



# Construction Defect Resource Guide

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# Introduction

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Munich Reinsurance America, Inc. is pleased to provide this guide that may be helpful in handling of construction defect claims. Our review consists of a survey of case law and statutes that increasingly inform the analysis of insurance coverage issues in construction defect claims. Of course, this booklet is not intended to be an exhaustive survey of each and every case or statute that may apply in a given claim; rather, it is offered as an introduction and quick start to detailed review and research.

In order to make the guide useful, we have focused our fifty state survey of case law on the issues that arise in nearly every claim: is there an occurrence; is there property damage; the applicable coverage trigger; and the allocation of loss. There are certainly many other insurance coverage issues that arise, but these appear in virtually all CD claims.

Because of the number, scope and nature of exclusions contained in liability policies that may otherwise respond to construction defect claims, it is not feasible to concisely summarize the universe of such exclusions, much less how each has been treated in state and federal case law. We, therefore, do not endeavor to address in this guide all case law concerning the application of such exclusions. Certain exclusions are commonly found, however, and should be reviewed in appropriate circumstances.

Among the more frequently addressed exclusions are the so-called "business risk" exclusions, which include the "damage to property"; "damage to your property", and "damage to your work" exclusions. Other potentially applicable exclusions concern prior work; contractual liability; EIFS; mold; owned property; earth movement, and known or continuing injury or damage. Claims for damages resulting from defective drywall began to appear in about 2005, and courts have frequently addressed whether the standard pollution exclusion, in addition to the above-mentioned exclusions, bars coverage for such claims.

Due to the increasing number of decisions, we have omitted cases where the holding was similar in the same or lower courts. We have provided a chronological view of the relevant decisions rendered through June 2012. Cases are grouped by state and contain the citation or docket number, date of decision, a very abbreviated factual summary, and the court's finding. As many of the cases may be preliminary or still subject to appeal, further review of any development in these cases is required. Additionally, since these reviews provide only a brief summation, a complete reading and analysis of the cases is necessary. You will doubtless notice a lack of consistent judicial treatment of the issues addressed in this guide, even within the same state. The subtleties of each claim, different facts and precise policy language all contribute to the disparity. And, in some cases, the decisions are simply not reconcilable.

Separate from the case law summaries, we also include a chart outlining legislation enacted by various states concerning the right to repair/cure, statutes of limitations and repose, and anti-indemnity statutes, as pertinent to the institution of a construction defect lawsuit.

The summaries and descriptions contained in this booklet do not address, nor are they intended to address, all of the actual terms, conditions, exclusions or limitations found in an insurance policy. We certainly are not and do not intend to provide legal advice.

Finally, we should note that our focus on the issues discussed in this booklet does not reflect the claims perspective or positions of Munich Reinsurance America, Inc. Rather, it is simply offered as an aid to your independent analysis and research.

We welcome any feedback you may have. Any such comments or questions may be addressed to: [info@munichreamerica.com](mailto:info@munichreamerica.com)

## Is There An Occurrence?

The first step in any coverage analysis is to determine whether the underlying claim or suit comes within the scope of the insuring agreement of the policy including, under a commercial general liability policy, whether the injury or property damage was caused by an occurrence. "Occurrence" is generally defined as an accident, including continuous or repeated exposure to the same or similar general harmful conditions. Despite what may be similar policy language and fact patterns involved in these claims, the interpretation of what constitutes an occurrence in the context of a construction defect claim often varies widely from one jurisdiction to the next.

