

The Wisconsin Court Of Appeals Reaffirms Lack Of Coverage For An Insured's Defective Work Or Products

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In *Konrad Marine, Inc. v. Marine Associates, Inc. et. al.*, 2013 WL 1580354 (Wis. Ct. App., Apr. 16, 2013), plaintiff, Konrad Marine, manufactured stern drives for boats with inboard motors. Defendant, Marine Associates, cut teeth into gears used by Konrad Marine in the stern drives. Konrad Marine alleged that negligent workmanship by Marine Associates resulted in gear failure when the stern drives were put into service. The jury determined that Marine Associates was negligent and awarded Konrad Marine damages for defective gears, costs to investigate the gear failure, costs to repair or replace stern drives damaged when gears failed, and lost profits. The trial court ruled that Regent Insurance Company, Marine Associates' insurer, had a duty to indemnify the entire jury award. The Court of Appeals affirmed in part and reversed in part.

First, the appellate court agreed with Regent that the award for defective gears was barred by the "your work" and "your product" exclusions. As the court noted, CGL policies do not provide coverage for repair or replacement of the insured's defective workmanship. The court also agreed with Regent that costs incurred to determine the cause of the insured's defective work were not covered.

Regent also argued that Konrad Marine's lost profits claim was similarly derivative of the insured's defective workmanship. In particular, Regent argued that the evidence at trial showed that Konrad Marine's business fell off when customers heard that the stern drives failed, and the stern drives failed as a result of the defective gears. The appellate court disagreed and held that it could be inferred that lost profits also resulted from the physical damage caused to the stern drives.

Lastly, Marine Associates argued that Regent's policy provided illusory products-completed operations coverage. In particular, Marine Associates argued that the definition of products-completed operations hazard provided an independent coverage grant without any exclusions whatsoever. The court summarily rejected the argument based on its recent decision on the same issue in *Pamperin Rentals II, LLC v. R.G. Hendricks & Sons Constr.*, 2012 WI App 125, 344 Wis. 2d 669, 825 N.W.2d 297.

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