use the same language as (j)(5) and (j)(6):

k. Damage to Property Property damage to: . . . **(5)** That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the property damage arises out of those operations; or **(6)** That particular part of any property that must be restored, repaired or replaced because your work was incorrectly performed on it.

Id. at 37.

26. *Id.* at 40–41.

27. *Id.* at 41–42.

28. *Id.* at 42.

29. *Id.*

30. See *Buell Indus., Inc. v. Greater N.Y. Mut. Ins. Co.*, 791 A.2d 489, 501 (Conn. 2002); *Katskee v. Blue Cross/Blue Shield of Neb.*, 515 N.W.2d 645, 649 (Neb. 1994); *A.Y. McDonald Indus., Inc. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 619 (Iowa 1991).

31. *Particular*, MERRIAM-WEBSTER (Nov. 10, 2025), <https://www.merriam-webster.com/dictionary/particular>.

32. See *Citizens Ins. Co. of Am. v. Wynndalco Enters., LLC*, 70 F.4th 987 (7th Cir. 2023); *Lincoln Logan Mut. Ins. Co. v. Fornshell*, 722 N.E.2d 239 (Ill. App. Ct. 1999).

33. Conn. Ins. Guar. Ass'n v. Drown, 101 A.3d 200, 216 (Conn. 2014).
34. 537 N.E.2d 107, 111 (Mass. 1989).
35. *Id.*
36. *Id.*
37. *Id.*
38. 120 F.4th 933, 935 (1st Cir. 2024).
39. Admiral Ins. Co. v. Tocci Bldg. Corp., 594 F. Supp. 3d 201, 203 (D. Mass. 2022), *aff'd on other grounds*, 120 F.4th 933 (1st Cir. 2024).
40. *Id.* at 205.
41. *Tocci*, 120 F.4th at 939.
42. *Id.*
43. *Id.*
44. *Id.* at 939–40.
45. 613 N.Y.S.2d 152, 156 (App. Div. 1994).
46. *Id.* at 154–55.
47. *Id.* at 155.
48. *Id.* at 156.
49. 110 A.3d 822, 823–24 (N.H. 2015).
50. *Id.* at 824.
51. *Id.* at 827–28.
52. *Id.* at 828.
53. 913 F.3d 1245, 1249 (10th Cir. 2019).
54. *Id.* at 1247–48.
55. *Id.* at 1247.

56. *Id.*

57. *Id.*

58. *Id.* at 1250–51.

59. *Id.* at 1251.

60. *Id.*

61. 967 S.W.2d 74, 76 (Mo. 1998).

62. Note that this is the same language as (j)(5):

This insurance does not apply to: **k.** “Property damage” to: **(5)** That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the “property damage” arises out of those operations.

Id. at 76–77.

63. *Id.* at 80.

64. *Id.* at 80–81.

65. 251 A.3d 600, 603 (Conn. 2020).

66. *Id.* at 603–04 (“Under exclusion k (5), the policy excludes coverage for property damage to ‘[t]hat particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the “property damage” arises out of those operations’ Under exclusion k (6), the policy excludes coverage for property damage to ‘[t]hat particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.’”).

67. *Id.* at 612–13.

68. *Id.* at 613.

69. *Id.* at 616.

70. 240 S.W.3d 633, 635–36 (Ky. 2007), *as modified* (Dec. 21, 2007), *as modified on denial of reh’g* (Jan. 24, 2008).

71. *Id.* at 636–37.

72. *Id.* at 642–43.

73. *Id.* at 641–42.

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