The following is a summary of selected cases addressing construction defect as an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Alabama	QBE Ins. Corp. v. Estes Heating & Air Conditioning, Inc., 2012 U.S. Dist. LEXIS 16159 (S.D. Ala. 2012)	Tenants sued subcontractor, claiming injuries from Chinese drywall gases resulting from the negligent installation of HVAC units.	Occurrence	The term accident does not exclude human fault, and there is no evidence the insured intended drywall gas exposure.
Alabama	Town & Country Prop., L.L.C. v. Amerisure Ins. Co., 2011 Ala. LEXIS 183 (Ala. 2011)	Automobile facility owner sued contractor, alleging faulty construction.	No occurrence	Faulty workmanship itself is not an occurrence, and the insurer has no indemnification obligation for cost to repair or replace faulty work.
Alabama	U.S. Liab. Ins. Co. v. Sternberg Constr., 2011 U.S. Dist. LEXIS 91477 (M.D. Ala. 2011)	Homeowners sued contractor, alleging completed residence suffered numerous construction defects.	No occurrence	No evidence showing that the insured's actions were unexpected, unintended or results were unforeseen; therefore, no occurrence.
Alabama	Berry v. S.C. Ins. Co., 495 So. 2d 511 (Ala. 1985)	Homeowners sued insured contractor claiming damages resulting from the faulty construction of an addition to their home.	No occurrence	No damage as a result of an accident. All damages related to the work done pursuant to contract.
Alabama	U.S. Fid. & Guar. Co. v. Warwick Dev. Co., 446 So. 2d 1021 (Ala. 1984)	Home purchasers sued builder for unworkmanlike construction and misrepresentations.	No occurrence	Reliance upon misrepresentations does not constitute an occurrence.
Alabama	Moss v. Champion Ins. Co., 442 So. 2d 26 (Ala. 1983)	Rain damaged attic and ceilings when roof was left uncovered during construction.	Occurrence	Occurrence under the policy, as insured did not intend damage.
Alabama	U.S. Fid. & Guar. Co. v. Bonitz Insulation of Ala., 424 So. 2d 569 (Ala. 1982)	Within a year after installation, new roof began to leak, requiring replacement.	Occurrence and no occurrence	Because there was no evidence the contractor expected the roof to leak, there is an occurrence under the policy in effect when the roof began to leak.
Alaska	Fejes v. Alaska Ins. Co., 984 P.2d 519 (Alaska 1999)	Improperly constructed curtain drain failed causing septic system to stop functioning.	Occurrence	Accident included failure of the curtain drain, which was neither expected nor intended.
Arizona	Am. Family Mut. Ins. Co. v. Spectre W. Builders Corp., 2011 U.S. Dist. LEXIS 11328 (D. Ariz. 2011)	Homeowners' association sued contractor, alleging faulty workmanship, cost of repair, and resulting water damage.	Occurrence and no occurrence	Physical damage caused by faulty workmanship can constitute an occurrence. Coverage for damage resulting from workmanship.
Arizona	Lennar Corp. v. Auto-Owners Ins. Co., 151 P.3d 538 (Ariz. Ct. App. 2007)	Homeowners sued developer after experiencing cracks, baseboard separation, and sticking doors.	Occurrence	Continued exposure to faulty construction that results in property damage is an occurrence.
Arizona	U.S. Fid. & Guar. Corp. v. Advance Roofing & Supply Co., 788 P.2d 1227 (Ariz. Ct. App. 1990)	Homeowners association sued insured roofing contractor, alleging faulty work on roofs installed in a housing complex.	No occurrence	Faulty workmanship alone does not constitute an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Arkansas	Lexicon, Inc. v. ACE Am. Ins. Co., 634 F.3d 423 (8th Cir. 2010)	Company subcontracted fabrication of six silos, one of which collapsed due to subcontractor's faulty welds. Damage to adjacent silos and equipment.	Occurrence and no occurrence	Defective workmanship alone and damage only to work product is not an occurrence; however, coverage exists for other damage.
Arkansas	Allstate Indem. Co. v. Bobbitt, 2010 U.S. Dist. LEXIS 135190 (E.D. Ark. 2010)	Home purchasers sued building contractor, alleging defective siting and construction work resulted in exterior wall and stucco cracks.	No occurrence	Alleged defective siting and construction work is not an accident and hence, not an occurrence.
Arkansas	Cincinnati Ins. Cos. v. Collier Landholdings, LLC, 614 F. Supp. 2d 960 (W.D. Ark. 2009)	Building owner sued contractor for water damages allegedly caused by the faulty work of subcontractors hired by insured.	No occurrence	Defective workmanship of a subcontractor is not an occurrence, irrespective of whether defect discovered before or after owner takes possession of building.
Arkansas	Cooley v. St. Farm Fire & Cas. Co., 2009 U.S. Dist. LEXIS 97144 (E.D. Ark. 2009)	Home purchasers sued prior owners, alleging various defect problems, claiming breach of contract, misrepresentation and fraud.	No occurrence	Alleged nondisclosure, misrepresentation, and breach of contract not an accident that resulted in property damage.
Arkansas	Essex Ins. Co. v. Holder, 261 S.W.3d 456 (Ark. 2008)	Homeowners sued insured homebuilder, alleging they suffered damages resulting from the builder's delays, employment of incompetent contractors, and defective construction.	Occurrence	Faulty workmanship is not an accident; instead, it is a foreseeable occurrence for which risk performance bonds exist.
Arkansas	Nabholz Constr. Corp. v. St. Paul Fire & Marine Ins. Co., 354 F. Supp. 2d 917 (E.D. Ark. 2005)	Roof not installed in accordance with manufacturer recommendations leaked, causing stained ceiling tiles, and possible damage from water leaking into wall cavities and behind insulation.	Occurrence and no occurrence	No coverage for property damage resulting from breach of contract; however, insured may recover for property damage such as water stained ceiling tiles.
Arkansas	Geurin Contractors, Inc. v. Bituminous Cas. Corp., 636 S.W.2d 638 (Ark. Ct. App. 1982)	Business owner sued highway contractor for lost profits, alleging that the negligent highway work caused road closures in front of his store.	Occurrence	Delays to highway construction project caused by unforeseen and unexpected soil conditions were not expected or intended by the insured, and thus an occurrence.
California	Ameron Int'l Corp. v. Am. Home Assurance Co., 2011 U.S. Dist. LEXIS 61486 (C.D. Cal. 2011)	Subcontractor supplied concrete for highway project. General contractor sued, alleging concrete was substandard and resulted in the failure of drill shafts and project delays.	Occurrence	Unintentional supplying of defective products constitutes an occurrence. As general contractor's complaint does not allege whether insured intentionally or unintentionally supplied faulty concrete, the allegation creates potential of liability, thereby triggering insurer's duty to defend.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
California	Allstate Ins. Co. v. Morgan, 806 F. Supp. 1460 (N.D. Cal. 1992)	Home purchasers sued seller for not disclosing certain facts.	No occurrence	No occurrence where damages from alleged misrepresentation did not arise from accident, hence no occurrence.
Colorado	TCD, Inc. v. Am. Family Mut. Ins. Co., 2012 COA 65 (Colo. Ct. App. 2012)	Developer sued general contractor, alleging that roof installed was defective.	No occurrence	A claim for damages arising from poor workmanship does not constitute an occurrence, and there was no allegation of consequential damage.
Colorado	United Fire & Cas. Co. v Boulder Plaza Residential, LLC, 2010 U.S. Dist. LEXIS 14257 (D. Colo. 2010), aff'd, 633 F.3d 951 (10th Cir. 2011)	Condominium owner sought coverage for claims concerning improper installation of, and resulting damage to, wood floors.	No occurrence	As complaints allege damage only to the work product, i.e., the flooring, they present claims for damages arising solely from poor workmanship and hence, no occurrence.
Colorado	Greystone Constr., Inc. v. Nat'l Fire & Marine Ins. Co., 661 F. 3d 1272 (10th Cir. 2011), modified, 2011 U.S. App. LEXIS 26082 (10th Cir.)	Homeowners sued general contractors, alleging defective construction by the subcontractors who installed foundations.	Occurrence	Damage to other property caused by poor workmanship was neither expected nor intended, and therefore an occurrence.
Colorado	Cont'l W. Ins. Co. v. Shay Constr., Inc., 805 F. Supp. 2d 1125 (D. Colo. 2011)	General contractor sued framing/siding contractor alleging the insured's work was defective and damaged work of other trades.	Possible occurrence	Contention that insured's defective work caused damage to a third party might constitute an occurrence.
Colorado	Gen. Sec. Indem. Co. v. Mt. States Mut. Cas. Co., 205 P.3d 529 (Colo. Ct. App. 2009)	Subcontractor's insurer sued other insurers for refusal to share in costs of defending suit filed by general contractor.	No occurrence	Claims arising from poor workmanship do not allege an accident or occurrence. *Superseded by C.R.S. § 13-20-808. See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC, 633 F.3d 951 (10th Cir. 2011); Cont'l W. Ins. Co. v. Shay Constr., Inc., 805 F. Supp. 2d 1125 (D. Colo. 2011)
Colorado	Am. Family Mut. Ins. Co. v. Teamcorp., Inc. 659 F. Supp. 2d 1115 (D. Colo. 2009)	Homeowners sued home designer, asserting plans resulted in numerous problems, including home being uninhabitable.	Occurrence	As allegations can be read to support a claim that deficient plans were a cause, among others, of consequential damages to entire structure, insurer has obligation to defend.
Colorado	Adair Group, Inc. v. St. Paul Fire & Marine Ins. Co. 477 F.3d 1186 (10th Cir. 2007)	Coverage sought for arbitration award concerning deficiencies in work by subcontractors.	No occurrence	Unlike resultant damage caused by poor construction, faulty workmanship is not an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Colorado	Union Ins. Co. v. Hottenstein, 83 P.3d 1196 (Colo. Ct. App. 2003)	Arbitrator awarded damages to homeowner for cost to complete home construction, remedy inadequate work, and lost business and rental income.	No occurrence	A breach of contract is neither an accident nor a covered occurrence.
Colorado	Am. Emp'rs Ins. Co. v. Pinkard Constr. Co., 806 P.2d 954 (Colo. Ct. App. 1990)	Progressive corrosion in newly-installed roof resulted in widespread damage and collapse.	Occurrence	There was an occurrence triggering coverage under each policy in effect between installation of the roof and its collapse.
Colorado	Colard v. Am. Fam. Mut. Ins. Co., 709 P.2d 11 (Colo. Ct. App. 1985)	Homeowners terminated contract with homebuilder because of negligent and unsatisfactory construction. Homeowners hired other contractors to correct and complete the construction.	Occurrence	Occurrence under the policy, as the negligent construction was neither expected nor intended, and created an exposure to a continuous condition that resulted in property damage.
Connecticut	Travelers Cas. v. Neth. Ins. Co., 2012 Conn. Super. LEXIS 1460 (Conn. Super. 2012)	University sued mason to recover cost to repair water damage caused by defective construction work.	Occurrence	Water intrusion is an unintended and unforeseen injurious occurrence that takes place without foresight or expectation.
Connecticut	Peterbilt of Conn., Inc. v. First Fin. Ins. Co., 2011 U.S. Dist. LEXIS 106740 (D. Conn 2011)	Building owner sued roofing contractor, alleging faulty work caused roof to leak.	No occurrence	Damages awarded for breach of contract and replacement of roof due to faulty workmanship do not constitute damages caused by an occurrence.
Connecticut	Scottsdale Ins. Co. v. R.I. Pools, Inc., 742 F. Supp. 2d 239 (D. Conn. 2010)	Owners sued swimming pool contractor because of cracks in concrete walls and floors of pools. Insured purchased concrete materials from other companies.	No occurrence	As pool owner complaints against the insured do not allege harm resulting from an accident, no claim for property damage caused by occurrence.
Connecticut	Philbin Bros., LLC v. Hartford Fire Ins. Co., 2008 Conn. Super. LEXIS 3301 (Conn. Super. 2008)	Buyers of house sued builder, asserting the construction was faulty and builder failed to warn of risks created by poor construction.	No occurrence	CGL policy does not cover insured's work itself; rather, it insures against negligence claims that arise during performance of work.
Connecticut	Times Fiber Commc'ns Inc. v. Travelers Indem. Co. of Ill., 2005 WL 589821 (Conn. Super. Ct. 2005) (unpublished)	Insured sold cable to telephone company, representing that cable was suitable for residential use. After installation, it was discovered the cable did not meet the applicable building codes. The phone company replaced the cable, and sought remediation costs.	No occurrence	The alleged loss of property use was due to repair activities. The decision to replace the nonconforming cable was not an accident, and therefore not an occurrence.
Florida	Auto-Owners Ins. Co. v. Pozzi Window Co. 984 So. 2d 1241 (Fla. 2008)	Homeowner sued contractor after windows installed in new home leaked during rainstorms.	Occurrence	Defective installation of windows constitutes an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Florida	U.S. Fire Ins. Co. v. J.S.U.B., Inc., 979 So. 2d 871 (Fla. 2007)	Subcontractor's use of poor soil and inadequate compacting led to damaged foundation, drywall, and interior of home.	Occurrence	Faulty workmanship, neither intended nor expected from the standpoint of the contractor, constitutes an occurrence.
Florida	Rolyn Cos., Inc. v. R & J Sales of Tex., Inc., 671 F. Supp. 2d 1314 (S.D. Fla. 2007)	Contractor hired to repair roof. Insured alleged that roofing contractor's faulty work resulted in further water damage to the building.	Occurrence	As subcontractor's faulty work was neither intended nor expected from the standpoint of insured, faulty work was an occurrence.
Florida	State Farm Fire & Cas. Co. v. CTC Dev. Corp., 720 So. 2d 1072 (Fla. 1998)	Insured built home on property in violation of restrictive covenants, assuming the homeowners' association had approved a variance.	Occurrence	Mistaken belief can supercede intentional conduct where damages not expected or intended from the insured's standpoint.
Georgia	Am. Empire Surplus Lines Ins. Co. v. Hathaway Dev. Co., Inc., 707 S.E.2d 369 (Ga. 2011)	General contractor sued plumbing subcontractor, seeking recovery of repair costs caused by insured's faulty workmanship.	Occurrence	Faulty workmanship constitutes an occurrence under a CGL policy where it causes unforeseen or unexpected damage to other property.
Georgia	QBE Ins. Co. v. Couch Pipeline & Grading, Inc., 692 S.E.2d 795 (Ga. Ct. App. 2010)	General contractor sued subcontractor, alleging that insured negligently performed grading work which prevented building pad from being compacted.	Occurrence	No evidence to show that insured intended building pad to be unsuitable.
Georgia	Custom Planning & Dev., Inc. v. Am. Nat'l Fire Ins. Co., 606 S.E.2d 39 (Ga. Ct. App. 2004)	Property buyer contended retaining wall was defective because of poor soil compaction and the presence of trash and debris in the fill soil.	No occurrence	There is no occurrence where faulty workmanship causes damage only to the work itself, i.e., the retaining wall.
Georgia	SawHorse, Inc. v. S. Guar. Ins. Co. of Ga., 604 S.E.2d 541 (Ga. Ct. App. 2004)	Newly built second floor and existing first floor of home were damaged when support beams were not included in schematics or construction.	Occurrence	Where faulty workmanship causes damage to other property (in this case the existing first floor), there may be an occurrence from such faulty workmanship.
Georgia	Glens Falls Ins. Co. v. Donmac Golf Shaping Co., 417 S.E.2d 197 (Ga. Ct. App. 1992)	Contractor sought coverage after building golf course partly on protected wetlands without obtaining permits.	Occurrence	There is an occurrence under the policy as there was no evidence that the damage alleged was intended or expected by the builder.
Hawaii	Nautilus Ins. Co. v. Waikoloa Enters., Inc., 2012 U.S. Dist. LEXIS 76360 (D. Haw.), aff'd, 2012 U.S. Dist. LEXIS 77206 (D. Haw. 2012)	Apartment association sued tile subcontractor, alleging inappropriate materials caused cracked tiles and damage to lanais' waterproofing.	No occurrence	Arbitrator found insured deliberately failed to waterproof the lanais, and such intentional actions do not constitute an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Hawaii	Group Builders, Inc. v. Admiral Ins. Co., 231 P.3d 67 (Haw. Ct. App. 2010)	Hotel owner sued exterior finishing subcontractor, alleging construction defects contributed to mold growth, causing hotel closure.	No occurrence	Construction defects claims do not constitute an occurrence under a CGL policy, and breach of contract and tort-based claims based on shoddy performance are not covered.
Hawaii	Burlington Ins. Co. v. Oceanic Design & Constr., Inc., 383 F.3d 940 (9th Cir. 2004)	Homeowners asserted breach of contract and negligence claims, improper design and faulty construction of foundation, causing earth movements which damaged the home and retaining walls on the property.	No occurrence	Breach of contract claims, even with related negligence claims, do not constitute an occurrence.
Illinois	Donven Homes, Inc. v. Amerisure Ins. Co., 2012 Ill. App. Unpub. LEXIS 791 (Ill. App. Ct. 2012)	Homeowners sued general contractor, alleging faulty workmanship caused problems with windows, roofs, foundations, and decks of homes.	No occurrence	Defective construction claims do not fall within coverage of CGL policies, damage to something other than project itself is required.
Illinois	Nautilus Ins. Co. v. JDL Dev., IX, LLC, 2012 U.S. Dist. LEXIS 57294 (N.D. Ill. 2012)	Condominium association sued developer and contractors, alleging faulty workmanship caused damage to windows and doors of building, terraces, flooring, and door sills.	No occurrence	As alleged damage is to, and recovery sought is for, repair to materials furnished by the insureds, no occurrence is alleged.
Illinois	Milwaukee Mut. Ins. Co. v. J.P. Larsen, Inc., 956 N.E.2d 524 (Ill. App. Ct. 2011)	Condominium association sued building contractor for water damage caused by leaking windows; contractor asserted third party claims against insured subcontractor hired to seal windows.	Occurrence	As subcontractor's faulty work was alleged to cause damage beyond work performed by subcontractor, an occurrence was pled, and insurer had duty to defend subcontractor.
Illinois	AMCO Ins. Co. v. N. Heritage Builders, LLC, 2011 U.S. Dist. LEXIS 145405 (N.D. Ill. 2011)	Homeowner alleged faulty workmanship of masonry subcontractor allowed water damage to house.	Occurrence and no occurrence	Insurer had duty to defend contractor because homeowner alleged damages beyond cost of repairing defective masonry work. Once homeowner agreed he was not seeking damages to other parts of home, there was no longer a duty to indemnify.
Illinois	W. Bend Mut. Ins. Co. v. People, 929 N.E.2d 606 (Ill. App. Ct. 2010)	Homeowners and Attorney General sued remodeling company, alleging deliberate fraud and faulty workmanship.	No occurrence	Where claimed defect is natural and ordinary consequence of faulty workmanship, it is not caused by accident and does not constitute an occurrence.
Illinois	CMK Dev. Corp. v. W. Bend Mut. Ins. Co., 917 N.E.3d 1155 (Ill. App. Ct. 2009)	Homeowners asserted claims against insured homebuilder, alleging several defects in their home.	No occurrence	To constitute an occurrence, construction defects must damage something other than the project itself.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Illinois	Stoneridge Dev. Co. v. Essex Ins. Co., 888 N.E.2d 633 (Ill. App. Ct. 2008)	Owner sued builder, alleging that land under townhome consisted of unsuitable structural bearing soils. Soil movement caused home to move, crack, and fail.	No occurrence	No occurrence, since the cracks were a natural and ordinary consequence of defective workmanship, and homeowner alleged damage only to the home.
Illinois	Country Mut. Ins. Co. v. Carr, 867 N.E.2d 1157 (Ill. App. Ct. 2007)	Homeowners sued insured, alleging inappropriate backfill operations, causing damage to basement walls and other parts of the residence.	Occurrence	The term accident is ambiguous and must be liberally construed in favor of coverage. As it was not alleged that the insured or his subcontractors expected or intended damage to the basement wall, the complaint alleged an occurrence.
Illinois	Viking Constr. Mgmt., Inc. v. Liberty Mut. Ins. Co., 831 N.E.2d 1 (Ill. App. Ct. 2005)	A masonry wall collapsed at a construction site, injuring a worker who sued for faulty bracing.	No occurrence	No occurrence where the collapse of the wall was the ordinary and natural consequence of defective workmanship.
Illinois	State Farm Fire & Cas. Co. v. Tillerson, 777 N.E.2d 986 (Ill. App. Ct. 2002)	Insured contractor built a home addition and carport over uneven soil. Homeowners sued, alleging breach of warranty.	No occurrence	No occurrence where damages are the result of defective work and design. The complaint did not allege an unforeseen or unexpected event.
Illinois	Pekin Ins. Co. v. Richard Marker Assocs., Inc., 682 N.E.2d 362 (Ill. App. Ct. 1997)	Insured improperly installed plumbing, HVAC, pipes, and insulation, causing pipes to burst, damaging carpet, furniture, window trim, flooring, and walls.	Occurrence	The complaint alleged faulty workmanship caused water pipes to burst and repeated condensation which caused damage to other property.
Illinois	Monticello Ins. Co. v. Wil-Freds Constr., Inc., 661 N.E.2d 451 (Ill. App. Ct. 1996)	Building and garage built by insured alleged to contain voids and cracks in the walls, columns, and stairwell; insufficient support for anchor bolts; water damage, and water penetration from the roof.	No occurrence	No occurrence where the construction defects were the natural and ordinary consequences of the improper construction.
Illinois	Indiana Ins. Co. v. Hydra Corp., 615 N.E.2d 70 (Ill. App. Ct. 1993)	Building owner sued contractor, alleging that cracks had appeared in concrete flooring and problems with the building's exterior paint.	No occurrence	Cracks in the flooring and loose paint on the exterior were not accidental but natural consequences of defective concrete work.
Indiana	Sheehan Constr. Co., Inc. v. Cont'l Cas. Co., 938 N.E.2d 685 (Ind. 2010)	After experiencing water leaks in their home, homebuyers sued insured general contractor for resulting water damage caused by faulty subcontractor work.	Occurrence	Faulty subcontractor workmanship is an accident, and therefore an occurrence under a standard CGL policy if the faulty workmanship was unexpected and not foreseeable.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Indiana	Trinity Homes, LLC v. Ohio Cas. Ins. Co., 629 F.3d 653 (7th Cir. 2010)	Purchasers of homes sued, asserting that the faulty work of subcontractors allowed water to enter their homes, resulting in damages.	Occurrence	Standard CGL policy covers damage to a home's structure resulting from defective subcontractor work, unless work was intentionally faulty.
Indiana	Amerisure, Inc. v. Wurster Constr. Co., 818 N.E.2d 998 (Ind. Ct. App. 2004)	Subcontractors installed exterior sheathing and finish systems for two construction projects. After completion, general contractor was required to correct defects in the work.	No occurrence	No occurrence where the exterior sheathing and finish system failures were due to defective workmanship.
Indiana	R.N. Thompson & Assocs., Inc. v. Monroe Guar. Ins. Co., 686 N.E.2d 160 (Ind. Ct. App. 1997)	Homeowners' association sued developer, alleging roof deck contained inadequate plywood and buildings were improperly ventilated.	No occurrence	No occurrence where plywood degradation and improper ventilation were the result of faulty workmanship and design.
Iowa	Liberty Mut. Ins. Co. v. Pella Corp., 650 F.3d 1161 (8th Cir. 2011)	Homeowners sued insured window manufacturer, alleging defects in the windows resulting in physical damage to the windows and main structure, and that the window manufacturer was aware that its windows were defective.	No occurrence	As homeowner damages were alleged to be the result of a defect known to the manufacturer, such defective workmanship cannot be considered an occurrence, i.e., "an undesired, sudden and unexpected event."
Iowa	W.C. Stewart Constr., Inc. v. Cincinnati Ins. Co., 2009 Iowa App. LEXIS 273 (Iowa Ct. App. 2009), aff'd, 770 N.W.2d 850 (Iowa Ct. App.)	Insured subcontractor sought coverage under CGL policy for claims asserted by developer for subcontractor's defective grading, resulting in wall cracks and building movement.	No occurrence	Because damages sought were to property upon which subcontractor performed work, damages were not the result of an occurrence.
Iowa	Norwalk Ready Mixed Concrete v. Travelers Ins. Co., 246 F.3d 1132 (8th Cir. 2001)	Insured supplied concrete to build a trucking terminal parking lot. Three years later, the concrete cracked and deteriorated.	No occurrence	Facts showed that concrete damage was due to defective workmanship.
Iowa	Pursell Constr., Inc. v. Hawkeye-Sec. Ins. Co., 596 N.W.2d 67 (Iowa 1999)	Insured hired to build houses above flood plain. Inspection revealed houses in the flood plain and owner had to raise the level of the houses.	No occurrence	Contractor's failure to build the houses above the flood plain constituted defective workmanship.
Iowa	Yegge v. Integrity Mut. Ins. Co., 534 N.W.2d 100 (Iowa 1995)	Homeowners sued contractor who built their home, asserting breach of contract and express warranty of fitness and sought labor costs, materials, and supplies to complete the residence.	No occurrence	The alleged failures giving rise to the homeowners' claims did not involve accidental conduct.
Kansas	Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co., 137 P.3d 486 (Kan. 2006)	Homeowners complained that windows installed in new home were leaking and the stucco exterior was cracking and leaking.	Occurrence	Faulty materials and workmanship provided by subcontractors caused continuous exposure of home to moisture that caused damage which was unforeseen and unintended.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Kansas	Am. States Ins. Co. v. Powers, 262 F. Supp. 2d 1245 (D. Kan. 2003)	Building owners alleged that contractor failed to construct building according to the agreed specifications, within the time agreed upon, to meet building codes, and to stay within the contract price.	Occurrence	Faulty or negligent workmanship can constitute an occurrence so long as the insured did not intend the damage to occur. No such evidence here.
Kansas	Fidelity & Deposit Co. of Md. v. Hartford Cas. Ins. Co., 189 F. Supp. 2d 1212 (D. Kan. 2002)	Work performed on school project was determined to be defective, including deteriorated walls, broken blocks, cracked joints and slabs, and improper drain lines.	Occurrence	Damage that occurs as a result of faulty or negligent workmanship constitutes an occurrence if the insured did not intend for the damage to occur.
Kentucky	McBride v. Acuity, 2011 U.S. Dist. LEXIS 141498 (W.D. Ky. 2011)	Insured was hired to construct a home and subcontracted footer and basement work. Homeowners sued insured for issues related to differential settlement of house.	No occurrence	Faulty workmanship alone is not an occurrence.
Kentucky	Cincinnati Ins. Co. v. Motorists Mut. Ins. Co., 306 S.W.3d 69 (Ky. 2010)	Homeowners sued contractor claiming that home was poorly built, beyond repair and had to be razed.	No occurrence	Defective construction claim against a homebuilder, standing alone, is not a claim for property damage caused by an occurrence (finding that Bituminous Cas. Corp. v. Kenway Contracting, Inc., 240 S.W.3d 633 (Ky. 2007) does not require a contrary finding).
Kentucky	Global Gear & Mach. Co., Inc. v. Capitol Indem. Corp., 2010 U.S. Dist. LEXIS 86745 (W.D. Ky. 2010)	Vessel owner sued repair company, alleging defective work, causing damage to other parts of boats and damage to owner's reputation.	No occurrence	Alleged intentional conduct and contractual claims are not fortuitous, and therefore not an occurrence.
Kentucky	Acuity v. Krumpelman Builders, Inc., 2010 U.S. Dist. LEXIS 34777 (E.D. Ky. 2010)	Insured hired to construct a home subcontracted construction of foundation. Homeowners sued insured, alleging accumulation of water in basement.	No occurrence	Faulty workmanship claim is not an occurrence under a CGL policy, even if substandard work was performed by a subcontractor.
Kentucky	Bituminous Cas. Corp. v. Kenway Contracting, Inc., 240 S.W.3d 633 (Ky. 2007)	Contractor hired to demolish carport attached to one story home. Heavy equipment operator demolished the carport and half of the house before being stopped.	Occurrence	The damage to the property was unexpected and unintended by the insured. It was not the plan, design, or intent of the insured.
Kentucky	Lenning v. Commercial Union Ins. Co., 260 F.3d 574 (6th Cir. 2001)	Homeowner alleged that home was built with poor workmanship, not in conformance with contract and applicable plans. Owner finished construction at his own expense.	No occurrence	Homeowner did not allege any damage to, destruction of, or loss of the use of the property.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Louisiana	Travelers Cas. & Sur. Co. of Am. v. Univ. Facilities, Inc., 2012 U.S. Dist. LEXIS 49970 (E.D. La. 2012)	Building developer sued general contractor and drywall subcontractor, alleging faulty workmanship in installation of wall board.	Occurrence	Allegations that faulty wall board installation caused damage to building constituted an occurrence.
Louisiana	Martco Ltd. P'ship v. Wellons, Inc., 2008 U.S. Dist. LEXIS 98385 (W.D. La. 2008), aff'd, 312 Fed. Appx. 716 (5th Cir. 2009), aff'd, 2009 U.S. App. LEXIS 25428 (5th Cir.)	Plant owner sued insured hired to improve oriented strand board plant, alleging breach of contract, invalidity of contract, redhibition, negligence, and resulting damages.	Occurrence	Defects in construction that result in damage subsequent to completion are accidents and occurrences.
Louisiana	Grand Acadian, Inc. v. Fluor Corp., 2009 U.S. Dist. LEXIS 31392 (W.D. La. 2009)	Property owner sued contractor hired to design and construct a trailer park, alleging that insured's defective work destroyed clay base of soil, limiting its commercial usefulness.	Occurrence	As property owner alleges insured performed defective work and property damage resulted from construction defects, claim constitutes an occurrence.
Louisiana	United Nat'l Ins. Co. v. Dexter Honore Constr. Co., LLC, 2009 U.S. Dist. LEXIS 38478 (W.D. La. 2009)	Property owner sued insured contractor, alleging the insured damaged the clay base of the property which destroyed the property's commercial value.	Occurrence	Although the insured performed defective work, the work in turn caused property damage that constituted an occurrence.
Louisiana	Grimaldi Mech., L.L.C. v. Gray Ins. Co., 933 So. 2d 887 (La. Ct. App. 2006)	Mechanical contractor sought cost of defending claims asserted against it for damages resulting from alleged defective installation of a piping system.	Possible occurrence	As complaint alleges both breach of contract and damages resulting from the insured's breach of contract, there may have been an occurrence, resulting in property damage, thereby triggering the insurer's duty to defend.
Louisiana	Rando v. Top Notch Props., LLC, 879 So. 2d 821 (La. Ct. App. 2004)	Insured subcontractor sued for plumbing and structural defects in residence resulting from subcontractor's faulty pile driving.	Occurrence	Defects in construction that result in damage subsequent to completion are accidents and occurrences when discovered.
Louisiana	Joe Banks Drywall & Acoustics, Inc. v. Transcon. Ins. Co., 753 So. 2d 980 (La. Ct. App. 2000)	Sheet vinyl flooring installed by contractor became stained. The staining appeared to seep up from beneath the vinyl.	Occurrence	Since there was no allegation that the damage was intentional, the damage constituted an occurrence.
Louisiana	Iberia Parish School Bd. v. Sandifer & Son Constr. Co., 721 So. 2d 1021 (La. Ct. App. 1998)	Following completion of school roofing job, leaks were discovered due to defective materials and poor workmanship. The leaks caused unspecified damages to the school.	Occurrence	An occurrence is an accident including continuous or repeated exposure to substantially the same harmful conditions. The roof leaked because of improper construction, requiring replacement.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Maryland	French v. Assurance Co. of Am., 448 F.3d 693 (4th Cir. 2006)	Subcontractor applied synthetic stucco to exterior of home. Five years later, homeowners discovered extensive moisture and water damage caused by defective stucco.	Occurrence and no occurrence	Damage to stucco itself and defective application to home is not an occurrence. Damage to the otherwise nondefective wall was caused by moisture intrusion that was unexpected and unintended, and was, therefore, an occurrence.
Maryland	Lerner Corp. v. Assurance Co. of Am., 707 A.2d 906 (Md. Ct. Spec. App. 1998)	Insured developer and project manager sought to recover costs incurred in repairing a defective exterior stone facade installed by a subcontractor.	No occurrence	The obligation to repair the building's facade did not result from an "accident" but simply from the insured's failure to satisfy its obligation under their contract.
Maryland	IA Constr. Corp. v. T&T Surveying, Inc., 822 F. Supp. 1213 (D. Md. 1993)	General contractor sued insured subcontractor, alleging that repairs necessitated by the insured's faulty work required the removal and replacement of other nondefective work.	No occurrence	No accident occurred because all that happened is that the faulty work of a subcontractor required that work performed by another contractor in reliance upon it be redone.
Maryland	Reliance Ins. Co. v. Mogavero, 640 F. Supp. 84 (D. Md. 1986)	Owner of fire-damaged apartment building sued insured for performing renovation work improperly. The alleged defects to the building included openings in the drywall exterior, omitted insulation, inadequate electric water heater capacity, and uninsulated hot water pipes.	No occurrence	Occurrence does not include the normal, expected consequences of poor workmanship.
Maryland	Minnicks, Inc. v. Reliance Ins. Co., 422 A.2d 1028 (Md. Ct. Spec. App. 1980)	Insured heating contractor installed heating systems in houses built by developer. Four purchasers claimed the heating systems were defective and replaced the defective systems. The homeowners also alleged loss of consortium.	Occurrence	Loss of consortium was caused by continuous or repeated exposure to conditions which result in bodily injury, thus was an occurrence within the meaning of the policy.
Massachusetts	Friel Luxury Home Constr., Inc. v. Probuilders Specialty Ins. Co. RRG, 2009 U.S. Dist. LEXIS 121775 (D. Mass. 2009)	Homeowners sued contractor, alleging faulty workmanship in renovation work resulted in costs and damages.	No occurrence	Faulty workmanship fails to constitute accidental occurrence and here, all homeowners' allegations arise out of alleged defects in insured's work
Massachusetts	Mello Constr., Inc. v. Acadia Ins. Co., 874 N.E.2d 1142, 2007 WL 2908267 (Mass. App. Ct. 2007) (unpublished)	General contractor sought coverage for cost of repairing defective concrete slab constructed by subcontractor.	No occurrence	Defective work is not an accident and hence not an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Massachusetts	Am. Home Assur. Co. v. AGM Marine Contrs, Inc., 379 F. Supp. 2d 134 (D. Mass. 2005), aff'd, 467 F.3d 810 (1st Cir. 2006)	Insured constructed a floating dock system and was later sued for physical damage to docks, allegedly resulting from insured's faulty workmanship.	No occurrence	Faulty workmanship fails to constitute an accidental occurrence under a CGL policy, and here, only docks themselves sustained damage as a result of faulty workmanship.
Massachusetts	Davenport v. U.S. Fid. & Guar. Co., 778 N.E.2d 1038, 2002 WL 31549391 (Mass. App. Ct. 2002) (unpublished)	Painting subcontractor failed to apply a primer coat before putting on a final coat of exterior paint. The paint peeled and flaked, requiring general contractor to redo the work.	No occurrence	Faulty workmanship alone is not an occurrence.
Michigan	Ahrens Constr., Inc. v. Amerisure Ins. Co., 2010 Mich. App. LEXIS 290 (Mich. Ct. App. 2010)	General contractor sued subcontractor hired to construct roof of a natatorium, alleging the roof trapped condensation and had to be rebuilt.	No occurrence	Damages arising solely from faulty workmanship are not considered as resulting from an occurrence, and here, the damages sought relate solely to the insured's faulty roof work.
Michigan	Houseman Constr. Co. v. Cincinnati Ins. Co., 2010 U.S. Dist. LEXIS 39961 (W.D. Mich. 2010)	Grocery store owner sued general contractor, alleging construction defects caused store's floor to sink.	Occurrence and no occurrence	Cost of repairing sinking floor is not an occurrence because it was the result of defective workmanship; however, damage to other parts of store or loss of store's use is an occurrence.
Michigan	Liparoto Constr., Inc. v. Gen. Shale Brick, Inc., 772 N.W.2d 801 (Mich. Ct. App. 2009)	Homeowners sued home contractor, alleging discoloration of bricks used in construction.	No occurrence	As alleged damages did not extend beyond insured's own work product, insured failed to establish an occurrence.
Michigan	Radenbaugh v. Farm Bureau Gen. Ins. Co. of Mich., 610 N.W.2d 272 (Mich. Ct. App. 2000)	Seller of mobile home provided erroneous schematics and instructions to contractors hired to build the mobile home's basement and foundation and erect the home on its basement.	Occurrence	Case did not involve defective workmanship alone because there were damages to property (i.e., the homeowners' basement and foundation).
Michigan	Hawkeye-Sec. Ins. Co. v. Vector Constr. Co., 460 N.W.2d 329 (Mich. Ct. App. 1990)	After concrete obtained from supplier had been poured, testing revealed that concrete did not meet the project's plans and specifications. Subcontractor removed and re-poured concrete and submitted claim to insurer.	No occurrence	The use of inferior cement is defective workmanship, which does not constitute an occurrence.
Minnesota	Aten v. Scottsdale Ins. Co., 511 F.3d 818 (8th Cir. 2008)	Homeowners sued builder for defective home construction, including missing trim, exposed screws, uneven floors in garage and basement and water damage.	Occurrence	Water damage to other property resulting from an improperly poured and graded basement floor which caused water to flow away from the drain is an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Minnesota	Bor-Son Bldg. Corp. v. Emp'rs Commercial Union Ins. Co. of Am., 323 N.W.2d 58 (Minn. 1982)	General contractor who constructed buildings pursuant to federal contract was sued by building owner after the building developed significant leaks.	No occurrence	The complaints concern faulty workmanship resulting in damage to the buildings themselves. As such, the damages arose only from a breach of contract.
Minnesota	Ohio Cas. Ins. Co. v. Terrace Enters., Inc., 260 N.W.2d 450 (Minn. 1977)	Insured was warned that soil below building project could potentially freeze, but made efforts to protect soil. The building was constructed but subsequently collapsed.	Occurrence	The insured was aware of the dangers of freezing conditions and took precautions that ultimately failed. Such conduct was negligent, and the building collapse was an occurrence.
Mississippi	Carl E. Woodward, LLC v. Acceptance Indem. Ins. Co., 2011 U.S. Dist. LEXIS 92659 (S.D. Miss. 2011)	Insured general contractor on condominium project sued concrete subcontractor for defects in concrete work.	Possible occurrence	Faulty workmanship and hiring of a subcontractor are not as a matter of law excluded from coverage. Record unclear whether subcontractor's defective work was accidental. Claim triggers duty to defend.
Mississippi	Lafayette Ins. Co. v. Peerboom, 2011 U.S. Dist. LEXIS 58985 (S.D. Miss. 2011)	Homeowners sued insured contractor, alleging that insured's negligent work to elevate their home resulted in damage to the entire structure.	Occurrence	Because the complaint leaves open the possibility that the alleged property damage was caused by an accident (an inadvertent act) and that the damage was thus the result of an occurrence, the insurer has duty to defend.
Mississippi	Architex Ass'n, Inc. v. Scottsdale Ins. Co., 27 So. 3d 1148 (Miss. 2010)	Insured used multiple subcontractors to construct inn, including foundation. Inn owners sued insured contractor after deficiencies found in foundation.	Possible occurrence	The term occurrence cannot be construed to preclude coverage for unexpected or unintended property damage resulting from work performed by the insured's subcontractor.
Mississippi	Nationwide Mut. Fire Ins. Co. v. Hayes, 2010 U.S. Dist. LEXIS 92988 (S.D. Miss. 2010)	Homeowner sued construction company asserting contract, conversion, and negligent construction claims.	Occurrence	Pursuant to Architex Association, Inc. case, negligent construction is an occurrence under Mississippi law.
Missouri	Emp'rs Mut. Cas. Co. v. Luke Draily Constr. Co., Inc., 2011 U.S. Dist. LEXIS 69929 (W.D. Mo. 2011)	Hotel developer sued general contractors, alleging defects in hotel roof installed by subcontractors.	No occurrence	Pure contract claims do not constitute occurrences under a CGL policy. There must be an accident to trigger coverage, and here, subcontractor did not accidentally install roof; it did so intentionally but poorly.
Missouri	Cincinnati Ins. Co. v. Stolzer, 2010 U.S. Dist. LEXIS 9986 (E.D. Mo. 2010)	Homeowner sued homebuilder, alleging new home was damaged because of problematic soil conditions.	No occurrence	Evidence established that builder made considered decision not to test soil; thus, when home was damaged by problematic soil conditions, it was not an event that took place without expectation or an unforeseen occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Missouri	St. Paul Fire & Marine Ins. Co. v. Building Constr. Enters. Inc., 484 F. Supp. 2d 1004 (W.D. Mo. 2007)	Underground duct banks for electrical, data and communications cables did not meet design requirements. General contractor sought costs of correcting those deficiencies and for related landscaping.	No occurrence	Neither substandard work nor grass re-seeding considered an accident or occurrence.
Missouri	Cincinnati Ins. Co. v. Venetian Terrazzo, Inc., 198 F. Supp. 2d 1074 (Mo. 2001)	After problems were discovered with newly-installed terrazzo floor, general contractor sued subcontractor, alleging failure to properly test and prepare the concrete substrate.	No occurrence	Insured's breach of contract in performance of its work was not an accident or occurrence.
Missouri	Am. States Ins. Co. v. Mathias, 974 S.W. 2d 647 (Mo. Ct. App. 1998)	Contractor brought suit to recover damages incurred when it had to remove and replace subcontractor's improperly trenched and constructed duct banks, electrical conduit, cable, and wire installed in the ducts by others.	No occurrence	Insured's failure to construct ducts according to contract specifications is not an occurrence.
Missouri	Taylor-Morley- Simon, Inc. v. Mich. Mut. Ins. Co., 645 F. Supp. 596 (E.D. Mo. 1986), aff'd, 822 F.2d 1093 (1987)	Concrete slab in new residential construction caused walls and ceilings to crack, water lines and gas lines to stress, and heating and air-conditioning ducts to tear loose.	Occurrence	Damage to home qualified as an accident resulting in property damage, not expected or intended by the insured.
Montana	Penn-Star Ins. Co. v. Coyote Ridge Constr., Inc., 2012 U.S. Dist. LEXIS 24882 (D. Mont. 2012)	Homeowners sued contractor, alleging misrepresentations and failure to complete construction of home.	Occurrence	Intent of policy is to insure the acts or omissions of insured, intentional or negligent, excluding only those where injury is expected or intended from insured's standpoint.
Montana	Haskins Constr., Inc. v. Mid-Continent Cas. Co., 2011 U.S. Dist. LEXIS 127231 (D. Mont. 2011)	Homeowners sued construction company, alleging faulty work caused numerous defects in homes.	Occurrence	As accident means "any unexpected happening that occurs without intention or design on the part of the insured," an occurrence encompasses faulty workmanship alleged by homeowners.
Montana	King v. State Farm Fire & Cas. Co., 2010 U.S. Dist. LEXIS 49029 (D. Mont. 2010)	Log home purchaser sued manufacturer and sales agent, alleging that log home construction package had numerous deficiencies.	No occurrence	No coverage for intentional acts that lead to accidental injuries under definition of occurrence. Thus, alleged intentional business decisions of insureds do not constitute an occurrence.
Montana	Lloyd A. Twite Family P'ship v. Unitrin Multi Line Ins., 192 P.3d 1156 (2008)	Montana Fair Housing Inc. sued insured construction company, alleging that housing complexes designed by the insured violated the Fair Housing Act ("FHA") and the Montana Human Rights Act ("MHRA").	No occurrence	Insured's failure to comply with FHA and MHRA requirements is not an accident that meets the definition of occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Nebraska	Auto-Owners Ins. Co. v. Home Pride Ins. Cos., 684 N.W.2d 571 (Neb. 2004)	Apartment buildings owner alleged that roofing shingles were improperly installed, causing substantial damage to roof structures and buildings. The building owner also alleged that the shingles themselves were defective.	Occurrence	While faulty workmanship alone is not a fortuitous event, if it causes property damage to something other than the insured's work product, there is coverage.
New Hampshire	Concord Gen. Mut. Ins. Co. v. Green & Co. Bldg. and Dev. Corp., 8 A.3d 24 (N.H. 2010)	Homeowners asserted claims against insured contractor, alleging defective chimneys were causing the release of carbon monoxide and flue gases into their homes.	No occurrence	The released gases caused no physical tangible alteration to any property, and the loss of use of the insured's work product, standing alone, does not constitute an occurrence.
New Hampshire	Webster v. Acadia Ins. Co., 934 A.2d 567 (N.H. 2007)	School sued insured roofing contractor, alleging the roof installed was defective, requiring replacement and repair of existing components.	Occurrence	The school alleges damage to property other than the work of the insured and thus, an occurrence.
New Hampshire	High Country Assocs. v. N.H. Ins. Co., 648 A.2d 474 (N.H. 1994)	Condo association sued developer, alleging faulty design, materials and construction caused mildew and rotting of the walls, and loss of structural integrity.	Occurrence	Property damage not simply a claim for the contractor's defective work, but the corresponding structural damage.
New Hampshire	M. Mooney Corp. v. U.S. Fid. & Guar. Co., 618 A.2d 793 (N.H. 1992)	Chimney fire in a new condo development revealed inadequate clearance between the fireplace masonry and wood framing. Inspections revealed charring adjacent to fireplaces in four other units. The insurer paid claims for repairing actual damage but denied coverage for claims to correct the condition in units that were not burned or charred.	Occurrence	The fire that damaged one of the units sparked an investigation that revealed hazardous conditions in all units. Under these facts, there is a clear causal link between the occurrence of the fire and the loss of use of tangible property in all units.
New Hampshire	McAllister v. Peerless Ins. Co., 474 A.2d 1033 (N.H. 1984)	Homeowner sued contractor for breach of contract seeking money damages for allegedly defective work in installing a septic field and landscaping the property.	No occurrence	Claimed damages were solely for cost of correcting defective work and landscaping with no claim that defects had caused damage to property other than the insured's own work.
New Hampshire	Hull v. Berkshire Mut. Ins. Co., 427 A.2d 523 (N.H. 1981)	Plaintiffs discharged a masonry contractor while he was in the process of building a porch, steps, and retaining wall, then sued him for the allegedly defective work that he had completed.	No occurrence	There was no occurrence for claims that alleged only defective work of the insured.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
New Jersey	Pa. Nat'l Mut. Cas. Ins. Co. v. Parkshore Dev. Corp., 403 Fed. Appx. 770 (3d Cir. 2010)	Condominium association sued developer and general contractor, alleging water damage caused by improper stucco caulking around windows.	No occurrence	No occurrence where faulty workmanship causes damage to completed project itself.
New Jersey	Firemen's Ins. Co. of Newark v. Nat'l Union Fire Ins. Co., 904 A.2d 754 (N.J. Super. Ct. App. Div. 2006)	Condominium association sued developer and builder, alleging defects in the construction of condominium units.	No occurrence	Faulty workmanship is not an occurrence.
New Jersey	S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 680 A.2d 1114 (N.J. App. Div. 1996)	Homeowners sued developer and subcontractor, alleging that sewage systems installed in homes were defective causing effluent to seep onto lawn and back up into residences.	Occurrence	Faulty workmanship which caused damage to property other than work product of insured does constitute an occurrence.
New Jersey	Weedo v. Stone-E-Brick, Inc., 405 A.2d 788 (N.J. 1979)	Homeowners sued mason after crack appeared in stucco applied by insured, requiring replacement.	No occurrence	The consequence of not performing well is part of every business venture. Replacement or repair of faulty goods and work is a business expense, not an occurrence giving rise to insurable liability.
New Mexico	O'Rourke v. New Amsterdam Cas. Co., 362 P.2d 790 (N.M. 1961)	Homeowners' insurer brought subrogation claim against insured hired to re-roof the homeowners' dwelling, alleging rain occurred during the project, damaging the dwelling and some household goods.	Occurrence	The rain that was the cause of the damage was sudden and unpredicted and can be considered an accidental cause or result.
New York	Cont'l Ins. Co. v. Huff Enters., 2010 U.S. Dist. LEXIS 71272 (E.D.N.Y. 2012), adopted by, 2010 U.S. Dist. LEXIS 71269 (E.D.N.Y.)	New York State housing corporation sued roofing contractor, alleging faulty workmanship caused roofs to leak, requiring repair and replacement.	No occurrence	No occurrence where general contractor's negligent acts only affect property owner's economic interest in building.
New York	Exeter Bldg. Corp. v. Scottsdale Ins. Co., 913 N.Y.S.2d 733 (N.Y. App. Div. 2010)	Condominium association sued general contractor, alleging defects in design and construction work performed by insured and its subcontractors.	No occurrence	CGL policies are not intended to provide indemnification for defective work product.
New York	Baker Residential Ltd. P'ship v. Travelers Ins. Co., 782 N.Y.S.2d 249 (N.Y. App. Div. 2004)	Condominium association alleged insured installed defective structural beams that deteriorated from inappropriate installation, flashing, and waterproofing.	No occurrence	Damages sought did not arise from an occurrence resulting in damage to property distinct from insured's own work product as required by CGL policy.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
New York	J.Z.G. Resources, Inc. v. King, 987 F.2d 98 (2d Cir. 1993)	Second road contractor hired to finish work discovered that one road was out of place, the elevations for two roads were wrong, and some of the roads were badly pitched to the side.	No occurrence	There is no occurrence for claims of faulty workmanship.
North Carolina	Nat'l Union Fire Ins. Co. v. Intercoastal Diving, Inc., 2012 U.S. Dist. LEXIS 76291 (E.D.N.C. 2012)	Condominium and boat owners association sued general contractor, asserting bulkhead constructed by insured suffered from numerous defects.	Possible occurrence	Damage to property other than bulkhead caused by insured's defective work could constitute property damage caused by an occurrence.
North Carolina	Builders Mut. Ins. Co. v. Mitchell, 709 S.E. 2d 528 (N.C. Ct. App. 2011)	Insured contractor was sued by homeowner after insured's faulty workmanship and repairs caused further water damage to home.	Possible occurrence	Allegations of damage to previously undamaged property could constitute an accident and thus an occurrence under the policy.
North Carolina	ABT Bldg. Prods. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Inc., 472 F.3d 99 (4th Cir. 2006)	Homeowners sued a hardboard siding manufacturer, alleging that siding absorbed moisture and prematurely deteriorated, resulting in consequential damage to other parts of homes.	Occurrence	Since insured's defective product, not workmanship, caused damages, there is an occurrence. Negligence, such as the manufacture of defective siding, can constitute an accident under a CGL policy.
North Carolina	Travelers Indem. Co. v. Miller Bldg. Corp., 97 Fed. Appx. 431 (4th Cir. 2004)	Hotel owner sued building contractor, alleging faulty workmanship which caused hotel's framework to crack and allowed water to enter hotel, damaging exterior finishes.	Occurrence and no occurrence	Cost of correcting faulty workmanship does not constitute an occurrence, but claims that defective workmanship caused damages to interiors of guestrooms does.
North Carolina	William C. Vick Constr. Co. v. Pa. Nat'l Mut. Cas. Ins. Co., 52 F. Supp. 2d 569 (E.D.N.C. 1999), aff'd, 2000 U.S. App. LEXIS 8486 (4th Cir. 2000)	Roofing subcontractor improperly installed waterproofing membrane, resulting in numerous leaks requiring repairs.	No occurrence	The claims against the insured were the costs of repairing faulty workmanship which does not constitute an occurrence.
North Carolina	Iowa Mut. Ins. Co. v. Fred M. Simmons, Inc., 128 S.E.2d 19 (N.C. 1962)	Roofing contractor sued for damages caused by rainwater that leaked into building as a result of insured's failure to cover roof.	Possible occurrence	The term accident in the liability policy does not necessarily exclude the contractor's negligence in leaving roof inadequately covered.
North Dakota	Acuity v. Burd & Smith Constr., Inc., 721 N.W.2d 33 (N.D. 2006)	Building owners claimed that while replacing roof, the insured contractor failed to protect from rainstorms, causing extensive water damage to the interior of the building and damage to tenants' property.	Occurrence	Damage to property other than the insured's work product is a covered occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Ohio	Myers v. United Ohio Ins. Co., 2012 Ohio 340 (Ohio Ct. App. 2012)	Homeowners sued insured contractor, alleging he failed to complete the construction of an addition to their home and that the completed work was faulty.	No occurrence	Damages to the work product itself does not qualify as an occurrence.
Ohio	JTO, Inc. v. State Auto. Mut. Ins. Co., 956 N.E.2d 328 (Ohio Ct. App. 2011)	Hotel owner sued general contractor, alleging that insured's faulty workmanship resulted in water infiltration throughout hotel, resulting in wall and ceiling damage.	Possible occurrence	In assessing whether consequential damages from faulty workmanship are covered, key issues are whether contractor controlled process leading to damages and whether damages were anticipated.
Ohio	Westfield Ins. Co. v. R.L. Diorio Custom Homes, Inc., 932 N.E.2d 369 (Ohio Ct. App. 2010)	Homeowner sued building contractor, alleging contractor failed to construct home in workmanlike manner.	No occurrence	Defective workmanship does not constitute an accident.
Ohio	Ohio Cas. Ins. Co. v. Hanna, 2008 Ohio 3203 (Ohio Ct. App. 2008)	Homeowners sued construction company, alleging faulty framing created problems with home.	Occurrence	Defective framing constituted an occurrence because it was caused by an accident, namely insured's faulty work.
Ohio	Dublin Bldg. Sys. v. Selective Ins. Co. of S.C., 874 N.E.2d 788 (Ohio Ct. App. 2007)	Subcontractor installed stucco and cultured stone on exterior of office building without sealing mortar joints, resulting in extensive mold growth and claims of health-related problems by tenants.	Occurrence	Plaintiffs' allegations of negligent faulty workmanship sufficient to find property damage caused by an occurrence because insured had no intent or expectation of injury or damage.
Ohio	Acme Constr. Co. v. Cont'l Nat'l Indem. Co., 2003 WL 194879 (Ohio Ct. App. 2003)	Storm sewer system constructed by contractor claimed to be defective virtually along its entire length, requiring major repair.	Occurrence	Allegations of negligence and defective workmanship constituted an occurrence.
Ohio	Erie Ins. Exch. v. Colony Dev. Corp., 736 N.E.2d 941 (Ohio Ct. App. 1999)	Condo association sued developer for damages to units, common areas, and surrounding landscape arising out of design, construction, and sale of condominium complex.	Occurrence	The association's allegations reasonably fall within the policy's definition of property damage caused by an occurrence.
Ohio	Heile v. Herrmann, 736 N.E.2d 566 (Ohio Ct. App. 1999)	Homeowners sued builder, alleging deterioration of driveway, walkway, front porch and leaking roof and basement.	No occurrence	Defective workmanship does not constitute an occurrence. The policies do not provide coverage where the damages claimed are the cost of correcting the work itself.
Ohio	Owners Ins. Co. v. Reyes, 1999 WL 769561 (Ohio Ct. App. 1999)	Homeowner asserted claims against contractor for never completing work, breach of contract and deviation from professional standards.	No occurrence	All of the damages arise from either breach of contract (not an occurrence) or improper performance of work done (excluded from coverage).

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Ohio	Rombough v. Angeloro, 1998 WL 553148 (Ohio Ct. App. 1998)	Homeowner claimed several defects in new construction and sued the insured for breach of contract and failure to perform in a workmanlike manner.	No occurrence	No facts alleged in the underlying complaint that could constitute an accident or occurrence.
Ohio	Am. Home Assurance Co. v. Libbey-Owens-Ford Co., 786 F.2d 22 (1st Cir. 1986)	Claims against manufacturer of windows that failed during storms after architect determined that windows did not meet contract specifications.	Occurrence and no occurrence	The policy covered consequential damages resulting from physical injury to the windows, but no coverage for repairs to and replacement of windows.
Oklahoma	U.S. Fid. & Guar. Co. v. Briscoe, 239 P.2d 754 (Okla. 1951)	Homeowners sued insured contractor, alleging that highway construction caused cement dust to impregnate their home and property.	No occurrence	Claims asserted against the insured were not predicated on, or caused by accident, and instead, were predicated upon a series of voluntary, intentional, tortious and wrongful acts.
Oregon	Willmar Dev., LLC v. Ill. Nat'l Ins. Co., 2011 U.S. App. LEXIS 25854 (9th Cir. 2011)	Homeowners alleged that damages to home were caused by insured contractor's negligent site selection and construction.	Occurrence	There was an occurrence because damages were unintended, accidental results of builder's alleged negligence.
Oregon	Cal. Ins. Co. v. Stimson Lumber Co., 2004 U.S. Dist. LEXIS 10098 (D. Or. 2004), aff'd in part, 325 Fed. Appx. 496 (9th Cir. 2009)	Homeowners sued manufacturer, asserting warranty and repair claims related to insured's defective siding product.	No occurrence	A breach of contract or warranty is not an occurrence and there is no allegation of third-party property damage.
Oregon	Oak Crest Constr. Co. v. Austin Mut. Ins. Co., 998 P.2d 1254 (Or. 2000)	Contractor sought to recover costs of stripping and repainting cabinets painted by a subcontractor that did not cure properly.	No occurrence	No accident and no occurrence.
Pennsylvania	Specialty Surfaces Int'l, Inc. v. Cont'l Cas. Co., 609 F.3d 223 (3d Cir. 2010)	School sued general contractor and subcontractor, alleging subcontractor's failure to appropriately install subdrain system and impermeable liner resulted in damage to installed turf.	No occurrence	Damage to subcontractor's own work product based on subcontractor's alleged negligence is claim of damage based on faulty workmanship and not a covered occurrence.
Pennsylvania	Millers Capital Ins. Co. v. Gambone Bros. Dev. Co., 941 A.2d 706 (Pa. Super. Ct. 2007)	Homeowners claimed their homes suffered leaks as a result of construction defects and product failures in vapor barriers, windows, roofs, and stucco exteriors.	No occurrence	Since the damages at issue were not caused by an accident, there was no occurrence.
Pennsylvania	Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co., 908 A.2d 888 (Pa. 2006)	Contractual claims asserted against fabricator of industrial ovens, contending that the ovens had cracked paver bricks and other defects.	No occurrence	There was no accident or occurrence for claims of faulty workmanship. To find coverage would be to convert insurance into a performance bond.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Pennsylvania	Redevelopment Auth. of Cambria Cnty. v. Int'l Ins. Co., 685 A.2d 581 (Pa. Super. Ct. 1996)	Municipality sued insured county redevelopment authority and community water authority for contractual failure of the township water system to comply with state standards and to deliver potable water.	No occurrence	Notwithstanding negligence claims, the underlying suit arises out of a breach of contract which is not an accident or occurrence.
Pennsylvania	Gene & Harvey Builders, Inc. v. Pa. Mfrs. Ass'n, Inc., 517 A.2d 910 (Pa. 1986)	Two years after residential construction, homeowners sued the contractor, alleging the land had subsided and pulled away from the foundation. The complaint alleged that subsidence and sink holes were known and concealed by the contractor.	No occurrence	Claims were either not accidents and not occurrences, or excluded by "your product" or "your work" exclusions.
Rhode Island	Furey Roofing & Constr. Co., Inc. v. Emp'rs Mut. Cas. Co., 2010 R.I. Super LEXIS 24 (R.I. Super. Ct. 2010)	Building contractor asserted claims against insured roofing subcontractor for deficiencies in the insured's roofing work.	Occurrence	The claims allege an occurrence and property damage because damage to the building from original roof leaks remained unresolved and because it may be necessary to replace the work of other subcontractors.
Rhode Island	Aetna Cas. & Sur. Co. v. Consulting Env't Engineers, Inc., 1989 R.I. Super. LEXIS 137 (R.I. Super. Ct. 1989)	Installer of manhole covers and pipes on a sewer project brought claims against design engineers for improper grading specifications.	Occurrence	Unexpected settling constituted an occurrence.
South Carolina	Jessco, Inc. v. Builders Mut. Ins. Co., 2009 U.S. Dist. LEXIS 86920 (D.S.C. 2009), aff'd in part, 2012 U.S. App. LEXIS 6502 (4th Cir. 2012)	Homeowners sued insured contractor, alleging certain construction defects existed in their home.	Occurrence and no occurrence	Failure to repair faulty work is not damage caused by an occurrence, but the flooding of the homeowner's yard constitutes an occurrence as the result of continuous exposure to the same harmful conditions, the adjacent wetlands and the insured's faulty grading.
South Carolina	Builders Mut. Ins. Co. v. Lacey Constr. Co., Inc., 2012 U.S. Dist. LEXIS 41588 (D.S.C. 2012)	Homeowner's association sued insured for construction defects in certain common areas.	Occurrence and no occurrence	No coverage for repairing defectively constructed components, but coverage may be available to the extent defectively constructed component causes injury to another component.
South Carolina	Crossmann Cmty. of N.C. v. Harleysville Mut. Ins. Co., 717 S.E.2d 589 (S.C. 2011)	Homeowners sued developer, alleging that condominiums' exterior components were negligently constructed, resulting in water penetration and progressive damage to otherwise nondefective components of condominiums.	Occurrence	The costs of replacing defective stucco were not covered, but damage caused by resulting continuous moisture intrusion was covered.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
South Carolina	Builders Mut. Ins. Co. v. R. Design Constr. Co., LLC, 2010 U.S. Dist. LEXIS 51069 (D.S.C. 2010)	Owner sued insured general contractor which supervised a condominium construction project, alleging multiple construction defects.	No occurrence	Because the insured knew certain materials did not comply with plans and should have known damage would occur if not corrected, there was nothing accidental about what happened to other parts of the structure.
South Carolina	Auto-Owners Ins. Co. v. Newman, 684 S.E.2d 541 (S.C. 2009)	Homeowner sued builder alleging that faulty stucco application allowed water intrusion and damage to home's framing and exterior sheathing.	Occurrence	Although the subcontractor's negligent application does not on its own constitute an occurrence, the resulting damage qualifies as an occurrence.
South Carolina	Okatie Hotel Group, LLC v. Amerisure Ins. Co., 2006 WL 91577 (D.S.C. 2006)	Subcontractors' work during construction of hotel resulted in extensive moisture damage.	Occurrence	Although damage to work product alone, caused by faulty workmanship, does not constitute an occurrence, the corresponding water damage does.
South Carolina	L-J, Inc. v. Bituminous Fire & Marine Ins. Co., 621 S.E.2d 33 (S.C. 2005)	Years after insured installed roads for developer, the roads deteriorated, and the developer sued insured for breach of contract and warranty and negligence.	No occurrence	All of the allegations were based on faulty workmanship, which does not constitute an accident or occurrence.
South Carolina	Nas Sur. Group v. Precision Wood Prods., Inc., 271 F. Supp. 2d 776 (M.D.N.C. 2003)	Extensive defects were discovered in cabinets and millwork installed by insured, also causing delamination of the countertops.	No occurrence	The costs to repair and replace the defective cabinetry and millwork were foreseeable as were other repairs incidental to the replacement of the insured's work.
South Dakota	Corner Constr. Co. v. U.S. Fid. & Guar. Co., 638 N.W.2d 887 (S.D. 2002)	Insured hired to construct school subcontracted heating and ventilation work. After construction was completed, construction and design defects were detected in both insured's and subcontractor's work.	Occurrence and no occurrence	Broad form property damage endorsement did not provide coverage caused by and confined to insured's own work. To the extent subcontractor's work caused damage to insured's work, damages are covered.
Tennessee	Travelers Indem. Co. of Am. v. Moore & Assocs., Inc., 216 S.W.3d 302 (Tenn. 2007)	Building contractor asserted claims against window subcontractor, alleging negligent design, supervision, and installation, resulting in water and moisture penetration, and premature deterioration of and damage to other components of the interior and exterior wall structure.	Occurrence	Because water penetration was an event that was unforeseeable by the insured, it was both an accident and an occurrence.
Texas	Bldg. Specialities, Inc. v. Liberty Mut. Fire Ins. Co., 712 F. Supp. 2d 628 (S.D. Tex. 2010)	Homebuilder sued insured HVAC subcontractor, alleging that the subcontractor's defective work caused water damages.	Occurrence	The claimant states that the subcontractor's work was defectively designed and installed, and the absence of a specific allegation of "negligence" does not show there is no duty to defend.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Texas	Landstar Homes Dallas, Ltd. v. Mid-Continent Cas. Co., 2010 U.S. Dist. LEXIS 131516 (N.D. Tex. 2010)	Homeowner sued insured homebuilder, alleging damages as a result of a defective foundation.	Occurrence	Shifting of the foundation was inadvertent and unintended, qualifying it as an occurrence.
Texas	Sigma Marble & Granite-Houston, Inc. v. Amerisure Mut. Ins. Co., 2010 U.S. Dist. LEXIS 137096 (S.D. Tex. 2010)	General contractor sued insured subcontractor, alleging that faulty stone work increased costs and delayed completion.	Occurrence	Because there is no allegation that the insured intended or expected its work to cause damage, the claims against the insured constitute an occurrence.
Texas	Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co., 279 S.W.3d 650 (Tex. 2009)	Homeowners sued insured builder, alleging defective construction caused water damage.	Occurrence	A claim of faulty workmanship against a homebuilder is a claim for property damage caused by an occurrence under a CGL policy.
Texas	Home Owners Mgmt. Enters., Inc. v. Mid-Continent Cas. Co., 294 Fed. Appx. 814 (5th Cir. 2008)	Homeowner sued insured homebuilder, alleging structural and cosmetic damages that resulted from construction defects.	Occurrence	A deliberate act, performed negligently, is an accident if the effect is not the intended or expected result.
Texas	Lamar Homes, Inc. v. Mid-Continent Cas. Co., 242 S.W.3d 1 (Tex. 2007)	Several years after purchase, homeowners encountered problems attributed to defects in foundations.	Occurrence	The negligent and defective construction claims alleged an occurrence. No suggestion the insured expected or intended its work to damage the home.
Texas	Lennar Corp. v. Great Am. Ins. Co., 200 S.W.3d 651 (Tex. App. 2006)	Builder applied synthetic stucco to numerous homes and builder later determined the material was defectively designed so as to trap water behind it, causing wood rot, mold, and termite infestation. Builder then replaced the stucco and sought replacement cost.	Occurrence	Negligent, unintended or inadvertent defective construction resulting in damage to the insured's own work, neither intended nor expected, can constitute an occurrence.
Texas	CU Lloyds of Texas v. Main St. Homes, Inc., 79 S.W.3d 687 (Tex. App. 2002)	Homeowner sued general contractor for structural defects and for ignoring warnings that foundations in the homes constructed were inappropriate for the subdivision's soil condition.	Occurrence	The complaint sufficiently alleged facts that could be construed as an occurrence for purposes of determining that the insurer had a duty to defend.
Texas	Great Am. Ins. Co. v. Calli Homes, Inc., 236 F. Supp. 2d 693 (S.D. Tex. 2002)	Insured sued for negligent construction and supervision in the construction of a home and installation of exterior insulation and finish system.	Occurrence	Underlying allegations of negligence allege an occurrence giving rise to the duty to defend.
Utah	Cincinnati Ins. Co. v. Linford Bros. Glass Co., 2010 U.S. Dist. LEXIS 11226 (D. Utah 2010)	Developer sued window and door manufacturer, alleging defects resulted in damages to homes in which windows and doors were installed.	No occurrence	Since negligent manufacture of windows and doors is likely to cause damage to property in which defective products are installed, no occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Utah	Great Am. Ins. Co. v. Woodside Homes Corp., 448 F. Supp. 2d 1275 (D. Utah 2006)	Homeowners sued developer, alleging construction defects that caused structural damage to homes. Developer claimed faulty work by subcontractors constituted an occurrence.	Occurrence	While an insured's own faulty work is not fairly characterized as an occurrence, damage resulting from a subcontractor's negligent acts can be considered an occurrence.
Virginia	Dragas Mgmt. Corp. v. Hanover Ins. Co., 798 F. Supp. 2d 758 (E.D. Va. 2011)	Homebuilder obtained a judgment against subcontractor for costs incurred in removing and replacing Chinese drywall installed by subcontractor and in repairing other damage caused by drywall.	Occurrence and no occurrence	The replacement of defective drywall itself is not an occurrence; however, any repair or replacement of nondefective components of home constitutes an occurrence.
Virginia	Builders Mut. Ins. Co. v. Dragas Mgmt. Corp., 709 F. Supp. 2d 441 (E.D. Va. 2010)	Homeowners sued builder, alleging damages resulting from Chinese drywall installed in home.	Occurrence	Damage that a subcontractor's defective work caused to an insured's nondefective work constitutes an occurrence.
Virginia	Hotel Roanoke Conference Ctr. Comm'n v. Cincinnati Ins. Co., 303 F. Supp. 2d 784 (W.D. Va. 2004)	Repairs to conference center adjacent to hotel resulted in inability to access 60 guest rooms and restaurant. Hotel, which held an easement to the conference center, lost significant revenues.	No occurrence	Accident as used in the definition of occurrence requires a degree of fortuity not present here.
Washington	Big Constr., Inc. v. Gemini Ins. Co., 2012 U.S. Dist. LEXIS 71350 (W.D. Wash. 2012)	Homeowners sued insured homebuilder, alleging incomplete, nonconforming, and unsatisfactory construction work resulted in additional expenses and diminution of property value.	No occurrence	Pure workmanship defects are not accidents or occurrences, since CGL policies are not meant to be performance bonds or product liability insurance.
Washington	Indian Harbor Ins. Co. v. Transform LLC, 2010 U.S. Dist. LEXIS 94080 (W.D. Wash. 2010)	Condominium developer asserted claims against insured modular condominium unit manufacturer, alleging units were defective and their repair and replacement caused damage to existing structures.	Occurrence	The developer's third party property damage resulting from the insured's defective workmanship is an occurrence.
Washington	Far Nw. Dev. Co. LLC v. Cmty. Ass'n of Underwriters of Am., 362 Fed. Appx. 861 (9th Cir. 2010)	Condominium association sued developer, alleging failure to investigate and repair potential construction defects that caused property damage to condominium buildings.	No occurrence	Damage to condominiums was not an accident because it was not "unforeseen, involuntary, unexpected and unusual," as developer admitted overlooking construction problems because of cost concerns.
Washington	Mid-Continent Cas. Co. v. Titan Constr. Corp., 281 Fed. Appx. 766 (9th Cir. 2008)	Condominium association sued building contractor, alleging extensive water damage resulting from construction deficiencies.	Occurrence	Occurrence includes deliberate manufacture of a product which inadvertently was defectively manufactured. Absent intentional breach of contract, claimed negligent construction constituted an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Washington	Yakima Cement Products Co. v. Great Am. Ins. Co., 608 P.2d 254 (Wash. 1980)	Building contractor sued manufacturer of concrete wall panels, alleging defective panels had to be removed and repaired.	Occurrence	Manufacturer's unintentional and unexpected defectively manufacture concrete panels is an accident and thus an occurrence.
Washington	Gruol Constr. Co. v. Ins. Co. of N. Am., 524 P.2d 427 (Wash. Ct. App. 1974)	Improper backfilling during construction caused dry rot.	Occurrence	Dry rot came within the definitions of accident and occurrence and was not foreseeable.
West Virginia	Simpson-Littman Constr., Inc. v. Erie Ins. Prop. & Cas. Ins. Co., 2010 U.S. Dist. LEXIS 95378 (S.D. W. Va. 2010)	Homeowners sued contractor for damages to home resulting from negligent site and masonry work.	Occurrence	As neither subcontractors' negligence nor damages to homes were "intended, anticipated or expected," settlement of soil and fill is an occurrence.
West Virginia	Webster Cnty. Solid Waste Auth. v. Brackenrich & Assoc., 617 S.E.2d 851 (W. Va. 2005)	Solid Waste Authority sued engineering firm, alleging defective design and construction.	No occurrence	Allegations of poor work performance, standing alone, are not occurrences.
West Virginia	Corder v. William W. Smith Excavating Co., 556 S.E.2d 77 (W. Va. 2001)	Subdivision owner sued excavator for damages resulting from faulty sewer work.	Possible occurrence	Key to determining existence of an occurrence is whether a separate act or event caused property damages or whether property damage is tied to original faulty work of insured.
West Virginia	Erie Ins. Prop. & Cas. Co. v. Pioneer Home Improvement, Inc., 526 S.E.2d 28 (W. Va. 1999)	Homeowners sued building contractor, alleging faulty workmanship in performance of building contract.	No occurrence	CGL policies do not provide protection for poor workmanship but from personal injury or property damage to others caused by the insured's negligence.
Wisconsin	Acuity, a Mut. Ins. Co. v. VPP Group, LLC, 810 N.W.2d 812 (Wisc. Ct. App. 2012)	Plant owner's insurer filed subrogation action against insured contractor, alleging faulty excavation work caused soil settling and damage to the existing plant.	Occurrence	Faulty workmanship that causes unintended harm to other property is an occurrence.
Wisconsin	Yeager v. Polyurethane Foam Insulation, LLC, 2012 WI App. 11 (Wisc. Ct. App. 2012)	Owner hired company to insulate home. Owner sued insured, alleging insured's workmanship caused frost pockets, condensation, and other damages to home.	No occurrence	Faulty workmanship, in and of itself, is not an occurrence.
Wisconsin	Mantz Automation, Inc. v. Navigators Ins. Co., 787 N.W.2d 60 (Wisc. Ct. App. 2010)	Insured constructed a manufacturing facility and subcontracted the masonry work. Building owner sued contractor, alleging that cracking and chipping of concrete floor was creating a safety hazard.	No occurrence	The only damage alleged was the defective floor itself, and faulty workmanship does not constitute an occurrence.

## Is There An Occurrence?

State	Citation	Facts	Finding	Comments
Wisconsin	Stuart v. Weisflog's Showroom Gallery, Inc., 753 N.W.2d 448 (Wis. 2008)	Homeowners claimed misrepresentation and design and construction defects in remodeling project.	No occurrence	Misrepresentations of professional ability do not constitute an occurrence.
Wisconsin	Glendenning's Limestone & Ready-Mix Co., Inc. v. Reimer, 721 N.W.2d 704 (Wisc. Ct. App. 2006)	Tenants of a dairy farm sued general contractor hired to improve facility, alleging various deficiencies in work, including damage to improperly installed rubber mats.	Occurrence and no occurrence	While faulty workmanship itself is not an occurrence, improperly installed mats damaged through normal use was caused by an accident and not intended or anticipated.
Wisconsin	Am. Fam. Mut. Ins. Co. v. Am. Girl, Inc., 673 N.W.2d 65 (Wis. 2004)	Soil engineering subcontractor provided faulty site preparation advice resulting in structural damage.	Occurrence	Substantial soil settlement which resulted from faulty site preparation advice was accidental, not anticipated.
Wisconsin	Kalchthaler v. Keller Constr. Co., 591 N.W.2d 169 (Wis. Ct. App. 1999)	Building leaked causing water damage to the interior.	Occurrence	Windows leaking as a result of negligent installation is an occurrence.
Wyoming	Emp'rs Mut. Cas. Co. v. Bartile Roofs, 618 F.3d 1153 (10th Cir. 2010)	Hotel owner sued building contractor alleging defects in construction, and contractor filed a cross-complaint against insured roofing subcontractor.	No occurrence	All claims were for subcontractor's negligent roofing work, and natural results of unworkmanlike construction do not constitute an occurrence.

## Is There Property Damage?

In order to trigger coverage under a commercial general liability policy, the insured's liability must be based on actual physical injury to tangible property or an actual loss of use of such property. Where the construction claim against the contractor does not involve tangible, physical injury, courts have found no covered property damage. Most courts have also held that claims limited to fixing or replacing all or part of defective construction and/or claims of diminution in value, because of defective construction work or materials with no physical injury, are not claims for property damage. Defective work or materials in and of themselves do not constitute property damage.

The following is a summary of selected cases addressing construction defect as property damage.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Alabama	Town & Country Prop., L.L.C. v. Amerisure Ins. Co., 2011 Ala. LEXIS 183 (Ala. 2011)	Automobile facility owner sued contractor, alleging faulty construction.	Possible property damage	Damages awarded to compensate for damaged personal property or otherwise nondefective portions of the facility would constitute property damage.
Alabama	U.S. Fid. & Guar. Co. v. Warwick Dev. Co., 446 So. 2d 1021 (Ala. 1984)	Home purchasers sued builder for unworkmanlike construction and misrepresentations.	Not property damage	No evidence that misrepresentations caused physical injury to tangible property.
Alaska	Fejes v. Alaska Ins. Co., 984 P.2d 519 (Alaska 1999)	Homeowner sued insured contractor, alleging curtain drain improperly constructed by a subcontractor caused the failure of the home's septic system.	Property damage	The failure of the curtain drain caused destruction of the septic system, which falls within the definition of property damage, "destruction of tangible property."
Arizona	Am. Family Mut. Ins. Co. v. Spectre W. Builders Corp., 2011 U.S. Dist. LEXIS 11328 (D. Ariz. 2011)	Homeowners' association sued insured contractor, alleging faulty workmanship, and is seeking to recover the cost of the defective work and resulting water damage.	Property damage	The cost of repairing defective work does not constitute property damage, but the policies provide coverage for the portion of damages meant for resultant damage repairs.
Arizona	U.S. Fid. & Guar. Corp. v. Advance Roofing & Supply Co., 788 P.2d 1227 (Ariz. 1990)	Homeowners association sued insured roofing contractor, alleging faulty work on roofs installed in a housing complex.	Not property damage	Allegations not a claim for property damage, and the cost of repairing any defect does not constitute property damage.
Arizona	Univ. Mech. Contractors of Ariz., Inc. v. Puritan Ins. Co., 723 P.2d 648 (Ariz. 1986)	Contractor hired to build a solar heating facility sued insured piping supplier, alleging that defects in the supplied piping required the contractor to repair the entire system of installed piping.	Property damage	The installation of the faulty piping constituted physical injury to the solar facility, and as a result of the installation of the defective pipes, there was a loss of the facility's use.
Arkansas	Cooley v. St. Farm Fire & Cas. Co., 2009 U.S. Dist. LEXIS 97144 (E.D. Ark. 2009)	Home purchasers sued prior owners, alleging various defect problems with the home sold to them, and is seeking recovery for breach of contract, misrepresentation and fraud.	Not property damage	The alleged nondisclosure, misrepresentation and breach of contract was not an accident that resulted in property damage, but rather, was an event that allegedly caused economic damages.
Arkansas	Geurin Contractors, Inc. v. Bituminous Cas. Corp., 636 S.W.2d 638 (Ark. Ct. App. 1982)	Business owner sued highway contractor for lost profits, alleging negligent performance of highway contract caused road closure at front of store.	Property damage	Loss of use of tangible property caused by an occurrence constituted property damage.
California	St. Paul Fire & Marine Ins. Co. v. Vadnis Corp., 2012 U.S. Dist. LEXIS 29696 (E.D. Cal. 2012)	Town water district alleged that the insured defectively constructed a pipeline causing irrigation water to be lost.	Not property damage	Whereas the definition of property damage would cover damages related to the loss of use of the water, the loss of water is not insured.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
California	Ameron Int'l Corp. v. Am. Home Assurance Co., 2011 Dist. LEXIS 61486 (C.D. Cal. 2011)	General contractor on highway project sued insured subcontractor, alleging that concrete supplied by the subcontractor was substandard and resulted in the failure of drill shafts, causing project delays.	Property damage	Allegations that the supply of defective concrete caused project delays, resulting in consequential damages, assert property damage in the form of loss of use of property.
California	McGranahan v. Ins. Corp., 544 F. Supp. 2d 1052 (E.D. Cal. 2008)	Home developer initiated arbitration against insured drywall installer, alleging insured installed moldy drywall, and arbitrator awarded damages for remediation, lot discounts and carrying costs.	Property damage	Lot discounts, concessions, and carrying costs constitute property damage because, rather than being purely economic losses, they arose from defective drywall installed by the insured.
California	F & H Constr. v. ITT Hartford Ins. Co. of the Midwest, 12 Cal. Rptr. 3d 896 (Cal. Ct. App. 2004)	Subcontractor supplied pipe caps to contractor who welded them onto driven piles. Caps later determined to be inferior grade, and contractor sought damages under CGL policy for property damage.	Not property damage	Damage alleged by contractor was the cost of modifying the caps and lost bonuses. Such intangible economic damages are not proper damages under the policy.
California	Allstate Ins. Co. v. Morgan, 806 F. Supp. 1460 (N.D. Cal. 1992)	Home purchasers sued seller for not disclosing certain facts.	Not property damage	Claims seek economic damages and do not constitute property damage under the policy. Claims are also contractual in nature, such that there is no coverage under the policy.
California	N.H. Ins. Co. v. Vieira, 930 F.2d 696 (9th Cir. 1991)	Contractor installed drywall in rooms and attics of three housing projects. An investigation revealed that the contractor failed to secure the drywall properly and install drywall in the attics to prevent fire. Building owner attempted to make repairs which diminished the property value.	Not property damage	Diminution in value does not constitute property damage as defined by the policy.
California	Maryland Cas. Co. v. Reeder, 270 Cal. Rptr. 719 (Cal. Ct. App. 1990)	Owners sued developer and builder, alleging that condominiums experienced cracks in the walls, settling of the slab, soil subsidence caused cracking, and separation in floor and walkways. The roofing system also failed, permitting rainwater to damage building structures.	Property damage	The allegations went beyond allegations that defects in material and workmanship exist in the project and allege property damage within the meaning of the policy.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
California	St. Paul Fire & Marine Ins. Co. v. Coss, 145 Cal. Rptr. 836 (Cal. Ct. App. 1978)	Insured agreed to build a dwelling and garage. A dispute later arose regarding the quality of the work and insured discontinued the work. At the time of discontinuance, neither dwelling nor garage could be used for the intended purpose.	Not property damage	The damages were costs incurred to correct the defective work. Poor workmanship on the delivered product is not property damage within the terms of the policy.
Colorado	TCD, Inc. v. Am. Family Mut. Ins. Co., 2012 COA 65 (Colo. Ct. App. 2012)	Developer sued insured general contractor, alleging that the roof installed by insured and its roofing subcontractor was defective.	Not property damage	Allegations sounding in contract and tort law do not fit within the meaning of property damage.
Colorado	St. Paul Fire & Marine Ins. Co. v. Alstom Power, Inc., 2010 U.S. Dist. LEXIS 90016 (D. Colo. 2010)	Energy company sued insured power plant contractor, alleging defective welding performed by insured's subcontractor caused latent defects.	Not property damage	Allegations that faulty workmanship in the use of incorrect materials, which cause a latent defect do not constitute an allegation of property damage.
Colorado	Am. Family Mut. Ins. Co. v. Teamcorp., Inc., 659 F. Supp. 2d 1115 (D. Colo. 2009)	Homeowners sued insured home designer, asserting that the insured's faulty plans resulted in problems in their home, including being uninhabitable.	Property damage	Even if the complaint could not be construed to allege physical injury, coverage arguably exists for loss of use of tangible property by the homeowners.
Colorado	Colard v. Am. Fam. Mut. Ins. Co., 709 P.2d 11 (Colo. Ct. App. 1985)	Homeowners terminated contract with homebuilder because of negligent and unsatisfactory construction. Homeowners hired other contractors to correct and complete the construction.	Property damage	The results of the insured's actions were neither expected nor intended, and the unintended poor workmanship of the insured created an exposure to a continuous condition that resulted in property damage.
Connecticut	Peterbilt of Conn., Inc. v. First Fin. Ins. Co., 2011 U.S. Dist. LEXIS 106740 (D. Conn. 2011)	Building owner sued insured roofing contractor, alleging faulty workmanship caused roof to leak.	Possible property damage	Damage caused to one component of a system by another component falls within the meaning of property damage.
Connecticut	Times Fiber Communs., Inc. v. Travelers Indem. Co. of Ill., 2005 Conn. Super. LEXIS 335 (Conn. Super. Ct. 2005)	Telephone company sued insured seller of telephone cable, alleging that the cable did not meet building code requirements and seeking costs associated with removing and replacing the installed cable.	Property damage	Repairs to drywall necessitated by removing defective cable do not constitute physical injury to tangible property; however, displacement of tenants and lost rental revenue does constitute the loss of use of tangible property.
Florida	Amerisure Mut. Ins. Co. v. Auchter Co., 673 F.3d 1294 (11th Cir. 2012)	Inn owner sued insured contractor, alleging the roof defectively installed by a subcontractor was aesthetically deficient and its repair would cause lost profits.	Not property damage	A claim for the cost of repairing the faulty roof supplied by the insured's subcontractor does not constitute a claim for property damage.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Florida	Precise Constr., Inc. v. W. Sur. Group, 417 Fed. Appx. 871 (11th Cir. 2011)	Building contractor sought coverage for costs incurred in demolishing and rebuilding foundation installed by a subcontractor.	Not property damage	Florida law clearly instructs that property damage under a CGL policy does not include costs associated with removing and replacing defective work.
Florida	Palm Beach Grading, Inc. v. Nautilus Ins. Co., 434 Fed. Appx. 829 (11th Cir. 2011)	General contractor sued insured subcontractor for costs incurred in repairing defective sewer piping installed by subcontractor.	Not property damage	The contractor's claim solely for the costs of repairing and removing the defective pipe is not a claim for property damage.
Florida	Mid-Continent Cas. Co. v. Frank Casserino Constr., Inc., 721 F. Supp. 2d 1209 (M.D. Fla. 2010)	General contractor sued insured roofing subcontractor, alleging construction defects caused water damage.	Property damage and not property damage	Although the subcontractor's defective workmanship may have caused water intrusion (and the resulting property damage to the buildings), its faulty workmanship alone does not constitute property damage.
Florida	Mid-Continent Cas. Co. v. Basdeo, 742 F. Supp. 2d 1293 (S.D. Fla. 2010)	Condominium association and unit owner sued insured roofing contractor seeking to recover expenses incurred by water damage caused by faulty roof repairs.	Property damage	While costs of repairing or removing defective work are not covered by the definition of property damage, costs of repairing damage caused by defective work are.
Florida	Homes By Deramo, Inc. v. Mid-Continent Cas. Co., 661 F. Supp. 2d 1281 (M.D. Fla. 2009)	Homeowner asserted claim against insured building contractor, alleging construction defects involving, among other items, the decks on the home which were installed by subcontractors.	Possible property damage	There is a difference between a claim for the cost of remediating defective work, which is not a claim for property damage, and a claim for the cost of repairing damage caused by defective work, which is a claim for property damage.
Florida	St. Paul Fire & Marine Ins. Co. v. Sea Quest Int'l., 676 F. Supp. 2d 1306 (M.D. Fla. 2009)	Company sued insured yacht builder, asserting damages resulting from insured's negligent and faulty workmanship.	Not property damage	Damages awarded for the cost of removing and replacing faulty work and completing the project, not for damage beyond the faulty work, does not constitute property damage.
Florida	Auto-Owners Ins. Co. v. Pozzi Window Co., 984 So. 2d 1241 (Fla. 2008)	Homeowner sued contractor after windows installed in new home leaked during rainstorms.	Property damage and not property damage	Claim for the replacement of windows that were defective does not constitute injury to tangible property. Claim for repair or replacement of windows that were damaged by defective installation constitutes physical injury to tangible property.
Florida	Nautilus Ins. Co. v. Baston-Cook Co., 2008 U.S. Dist. LEXIS 90909 (M.D. Fla. 2008)	Condominium association sued insured general contractor for negligent work that resulted in property damage.	Not property damage	Defective work itself cannot be considered property damage in the form of physical injury to tangible property, and there is no evidence of loss of use of tangible property that was not physically injured.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Florida	U.S. Fire Ins. Co. v. J.S.U.B., Inc., 979 So. 2d 871 (Fla. 2007)	Subcontractor's use of poor soil and inadequate compacting led to damaged foundation, drywall, and interior of home.	Property damage	Structural damage to completed homes caused by subcontractor's defective work is property damage.
Florida	W. Orange Lumber Co. v. Ind. Lumbermens Mut. Ins. Co., 898 So. 2d 1147 (Fla. Dist. Ct. App. 2005)	Contractor failed to provide the proper grade of cedar siding. Owner halted work on project and ordered the contractor to take corrective action. Sidings were removed and replaced with a substitute product.	Not property damage	There are no allegations of property damage. The dispute concerns a breach of contract, not a tort.
Georgia	Transcon. Ins. Co. v. R. Larry Phillips Constr. Co., 376 Fed. Appx. 885 (11th Cir. 2010)	Owner sued insured general contractor, alleging that structures at his apartment complex failed because of the insured's faulty workmanship, causing water to leak into buildings, resulting in rot.	Not property damage	The district court properly granted the insurers summary judgment, finding that no property damage had been caused by an occurrence.
Georgia	Glens Falls Ins. Co. v. Donmac Golf Shaping Co., 417 S.E.2d 197 (Ga. Ct. App. 1992)	Contractor sought coverage after building golf course partly on protected wetlands without obtaining permits.	Property damage	Negligent construction on wetlands caused losses due to physical damage and loss of use to the project.
Hawaii	Group Builders, Inc. v. Admiral Ins. Co., 231 P.3d 67 (Haw. Ct. App. 2010)	Hotel owner sued insured exterior finishing subcontractor, alleging construction defects contributed to mold growth, causing the closure of the hotel.	Property damage	The mold damage and resulting loss of use of the hotel qualifies as property damage.
Illinois	Milwaukee Mut. Ins. Co. v. J.P. Larsen, Inc., 956 N.E.2d 524 (Ill. App. Ct. 2011)	Condominium association sued building contractor, alleging damage caused by leaking windows, and contractor asserted third-party claims against insured subcontractor hired to seal the windows.	Property damage	The damages alleged are not intangible or merely associated with the repair or replacement of the faulty window caulking and sealant.
Illinois	Lagestee-Mulder, Inc. v. Consol. Ins. Co., 2011 U.S. Dist. LEXIS 129308 (N.D. Ill. 2011)	Building owner sued insured general contractor and insured window/door subcontractor, alleging defective workmanship caused water infiltration.	Property damage and not property damage	While water damage to parts of the building other than windows and doors does not qualify as property damage with respect to the general contractor, such work fell outside the scope of the subcontractor's work and thus qualifies as property damage with respect to the subcontractor.
Illinois	W. Bend Mut. Ins. Co. v. People, 929 N.E.2d 606 (Ill. App. Ct. 2010)	Homeowners and the Attorney General sued insured remodeling company, alleging fraud and faulty workmanship.	Not property damage	Finding coverage for the cost of replacing or repairing defective work would transform the policy into something akin to a performance bond.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Illinois	Stoneridge Dev. Co. v. Essex Ins. Co., 888 N.E.2d 633 (Ill. App. Ct. 2008)	Owner sued builder, alleging that land under townhome consisted of unsuitable structural bearing soils. Soil movement caused home to move and crack and fail.	Not property damage	Costs of repair, replacement, or the diminished value of a home, are not property damage under the policy.
Illinois	Lyerla v. AMCO Ins. Co., 536 F.3d 684 (7th Cir. 2008)	Homeowners sued insured contractor, alleging he failed to properly build their homes and seeking to recover the costs they incurred completing the project, storage fees, finance charges, loss of work, and litigation costs.	Not property damage	Homeowners did not allege a physical injury to tangible property. The complaint alleged only contractual damages.
Illinois	Country Mut. Ins. Co. v. Carr, 867 N.E.2d 1157 (Ill. App. Ct. 2007)	Homeowners sued insured contractor, alleging that the insured, or his subcontractor, inappropriately performed backfill operations, which caused damages to the basement walls and other parts of their residence.	Property damage	The homeowners allege physical injury to tangible property, their basement walls, which fall within the definition of property damage.
Illinois	Viking Constr. Mgmt., Inc. v. Liberty Mut. Ins. Co., 831 N.E.2d 1 (Ill. App. Ct. 2005)	A masonry wall collapsed at a construction site, injuring a worker who sued for faulty bracing.	Not property damage	Complaint alleged only damages to repair or replace defective products, which does not constitute property damage.
Illinois	State Farm Fire & Cas. Co. v. Tillerson, 777 N.E.2d 986 (Ill. App. Ct. 2002)	Insured contractor built a home addition and carport over uneven soil. Homeowners sued, alleging breach of warranty.	Not property damage	Complaint seeks the repair or replacement of defective work or the diminution in value of the home, which are not physical injury to tangible property.
Indiana	Trinity Homes LLC v. Ohio Cas. Ins. Co., 2012 U.S. Dist. LEXIS 43699 (S.D. Ind. 2012)	Homeowners sued insured general contractor, alleging that the faulty work of the insured's subcontractors resulted in water damages to their homes.	Property damage	The Indiana Supreme Court in Sheehan "clearly determined that the tangible property which experienced the 'physical injury' so as to qualify as 'property damage' can include the construction project."
Indiana	Cont'l Cas. Co. v. Sycamore Springs Homeowner's Ass'n Inc., 652 F.3d 804 (7th Cir. 2011)	Homeowner's association sued insured building contractor regarding damages caused by the overflow of a retention pond.	Not property damage	Because the damages sought were for steps that would reduce future flooding, as opposed to the cost of restoring the subdivision to its original condition, damages were not sought for property damage.
Indiana	Amerisure, Inc. v. Wurster Constr. Co., 818 N.E.2d 998 (Ind. Ct. App. 2004)	Subcontractors installed exterior sheathing and finish systems for two construction projects. After completion, general contractor was required to correct defects in the work.	Not property damage	Complaint did not assert any damage to any person or property other than to the project systems on the buildings. Damage to the projects due to faulty workmanship or defective materials does not involve property damage.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Indiana	R.N. Thompson & Assocs., Inc. v. Monroe Guar. Ins. Co., 686 N.E.2d 160 (Ind. Ct. App. 1997)	Homeowners' association sued developer, alleging roof deck contained inadequate plywood and buildings were improperly ventilated.	Not property damage	No property damage where the claim arises from economic loss and not from damage to property other than the contractor's completed work itself.
Iowa	Yegge v. Integrity Mut. Ins. Co., 534 N.W.2d 100 (Iowa 1995)	Homeowners sued contractor who built their home, asserting breach of contract and express warranty of fitness, and sought labor costs, materials, and supplies to complete the residence.	Not property damage	The complaint sought costs to complete work, expenses, and impairment, which did not qualify as property damage.
Kansas	Fidelity & Deposit Co. of Md. v. Hartford Cas. Ins. Co., 189 F. Supp. 2d 1212 (D. Kan. 2002)	Work performed on school project was determined to be defective, including deteriorated walls, broken blocks, cracked joints and slabs, and improper drain lines.	Property damage	The injury to the project allegedly caused by the insured's faulty workmanship is property damage, within the terms of the policy.
Kentucky	Global Gear & Mach. Co., Inc. v. Capitol Indem. Corp., 2010 U.S. Dist. LEXIS 86745 (W.D. Ky. 2010)	Vessel owner sued insured repair company, alleging the insured's repair services were defective, causing damage to other parts of the boats and damaging the owner's reputation.	Not property damage	Alleged injuries to reputation and goodwill do not allege physical injury to tangible property and therefore, are not property damage.
Louisiana	Travelers Cas. and Sur. Co. of Am. v. Univ. Facilities, Inc., 2012 U.S. Dist. LEXIS 49970 (E.D. La. 2012)	Building developer sued insured general contractor and drywall subcontractor, alleging faulty workmanship in the installation of wall board.	Property damage	Allegations that faulty workmanship caused water damage, the failure of floor and wall systems, and the permanent deterioration of the buildings constitute allegations of property damage.
Louisiana	Martco Ltd. P'ship v. Wellons, Inc., 2008 U.S. Dist. LEXIS 98385 (W.D. La. 2008), aff'd, 312 Fed. Appx. 716 (5th Cir. 2009), aff'd, 588 F.3d 864 (5th Cir.)	Plant owner sued insured hired to install improvements at its oriented strand board plant, alleging breach of contract, invalidity of contract, redhibition, negligence, and resulting damages.	Property damage	Evidence presented by plant owner established property damage in the form of physical injury to property and loss of use.
Louisiana	Stewart Interior Contractors, L.L.C. v. Metal Pro Indus., L.L.C., 969 So. 2d 653 (La. Ct. App. 2007)	Framing subcontractor sued insured sub-subcontractor, seeking to recover damages caused by allegedly defective steel studs supplied by insured.	Property damage	In addition to economic losses, allegations of damage to property other than to the steel studs themselves, or incidental to their removal and repair, constitute allegations of property damage.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Louisiana	Grimaldi Mech., L.L.C. v. Gray Ins. Co., 933 So. 2d 887 (La. Ct. App. 2006)	Insured mechanical contractor sought the cost of defending claims against it for damages resulting from its allegedly defective installation of a piping system.	Possible property damage	Because the complaint alleges both breach of contract and damages resulting from the insured's breach of contract, there may have been an occurrence, which may have resulted in property damage, thereby triggering the insurer's duty to defend.
Louisiana	Iberia Parish School Bd. v. Sandifer & Son Constr. Co., 721 So. 2d 1021 (La. Ct. App. 1998)	Following completion of school roofing job, leaks were discovered due to defective materials and poor workmanship. The leaks caused unspecified damages to the school.	Property damage	Property damage exists where defective workmanship and defective materials caused continuous exposure to rain, which caused the roof to leak and required a roof replacement.
Maryland	IA Constr. Corp. v. T&T Surveying, Inc., 822 F. Supp. 1213 (D. Md. 1993)	General contractor sued insured subcontractor, alleging that repairs necessitated by the insured's faulty work required the removal and replacement of other nondefective work.	Property Damage	There is nothing in the case law or policy language that suggests the damage sustained by the general contractor was not property damage.
Maryland	Reliance Ins. Co. v. Mogavero, 640 F. Supp. 84 (D. Md. 1986)	Owner of fire-damaged apartment building sued insured for performing renovation work improperly. The alleged defects to the building included openings in the drywall exterior, omitted insulation, inadequate electric water heater capacity, and uninsulated hot water pipes.	Not property damage	Claims for damage were incidental to the assertion of defective work performed by the insured and did not constitute property damage.
Massachusetts	Essex Ins. Co. v. BloomSouth Flooring Corp., 562 F.3d 399 (1st Cir. 2009)	General contractor and flooring subcontractor sought coverage for claims asserted by building tenant, seeking damages resulting from the installation of odor-emitting carpeting.	Property damage	Odor can constitute physical injury to property, and allegations that an unwanted odor permeated the building and resulted in the building's loss of use are susceptible to an interpretation that physical injury to property had been claimed.
Massachusetts	Friel Luxury Home Constr., Inc. v. Probuilders Specialty Ins. Co. RRG, 2009 U.S. Dist. LEXIS 121775 (D. Mass. 2009)	Homeowners sued insured contractor hired to perform construction and renovation work on their home, alleging the insured's faulty workmanship resulted in costs and damages.	Not property damage	The homeowners' claim does not allege that the insured's faulty work constitutes physical injury to their home such that there was property damage within the meaning of the policy.
Massachusetts	Davenport v. U.S. Fid. & Guar. Co., 778 N.E.2d 1038, 2002 WL 31549391 (Mass. App. Ct. 2002) (unpublished)	Painting subcontractor failed to apply a primer coat before putting on a final coat of exterior paint. The paint peeled and flaked, requiring general contractor to redo the work.	Not property damage	The cost of repairing defective work does not constitute property damage.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Michigan	Houseman Constr. Co. v. Cincinnati Ins. Co., 2010 U.S. Dist. LEXIS 39961 (W.D. Mich. 2010)	Grocery store owner sued insured general contractor, alleging construction defects caused the store's floor to sink.	Property damage	If the insured's work physically deteriorates in some way, the work has suffered property damage.
Minnesota	Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co., 806 N.W.2d 82 (Minn. Ct. App. 2011)	Homeowners sued insured contractor, alleging the contractor negligently failed to inform them of pre-existing moisture damage which was visible during remodeling.	Not property damage	There is no property damage giving rise to coverage because the moisture damage was pre-existing, not traceable to the insured contractor.
Minnesota	Grinnell Mut. Reinsurance Co. v. Wollak Const., Inc., 2010 U.S. Dist. LEXIS 110036 (Dist. Minn. 2010)	Homeowners sued insured general contractor alleging, in part, that negligent construction diminished the value of their home.	Not property damage	Diminution in value does not constitute property damage.
Minnesota	Grinnell Mut. Reinsurance Co. v. Ripley, 2009 Minn. App. Unpub. LEXIS 1349 (Minn. Ct. App. 2009)	Homeowners sued insured builder, alleging faulty construction caused their home to flood and seeking the costs of repairing the home to avoid future floods.	Property damage	The alleged injuries arguably constitute property damage, as the insured could become obligated to pay for "physical injury to tangible property."
Minnesota	Federated Mut. Ins. Co. v. Concrete Units, Inc., 363 N.W.2d 751 (Minn. 1985)	Insured supplied pre-mixed concrete for construction of grain elevator of such consistency that it adhered to the concrete forms, allegedly causing damage to the concrete when the forms were moved, damage to the forms, damage to reinforcing rods in the concrete, and loss of use of the grain elevator due to construction delays.	Property damage in part	The cost of replacing the defective concrete is not property damage, but the lost use of the grain elevator and the damaged rods and forms constitute property damage.
Mississippi	Nationwide Mut. Fire Ins. Co. v. Hayes, 2010 U.S. Dist. LEXIS 92988 (S.D. Miss. 2010)	Homeowner sued insured construction company, asserting contract, conversion, and negligent construction claims.	Property damage	Breach of contract alleged to have caused both physical damage to tangible property and loss of use is property damage.
Missouri	Esicorp, Inc. v. Liberty Mut. Ins. Co., 266 F.3d 859 (8th Cir. 2001)	Contractor purchased steel pipe to build hydroelectric plant. Insured inspected and approved the pipe but later inspections revealed defects in the welding, requiring repair and replacement.	Not property damage	The defectively welded pipe sections did not collapse, burst, or otherwise cause injury to the property as a result of the insured's negligent inspection. The cost of repairing the defective welds were not considered property damage.
Missouri	Taylor-Morley- Simon, Inc. v. Michigan Mut. Ins. Co., 645 F. Supp. 596 (E.D. Mo. 1986), aff'd, 822 F.2d 1093 (1987)	Concrete slab in new residential construction caused walls and ceilings to crack, water lines and gas lines to stress, and heating and air-conditioning ducts to tear loose.	Property damage	The cracking of walls, ceilings, and floors, the stress on water and gas lines, and the loosening of ducts throughout the home, sufficiently constitutes physical damage to tangible property.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Montana	Penn-Star Ins. Co. v. Coyote Ridge Constr., Inc., 2012 U.S. Dist. LEXIS 24882 (D. Mont. 2012)	Homeowners sued insured contractor, alleging that as a result of the insured's misrepresentations and failure to complete the construction of their home, they suffered damages.	Possible property damage	There is at least a possibility that the homeowners suffered property damage resulting from the loss of use of their home.
Montana	Haskins Constr., Inc. v. Mid-Continent Cas. Co., 2011 U.S. Dist. LEXIS 127231 (D. Mont. 2011)	Homeowners sued insured construction company, alleging the insured's faulty workmanship caused numerous defects in their house.	Property damage	Allegations that the insured or its subcontractors failed to install settling devices, defectively installed doors and windows, failed to seal the deck, and defectively installed the chimney resulting in water damage, sufficiently alleged property damage.
Montana	King v. State Farm Fire & Cas. Co., 2010 U.S. Dist. LEXIS 49029 (D. Mont. 2010)	Log home purchaser sued insured log home manufacturer and sales agent, alleging that the log home construction package sold to him had numerous deficiencies.	Not property damage	The purchaser's claim does not assert any property damage because the acts giving rise to the claims do not include physical injury to or destruction of property.
Nebraska	Auto-Owners Ins. Co. v. Home Pride Ins. Cos., 684 N.W.2d 571 (Neb. 2004)	Apartment buildings owner alleged that roofing shingles were improperly installed, causing substantial damage to roof structures and buildings. The building owner also alleged that the shingles themselves were defective.	Property damage	Claimants alleged that shingles were breaking apart and falling off the roofs of the apartment building, resulting in substantial and material damage to the roof structures and buildings. Such allegations stated cause for physical injury to tangible property.
Nevada	Aetna Cas. & Sur. Co. v. Mclbs, Inc., 684 F. Supp. 246 (D. Nev. 1988)	Cement block manufacturer produced blocks that were improperly sized for project. Blocks were cut to fit properly and stucco and plaster were used to cover other defects.	Not property damage	Increased labor costs and the cost of the plaster and stucco do not constitute property damage because there was no evidence of physical injury or destruction of any property on the project caused by the blocks.
New Hampshire	Webster v. Acadia Ins. Co., 934 A.2d 567 (N.H. 2007)	School sued insured roofing contractor, alleging the roof installed by the insured was defective, requiring the placement and repair of existing components.	Property damage	Because the school claims damage to existing ceiling beams, beyond the defective roof replacement, the claim satisfies the definition of property damage.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
New Hampshire	M. Mooney Corp. v. U.S. Fid. & Guar. Co., 618 A.2d 793 (N.H. 1992)	Chimney fire in a new condo development revealed inadequate clearance between the fireplace masonry and wood framing. Inspections revealed charring adjacent to fireplaces in four other units. The insurer paid claims for repairing actual damage but denied coverage for claims to correct the condition in units that were not burned or charred.	Property damage	The loss of use of fireplaces falls within the definition of property damage and was a direct result of the fire.
New Hampshire	Hull v. Berkshire Mut. Ins. Co., 427 A.2d 523 (N.H. 1981)	Plaintiffs discharged a masonry contractor while he was in the process of building a porch, steps, and retaining wall, then sued him for the allegedly defective work that he had completed.	Not property damage	Plaintiffs did not allege property damage because the claim was for money damages to compensate for contractor's defective work.
New Jersey	Firemen's Ins. Co. of Newark v. Nat'l Union Fire Ins. Co., 904 A.2d 754 (N.J. Super. Ct. App. Div. 2006)	Condominium association sued developer and builder, alleging defects in the construction of condominium units.	Not property damage	Property damage does not include the cost of repairing faulty workmanship.
New Mexico	Sadler v. Pac. Indem. Co., 363 Fed. Appx. 560 (10th Cir. 2010)	Home purchasers sued home sellers, alleging the sellers intentionally, negligently, and innocently misrepresented the condition of their home.	Not property damage	The buyers' claims pertaining to misrepresentation only resulted in economic loss, not physical damage to property, and claims alleging the home was uninhabitable do not constitute loss of use of tangible property.
New York	Franco Belli Plumbing & Heating & Sons, Inc. v. Liberty Mut. Ins. Co., 2012 U.S. Dist. LEXIS 56761 (E.D.N.Y. 2012)	General contractor sued insured subcontractor hired to install gas pipes in a new school, seeking the cost of repairing a defective gas pipe installed by the insured.	Not property damage	While walls were torn down in order to access and repair the pipes, this damage was not caused by the defective condition, but required to remedy it.
New York	Bonded Concrete, Inc. v. Transcon. Ins. Co., 784 N.Y.S.2d 212 (N.Y. App. Div. 2004)	General contractor sued insured for allegedly supplying defective concrete for use in sidewalks on a school renovation project.	Not property damage	The claim asserted that the contractor provided allegedly defective concrete and the damages sought were the cost of correction, not damage to property other than the completed work itself.
New York	Jakobson Shipyard, Inc. v. Aetna Cas. & Sur. Co., 961 F.2d 387 (2d Cir. 1992)	Purchaser of two tugboats sued insured manufacturer, alleging the tugs had defective steering apparatus, claiming costs of temporary and permanent repair.	Not property damage	The complaint alleged that the insured's work product did not perform according to contract specifications and the damages were to the tugs themselves. No damage to the property or persons of third parties was alleged or proven.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
North Carolina	Nat'l Union Fire Ins. Co. of Pittsburg, Pa. v. Intercoastal Diving, Inc., 2012 U.S. Dist. LEXIS 76291 (E.D.N.C. 2012)	Condominium and boat owner's association sued insured general contractor, asserting bulkhead constructed by the insured suffered from numerous defects.	Possible property damage	Damage to other than the bulkhead caused by the insured's defective work could constitute property damage caused by an occurrence.
North Carolina	Builders Mut. Ins. Co. v. Mitchell, 709 S.E.2d 528 (N.C. Ct. App. 2011)	Homeowner sued insured contractor hired to make repairs on his home, alleging faulty workmanship caused further water damage to his home.	Possible property damage	Property damage means damage to property that was previously undamaged and not the expense of repairing property or completing work that was done incorrectly.
North Carolina	Breezewood of Wilmington Condo. Homeowners Ass'n, Inc. v. Amerisure Mut. Ins. Co., 335 Fed. Appx. 268 (4th Cir. 2009)	Condominium association sued insured general contractor, alleging defects in construction and design necessitated repairs and reconstruction of major portions of the common elements.	Not property damage	Not only is the cost of repair or replacement of faulty workmanship not property damage, but neither is damage to the insured's own work that is caused by such faulty workmanship.
North Carolina	Amerisure Mut. Ins. Co. v. Superior Constr. Corp., 2008 U.S. Dist. LEXIS 62458 (W.D.N.C. 2008)	Condominium association sued insured general contractor, seeking to recover the cost of repairing construction defects caused by a subcontractor's faulty workmanship.	Property damage	Damages to upgraded portions of the condominiums that occurred after insured had finished construction would be within the meaning of property damage.
North Carolina	Travelers Indemn. Co. v. Miller Bldg. Corp., 221 Fed. Appx. 265 (4th Cir. 2007)	Developer sued insured general contractor hired to construct a hotel, alleging numerous construction defects.	Property damage and not property damage	The cost of correcting the insured's workmanship does not constitute property damage, but damages to the owner's own property that was separate from the hotel does constitute property damage.
North Carolina	ABT Bldg. Prod. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Inc., 472 F.3d 99 (4th Cir. 2006)	Homeowners sued insured hardboard siding manufacturer, alleging that the siding was defective because it absorbed moisture and prematurely deteriorated, resulting in consequential damages to other parts of their homes.	Property damage and not property damage	While the cost of replacing the defective product does not constitute covered property damage, consequential damages suffered by the homes upon which the siding was affixed is covered.
North Carolina	Prod. Sys. Inc. v. Amerisure Ins. Co., 605 S.E.2d 663 (N.C. Ct. App. 2004)	Contractor was hired to design and install oven line systems in a manufacturing plant but the systems contained defective bolts and did not work properly.	Not property damage	No property damage to the oven feed line systems because the damage was to repair the defects caused by faulty workmanship.
North Carolina	William C. Vick Constr. Co. v. Pa. Nat'l Mut. Cas. Ins. Co., 52 F. Supp. 2d 569 (E.D.N.C. 1999), aff'd, 2000 U.S. App. LEXIS 8486 (4th Cir. 2000)	Roofing subcontractor improperly installed waterproofing membrane, resulting in numerous leaks requiring repairs.	Not property damage	No property damage where policy requires property to have been undamaged previously. The complaint alleged that the property was never constructed properly in the first place.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
<b>North Carolina</b>	Hobson Constr. Co. v. Great Am. Ins. Co., 322 S.E.2d 632 (N.C. Ct. App. 1984)	Within a month of completion of concrete dam by insured contractor, it was apparent that it would not hold water.	Not property damage	The pleadings did not allege physical injury, destruction of tangible property, or loss of use of tangible property which has not been physically injured or destroyed.
<b>Ohio</b>	Ohio Cas. Ins. Co. v. Hanna, 2008 Ohio 3203 (Ohio Ct. App. 2008)	Homeowners sued insured construction company, alleging faulty framing created several problems with the house.	Property damage	The physical injury that triggered coverage was not the cosmetic changes to the home's drywall, trim and doors, but the faulty workmanship of the insured causing the frame of the house to become crooked.
<b>Ohio</b>	Erie Ins. Exch. v. Colony Dev. Corp., 736 N.E.2d 941 (Ohio Ct. App. 1999)	Condo association sued developer for damages to units, common areas, and surrounding landscape arising out of design, construction, and sale of condominium complex.	Property damage	Allegations that a building contractor breached its duty to construct or design a building in a workmanlike manner are sufficient to invoke the general coverage provision for property damage caused by an occurrence.
<b>Oklahoma</b>	Boggs v. Great N. Ins. Co., 659 F. Supp. 2d 1199 (N.D. Okla. 2009)	Home purchasers sued insured home sellers, claiming fraud, misrepresentation and negligence in connection with the home's improperly constructed fireplaces.	Not property damage	The purchasers' claims are economic in nature and do not constitute property damage.
<b>Oregon</b>	Willmar Dev, LLC v. Ill. Nat'l Ins. Co., 2011 U.S. App. LEXIS 25854 (9th Cir. 2011)	Homeowners alleged that damages to their home were caused by the insured contractor's negligent site selection and construction.	Property damage	The damage resulting from the builder's negligent performance – damage from the settling of the foundation – constitutes property damage.
<b>Oregon</b>	State Farm Fire & Cas. Co. v. Am. Family Mut. Ins. Co., 253 P.3d 65 (Or. Ct. App. 2011)	Homeowners sued insured builder, alleging the EIFS on their home was negligently installed.	Not property damage	None of the allegations assert water damage to the components or contents of the residence, beyond the EIFS itself.
<b>Oregon</b>	Cal. Ins. Co. v. Stimson Lumber Co., 2004 U.S. Dist. LEXIS 10098 (D. Or. 2004), aff'd in part, 325 Fed. Appx. 496 (9th Cir. 2009)	Homeowners sued insured manufacturer, asserting warranty and repair claims related to the insured's defective siding product.	Not property damage	Absent a showing that physical damage was caused to a claimant's property as a result of the defective siding, the manufacturer cannot recover the costs associated with repairing or replacing the defective siding.
<b>Pennsylvania</b>	Prudential Prop. & Cas. Ins. Co. v. Boyle, 305 Fed. Appx. 35 (3d Cir. 2008) (unpublished)	Homebuyers sued insured home seller after discovering rot inside the home's exterior siding and other defects, alleging breach of implied warranty of habitability.	Not property damage	A claim for breach of an implied warranty of habitability is not a claim for property damage caused by a loss.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Pennsylvania	Wausau Underwriters Ins. Co. v. State Auto. Mut. Ins. Co., 557 F. Supp. 2d 502 (D.N.J. 2008) (applying Pa. law)	Condominium association sued insured stone manufacturer/distributor as a result of deteriorating stone fascia applied to the outside of the condominiums.	Possible property damage	Damage allegedly caused by the negligent acts of the insured may be a sufficiently fortuitous event to constitute an accident and therefore an occurrence.
Rhode Island	Furey Roofing & Constr. Co., Inc. v. Emp'rs Mut. Cas. Co., 2010 R.I. Super. LEXIS 24 (R.I. Super. Ct. 2010)	Building contractor sued insured roofing subcontractor, seeking damages flowing from the insured's failure to obtain roof warranty and from its defective work.	Property damage	An occurrence of property damage is alleged because damage from roof leaks remains uncorrected, repairs may need to be made to the roof installed by the insured and to repair the roof, and the work of others may need repair.
Rhode Island	Aetna Cas. & Sur. Co. v. Consulting Env'tl. Eng'rs, Inc., 1989 R.I. Super. LEXIS 137 (R.I. Super. Ct. 1989)	Installer of manhole covers and pipes on a sewer project brought claims against design engineers for improper grading specifications.	Property damage	Tangible property does not need to be broken to be injured. It will suffice if it is or becomes so defective as to be inoperable.
South Carolina	Jessco, Inc. v. Builders Mut. Ins. Co., 2009 U.S. Dist. LEXIS 86920 (D.S.C. 2009), aff'd in part, 2012 U.S. App. LEXIS 6502 (4th Cir. 2012)	Homeowners sued insured contractor, alleging certain construction defects existed in their home.	Property damage and not property damage	Failure to repair faulty work does not constitute property damage, but the flooding of the homeowner's yard is property damage because it has caused them to lose the use of their yard and has caused water damage to their garage.
South Carolina	Builders Mut. Ins. Co. v. Oak Tree Homes, Inc., 2012 U.S. Dist. LEXIS 49333 (D.S.C. 2012)	Homeowners sued insured construction company, alleging breach of contract for defective construction and fraud for false assurances that a home warranty would be provided.	Property damage and not property damage	Defective construction resulting in damage to otherwise nondefective components may constitute property damage but the defective construction would not.
South Carolina	Builders Mut. Ins. Co. v. Lacey Constr. Co., Inc., 2012 U.S. Dist. LEXIS 41588 (D.S.C. 2012)	Homeowner's association sued insured developer and contractor for construction defects in the common elements and townhomes.	Property damage and not property damage	A claim for the costs of repairing damage caused by defective work is not a claim for property damage, but a claim for the cost of repairing damage caused by the defective work is a claim for property damage.
South Carolina	Crossman Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co., Inc., 717 S.E.2d 589 (S.C. 2011)	Condominium owners sued insured developer, alleging negligent construction of their homes' exterior components, resulting in progressive water damage to otherwise nondefective aspects of their homes.	Property damage and not property damage	Defective construction resulting in damage to otherwise nondefective components may constitute property damage, but the defective construction would not.
South Carolina	Isle of Palms Pest Control Co. v. Monticello Ins. Co., 459 S.E.2d 318 (S.C. Ct. App. 1994)	Home purchaser sued pest contractor, claiming negligent inspection, fraud, and breach of contract.	Property damage	Complaint alleged that insured failed to find termites in home, requiring purchaser to incur costs to stop termites from damaging home.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
South Dakota	Corner Constr. Co. v. U.S. Fid. & Guar. Co., 638 N.W.2d 887 (S.D. 2002)	School demanded arbitration against insured general contractor, alleging design and construction defects in the insured's work and that of subcontractors.	Property damage and not property damage	To the extent a subcontractor's work caused damage to other property, including the work of the insured general contractor, coverage is afforded for such damages.
Tennessee	Forrest Constr., Inc. v. Cincinnati Ins. Co., 728 F. Supp. 2d 955 (M.D. Tenn. 2010)	Homeowners sued insured contractor hired to build their home, alleging faulty workmanship caused cracking in the foundation and other problems.	Property damage	Complaint allegations leave open the possibility that the poorly constructed foundation caused damage to the rest of the house, and property damage occurs when one component of a finished product damages another component.
Tennessee	Travelers Indem. Co. of Am. v. Moore & Assocs., Inc., 216 S.W.3d 302 (Tenn. 2007)	Claims against window subcontractor allege negligent design, supervision, and installation, resulting in water and moisture penetration, and premature deterioration of and damage to other components of the interior and exterior wall structure.	Property damage	The claim was not limited to faulty workmanship and alleged the defective installation resulted in water penetration causing further damage.
Texas	Mid-Continent Cas. Co. v. Academy Dev., Inc., 2012 U.S. App. LEXIS 8056 (5th Cir. 2012)	Homeowners sued insured developer and builder of their lake front community, alleging that the walls of the constructed lakes were failing and seeking damages for the diminution in the value of their homes.	Property damage	Allegations of diminution in the value of their homes caused by defectively constructed lakes constitute property damage.
Texas	Bldg. Specialties, Inc. v. Liberty Mut. Fire Ins. Co., 712 F. Supp. 2d 628 (S.D. Tex. 2010)	Homebuilder sued insured HVAC subcontractor, alleging that the subcontractor's defective work caused water damages.	Not property damage	Because the petition did not allege that the defective work caused physical injury and loss of use, it did not allege covered property damage.
Texas	Landstar Homes Dallas, Ltd. v. Mid-Continent Cas. Co., 2010 U.S. Dist. LEXIS 131516 (N.D. Tex. 2010)	Homeowner sued insured homebuilder, alleging damages to her home as a result of a defective foundation.	Property damage	Awards for diminution in value and cosmetic repairs constitute property damage because they are physical injuries to tangible property.
Texas	Sigma Marble & Granite - Houston, Inc. v. Amerisure Mut. Ins. Co., 2010 U.S. Dist. LEXIS 137096 (S.D. Tex. 2010)	General contractor sued insured subcontractor, alleging that faulty stone work performed by the insured increased costs and delayed completion.	Property damage	Physical injury to tangible property, including the resulting loss of use of property, constitutes property damage, and here, loss-of-use damages were pled.
Texas	Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co., 279 S.W.3d 650 (Tex. 2009)	Homeowners sued insured builder, alleging defective construction caused water damage to their homes.	Property damage	A claim of faulty workmanship against a homebuilder is a claim for property damage caused by an occurrence under a CGL policy.

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Texas	Lamor Baptist Church of Arlington, Inc. v. St. Paul Fire and Marine Ins. Co., 2009 U.S. Dist. LEXIS 9470 (N.D. Tex. 2009)	Church sued building contractor hired to construct an addition, alleging the roof installed by a subcontractor was faulty and leaked.	Property damage and no property damage	The cost of replacing the roof installed by a subcontractor is not property damage, but the water leak damage to the ceiling tiles and carport is property damage.
Texas	Lamar Homes, Inc., v. Mid-Continent Cas. Co., 242 S.W.3d 1 (Tex. 2007)	Several years after purchase, homeowners encountered problems attributed to defects in foundations.	Property damage	Negligent design and construction of the foundation and defective workmanship caused the sheetrock and stone veneer to crack, which constitutes physical injury to tangible property.
Texas	Lennar Corp. v. Great Am. Ins. Co., 200 S.W.3d 651 (Tex. App. 2006)	Builder applied synthetic stucco to numerous homes and builder later determined the material was defectively designed so as to trap water behind it, causing wood rot, mold, and termite infestation. Builder then replaced the stucco and sought replacement cost.	Property damage and not property damage	The stucco's entrapment of moisture caused water damage to some of the homes, which constitutes physical injury to tangible property. The costs to remove and replace the synthetic stucco as a preventative measure and overhead costs do not constitute property damage.
Washington	Big Constr., Inc. v. Gemini Ins. Co., 2012 U.S. Dist. LEXIS 71350 (W.D. Wash. 2012)	Homeowners sued insured homebuilder, alleging incomplete, nonconforming, and unsatisfactory construction work resulted in additional construction expenses and diminution of their property value.	Not property damage	For faulty workmanship to give rise to property damage, there must be property damage separate from the defective product itself.
Washington	Mut. of Enumclaw Ins. Co. v. T & G Constr., Inc. 199 P.3d 376 (Wash. 2008)	General contractor of condominium project sued insured siding contractor, alleging poorly installed siding caused damage to subsurface and interior walls.	Property damage	Damage to subsurface and interior walls not installed by the insured was property damage, and removing and repairing the siding is part of the cost of repairing the damage to the interior walls.
Washington	Diamaco, Inc. v. Aetna Cas. & Sur. Co., 983 P.2d 707 (Wash. Ct. App. 1999)	The City of Seattle sued insured contractor, alleging defects in the insured's work delayed completion of an expressway project.	Property damage	Property damage is not limited to damage to third-party property.
Washington	Yakima Cement Prod. Co. v. Great Am. Ins. Co., 608 P.2d 254 (Wash. 1980)	Building contractor sued insured manufacturer of concrete wall panels, alleging that the concrete panels were defective, which necessitated the removal and repair of certain panels.	Not property damage	No property damage was alleged because there was no evidence that the incorporation of the defective panels diminished the value of the building.
West Virginia	Simpson-Littman Constr., Inc. v. Erie Ins. Prop. & Cas. Ins. Co., 2010 U.S. Dist. LEXIS 95378 (S.D. W. Va. 2010)	Homeowner sued insured contractor for damages to their home resulting from negligent site and masonry work performed by subcontractors.	Property damage	The structural defects to the home constitute "physical injury to or destruction of tangible property."

## Is There Property Damage?

State	Citation	Facts	Finding	Comments
Wisconsin	Acuity, a Mut. Ins. Co. v. VPP Group, LLC, 810 N.W.2d 812 (Wis. Ct. App. 2012)	Plant owner's insurer filed subrogation action against insured contractor, alleging faulty excavation work caused soil settling causing damage to the existing plant.	Property damage	The damage to the plant's engine room, roof, and the resulting damage to the equipment is plainly "physical injury to tangible property."
Wisconsin	Stuart v. Weisflog's Showroom Gallery, Inc., 753 N.W.2d 448 (Wis. 2008)	Homeowners sued insureds for damages resulting from alleged misrepresentations and construction defects related to a home remodeling project.	Property damage	Compensation was awarded for damage to the homeowners' property that came after, and was caused by, the insureds' statutory misrepresentations, which damages constitute property damage.
Wisconsin	Tweet v. Liberty Mut. Fire Ins. Co., 2007 U.S. Dist. LEXIS 9262 (E.D. Wis. 2007)	Plumbing subcontractor sought coverage for the cost of removing and replacing pipe valves installed at a stadium, which were defective but had not yet leaked.	Not property damage	"Physical injury" does not occur until it is "caused" by the defective component.
Wisconsin	Am. Fam. Mut. Ins. Co. v. Am. Girl, Inc., 673 N.W.2d 65 (Wis. 2004)	Soil engineering subcontractor provided faulty site preparation advice, resulting in structural damage.	Property damage	The sinking, buckling, and cracking of the warehouse was plainly physical injury to tangible property.
Wisconsin	Kalchthaler v. Keller Constr. Co., 591 N.W.2d 169 (Wis. Ct. App. 1999)	Building leaked, causing water damage to the interior.	Property damage	Wrecked drapery and wallpaper caused by water entering leaky windows is physical injury to tangible property.

## Coverage Trigger

Trigger of coverage relates to when injury or damage is deemed to have taken place, so as to implicate a particular policy period. Construction defect claims typically do not concern a discrete catastrophic event, but more frequently, latent or progressive damage that may take place over an extended period of time. As a result, the determination of when property damage occurred and which policies must respond in the context of a construction defect claim often results in thorny disputes between insurers and policyholders.

Because comprehensive general liability policies insure against damage or injury that occurs during the policy period, courts generally hold that the time the construction defect-related injury or damage occurs is the time the complaining party is actually damaged, not the time when the faulty work was performed. Courts have adopted several different theories for determining when a coverage-triggering event occurred and which policies may have to respond. The four trigger theories that typically apply to construction defect losses include:

- The Manifestation Trigger: The policies in effect at the time the property damage becomes apparent or is discovered provides coverage.
- The Exposure Trigger: The policies in effect at the time of actual exposure to the damage-causing substance or event provides coverage.
- The Actual Injury or Injury-In-Fact Trigger: Each insurance policy on the risk during the time period when damage actually occurs is triggered. Based on the evidence submitted, injury-in-fact may be determined as occurring at any time from exposure through manifestation.
- The Continuous Trigger: All policies in effect over a span of time, beginning from the first exposure to injurious conditions, continuing through any period of latency while the resulting damage remains undiscovered and is progressing, and ending at the time the injury manifests itself to the insured, are implicated.

The following is a summary of selected cases addressing trigger theories which have been applied in a construction-defect setting. Some states have reported cases dealing only with similar latent exposures such as environmental, asbestos, or other toxic tort fact patterns.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Alabama	Safety Nat'l Cas. Corp. v. Shook & Fletcher Insulation Co., No. CV-93-01574 (Ala. Cir. Ct., Jefferson Cty., Mar. 5, 1999), reprinted in 13 Mealey's Ins. Litig. Rep. No. 21 (Apr. 6, 1999)	Asbestos BI	Insured sought coverage for bodily injury claims arising from asbestos-containing products it manufactured.	Exposure	Coverage is triggered when claimant is actually exposed to insured's products; there is no coverage for policies in effect subsequent to exposure.
Alabama	Ala. Plating Co. v. U.S. Fid. & Guar Co., 690 So. 2d 331 (Ala. 1996)	Environ. PD	Insured sought coverage for cleanup costs ordered by Alabama Department of Environmental Management.	Injury-in-fact	Court reaffirmed rule that an occurrence is the time insured became injured (i.e., time when pollution damaged soil and groundwater).
Alabama	Commercial Union Ins. Co. v. Sepco Corp., 765 F.2d 1543 (11th Cir. 1985)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Exposure	Court found that undisputed medical evidence supported the exposure theory.
Alaska	Mapco Alaska Petroleum, Inc. v. Cent. Nat'l Ins. Co. of Omaha, 795 F. Supp. 941 (D. Alaska 1991)	Environ. PD	Insured sought coverage for groundwater pollution resulting from release of crude oil.	Exposure	Coverage is triggered by exposure to contaminants rather than by manifestation of the damage.
Arizona	Lenner Corp. v. Auto-Owners Ins. Co., 151 P.3d 538 (Ariz. Ct. App. 2007)	Construction Defect	Insured developer sought defense for claims asserted against it by homeowners for negligent construction.	Continuous	Insurers must provide coverage for ongoing property damage that occurs during the policy period, even if other similar damages preceded that damage.
Arizona	Associated Aviation Underwriters v. Wood, 98 P.3d 572 (Ariz. Ct. App. 2004)	TCE BI	Insured sought coverage for bodily injury claims resulting from exposure to groundwater contaminated by TCE.	Continuous	Coverage is triggered under an accident policy if, during the policy period, claimants were exposed to TCE, were developing TCE-related diseases, or manifested fully developed TCE-related diseases.
Arkansas	Unigard Sec. Ins. Co. v. Murphy Oil USA, Inc., 962 S.W.2d 735 (Ark. 1998)	Environ. PD	Insured sought indemnification for judgment arising from contamination at leased facility.	Injury-in-fact	Coverage is triggered if insured was legally obligated to pay damages due to property damage or actual injury during the policy period; there is no coverage for damages incurred for other reasons (i.e., indemnification for compensatory damages based on breach of lease).

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
California	Cal. v. Cont. Ins. Co., 2012 Cal. LEXIS 7324 (Cal. 2012)	Environ. PD	State of California sought indemnity from several insurers in connection with the cleanup of a waste site.	Continuous	That all policies were covering the risk at some point during the property loss is enough to trigger the insurers' indemnity obligation.
California	Acceptance Ins. Co. v. Am. Safety Risk Retention Group, 2011 U.S. Dist. LEXIS 88101 (S.D. Cal. 2011)	Construction Defect	Insured sought contribution from other insurers for the cost of defending insured roofing contractor against construction defect claims.	Manifestation	The relevant inquiry to determining coverage potential is whether there was a possibility that any property damage first manifested itself during the policy period.
California	Pa. Gen. Ins. Co. v. Am. Safety Indem. Co, 111 Cal. Rptr. 3d 403 (Cal. Ct. App. 2010)	Construction Defect	One insurer sued another seeking equitable contribution for a portion of costs paid to defend and settle an underlying construction defect lawsuit.	Injury-in-fact	The policy is reasonably susceptible to the interpretation that the trigger of coverage was damage to the property, not the causal conduct, and certain included endorsements were designed to obviate the application of the continuous trigger.
California	Fireman's Fund Ins. Co. v. Md. Cas. Co., 77 Cal. Rptr. 2d 296 (Cal. Ct. App. 1998)	Construction Defect	One insured sought contribution from another for the cost of defending and settling construction defect claims.	Continuous	The entire period of injury was deemed a single continuous loss.
California	Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co., 52 Cal. Rptr. 2d 690 (Cal. Ct. App. 1996)	Asbestos PD	Insured sought coverage for asbestos building claims.	Injury-in-fact	Coverage is triggered if any part of the property damage – installation, release, or re-entrainment – took place during a policy period.
California	Montrose Chem. Corp. v. Admiral Ins. Co., 913 P.2d 878 (Cal. 1995)	Environ. PD	Insured sought a defense to lawsuits including pollution from the disposal of waste at landfills.	Continuous	Bodily injury or property damage that is continuously or progressively deteriorating throughout several policy periods is potentially covered by all policies in effect during those periods.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Colorado	United Fire & Cas. Co. v. Boulder Plaza Residential, LLC, 633 F.3d 951 (10th Cir. 2011)	Construction Defect	General contractor sought coverage as an additional insured under policy issued to its flooring subcontractor for claims regarding defective flooring installation.	Manifestation	The physical manifestation of damage and not improper installation or other faulty workmanship is the trigger for coverage.
Colorado	Am. Family Mut. Ins. Co. v. Teamcorp., Inc., 659 F. Supp. 2d 1115 (D. Colo. 2009)	Construction Defect	Insured home designer sought a defense of claims asserted against it for design defects.	Injury-in-fact	The time of the occurrence of an accident is not the time the wrongful act was committed, but the time when the complaining party was actually damaged.
Colorado	Hoang v. Assurance Co. of Am., 149 P.3d 798 (Colo. 2007), modified by, 2007 Colo. LEXIS 174 (Colo. 2007)	Construction Defect	Buyers of homes sought to recover from builder's insurer for construction defects.	Injury-in-fact	Coverage for injury or damage occurring during the policy period, regardless of when the claim is presented.
Colorado	Village Homes of Colo., Inc. v. Travelers Cas. and Sur. Co., 148 P.3d 293 (Colo. Ct. App. 2006), aff'd, 155 P.3d 369 (Colo. 2007)	Construction Defect	Homeowners sued insured home builder alleging construction defects related to expansive soils.	Injury-in-fact	An occurrence policy in effect when injury or damage happened may provide coverage even when a claim for the injury or damage is not made until years later.
Colorado	Public Ser. Co. of Colo. v. Wallis & Cos., 986 P.2d 924 (Colo. 1999)	Environ. PD	Insured sought coverage for costs incurred for environmental cleanup.	Continuous	Continuous trigger applies due to continuous and progressive nature of contamination.
Connecticut	Travelers Cas. v. Neth. Ins. Co., 2012 Conn. Super. LEXIS 1460 (Conn. Super. Ct. 2012)	Construction Defect	One insurer sued another seeking to recover costs incurred in defending claims asserted against insured mason that construction defect caused ongoing water damage.	Injury-in-fact	The policyholder is covered if an occurrence causes damage during the policy period: the triggering point is the time of the alleged injury.
Connecticut	Homesite Ins. Co. v. Koch, 2007 Conn. Super. LEXIS 274 (Conn. Sup. Ct. 2007)	Construction Defect	Insured sought coverage for trespass claims arising from the alleged improper installation of electrical lines and sewer pipes.	Injury-in-fact	The injurious event need not occur within the policy period; rather, the result of the injurious event must occur during the policy period.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Connecticut	Travelers Prop. Cas. of Am. v. Laticrete Int'l, Inc., 2006 Conn. Super. LEXIS 2268 (Conn. Super. Ct. 2006)	Construction Defect	Hotel owner sued insured contractor alleging defects in the design and construction of bathroom showers resulting in water damage to surrounding areas.	Injury-in-fact	The triggering event is the water leaking from the showers causing physical injury to tangible property, not the installation of the defective showers.
Connecticut	Security Ins. Co. of Hartford v. Lumbermens Mut. Cas. Co., 2001 Conn. Super. LEXIS 1387 (Conn. Super. Ct. 2001), rev'd in part on other grounds, 826 A.2d 107 (Conn. 2003)	Asbestos BI	Insured sought coverage for asbestos injury claims.	Continuous	Continuous trigger applies in cases involving asbestos bodily injury claims. All policies in effect from exposure period are triggered for both defense costs and indemnity.
Connecticut	Aetna Cas. & Sur. Co. v. Abbott Labs., Inc., 636 F. Supp. 546 (D. Conn. 1986)	DES BI	Insured sought coverage for DES bodily injury claims.	Injury-in-fact	Coverage is triggered for DES-related injuries upon occurrence of injury-in-fact during the policy period.
Delaware	Hercules, Inc. v. AIU Ins. Co., 784 A.2d 481 (Del. 2001)	Environ. PD	Insured sought coverage for cleanup costs incurred at several manufacturing sites across the country.	Continuous	Continuous trigger applies in cases where long-term, gradual damage such as pollution, occurs at a constant rate. Thus, any policy in effect during the entire injurious process is triggered.
Delaware	Hercules, Inc. v. Aetna Cas. & Sur. Co., 1998 WL 962089 (Del. Super. Ct. 1998)	Environ. PD	Insured sought coverage for pollution arising from its chemical manufacturing plant.	Continuous	A continuous trigger applies to continuous damage.
Delaware	E.I. duPont de Nemours & Co. v. Admiral Ins. Co., 1995 WL 654020 (Del. Super. Ct. 1995)	Environ. PD	Insured sought coverage for pollution arising out of its operation of various manufacturing facilities.	Continuous	Where the contamination has been ongoing for decades, a continuous trigger applies.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
District of Columbia	Wrecking Corp. of Am. Va., Inc. v. Ins. Co. of N. Am., 574 A.2d 1348 (D.C. 1990)	Construction Defect	Insured sought coverage for property damage caused by collapsing wall.	Manifestation and continuous	General rule is that property damage occurs at the time the damage is discovered or when it manifests. A limited exception exists where the damage can be characterized as being "continuous or progressive" (i.e., leaking pool pipe causing erosion and saturation of adjoining landfill slopes).
District of Columbia	Keene Corp. v. Ins. Co. of N. Am., 667 F.2d 1034 (D.C. Cir. 1981)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Continuous	Bodily injury includes any part of the injurious process from exposure through exposure-in-residence to manifestation.
Florida	Axis Surplus Ins. Co. v. Contravest Constr., Inc., 2012 U.S. Dist. LEXIS 77489 (M.D. Fla. 2012)	Construction Defect	Insured contractor sought coverage for claims asserted by condominium association for negligent construction.	Injury-in-fact	The damage itself must occur during the policy period for coverage to be effective, and there is no requirement that the damages manifest themselves during the policy period.
Florida	Mid-Continent Cas. Co. v. Siena Home Corp., 2011 U.S. Dist. LEXIS 79132 (M.D. Fla. 2011)	Construction Defect	Insured developer sought coverage for homeowner claims seeking damages for water intrusion caused by negligent construction.	Manifestation	The occurrence and resulting coverage of property damage under a CGL policy is the manifestation of damage, not when the alleged negligence occurred.
Florida	Mid-Continent Cas. Co. v. Frank Cassarino Constr., Inc., 721 F. Supp. 2d 1209 (M.D. Fla. 2010)	Construction Defect	General contractor sued insured subcontractor hired to perform roofing and siding work, alleging construction defects caused water damage.	Manifestation	Coverage under a CGL policy is triggered when property damage manifests itself, not when the negligent act or omission giving rise to the damage occurs.
Florida	Assurance Co. of Am. v. Lucas Waterproofing Co., Inc., 581 F. Supp. 2d 1201 (S.D. Fla. 2008)	Construction Defect	Insured subcontractor sued by general contractor as a result of construction defects in the insured's waterproofing work at a condominium complex.	Manifestation	Florida courts follow the general rule that coverage is triggered when property damage manifests itself, not when the negligent act giving rise to the damage occurs.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Florida	Essex Building Group, Inc. v. Amerisure Ins. Co., 485 F. Supp. 2d 1302 (M.D. Fla. 2006)	Construction Defect	Building owner sued insured general contractor after discovering water damage in the structure built by the insured.	Manifestation	The time of the occurrence within the meaning of an occurrence policy is the time at which the injury first manifests itself.
Florida	Auto Owners Ins. Co. v. Travelers Cas. & Sur. Co., 227 F. Supp. 2d 1248 (M.D. Fla. 2002)	Construction Defect	Surety Company sued contractor's CGL carriers seeking reimbursement of expenses it incurred in connection with construction defect claims asserted against the contractor.	Manifestation	The trigger for coverage for a CGL policy is when the damages occur, and if damage is continuously occurring, the trigger is the time the damage manifests itself or is discovered.
Florida	Harris Spec. Chems, Inc. v. U.S. Fire Ins. Co., 2000 WL 34533982 (M.D. Fla. 2000)	Property Damage	Insured sought coverage for damage to buildings caused by a defective water sealant product.	Manifestation	Coverage is triggered only at the time that damage manifests itself.
Florida	Trizec Props., Inc. v. Biltmore Constr. Co., 767 F.2d 810 (11th Cir. 1985)	Construction Defect	Insured was accused of negligent construction of the roof of a shopping mall.	Injury-in-fact	Actual damage must occur during the policy period for there to be coverage.
Georgia	Arrow Exterminators, Inc. v. Zurich Am. Ins. Co., 136 F. Supp. 2d 1340 (N.D. Ga. 2001)	Environ. PD	Insured sought coverage for property damage caused by termites.	Continuous	Where a policy defines an occurrence as including "continuous or repeated exposure," the appropriate trigger is a continuous one.
Georgia	Briggs & Stratton Corp. v. Royal Globe Ins. Co., 64 F. Supp. 2d 1346 (M.D. Ga. 1999)	Environ. PD	Insured sought coverage for pollution damage resulting from the discharges of waste water into unlined surface impoundments.	Exposure	The exposure trigger of coverage is applicable.
Georgia	Boardman Petroleum, Inc. v. Federated Mut. Ins. Co., 926 F. Supp. 1566 (S.D. Ga. 1995), rev'd on other grounds, 150 F.3d 1327 (11th Cir. 1998)	Environ. PD	Insured sought a defense to state agency demand for cleanup of underground petroleum contamination at two gasoline stations.	Exposure	Exposure during dates of coverage to conditions that result in property damage constitutes an occurrence.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Georgia	S.C. Ins. Co. v. Coody, 813 F. Supp. 1570 (M.D. Ga. 1993)	Environ. PD	Insured sought coverage for cleanup costs incurred in complying with an administrative order.	Injury-in-fact	No coverage where both the exposure to pollutants and the discovery of contamination took place prior to the inception of the policy.
Hawaii	Sentinel Ins. Co. v. First Ins. Co. of Haw., Ltd., 875 P.2d 894 (Haw. 1994)	Construction Defect	Insured sought coverage for claim involving water infiltration damage to an apartment complex.	Injury-in-fact or continuous	The injury-in-fact trigger is true to the terms of a CGL policy, but where injury-in-fact occurs continuously over a period covered by different insurers or policies, a continuous trigger may be employed.
Idaho	N. Pac. Ins. Co. v. Mai, 939 P.2d 570 (Idaho 1997)	Environ. PD	Insured sought coverage for cleanup costs arising from disposal of wastes at a Superfund site.	Injury-in-fact	While court did not definitively rule on issue of trigger, concurring and dissenting opinions stated that injury-in-fact trigger should apply to define scope of insurer's coverage.
Illinois	Travelers Ins. Co. v. Eljer Mfg., Inc., 757 N.E.2d 481 (Ill. 2001)	Property Damage	Insured sought coverage for claims involving defective polybutylene pipes.	Injury-in-fact	"Physical injury to tangible property" did not occur when the plumbing system was installed in homes that did not experience leaks.
Illinois	Illinois Cent. R.R. v. Accident & Cas. Co. of Winterthur, 739 N.E.2d 1049 (Ill. App. Ct. 2000)	Employment Discrimination	Insured sought coverage for the cost of settling a discriminatory hiring practices class action suit.	Injury-in-fact	Damages will be deemed to have occurred during the policy in which the presentation of the futile employment application took place.
Illinois	Benoy Motor Sales, Inc. v. Universal Underwriters Ins. Co., 679 N.E.2d 414 (Ill. App. Ct. 1997)	Environ. PD	Insured sought coverage for pollution damage resulting from the disposal of waste oil at a landfill.	Continuous	Damage resulting from the discharge of pollutants is a continuing process and does not stop and start in discrete time periods.
Illinois	Outboard Marine Corp. v. Liberty Mut. Ins. Co., 670 N.E.2d 740 (Ill. App. Ct. 1996)	Environ. PD	Insured sought coverage for PCB contamination of Waukegan Harbor.	Continuous	All policies in effect during the time of release of pollutants are triggered.
Illinois	U.S. Gypsum Co. v. Admiral Ins. Co., 643 N.E.2d 1226 (Ill. App. Ct. 1994)	Asbestos PD	Insured sought coverage for asbestos building claims.	Continuous	All policies from the exposure to, or installation of, asbestos to manifestation or discovery of damage are triggered.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Illinois	Zurich Ins. Co. v. Raymark Indus., Inc., 514 N.E.2d 150 (Ill. 1987)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Injury-in-fact	Injury-in-fact occurred during the period of asbestos exposure and the time of the diagnosis.
Indiana	Grange Mut. Cas. Co. v. W. Bend Mut. Ins. Co., 946 N.E.2d 593 (Ind. Ct. App. 2011)	Construction Defect	Insured sought coverage for water damage claims resulting from the insured's fracture of a storm drain pipe.	Injury-in-fact	The time of the damage, as opposed to the time of the alleged negligent conduct that caused the damage, is the triggering event.
Indiana	Marley-Wylain Co. v. Affiliated FM Ins. Co., No. 46C01-0202-PL-00047 (Ind. Cir. Ct., Laporte Cty., July 29, 2003), reprinted in 17 Mealey's Ins. Litig. Rep. No. 37 (Aug. 5, 2003)	Asbestos BI	Insured sought coverage for bodily injury claims resulting from exposure to its boiler products.	Continuous	Court held that continuous trigger of coverage should apply.
Indiana	Allstate Ins. Co. v. Dana Corp., 759 N.E.2d 1049 (Ind. 2001)	Environ. PD	Insured sought coverage for various third-party and government agency suits for environmental contamination.	Injury-in-fact	Coverage is triggered where contamination caused damage to property during policy period.
Indiana	Huntzinger v. Hastings Mut. Ins. Co., 143 F.3d 302 (7th Cir. 1998)	Environ. PD	Insureds sought coverage for costs of cleaning up solid waste disposal on property.	Injury-in-fact	The time of the occurrence is when complaining party is actually injured.
Indiana	Eli Lilly & Co. v. Home Ins. Co., 482 N.E.2d 467 (Ind. 1985)	DES BI	Insured sought coverage for DES bodily injury claims.	Continuous	Coverage is triggered for any policy in effect from date of ingestion of the drug through date of manifestation.
Kansas	Atchison Topeka & Santa Fe Ry. v. Stonewall Ins. Co., 71 P.3d 1097 (Kan. 2003)	Hearing Loss BI	Insured sought coverage for numerous noise induced hearing loss claims.	Continuous	All policies are triggered from first exposure to manifestation of injury.
Kansas	Cessna Aircraft Co. v. Hartford Accident & Indem. Co., 900 F. Supp. 1489 (D. Kan. 1995)	Environ. PD	Insured sought coverage for groundwater contamination resulting from releases from its manufacturing facility.	Injury-in-fact	Injury occurs when damage actually takes place, not at the time of manifestation.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Kentucky	Generali U.S. Branch v. Nat'l Trust Ins. Co., 2009 U.S. Dist. LEXIS 76890 (W.D. Ky. 2009)	Construction Defect	Insured sought coverage for claims asserted against it by homeowners for negligent construction.	Continuous	Under an occurrence-based CGL policy, the continuous trigger theory applies to determine coverage where the damage can be characterized as continuous or progressive.
Louisiana	Claredon Am. Ins. Co. v. S. States Plumbing, Inc., 803 F. Supp. 2d 544 (W.D. La. 2011)	Construction Defect	Insured sought coverage for faulty construction and repair of plumbing fixtures resulting in mold exposure.	Manifestation	Property damage occurs when the damage manifests itself, rather than when the negligent act which causes it occurs.
Louisiana	S. Silica of La., Inc. v. La. Ins. Guar. Ass'n, 979 So. 2d 460 (La. 2008)	Silica BI	Insureds sought coverage for bodily injury claims resulting from exposure to silica dust.	Exposure	Exposure is the appropriate trigger for long-term substance exposure, such as silica, asbestos or tobacco.
Louisiana	Rando v. Top Notch Props., L.L.C., 879 So. 2d 821 (La. Ct. App. 2004)	Construction Defect	Insured subcontractor sought coverage for claims for damages caused by a faulty air conditioning system.	Manifestation	Defects in construction that result in damage subsequent to completion are accidents and occurrences when they manifest themselves.
Louisiana	Oxner v. Montgomery, 794 So. 2d 86 (La. Ct. App. 2001)	Construction Defect	Homeowners sought coverage from builder's insurers for damages caused by an unstable foundation.	Manifestation	A CGL policy is triggered when the damage manifests itself, rather than when the negligent act which causes it occurs.
Louisiana	James Pest Control, Inc. v. Scottsdale Ins. Co., 765 So. 2d 485 (La. Ct. App. 2000)	Property Damage	Insured sought coverage for termite damage to a condominium.	Manifestation	The manifestation theory is applicable and the termite infestation did not become damage until the homeowners discovered it.
Louisiana	Rubi v. Sunrise Homes, 653 So. 2d 1215 (La. Ct. App. 1995)	Construction Defect	Insured developer sought coverage for damages caused by foundation settlement resulting from faulty construction.	Manifestation	The effects of the excessive foundation settlement did not become damage until it was discovered by homeowners.
Louisiana	St. Paul Fire & Marine Ins. Co. v. Valentine, 665 So. 2d 43 (La. Ct. App. 1995)	Property Damage	Insured sought coverage for fire damage caused by the faulty installation of an air-conditioning system.	Manifestation	The date when negligence manifests itself by causing actual damage is generally the time of the occurrence.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Louisiana	Cole v. Celotex Corp., 599 So. 2d 1058 (La. 1992)	Asbestos BI	Executive officers and directors of insured sought coverage for asbestos claims filed against them.	Exposure	The insurer is on the risk for each policy period during which a plaintiff was exposed to asbestos dust.
Maine	Honeycomb Sys., Inc. v. Admiral Ins. Co., 567 F. Supp. 1400 (D. Me. 1983)	Product Liability	Insured manufactured a dryer which had problem welds in 1975 and cracks in 1977.	Manifestation	Occurrence arises when the injurious effects of the occurrence become apparent or manifest themselves.
Maryland	Maryland Cas. Co. v. Hanson, 902 A.2d 152 (Md. Ct. Spec. App. 2006)	Lead BI	Insured sought coverage under multiple policies for lead poisoning sustained by several children in an apartment.	Continuous	Proof of continuous exposure to lead, which results in poisoning injuries that continue for several years, triggered coverage under all applicable policies.
Maryland	Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Porter Hayden Co., 331 B.R. 652 (D. Md. 2005)	Asbestos BI	Insured sought coverage for bodily injury claims resulting from exposure to asbestos-containing materials	Continuous	Each policy in effect from the date of exposure through the date of manifestation is triggered.
Maryland	Mayor & City Council of Balt. v. Utica Mut. Ins. Co., 802 A.2d 1070 (Md. Ct. Spec. App. 2002)	Asbestos PD	Insured sought coverage for asbestos-in-building claims.	Continuous	A continuous trigger of coverage is applicable for long-term and continuing damage posed by the installation and continued presence of asbestos in buildings.
Maryland	Chantel Assoc. v. Mount Vernon Fire Ins. Co., 656 A.2d 779 (Md. 1995)	Lead BI	Insured sought coverage for bodily injuries resulting from the ingestion of lead paint chips.	Exposure	Coverage is triggered during any policy period in which a claimant ingested lead paint.
Maryland	Nationwide Mut. Ins. Co. v. Lafarge Corp., 1994 WL 706538 (D. Md. 1994)	Property Damage	Insured sought coverage for claims arising out of defective cement incorporated into concrete railroad ties.	Injury-in-fact	Complaint alleged damage during the policy period because the deterioration of railroad ties began immediately upon installation.
Maryland	Harford Cnty. v. Harford Mut. Ins. Co., 610 A.2d 286 (Md. 1992)	Environ. PD	County sought coverage for pollution at various landfills which it operated.	Injury-in-fact	Manifestation is not the sole trigger of coverage, and coverage may be triggered earlier upon proof of detectable property damage during a policy period.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Massachusetts	A.W. Chesterton Co. v. Mass. Ins. Insolvency Fund, 838 N.E.2d 1237 (Mass. 2005)	Asbestos BI	Insured sought coverage for bodily injury claims resulting from exposure to asbestos-containing materials.	Exposure	Triggering event is the exposure to, or inhalation of asbestos, which results in the injury, and not the injury itself. The continuing progression of asbestos-related disease, without some additional exposure to asbestos during the policy period, will not trigger coverage.
Massachusetts	Rubenstein v. Royal Ins. Co. of Am., 694 N.E.2d 381 (Mass. App. Ct. 1998), aff'd, 708 N.E.2d 639 (Mass. 1999)	Environ. PD	Insured sought coverage for pollution resulting from leaking underground storage tanks.	Continuous	Coverage is triggered when the property was being continuously contaminated by oil.
Massachusetts	U.S. Liab. Ins. Co. v. Selman, 70 F.3d 684 (1st Cir. 1995)	Lead BI	Insured sought coverage for bodily injury claims resulting from the ingestion of lead paint.	Exposure	Coverage is triggered at the time of exposure where the claimant suffered new and further injuries during the policy period.
Massachusetts	Liberty Mut. Ins. Co. v. Commercial Union Ins. Co., 978 F.2d 750 (1st Cir. 1992)	Asbestos BI	Insured sought coverage for occupational disease claims arising out of asbestos.	Manifestation	Coverage for occupational disease claims falls upon the last insurer on the date of disability, as determined by the date of decreased earning capacity.
Michigan	Arco Indus. Corp. v. Am. Motorists Ins. Co., 594 N.W.2d 61 (Mich. Ct. App. 1998), aff'd, 617 N.W.2d 330 (Mich. 2000)	Environ. PD	Insured sought coverage for groundwater contamination arising out of its operation of a manufacturing facility.	Injury-in-fact	Each insurer is only responsible for coverage during its policy period.
Michigan	Gelman Sciences, Inc. v. Fidelity & Cas. Co. of N.Y., 572 N.W.2d 617 (Mich. 1998)	Environ. PD	Insured sought coverage for chemical contamination at its manufacturing plant.	Injury-in-fact	An actual injury must occur when the policy is in effect in order for coverage to be triggered.
Minnesota	Donnelly Bros. Constr. Co., Inc. v. State Auto Prop. and Cas. Ins. Co., 759 N.W.2d 651 (Minn. Ct. App. 2009)	Construction Defect	Insured sought coverage for claims alleging that the insured's improper application of stucco resulted in water intrusion damages.	Injury-in-fact	To trigger a policy the insured must show that some damage occurred during the policy period.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Minnesota	W. Bend Mut. & SVK Dev., Inc. v. Valley Forge Ins. Co., 651 F. Supp. 2d 983 (D. Minn. 2009)	Construction Defect	Insured developer sought coverage for claims asserted by homeowners, alleging water damages resulting from faulty workmanship.	Injury-in-fact	Only those policies in effect when damage occurred are triggered.
Minnesota	Tony Eiden Co. v. Auto-Owners Ins. Co., 2009 Minn. App. Unpub. LEXIS 149 (Minn. Ct. App. 2009)	Construction Defect	Homeowners sued insured contractor alleging numerous construction defects allowed water to enter the home causing on-going wood rot.	Injury-in-fact	Although the injury to the home was continuous, the injuries were caused by a period of discrete incidents of water intrusion, and only those policies in effect at the time of such incidents are triggered.
Minnesota	Wooddale Builders, Inc. v. Maryland Cas. Co., 722 N.W.2d 283 (Minn. 2006)	Construction Defect	Insured sought coverage for various construction defect claims filed against it.	Injury-in-fact	The insurers on the risk for a claim are those that provided coverage between the closing date of the home and the date the insured received notice of the claim, and such insurers are on the risk for the entire period of each triggered policy.
Minnesota	In re Silicone Implant Ins. Coverage Litig., 667 N.W.2d 405 (Minn. 2003)	Breast Implant BI	Insured sought coverage for breast implant claims.	Injury-in-fact	Because damage occurred at or about the time of implantation, the policies in effect at or about the time of implantation were triggered.
Minnesota	Parr v. Gonzalez, 669 N.W.2d 401 (Minn. Ct. App. 2003)	Construction Defect	Homeowners sued insured subcontractor for mold damages resulting, in part, from the subcontractor's damage to a roof vent.	Injury-in-fact	While damage from mold in a house was continuous, it could be traced to a damaged vent cap, and thus, there was a discrete event that placed the policy in effect at the time of the damage on the risk.
Minnesota	Domtar, Inc. v. Niagara Fire Ins. Co., 563 N.W.2d 724 (Minn. 1997)	Environ. PD	Insured sought coverage for pollution arising out of the insured's operation of a tar refining plant.	Continuous	Each insurer is liable only for that period of time it was on the risk compared to the entire period during which damages occurred.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Minnesota	SCSC Corp. v. Allied Mut. Ins. Co., 536 N.W.2d 305 (Minn. 1995)	Environ. PD	Insured sought coverage for pollution damage after it received an information request from state pollution control agency.	Injury-in-fact	When property damage arises in a single year from a sudden and accidental occurrence, and the damage is not divisible, only policies in effect in the year the property damage arose are triggered.
Minnesota	N. States Power Co. v. Fid. & Cas. Co. of N.Y., 523 N.W.2d 657 (Minn. 1994)	Environ. PD	Insured sought coverage for pollution resulting from its operation of a coal-tar gasification plant.	Injury-in-fact	Each insurer is liable only for those damages which occur during its policy period; actual injury was "continuous from the point of the first damage to the point of cleanup."
Mississippi	Maxum Indem. Co. v. Wilson, 707 F. Supp. 2d 683 (S.D. Miss. 2010)	Construction Defect	Building owner sued insured building subcontractor for damages resulting from the collapse of its building.	Manifestation	Property damage occurred when building collapsed, not at the time it was constructed.
Mississippi	W. R. Grace Co. v. Md. Cas. Co., No. 89-5138 (Miss. Cir. Ct. 1991)	Asbestos PD	Insured sought coverage for settlement of asbestos building claims.	Continuous	Damage to building from asbestos products occurs at the time such products are in place and continues as long as the building contains the products.
Missouri	D.R. Sherry Constr., Ltd. v. Am. Family Mut. Ins. Co., 316 S.W.3d 899 (Mo. 2010)	Construction Defect	Insured builder sought coverage for structural damages to home insured built.	Continuous	An occurrence-based policy covers cases of progressive injury when the cause of the damage is present during the policy period but not apparent until after the policy period.
Missouri	Monsanto Co. v. Aetna Cas. & Sur. Co., 1994 WL 161953 (Del. Super. Ct.), rev'd on other grounds, 652 A.2d 30 (Del. 1994)	Environ. BI & PD	Insured sought coverage for various bodily injury and property damage claims arising out of the release of contaminants.	Injury-in-fact	Coverage is triggered by a showing of actual injury or damage during the policy period, not the negligent act.
Nebraska	Dutton-Lainson Co. v. Cont'l Ins. Co., 778 N.W.2d 433 (Neb. 2010)	Environ. PD	Insured sought coverage for cleanup costs arising from disposal of waste materials at landfills.	Continuous	Deposit of wastes is one continuing occurrence which triggers all policies in effect.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
New Hampshire	EnergyNorth Natural Gas, Inc. v. Underwriters at Lloyd's, 848 A.2d 715 (N.H. 2004)	Environ. PD	Insured sought coverage of costs for investigation and cleanup of pollution at manufactured gas plants.	Injury-in-fact and exposure	Court held different trigger theories apply due to variance of policy language: injury-in-fact applies where policy requires that property damage occur during policy period, and exposure trigger applies where policy requires an accident or occurrence during policy period.
New Hampshire	Conductron Corp. v. Am. Emp'rs Ins. Co., Nos. 93-E-149 and 93-C-599 (N.H. Super. Ct., Mar. 4, 1997), reprinted in 11 Mealey's Ins. Litig. Rep. No. 19 (Mar. 18, 1997)	Environ. PD	Insured sought coverage for remediation costs arising from its discharge of contaminated water.	Continuous	Coverage is triggered during policy period from time of discharge and migration through time of remediation, and for period when there is additional damage to property even though discharge occurred prior to the policy period.
New Hampshire	N.H. Ball Bearings v. Aetna Cas., 848 F. Supp. 1082 (D.N.H. 1994), rev'd in part on other grounds, 43 F.3d 749 (1st Cir. 1995)	Environ. PD	Insured sought coverage for cleanup costs arising from discharge of hazardous wastes into groundwater.	Manifestation	Coverage is triggered when contamination of groundwater is reasonably capable of being discovered.
New Jersey	Selective Way Ins. Co. v. Arthur J. Ogren, Inc., 2010 N.J. Super. Unpub. LEXIS 2979 (N.J. App. Div. 2010)	Construction Defect	County sued insured contractor alleging water damages resulting from faulty construction work.	Manifestation/ Continuous	It is not necessary to determine whether the continuous-trigger applies because the damage manifested before policy inception.
New Jersey	Quincy Mut. Fire Ins. v. Borough of Bellmawr, 799 A.2d 499 (N.J. 2002)	Environ. PD	Insured sought coverage for pollution resulting from the disposal of hazardous waste into a landfill.	Continuous	Exposure relating to the initial depositing of toxic waste into a landfill is the first trigger of coverage.
New Jersey	Carter-Wallace, Inc. v. Admiral Ins. Co., 712 A.2d 1116 (N.J. 1998)	Environ. PD	Insured sought coverage for pollution arising out of its disposal of waste at a landfill.	Continuous	Damages should be allocated among years based upon the amount of risk assumed by the insured and insurers in each year and allocated vertically among policies in each year based upon full policy limits.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
New Jersey	Owens-Illinois, Inc. v. United Ins. Co., 650 A.2d 974 (N.J. 1994)	Asbestos BI & PD	Insured sought coverage for asbestos bodily injury and asbestos building claims.	Continuous	Each insurer on the risk between initial exposure to asbestos and manifestation of disease is liable for defense and indemnity.
New Jersey	Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 609 A.2d 440 (N.J. Super. Ct. App. Div. 1992)	Dioxin BI	Insured sought coverage for its settlement of the Agent Orange case.	Injury-in-fact	Coverage was triggered four months after delivery of a given shipment of Agent Orange to the military.
New York	Travelers Ins. Co. v. Eljer Mfg., Inc., 757 N.E.2d 481 (Ill. 2001)	Property Damage	Insured sought coverage for claims involving defective polybutylene pipes.	Injury-in-fact	If installation of potentially defective plumbing system caused a diminution of value of home greater than the value of the plumbing system itself, injury to tangible property occurred.
New York	E.R. Squibb & Sons, Inc. v. Lloyd's & Cos., 241 F.3d 154 (2d Cir. 2001)	DES BI	Insured sought coverage for bodily injury claims asserted by women who ingested DES, their children, and grandchildren.	Injury-in-fact	For second-generation claimants, injury-in-fact includes predisposition to illness or disability as a result of cell mutation caused by DES. For third generation claimants, injury-in-fact includes causal consequences of injuries-in-fact to the reproductive systems of second-generation claimants that took place during the period of coverage.
New York	In re Prudential Lines, Inc., 158 F.3d 65 (2d Cir. 1998)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Injury-in-fact	The insured can demand that a policy pay full coverage for each claim in which the claimant suffered asbestos exposure and injury during the policy period.
New York	Stonewall Ins. Co. v. Asbestos Claims Mgmt. Corp., 73 F.3d 1178 (2d Cir. 1995), modified, 85 F.3d 49 (1996)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Continuous	Coverage is triggered under all policies in effect from the date of first exposure to manifestation.
New York	Maryland Cas. Co. v. W.R. Grace & Co., 23 F.3d 617 (2d Cir. 1993)	Asbestos PD	Insured sought coverage for asbestos building claims.	Injury-in-fact	Property damage occurs upon the installing of asbestos products and exists until it is discovered.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
North Carolina	Builders Mut. Ins. Co. v. Mitchell, 709 S.E.2d 528 (N.C. Ct. App. 2011)	Construction Defect	Homeowners sued insured contractor alleging the insured's faulty workmanship caused water damage.	Injury-in-fact	Whether the date of the injury-in-fact can be known with certainty is a genuine issue of material fact and should not be resolved on summary judgment.
North Carolina	Alliance Mut. Ins. Co. v. Guilford Ins. Co., 2011 N.C. App. LEXIS 473 (N.C. Ct. App. 2011)	Construction Defect	Insured plumbing contractor sought coverage for water damage caused by the separation of a water supply line.	Injury-in-fact	Because the water damage did not result from a continual leak, the damage occurred when the leak occurred as opposed to the date of improper installation.
North Carolina	Harleysville Mut. Ins. Co. v. Berkley Ins. Co. of the Carolinas, 610 S.E.2d 215 (N.C. Ct. App. 2005)	Construction Defect	Homeowners sued insured builder, alleging elevated moisture levels resulting from negligently installed synthetic stucco.	Injury-in-fact	The alleged damage occurred on the dates repairs were performed, not on the date of discovery.
North Carolina	Hutchinson v. Nat'l Mut. Fire Ins. Co., 594 S.E.2d 61 (N.C. Ct. App. 2004)	Construction Defect	Homeowners sued insured builder, alleging damages resulting from the continual entry of water into a negligently constructed retaining wall.	Injury-in-fact	Even in situations where damage continues over time, if it can be determined when the defect occurred from which all damages flow, coverage is triggered on the date of the defect: here, the date the retaining wall was constructed.
North Carolina	Gaston Cnty. Dyeing Mach. Co. v. Northfield Ins. Co., 524 S.E.2d 558 (N.C. 2000)	Property Damage	Insured sought coverage for underlying claims that a diagnostic dye was contaminated due to a leak in a pressure vessel.	Injury-in-fact	Property damage occurred on a single date when the pressure vessel ruptured, and only a single policy period is triggered even though the contamination continued until it was later discovered in a subsequent policy period.
North Carolina	Home Indem. Co. v. Hoechst Celanese Corp., 494 S.E.2d 774 (N.C. Ct. App. 1998)	Environ. PD	Insured sought coverage for pollution arising out of its operation of a polyester manufacturing plant.	Manifestation	Property damage occurs when it is manifested or discovered.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
North Carolina	Imperial Cas. & Indem. Co. v. Radiator Specialty Co., 862 F. Supp. 1437 (E.D.N.C. 1994), aff'd, 67 F.3d 534 (4th Cir. 1995)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Exposure	The date on which coverage is triggered is the date on which the first exposure to injury-causing conditions occurred.
North Dakota	Grinnell Mut. Reinsurance Co. v. Thies, 755 N.W.2d 852 (N.D. 2008)	Environ. PD	Insureds sought coverage for a third-party property damage claim involving mold accumulation.	Injury-in-fact	Court held language of policy required proof that damage occurred "during policy period" before policy was triggered.
North Dakota	Kief Farmers Co-Op Elevator Co. v. Farmland Mut. Ins. Co., 534 N.W.2d 28 (N.D. 1995)	Property Damage	Insured sought coverage for claim based on progressive damage to grain storage bin.	Injury-in-fact	Appropriate trigger of coverage for progressive property damage was whether real but undiscovered loss or damage could be proved in retrospect to have commenced during policy period.
Ohio	Ohio Cas. Ins. Co. v. Hanna, 2008 Ohio 3203 (Ohio Ct. App. 2008)	Construction Defect	Homeowners sued insured construction company, alleging faulty framing created several problems with the home.	Continuous	If an occurrence is continuous, it may trigger multiple policies.
Ohio	Plum v. W. Am. Ins. Co., 2006 Ohio 452 (Ohio Ct. App. 2006)	Construction Defect	Homeowners sued insured builder, alleging damages resulting from improper settling.	Continuous	Where a structure suffers damage of a continuing nature, coverage must be apportioned between the insurance carriers that insured the property during the course of the damage.
Ohio	Westfield Ins. Co. v. Milwaukee Ins. Co., 2005 Ohio 4746 (Ohio Ct. App. 2005)	Construction Defect	Homeowner sued insured builder, alleging faulty construction caused water damage.	Continuous	Where a structure suffers damage of a continuing nature, coverage must be apportioned between insurance carriers that insured the property during the course of the damage.
Ohio	Reynolds v. Celina Mut. Ins. Co., 2000 Ohio App. LEXIS 517 (Ohio Ct. App. 2000)	Construction Defect	Homeowners sued insured contractor, alleging defects in the construction of their home.	Manifestation	The date for determining whether property damage falls within the coverage period is when the first discoverable manifestations of damage occur.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Ohio	Gencorp. Inc. v. AIU Ins. Co., 104 F. Supp. 2d 740 (N.D. Ohio 2000)	Environ. PD	Insured sought coverage for its long-term disposal of industrial wastes at several sites.	Injury-in-fact	Continuous trigger that employs injury-in-fact as the initial trigger period is applicable if insured can establish that injuries were continuous in nature. In the absence of such a showing, injury-in-fact is the governing trigger.
Ohio	Owens-Corning Fiberglas Corp. v. Am. Centennial Ins. Co., 660 N.E.2d 770 (Ohio Com. Pleas Ct. 1995)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Continuous	All policies in effect from initial exposure until diagnosis or death are triggered.
Ohio	Babcock & Wilcox Co. v. Arkwright-Boston Mfg. Mut. Ins. Co., 53 F.3d 762 (6th Cir. 1995)	Asbestos BI	Insured sought coverage for bodily injury claims arising from exposure to its asbestos-containing boiler products.	Exposure	Coverage is triggered when an "event" or an exposure to asbestos occurs during the policy period.
Ohio	Sandborn Plastics Corp. v. St. Paul Fire & Marine Ins. Co., 616 N.E.2d 988 (Ohio Ct. App. 1993)	Environ. PD	Insured sought coverage for cleanup costs at a waste oil facility.	Injury-in-fact	Coverage is triggered at the time waste causes property damage or injury at site, not when insured handles or transfers waste for disposal.
Ohio	Eagle-Picher Indus., Inc. v. Liberty Mut. Ins. Co., 682 F.2d 12 (1st Cir. 1982)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Manifestation	Injury occurs when the asbestos disease becomes reasonably capable of medical diagnosis.
Oregon	Cal. Ins. Co. v. Stimson Lumber Co., 2004 U.S. Dist. LEXIS 10098 (D. Or. 2004), aff'd in part, 325 Fed. Appx. 496 (9th Cir. 2009)	Property Damage	Insured manufacturer sought coverage for warranty and repair claims related to its defective siding product.	Injury-in-fact	Coverage exists under every policy that was in effect during the time periods in which damage to property actually occurred, even if the damage was discovered long after it began.
Oregon	St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co., 923 P.2d 1200 (Or. 1996)	Environ. PD	Insured sought coverage for pollution arising out of its operation of several wood treatment plants.	Injury-in-fact	If property is injured during the policy period, coverage is triggered regardless of when the damage is discovered or when the insured's liability becomes fixed.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Pennsylvania	Wausau Underwriters Ins. Co. v. Emp'rs Ins. Co., 557 F. Supp. 2d 502 (D.N.J. 2008) (applying Pa. law)	Construction Defect	Condominium association sued insured stone manufacturer/distributor as a result of deteriorating stone fascia applied to the outside of the condominiums.	Manifestation	An occurrence happens when the injurious effects of the negligent act first manifest themselves in a way that would put a reasonable person on notice of injury (finding that the multiple trigger theory developed in J.H. France Refractories Co. is not appropriate here).
Pennsylvania	Babcock & Wilcox Co. v. Am. Nuclear Insurers, 2002 WL 31749119 (Pa. Super. Ct. 2002)	Environ. BI & PD	Insured sought coverage for bodily injury and property damage caused by radioactive emissions from the insured's facility.	Manifestation	The date of manifestation of injury is the appropriate date for determining the applicable policy and coverage limits.
Pennsylvania	West Am. Ins. Co. v. Endel Lindepuu, 128 F. Supp. 2d 220 (E.D. Pa. 2000)	Construction Defect	A group of homeowners sued insured subcontractor, alleging damages resulting from the defective installation of doors and windows.	Manifestation	Because the subcontractor was insured at the time of installation and when the problems were discovered, the multiple trigger used in asbestosis cases is not justified here.
Pennsylvania	Rockwood Cas. Ins. Co. v. Am. Mining Ins. Co., No. G.D. 98-5324 (Pa. Com. Pleas Ct. Aug. 6, 1999), reprinted in 13 Mealey's Ins. Litig. Rep. No. 40, Section D (Aug. 24, 1999), aff'd per curium, 754 A.2d 30 (Pa. Super. Ct. 2000)	Property Damage	Insured sought coverage for structural property damage caused by its mining operations.	Manifestation	An occurrence happens for purposes of insurance when the injurious effects of the negligent act first manifest.
Pennsylvania	Rohm & Haas Co. v. Cont'l Cas. Co., 35 Phila. 193 (Pa. C.P. 1997)	Environ. PD	Insured sought coverage for cleanup and defense costs incurred as a result of environmental contamination at two sites.	Continuous	Continuous trigger theory adopted by J.H. France decision is appropriate because environmental property damage is a progressive, indivisible harm.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Pennsylvania	Koppers Co., v. Aetna Cas. & Sur. Co., 98 F.3d 1440 (3d Cir. 1996)	Environ. PD	Insured sought coverage for numerous environmental claims.	Continuous	Environmental property damage is a progressive harm, and all triggered policies are jointly and severally liable subject to reallocation based on the "other insurance" clause.
Pennsylvania	J.H. France Refractories Co. v. Allstate Ins. Co., 626 A.2d 502 (Pa. 1993)	Asbestos BI	Insured sought coverage for asbestos bodily injury cases.	Continuous	Each insurer on the risk from first exposure to manifestation is responsible for full defense and indemnity, subject only to policy limits and "other insurance" clauses.
Rhode Island	Textron, Inc. v. Aetna Cas. and Sur. Co., 754 A.2d 742 (R.I. 2000)	Environ. PD	Insured sought coverage for pollution arising out of its manufacture of aerospace equipment.	Manifestation	Property damage triggers coverage under a CGL policy when the damage (1) manifests itself, (2) is discovered or, (3) in the exercise of reasonable diligence is discoverable.
Rhode Island	Truk-Away of R.I., Inc. v. Aetna Cas. & Sur. Co., 723 A.2d 309 (R.I. 1999)	Environ. PD	Insured sought coverage for pollution damage resulting from its storage and transportation of hazardous waste to a landfill.	Manifestation	There is no occurrence under the policy without property damage that becomes apparent during the policy period.
Rhode Island	CPC Int'l, Inc. v. Northbrook Excess & Surplus Ins. Co., 668 A.2d 647 (R.I. 1995)	Environ. PD	Insured sought coverage for pollution arising out of its operation of a manufacturing facility.	Manifestation	Coverage is triggered by an occurrence taking place when property damage is discoverable.
South Carolina	Crossman Cmty of N.C. v. Harleysville Mut. Ins. Co., 717 S.E.2d 589 (S.C. 2011)	Construction Defect	Homeowners sued insured developers, alleging that the exterior components of their homes were negligently constructed, causing water damages.	Modified continuous	Coverage is triggered at the time damage occurs and continuously thereafter to allow coverage under all policies in effect from the time of progressive damage.
South Carolina	Liberty Mut. Fire Ins. Co. v. J. T. Walker Indus., 817 F. Supp. 2d 784 (D.S.C. 2011)	Construction Defect	Insured window manufacturer sought coverage for five suits filed by homeowners for progressive damage.	Injury-in-fact	Every insurance policy in effect during the period of progressive damage is triggered.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
South Carolina	Stonehenge Eng'g Corp. v. Emp'rs Ins. of Wausau, 201 F.3d 296 (4th Cir. 2000)	Construction Defect	Insured sought coverage for construction defect claims involving defective buildings.	Modified continuous	Coverage is triggered by all policies in effect from the time the complainant was actually damaged and continuously thereafter until the end of the progressive damage, even if damage continues after discovery.
South Carolina	Spartan Petroleum Co. v. Federated Mut. Ins. Co., 162 F.3d 805 (4th Cir. 1998)	Environ. PD	Insured sought coverage for pollution damage resulting from a leaking underground gasoline storage system.	Injury-in-fact	Damage to the property must occur during the policy period.
South Carolina	Joe Harden Builders, Inc. v. Aetna Cas. & Sur. Co., 486 S.E.2d 89 (S.C. 1997)	Construction Defect	Insured sought coverage for progressive property damage caused by defective construction.	Modified continuous	Coverage is triggered at the time damage occurs and continuously thereafter.
Texas	Md. Cas. Co. v. Acceptance Indem. Ins. Co., 639 F.3d 701 (5th Cir. 2011)	Construction Defect	Homeowner sued insured pool contractor, alleging faulty work resulted in damage to his pool.	Injury-in-fact	Determining when property damage occurs requires focus on the time of the actual physical damage to the property, not the time of negligent conduct that later results in damage.
Texas	VRV Dev. L.P. v. Mid-Continent Cas. Co., 630 F.3d 451 (5th Cir. 2011)	Construction Defect	Homeowners sued insured developer, alleging faulty construction resulted in the collapse of retaining walls.	Injury-in-fact	Property damage does not necessarily occur at the first link in the causal chain of events giving rise to the property damage. The damage occurred at the time of collapse, not when the retaining walls were negligently constructed.
Texas	Mid-Continent Cas. Co. v. Acad. Dev. Inc., 2010 U.S. Dist. LEXIS 87637 (S.D. Tex. 2010)	Construction Defect	Insured developer sought coverage for the cost of defending claims asserted by homeowners for the diminution in the value of their homes.	Injury-in-fact	Texas has adopted the actual-inquiry rule in determining whether an insurer has a duty to defend, which rule deems property damage occurs when actual physical damage to property occurs.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Texas	Landstar Homes Dallas, Ltd. v. Mid-Continent Cas. Co., 2010 U.S. Dist. LEXIS 131516 (N.D. Tex. 2010)	Construction Defect	Insured homebuilder sought coverage for claims asserted by home purchaser for damages caused by a defectively designed foundation.	Injury-in-fact	The actual-injury rule states that a duty to defend is triggered when the underlying suit alleges (1) that property damage occurred during the term of the policy and (2) that the property damage was caused by the insured.
Texas	Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co., 279 S.W.3d 650 (Tex. 2009)	Construction Defect	Homeowners sued insured builder, alleging defective construction caused water damage to their homes.	Injury-in-Fact	Under the actual-injury rule, property damage occurred when a home suffered wood rot or other physical damages.
Texas	Wilshire Ins. Co. v. RJT Constr., LLC, 581 F.3d 222 (5th Cir. 2009)	Construction Defect	Insured builder sought defense for claims that his negligent foundation repairs resulted in wall and ceiling cracks.	Injury-in-fact	It is irrelevant that the faulty foundation work occurred pre-policy issuance; it matters only that the cracks were alleged to have occurred during the policy period.
Texas	Don's Bldg. Supply, Inc. v. OneBeacon Ins. Co., 267 S.W.3d 20 (Tex. 2008)	Construction Defect	CGL insurer sought declaratory judgment of no duty to defend or indemnify insured distributor of synthetic stucco product against homeowners' suits alleging negligence, fraud, and violations of the Deceptive Trade Practices Act.	Injury-in-fact	Property damage under CGL policy occurred when actual physical damage to the property occurred, not when the damage was or could have been discovered.
Texas	Guar. Nat'l Ins. Co. v. Azrock Indus., Inc., 211 F.3d 239 (5th Cir. 2000)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Exposure	Injury takes place at the time of exposure to or inhalation of asbestos fibers.
Texas	Am. Home Assurance Co. v. Unitramp Ltd., 146 F.3d 311 (5th Cir. 1998)	Property Damage	Insured sought coverage for damage resulting from contaminated fuel that had to be replaced.	Manifestation	The time of the occurrence is when the complaining party actually was damaged, not the time that the wrongful act was committed; a party sustains actual damage when it sustains damage that is readily apparent.
Texas	Bristol-Myers Squibb Co. v. AIU Ins. Co., 1995 WL 861100 (Tex. Dist. Ct. 1995)	Breast Implant BI	Insured sought coverage for numerous breast implant claims filed against it.	Continuous	Damage or injury begins with the first exposure and continues through the manifestation of illness.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Texas	Gulf Chem. & Metallurgical Corp. v. Associated Metals & Minerals Corp., 1 F.3d 365 (5th Cir. 1993)	Environ. BI	Insured sought coverage for bodily injury claims arising out of exposure to chemicals used in a steel mill.	Continuous	All insurers, and the insured, must share equally in the defense until there can be adjustments for the defense as to each claimant based on a pro rata sharing between the insurers and the insured.
Utah	Quaker State Minit-Lube, Inc. v. Fireman's Fund Ins. Co., 868 F. Supp. 1278 (D. Utah 1994), aff'd, 52 F.3d 1522 (10th Cir. 1995)	Environ. PD	Insured sought coverage for pollution arising out of its disposal of waste oil at a waste oil recycling facility.	Injury-in-fact	Coverage is triggered each time hazardous waste such as waste oil was discharged onto the property.
Vermont	Towns v. N. Sec. Ins. Co., 964 A.2d 1150 (Vt. 2008)	Environ. PD	Insured sought coverage for defense and remediation costs incurred as a result of depositing waste and debris at a site.	Continuous	Where hazardous chemicals progressively migrate into the groundwater and soil on the insured's property, each of the insurers are liable for the resulting environmental damage, which begins from point of initial exposure or contamination.
Vermont	State of Vt. v. CNA Ins. Cos., 779 A.2d 662 (Vt. 2001)	Environ. PD	Insured sought coverage for environmental cleanup damage sought from it in an administrative proceeding.	Injury-in-fact	Continuous trigger does not apply where there is no evidence of damage from the date of discharge of pollutants in the 1950s until the discovery in the 1990s.
Virginia	Morrow Corp. v. Harleysville Mut. Ins. Co., 101 F. Supp. 2d 422 (E.D. Va. 2000)	Environ. PD	Insured sought coverage for cleanup costs.	Injury-in-fact	Coverage is triggered when continuous or progressive injury occurs during policy period.
Virginia	C.E. Thurston & Sons, Inc. v. Am. Centennial Ins. Co., No. 2:97 CV 1034 (E.D. Va. 1998), reprinted in 12 Mealey's Ins. Litig. Rep. No. 47 (Oct. 20, 1998)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Continuous	Continuous trigger theory applies and is consistent with "all sums" approach.
Washington	Am. States Ins. Co. v. Century Sur. Co., 2011 Wash. App. LEXIS 2488 (Wash. Ct. App. 2011)	Construction Defect	Apartment owner sued insured siding contractor, alleging defective siding installation resulted in progressive moisture damages.	Continuous	Every policy spanning the period during which property damage progresses is liable for all damages attributable to the occurrence.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Washington	Cadet Mfg. Co. v. Am. Ins. Co., 2006 U.S. Dist. LEXIS 51241 (W.D. Wash. 2006)	Environ. PD	Insured sought coverage for environmental liabilities arising out of its manufacturing operations at two sites.	Continuous	The migration of pollutants into the subsoil and groundwater constitutes "continuous and repeated" exposure and property damage, and a continuous trigger of coverage applies.
Washington	Skinner Corp. v. Fireman's Fund Ins. Co., 1996 WL 376657 (W.D. Wash. 1996)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims under a marine insurance policy.	Continuous	Every policy throughout the injury-causing process is triggered for the entire amount of the covered loss.
Washington	Villella v. Pub. Emp. Mut. Ins. Co., 725 P.2d 957 (Wash. 1986)	Construction Defect	Coverage sought under homeowner's policy for damages resulting from a foundation shift caused by negligent construction.	Injury-in-fact	For a policy to be triggered, damage must occur during the policy period, and here, the residence was not damaged until the foundation shifted.
Washington	Gruol Constr. Co. v. Ins. Co. of N.A., 524 P.2d 427 (Wash. Ct. App. 1974)	Construction Defect	Insured piled dirt against box sills of apartment building by backfilling during construction, resulting in progressively worsening dry rot.	Continuous	Where damage was a continuous process set in motion at the time of construction, all policies in effect during the total period of the undiscovered condition are triggered.
West Virginia	Simpson-Littman Constr., Inc. v. Eric Ins. Prop. Cas. Ins. Co., 2010 U.S. Dist. LEXIS 95378 (S.D. W. Va. 2010)	Construction Defect	Homeowner sued insured contractor, alleging that faulty construction and the failure to supervise a masonry contractor resulted in the improper settling of his home.	Manifestation	The date on which the property damage is deemed to have occurred is the date of the actual injury (i.e., the date the cracks in the walls or foundation appeared).
West Virginia	Wheeling Pittsburgh Corp. v. American Ins. Co., 2003 WL 23652106 (W. Va. Cir. Ct. 2003)	Environ. PD	Insured sought coverage for pollution damage at four sites.	Continuous	All policies in effect may be potentially involved to provide coverage for property damage proven to be continuous throughout several policy periods.
Wisconsin	Selmer Co. v. Selective Ins. Co. of S.C., 806 N.W.2d 268 (Wisc. Ct. App. 2011)	Construction Defect	Building contractor sought coverage for the cost of replacing a defective roof installed by a subcontractor.	Manifestation	Because the policy requires that both the occurrence and resulting property damage transpire during the policy period, there is no coverage for defective work discovered after the policy period.

## Coverage Trigger

State	Citation	Type of Case	Facts	Finding	Comments
Wisconsin	Society Ins. v. Town of Franklin, 607 N.W.2d 342 (Wis. Ct. App. 2000)	Environ. PD	Insured sought coverage for costs of cleaning up contamination at town dump.	Continuous	All policies in effect while the occurrence was ongoing are triggered for their full limits.
Wisconsin	Wis. Elec. Power Co. v. Cal. Union Ins. Co., 419 N.W.2d 255 (Wis. Ct. App. 1987)	Negligence PD	Insured sought coverage for injuries to dairy cows due to stray voltage from an improper power supply over a 12-year period.	Continuous	The occurrence triggering coverage began with the installation of the power supply in 1970 and continued uninterrupted until the problem was resolved in 1982.
Wisconsin	Lund v. Am. Motorists Ins. Co., 797 F.2d 544 (7th Cir. 1986)	Construction Defect	Apartment building owner alleged insured contractor was negligent in designing the building's roof that collapsed.	Negligent Act Rule	The negligent act (such as the negligent design and construction of the roof), as opposed to the resulting damage (the roof's collapse) triggers coverage.
Wisconsin	Kremers-Urban Co. v. Am. Emp'rs Ins. Co., 351 N.W.2d 156 (Wis. 1984)	DES BI	Insured sought coverage for DES bodily injury claims.	Exposure	Court held that ingestion of the drug during the policy period triggered coverage even though the injury manifested itself years later.

## Allocation of Loss

Because construction defect claims often implicate consecutive policy periods, the total amount of coverage available to respond to a claim may exceed the total amount of damages. In such circumstances, the damages must be allocated among the triggered policies or policy years. The issue of how a loss should be allocated in a construction defect claim is closely tied to the applicable trigger of coverage, and the resolution of one typically compels consideration of the other.

Generally speaking, courts have applied two key methods for determining how policies will respond:

**Pro Rata** – Policies respond in a particular policy period in proportion to the time on the risk and the total number of years triggered by the loss. Under this approach, each triggered policy is responsible for a portion of damages based on the years it was on the risk in comparison to the total number of years triggered by the loss. This approach is tied to policy language limiting exposure to those damages that take place during the policy period.

**All Sums** – Policies in a particular policy period may respond in full, subject to their limits. This approach is based on the “all sums” language in policies and allows an insured to pick which policy years that will respond to a loss.

The following is a summary of selected cases addressing allocation of loss. Because the allocation of a construction defect claim can be very similar to that of other long-tail claims, such as environmental or asbestos, where there have not been cases identified in a specific state that deal directly with the allocation of a construction defect claim, reference is made to cases involving other types of continuous losses.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Alabama	Commercial Union Ins. Co. v. Sepco Corp., 918 F.2d 920 (11th Cir. 1990)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Pro rata	Defense costs allocated pro rata by months of coverage provided during period of exposure; insured shares in defense costs for years in which it lacked coverage.
Arkansas	Murphy Oil USA, Inc. v. U.S. Fid. & Guar. Co., No. 91-439-2 (Ark. Cir. Ct. Feb. 21, 1995), reprinted in 9 Mealey's Ins. Litig. Rep. No. 19, Section I (Mar. 21, 1995)	Environ. PD	Insured sought coverage for three petroleum spills which took place on property it rented.	All sums	Insurers are jointly and severally liable up to the policy limits. Insured allowed to pick and choose among the triggered policies. The insurers' cross-claims will resolve any allocation disputes among the insurers in the event coverage is ultimately found for the claim.
California	Cont. Ins. Co. v. Emp'rs Ins. of Wausau, 2012 Cal. LEXIS 7324 (Cal. 2012)	Environ. PD	State of California sought indemnity from several insurers in connection with the cleanup of a waste site.	All sums	The "during the policy period" language does not appear in the "Insuring Agreement" section of the policy and therefore, is not related to the "all sums" language in the insuring agreement.
California	Travelers Cas. & Sur. Co. v. Century Sur. Co., 13 Cal. Rptr. 3d 526 (Cal. Ct. App. 2004)	Construction Defect	One insurer sought contribution from another for defense and indemnity paid for a construction defect claim spanning multiple policy periods.	Pro rata	Each insurer is liable for a pro rata share of defense and indemnity based on its time-on-the-risk.
California	Centennial Ins. Co. v. U.S. Fire Ins. Co., 105 Cal. Rptr. 2d 559 (Cal. Ct. App. 2001)	Construction Defect	Insured sought coverage for property damage resulting from construction defects.	Pro rata	The time-on-the-risk method of allocating defense costs among multiple insurance carriers is the equitable way to apportion defense costs.
California	Alcan Aluminum Corp. v. Prudential Assurance Co., 173 F.3d 859 (9th Cir. 1999)	Environ. BI & PD	Insured sought coverage for bodily injury and property damage claims arising out of its disposal of waste at a landfill.	Pro rata	The insured is responsible for costs attributable to injuries occurring, continuing or deteriorating during the self-insured period.
California	Fireman's Fund Ins. Co. v. Md. Cas. Co., 77 Cal. Rptr. 2d 296 (Cal. Ct. App. 1998)	Construction Defect	One insured sought contribution from another for cost of defending and settling construction defect claims.	Pro rata	Each insurer was liable for pro rata share of defense and indemnity based on its time-on-the-risk.
California	FMC Corp. v. Plaisted & Cos., 72 Cal. Rptr. 2d 467 (Cal. Ct. App. 1998)	Environ. PD	Insured manufacturer of chemical compounds sought coverage for contamination at 57 sites.	All sums	All triggered policies are responsible for "all sums" of the loss, but those insurers can seek reallocation based on "other insurance" clauses.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
California	Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co., 52 Cal. Rptr. 2d 690 (Cal. Ct. App. 1996)	Asbestos PD	Insured sought coverage for asbestos building claims.	All sums	Triggered policies must respond for the entire loss based on the policies' "all sums" language but may seek contribution from other insurers.
California	Montrose Chem. Corp. v. Admiral Ins. Co., 913 P.2d 878 (Cal. 1995)	Environ. BI & PD	Insured sought a defense to lawsuits involving pollution from the disposal of waste at landfills.	All sums	Court ruled in favor of a continuous trigger, but an insurer may allocate the loss among additional insurers based on the "other insurance" provisions.
Colorado	Public Serv. Co. of Colo. v. Wallis & Cos., 986 P.2d 924 (Colo. 1999)	Environ. PD	Insured sought coverage for costs incurred in the cleanup of two landfills.	Pro rata	Liability must be allocated proportionately among insurance policies according to both time-on-the-risk and to the degree of risk assumed.
Connecticut	Sec. Ins. Co. of Hartford v. Lumbermens Mut. Cas. Co., 826 A.2d 107 (Conn. 2003)	Asbestos BI	Insured sought coverage for defense costs for asbestos bodily injury claims.	Pro rata	Defense costs should be pro-rated based on time-on-the-risk, and the insured should pay its fair share for uninsured periods.
Delaware	Hercules Inc. v. AIU Ins. Co., 784 A.2d 481 (Del. 2001)	Environ. PD	Insured sought coverage for pollution arising from its chemical manufacturing facility.	All sums	The insurers are jointly and severally liable for sums they are legally obligated to pay. The court did not preclude subsequent reallocation among insurers.
District of Columbia	Keene Corp. v. Ins. Co. of N. Am., 667 F.2d 1034 (D.C. Cir. 1981)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	All sums	Each triggered policy is jointly and severally liable up to its policy limits. Insured may select the policy it wants to respond and need not contribute to defense costs or indemnity payments. The triggered insurer may seek contribution from other triggered policies.
Georgia	Nat'l Serv. Indus., Inc. v. St. Paul Guardian Ins. Co., No. 2004 CV 83960 (Ga. Super. 2005), reprinted in 19 Mealey's Ins. Litig. Rep. No. 30, Section E (June 14, 2005)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Pro rata	The pro rata time-on-the-risk method should determine coverage because an insurer should not provide coverage during periods where bodily injury did not occur.
Georgia	Liberty Mut. Ins. Co. v. Wheelwright Trucking Co., 851 So. 2d 466 (Ala. 2002)	Property Damage	Insured sought coverage for damages arising out of its manufacture of defective trailers.	Pro rata	A separate SIR must be paid in full by the insured for each policy that is triggered.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Hawaii	Sentinel Ins. Co. v. First Ins. Co. of Haw., Ltd., 875 P.2d 894 (Haw. 1994)	Construction Defect	Insured sought coverage for claim involving water infiltration damage to an apartment complex.	Pro rata	Where injury-in-fact occurs continuously over period covered by different insurers or policies, continuous trigger may allocate contribution among liable insurers in proportion to time-on-the-risk.
Illinois	Ill. Cent. R.R. v. Accident & Cas. Co. of Winterthur, 739 N.E.2d 1049 (Ill. App. Ct. 2000)	Employment Discrimination	Insured sought coverage for the costs of settlement of a class action involving discriminatory hiring practices.	Pro rata	Where the insured is unable to allocate damages based upon the time the injury was suffered, damages were allocated on a pro rata basis over all triggered years.
Illinois	Mo. Pac. R.R. v. Int'l Ins. Co., 679 N.E.2d 801 (Ill. App. Ct. 1997)	Hearing Loss & Asbestos BI	Insured sought coverage for numerous noise induced hearing loss and asbestos bodily injury claims.	Pro rata	Although multiple policies may be triggered, the insurer is obligated to pay only an amount attributable to the injury which occurs during its policy period based on the evidence or based on a pro rata time-on-the-risk allocation.
Illinois	Outboard Marine Corp. v. Liberty Mut. Ins. Co., 670 N.E.2d 740 (Ill. App. Ct. 1996)	Environ. PD	Insured sought coverage for environmental cleanup.	Pro rata	Court adopted pro rata allocation by time-on-the-risk analysis with horizontal exhaustion of primary policies. If no insurance is available for a time period, the insured is responsible for its pro rata share.
Illinois	Zurich Ins. Co. v. Raymark Indus., Inc., 514 N.E.2d 150 (Ill. 1987)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	All sums	Court rejected pro rata allocation, letting stand the appellate ruling of joint and several liability between insurers. The court did not preclude subsequent reallocation among insurers.
Indiana	Allstate Ins. Co. v. Dana Corp., 759 N.E.2d 1049 (Ind. 2001)	Environ. PD	Insured sought coverage for the costs of cleaning up pollution at various sites.	All sums	Insurer must indemnify insured for all sums insured must pay as a result of an occurrence, subject to policy limits. The court did not preclude subsequent reallocation among insurers.
Iowa	Mid-Am. Energy Co. v. Certain Underwriters at Lloyd's London, No. 107142 (Iowa Dist. Ct. 2011), reprinted in 25 Mealey's Ins. Litig. Rep. No. 11 (Jan. 19, 2011)	Environ. PD	Insured sought coverage for investigation and remediation costs associated with property damage.	Pro rata	Losses allocated proportionately among insurers on risk. Insured will share in allocation for periods when it was not insured or self-insured.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
<b>Kansas</b>	Liberty Mut. Fire Ins. Co. v. Harper Indus., Inc., 2007 U.S. Dist. LEXIS 10753 (W.D. Ky. 2007)	Products Liability	Insurer sought allocation of costs incurred in defending insured concrete supplier against product defect claims.	Pro rata	All individual insurers shall be responsible for their individual and proportionate share of defense costs of insured.
<b>Kansas</b>	Atchison Topeka & Santa Fe Ry. v. Stonewall Ins. Co., 71 P.3d 1097 (Kan. 2003)	Hearing Loss BI	Insured sought coverage for numerous noise induced hearing loss claims.	Pro rata	Excess insurers not jointly and severally liable for hearing loss claims because allocation based on joint and several liability is not consistent with the term "all sums" and contradicts the agreement to indemnify the insured for injuries during a specific policy period.
<b>Kentucky</b>	Generali U.S. Branch v. Nat'l Trust Ins. Co., 2009 U.S. Dist. LEXIS 76890 (W.D. Ky. 2009)	Construction Defect	Contractor sought coverage for negligent construction claims asserted by homeowners.	No allocation	So long as a reasonable fact-finder can determine what damage to contractor's work occurred during various policy periods, court cannot make an equitable allocation.
<b>Kentucky</b>	Aetna Cas. & Sur. Co. v. Commonwealth of Ky., 179 S.W.3d 830 (Ky. 2005)	Environ. PD	Insured sought coverage for costs incurred in participating in a CERCLA cleanup of a contaminated landfill.	Pro rata	Court held that the damages should be allocated over all triggered periods based on policy limits.
<b>Louisiana</b>	Cole v. Celotex Corp., 599 So. 2d 1058 (La. 1992)	Asbestos BI	Executive officers and directors of insured sought coverage for asbestos claims filed against them.	Pro rata	Court held that each asbestos claimant's judgment should be spread over all triggered policies during the period of exposure.
<b>Louisiana</b>	Ducres v. Mine Safety Appliances Co., 645 F. Supp. 708 (E.D. La. 1986), aff'd, 833 F.2d 588 (5th Cir. 1987)	Silica BI	Insured sought coverage for injuries to workers arising out of their exposure to silica and other dust.	Pro rata	Indemnity payments should be divided by the total number of years of exposure to determine amount allocated to each year.
<b>Maryland</b>	Riley v. United Servs. Auto. Assoc., 871 A.2d 599 (Md. Ct. Spec. App. 2005), aff'd, 899 A.2d 819 (Md. 2006)	Lead BI	Insured sought coverage for bodily injury claims alleging exposure to lead paint over multiple policy periods.	Pro rata	When the parties cannot attribute the damages among different periods, the damages are allocated pro rata among all policies based on time-on-the-risk.
<b>Maryland</b>	In re Wallace & Gale Co., 385 F.3d 820 (4th Cir. 2004)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Pro rata	Pro rata allocation is appropriate because it is not equitable for an insurance company to pay for coverage during a period for which no effective coverage is in force.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Maryland	Mayor & City Council of Balt. v. Utica Mut. Ins. Co., 802 A.2d 1070 (Md. Ct. Spec. App. 2002)	Asbestos PD	Insured sought coverage for asbestos-in-building claims.	Pro rata	A continuous trigger of coverage is applicable for long-term and continuing damage posed by the installation and continued presence of asbestos in buildings.
Maryland	Nationwide Mut. Ins. Co. v. Lafarge Corp., 1994 WL 706538 (D. Md. 1994)	Property Damage	Insured sought coverage for claims arising out of defective cement incorporated into concrete railroad ties.	Pro rata	Defense costs apportioned among all primary insurers based upon number of years of coverage provided, including those insurers issuing "fronting policies." Insured does not bear share of insolvent insurers.
Massachusetts	Boston Gas Co. v. Century Indemn. Co., 910 N.E.2d 290 (Mass. 2009)	Environ. PD	Insured sought coverage for pollution damage at former manufactured gas plant sites.	Pro rata	When contamination takes place over several years, liability of insurers should be pro-rated based on time-on-the-risk, and the insured is responsible for periods without insurance. Insured is responsible for only pro-rated portion of the SIR, if existing.
Massachusetts	Rubenstein v. Royal Ins. Co. of Am., 694 N.E.2d 381 (Mass. App. Ct. 1998), aff'd, 708 N.E.2d 639 (Mass. 1999)	Environ. PD	Insured sought coverage for pollution resulting from leaking underground storage tanks.	All sums	Each triggered policy is jointly and severally liable for the entire claim, but an insurer can obtain a share of indemnification or defense costs from other insurers.
Michigan	Cont. Cas. Co. v. Indian Head Indus. Inc., 2010 WL 188083 (E.D. Mich. 2010)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Pro rata	Pro rata time-on-the-risk method fairly allocates risk that insurer entered into when it issued policy to insured.
Michigan	Wolverine World Wide, Inc. v. Liberty Mut. Ins. Co., 2007 WL 705981 (Mich. Ct. App. 2007)	Environ. PD	Insured sought coverage for pollution caused by its disposal of tannery waste at a landfill.	Pro rata	Damages should be allocated on a pro rata time-on-the-risk basis over all policies from the time that pollutants were first deposited at the site until the time the contamination is removed or remediated.
Michigan	Stryker Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 2005 WL 1610663 (W.D. Mich. 2005)	Bodily injury	Insured sought coverage for bodily injury claims arising out of defective knee implants.	Pro rata	Pro rata allocation is consistent with the policy language in this case and with the injury-in-fact trigger of coverage adopted by the Michigan Supreme Court.
Michigan	Arco Indus. Corp. v. Am. Motorists Ins. Co., 594 N.W.2d 61 (Mich. Ct. App. 1998), aff'd, 617 N.W.2d 330 (Mich. 2000)	Environ. PD	Insured sought coverage for groundwater contamination arising out of its operation of a manufacturing facility.	Pro rata	Each insurer is only responsible for coverage during its policy period based on a time-on-the-risk approach.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Michigan	Ray Indus., Inc. v. Liberty Mut. Ins. Co., 974 F.2d 754 (6th Cir. 1992)	Environ. PD	Insured received a PRP letter to remediate pollution at a landfill where it disposed of drums of hazardous waste.	Pro rata	Insured is responsible for indemnity payments for periods for which there is no insurance due to an exclusion, but the duty to defend is not apportionable.
Minnesota	Tony Eiden Co. v. State Auto Prop. & Cas. Ins. Co., 2009 Minn. App. unpub. LEXIS 149 (Minn. Ct. App. 2009)	Construction Defect	Contractor sought coverage for claims alleging faulty workmanship causing water damages.	All sums	When continuous injuries arise from a discrete event or series of events, policy or policies on risk at time of risk or series of events are liable for all sums arising from event.
Minnesota	W. Bend Mut. & SVK Dev., Inc. v. Valley Forge Ins. Co., 651 F. Supp. 2d 983 (D. Minn. 2009)	Construction Defect	Developer sought coverage for claims asserted by homeowners alleging water infiltration, stucco cracking, and structural defects.	Pro rata	Construction of a home is not a discrete and identifiable event and damages are appropriately apportioned pro rata by time-on-the-risk.
Minnesota	Wooddale Builders, Inc. v. Md. Cas. Co., 722 N.W.2d 283 (Minn. 2006)	Construction Defect	Insured sought coverage for various construction defect claims filed against it.	Pro rata	Pro rata time-on-the-risk allocation applies, and the total period over which liability is allocated must include time periods which the insured was voluntarily self-insured.
Minnesota	In re Silicone Implants Ins. Coverage Litig., 667 N.W.2d 405 (Minn. 2003)	Breast Implant BI	Manufacturer sought coverage for breast implant claims.	All sums	Although injuries were continuous, they were the result of a discrete event (implant implantation), and thus, policies on risk at the time of the event are liable for all sums arising from event.
Minnesota	N. States Power Co. v. Fid. & Cas. Co. of N.Y., 523 N.W.2d 657 (Minn. 1994)	Environ. PD	Insured sought coverage for pollution resulting from operation of a coal-tar gasification site over several decades.	Pro rata	Pro rata allocation appropriate because injury was continuous over a period of years and injury suffered during different policy periods was indivisible.
Missouri	Nationwide Ins. Co. v. Cent. Mo. Elec. Co-op, Inc., 278 F.3d 742 (8th Cir. 2001)	Property Damage	Insured sought coverage for damages resulting from the provision of inconsistent voltage electricity.	Pro rata	A time-on-the-risk allocation is appropriate since each insurer is only liable for injuries suffered in its coverage period.
Missouri	Monsanto Co. v. C.E. Heath Comp. & Liab. Ins. Co., 652 A.2d 30 (Del. 1994) (applying Mo. law)	Environ. BI & PD	Insured sought coverage for various bodily injury and property damage claims arising out of the release of contaminants.	All sums	Where multiple policies are triggered, each insurer whose coverage is applicable must pay "all sums" to the policyholder and seek contribution from the other insurers.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Montana	N.W. Corp. d/b/a N.W. Energy v. Assoc. Electric & Gas Ins. Serv. Ltd., No. 07-1174 (S.D. Cir. Ct. 2010), reprinted in 24 Mealey's Ins. Litig. Rep. No. 37 (Aug. 4, 2010)	Environ. PD	Insured sought coverage for property damage arising from contaminants deposited at various properties due to floods.	All sums	Triggered policies require insurers to pay any and all sums insured becomes legally obligated to pay as a result of an occurrence.
Nebraska	Dutton-Lainson Co. v. Cont'l Ins. Co., 778 N.W.2d 433 (Neb. 2010)	Environ. PD	Manufacturing company used various solvents in operations to clean machines and parts between 1948 and 1987 causing contamination at four different sites.	Pro rata	Insured cannot assert joint and several liability without proving amount of damages that resulted during periods of coverage provided by each insurer. If a time-on-the-risk allocation is not applied, then damages for each period of policy coverage must be established by insured.
New Hampshire	EnergyNorth Natural Gas, Inc. v. Certain Underwriters at Lloyd's, 934 A.2d 517 (N.H. 2007)	Environ. PD	Insured sought coverage for the cleanup of pollution at a former manufactured gas plant.	Pro rata	The pro rata approach is a superior allocation method to joint and several liability, and courts should apply the pro-ration by a years and limits method.
New Jersey	Potomac Ins. Co. of Ill. v. Pa. Mfr. Ass'n Ins. Co., 41 A.3d 586 (N.J. App. Div. 2012)	Construction Defect	One insurer sued another seeking reimbursement of costs incurred in defending their insured against construction defect claims.	Pro rata	Insurer is entitled to obtain contribution of defense costs from settling insurer under the weighted time-on-the-risk apportionment doctrine enunciated in Owens-Illinois Inc. v. United Insurance Co.
New Jersey	Benjamin Moore & Co. v. Aetna Cas. & Sur. Co., 843 A.2d 1094 (N.J. 2004)	Environ. PD	Insured sought coverage for pollution damages under numerous primary policies that contained deductibles.	Pro rata	Where a claim triggers multiple years of coverage, the insured must satisfy a full per-occurrence deductible in each triggered policy before the insured is entitled to indemnity.
New Jersey	Quincy Mut. Fire Ins. v. Borough of Bellmawr, 799 A.2d 499 (N.J. 2002)	Environ. PD	Insured sought coverage for pollution resulting from the disposal of hazardous waste into a landfill.	Pro rata	Allocation of liability between insurers for pollution during their policy periods needed to reflect days on the risk; the initial policy was in effect for only about 49 days after the initial trigger, and the subsequent insurer's policies were in effect for several years.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
New Jersey	Carter-Wallace, Inc. v. Admiral Ins. Co., 712 A.2d 1116 (N.J. 1998)	Environ. PD	Insured sought coverage for pollution arising out of its disposal of waste at a landfill.	Pro rata	Damages should be allocated among years based upon the amount of risk assumed by the insured and insurers in each year and allocated vertically among policies in each year based upon full policy limits.
New Jersey	Owens-Illinois, Inc. v. United Ins. Co., 650 A.2d 974 (N.J. 1994)	Asbestos BI & PD	Insured sought coverage for asbestos bodily injury and asbestos building claims.	Pro rata	Court rejected joint and several liability and held in favor of pro rata allocation based on time-on-the-risk and the degree of risk assumed. Contribution from insured allowed for periods in which it decided to assume a risk; but not for periods where insurance is "unavailable."
New York	Serio v. Public Serv. Mut. Ins. Co., 759 N.Y.S.2d 110 (N.Y. App. Div. 2003)	Environ. BI	Insured sought coverage for bodily injury arising out of exposure to lead paint.	Pro rata	Each insurer shall bear pro rata responsibility for funding the settlement in direct proportion to each insurer's time-on-the-risk.
New York	Consol. Edison Co. of N.Y., Inc., v. Allstate Ins. Co., 774 N.E.2d 687 (N.Y. 2002)	Environ. PD	Insured sought coverage for pollution arising out of its operation of manufactured gas plants.	Pro rata	Pro rata allocation is consistent with the language of the policies, which provide indemnification for liability incurred as a result of an accident or occurrence during the policy period.
New York	E.R. Squibb & Sons, Inc. v. Lloyd's & Cos., 241 F.3d 154 (2d Cir. 2001)	DES BI	Insured sought coverage for bodily injury claims asserted by women who ingested DES, their children and grandchildren.	Pro rata	Insurer's responsibility for the insured's loss is calculated by multiplying the loss by a fraction that has as its denominator the entire number of years of the claimant's injury, and as its numerator the number of years within that period when the policy was in effect.
New York	Olin Corp. v. Ins. Co. of N. Am., 221 F.3d 307 (2d Cir. 2000)	Environ. PD	Insured sought coverage for soil and groundwater pollution resulting from its operation of a pesticide manufacturing facility.	Pro rata	Pro rata allocation is appropriate to prevent insured from imposing liability on an insurer for injuries that occurred in years that it did not provide coverage, and a full deductible is applied to each year.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
New York	In re Prudential Lines, Inc., 158 F.3d 65 (2d Cir. 1998)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	All sums	The insured can demand that a policy pay full coverage for each claim in which the claimant suffered asbestos injury during the policy period. The insurer may seek contribution from other insurers pursuant to the other insurance clauses.
New York	Stonewall Ins. Co. v. Asbestos Claims Mgmt. Corp., 73 F.3d 1178 (2d Cir. 1995), modified, 85 F.3d 49 (1996)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Pro rata	Each triggered policy is responsible only for a pro rata share of the total liability. Insured must bear its pro rata share of liability for uninsured periods.
New York	Uniroyal, Inc. v. Home Ins. Co., 707 F. Supp. 1368 (E.D.N.Y. 1988)	Dioxin BI	After settling product liability litigation with plaintiffs, manufacturer of Agent Orange brought action against insured for indemnification.	Pro rata	Court allocated defense and indemnity costs to each policy according to the proportion of injuries occurring during the policy period. Insured could not select policies to avoid self-insured retained limits.
Ohio	Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co., 769 N.E.2d 835 (Ohio 2002)	Environ. PD	Insured sought coverage for the cleanup of soil contamination resulting from its waste disposal practices.	All sums	When continuous pollution triggers claims under multiple policies, the insured can demand coverage from a single policy that covers "all sums" incurred as damages "during the policy period," subject to that policy's limit. The insurer can obtain contribution from other applicable insurance policies.
Ohio	Lincoln Elec. Co. v. St. Paul Fire & Marine Ins. Co., 210 F.3d 672 (6th Cir. 2000)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Pro rata	There is a rebuttable presumption that all exposure prior to diagnosis contributed equally to injury-in-fact.
Ohio	Owens-Corning Fiberglas Corp. v. Am. Centennial Ins. Co., 660 N.E.2d 770 (Ohio Com. Pleas Ct. 1995)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	All sums	Each triggered policy is obligated to pay in full the claim, subject to policy limits. The right of excess insurers to demand proration between themselves does not affect the insured's right to full contribution from the insurer of its choice.
Oregon	Ca. Ins. Co. v. Stimson Lumber Co., 325 Fed. Appx. 496 (9th Cir. 2009)	Property Damage	Insured sought coverage for the cost of defending warranty claims involving defective siding.	Pro rata	When multiple insurers have a defense obligation, defense costs can be apportioned among solvent insurers.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Oregon	Cascade Corp. v. Am. Home Assurance Co., 135 P.3d 450 (Ore. Ct. App. 2006)	Environ. PD	Insured sought coverage for groundwater pollution resulting from its use of chlorinated solvents to clean metal as part of its manufacturing process.	All sums	Even though multiple years and multiple other policies are triggered, any triggered policy is liable for the full amount of the insured's claim, subject to its policy limit.
Oregon	Emp'rs Ins. of Wausau v. Tektronix, No. CCV99-08-032 (Or. Cir. Ct. May 5, 2003), reprinted in 17 Mealey's Ins. Litig. Rep. No. 30, Section A (June 10, 2003)	Environ. PD	Insured sought coverage for pollution that occurred over an extended period of time.	Pro rata	There is a clear correlation between the size of the plume and the passage of time and the cost of remediation, so an allocation of liability based on the relationship between time periods of coverage and the total loss is appropriate.
Pennsylvania	Am. Sterilizer Co. v. Liberty Mut. Ins. Co., Civ. No. 00-41E (W.D. Pa. Aug. 5, 2002), reprinted in 16 Mealey's Ins. Litig. Rep. No. 38, Section B (Aug. 13, 2002)	Environ. BI	Insured sought coverage for bodily injuries sustained as a result of continuous exposure to ethylene oxide emitted from the insured's products over a ten-year period.	All sums	Where the injury is continuous and indivisible, each policy is obligated to provide full coverage up to its limits. The insured can select which policy will respond. The court did not preclude subsequent reallocation among insurers.
Pennsylvania	Koppers Co. v. Aetna Cas. & Sur. Co., 98 F.3d 1440 (3d Cir. 1996)	Environ. PD	Insured sought coverage for numerous environmental claims.	All sums	Environmental property damage is a progressive harm, and all triggered policies are jointly and severally liable subject to reallocation based on the "other insurance" clause.
Pennsylvania	J.H. France Refractories Co. v. Allstate Ins. Co., 626 A.2d 502 (Pa. 1993)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	All sums	Each insurer on the risk from first exposure to manifestation is responsible for full defense and indemnity, subject to policy limits, and insured can recover indemnity costs from any triggered insurer. Insurer can then seek contribution from other triggered insurers.
Pennsylvania	ACandS, Inc. v. Aetna Cas. & Sur. Co., 764 F.2d 968 (3d Cir. 1985)	Asbestos BI	Insured sought coverage for asbestos-related bodily injury claims.	All sums	Every triggered policy is responsible in full up to the policy limits for the entire risk. No proration of losses under policy once coverage was triggered and no contribution from the insured. The court did not preclude subsequent reallocation among insurers.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Rhode Island	OneBeacon Am. Ins. Co. v. Narragansett Elec. Co., 2010 Mass. Super. LEXIS 233 (Mass. Super. Ct. 2010) (predicting Rhode Island law)	Environ. PD	Insured sought coverage for environmental contamination claims at multiple sites.	All sums	Finding no reason to deviate from First Circuit's prediction in Emhart Industries that Rhode Island would adopt an all sums approach with respect to allocation of defense costs.
Rhode Island	Emhart Indust., Inc. v. Century Indem. Co., 559 F.3d 57 (1st Cir. 2009)	Environ. PD	Insured sought defense costs incurred in relation to remediating a Superfund site.	All sums	"All sums" and "ultimate net loss" language of policies do not admit to any limitation, temporal or otherwise.
South Carolina	Crossman Cmty. of N.C. v. Harleysville Mut. Ins. Co., 717 S.E.2d 589 (S.C. 2011)	Construction Defect	Developer sought coverage for claims that faulty workmanship caused water damage to condominiums.	Pro rata	Time-on-the-risk is allocation method most consistent with the language of a CGL policy and requires policyholder to bear a portion of loss corresponding to uninsured periods.
South Carolina	Liberty Mut. Fire Ins. Co. v. J.T. Walker Indus., 817 F. Supp. 2d 784 (D.S.C. 2011)	Construction Defect	Window manufacturer sought coverage for five suits filed by homeowners for progressive damages.	Pro rata	Defense and indemnity cost should be allocated among triggered policies based on time-on-the-risk.
South Carolina	Spartan Petroleum Co. v. Federated Mut. Ins. Co., 162 F.3d 805 (4th Cir. 1998)	Environ. PD	Insured sought coverage for pollution damage resulting from a leaking underground gasoline storage system.	Pro rata	In cases of continuous damage, all policies and the insured (in cases of no coverage) are responsible for a pro rata share of damages.
Texas	Mid-Continent Cas. Co. v. Acad. Dev. Inc., 2010 U.S. Dist. LEXIS 87637 (S.D. Tex. 2010)	Construction Defect	Developer sought coverage for cost of defending claims asserted by homeowners for diminution in value of their homes.	All sums	Policyholder is entitled to select policy among triggered policies that will provide a complete defense.
Texas	Highlands Ins. Co. v. Temple-Inland, Inc., No. 98-42939 (Tex. Dist. Ct. Aug. 4, 1999), reprinted in 13 Mealey's Ins. Litig. Rep. No. 40, Section H (Aug. 24, 1999)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	All sums	The policy does not provide for the reduction of the insurer's policy limits if an injury only partially occurs during the policy period. The court did not preclude subsequent reallocation among insurers.
Texas	Union Pac. Res. Co. v. Cont. Ins. Co., No. 249- 23-98 (Tex. Dist. Ct. Dec. 17, 1998), reprinted in 13 Mealey's Ins. Litig. Rep. No. 11, Section A (Jan. 19, 1999)	Environ. PD	Insured sought coverage for various environmental claims.	All sums	Once a policy is triggered, it is liable to the full extent of its limit for all sums, with no proration of liability. The court did not preclude subsequent reallocation among insurers.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Texas	Tex. Prop. and Cas. Ins. Guar. Ass'n v. Sw. Aggregates, Inc., 982 S.W.2d 600 (Tex. Ct. App. 1998)	Silicosis BI	Guaranty Association sought reimbursement of defense costs it paid under a reservation of rights.	All sums	Each of several insurers on concurrently triggered policies is obligated to provide a full defense.
Texas	Bristol-Myers Squibb Co. v. AIU Ins. Co., No. 0145672 (Tex. Dist. Ct. May 3, 1996), reprinted in 10 Mealey's Ins. Litig. Rep. No. 26, Section B (May 14, 1996)	Breast Implant BI	Insured sought coverage for numerous breast implant claims filed against it.	All sums	Court allowed insured to pick the policy period to respond to a claim in a manner to maximize coverage. The court did not preclude subsequent reallocation among insurers.
Texas	CNA Lloyds of Tex. v. St. Paul Ins. Co., 902 S.W.2d 657 (Tex. Ct. App. 1995)	Dental Malpractice	One insurer sued another seeking reimbursement of portion of settlement it paid which it alleged exceeded its pro rata share.	All sums	Insurer's duty to indemnify is not reduced when there is concurrent coverage among multiple insurers; however, insurer entitled to assert subrogation rights against other insurers whose policies are triggered.
Texas	Am. Physicians Ins. Exch. v. Garcia, 876 S.W.2d 842 (Tex. 1994)	Medical Malpractice	Physician sought damages from his insurers for failure to defend and settle.	All sums	Insured may select from multiple consecutive insurance policies the one under which it is to be indemnified.
Texas	Gulf Chem. & Metallurgical Corp. v. Associated Metals & Minerals Corp., 1 F.3d 365 (5th Cir. 1993)	Environ. BI	Insured sought coverage for bodily injury claims arising out of exposure to chemicals used in a steel mill.	Pro rata	The insurers and the insured must share equally in the defense until there can be adjustments for the defense as to each claimant based on a pro rata sharing between the insurers and the insured, with apportionment based on time-on-the-risk.
Virginia	Morrow Corp. v. Harleystown Mut. Ins. Co., 101 F. Supp. 2d 422 (E.D. Va. 2000)	Environ. PD	Insured sought defense and indemnity under its policies for property damage arising from dry cleaning operations and deposits of contaminants in soil.	Pro rata	Based on a pollution exclusion, court opined that Virginia law requires remediation costs be allocated equally over years between commencement of contamination and discovery.
Virginia	C.E. Thurston & Sons Inc. v. Am. Centennial Ins. Co., No. 2:97CV1034 (E.D. Va. 1998), reprinted in 12 Mealey's Ins. Litig. Rep. No. 47 (Oct. 20, 1998)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	All sums	Policies require insurer to pay all sums insured is obligated to pay because of bodily injury that occurs during policy period. Utilizing a pro rata allocation contradicts policy language.

## Allocation of Loss

State	Citation	Type of Case	Facts	Finding	Comments
Washington	Mut. of Enumclaw Ins. Co. v. One Beacon Ins. Co., 2010 Wash. App. LEXIS 2291 (Wash. Ct. App. 2010)	Construction Defect	One insurer sued another seeking contribution for costs paid to settle construction defect claims against jointly insured contractor.	Pro rata	Appropriate method of apportioning damages between multiple insurers jointly and severally liable is an equitable determination within sound discretion of trial court.
Washington	Polygon Nw. Co., LLC v. Steadfast Ins. Co., 682 F. Supp. 2d 1231 (W.D. Wash. 2009)	Construction Defect	Developer sought coverage under several consecutive policies for construction defect claims.	Pro rata	Reasonable basis exists for allocating property damage to common elements across policy periods based on unit sales.
Washington	MacLean Townhomes, LLC v. Charter Oak Fire Ins. Co., 2008 U.S. Dist. LEXIS 95192 (W.D. Wash. 2008)	Construction Defect	Condominium developer, as an assignee of claims, sought coverage for water damages caused by insured's faulty siding installation.	All sums	Once a policy is triggered, insurer is required to pay all sums for which insured becomes legally obligated, up to policy limits.
Washington	Am. Nat'l Fire Ins. Co. v. B&L Trucking and Constr. Co., 951 P.2d 250 (Wash. 1998)	Environ. PD	Insured sought coverage for pollution resulting from its disposal of smelter slag over years.	All sums	Once a policy is triggered, policy language requires insurer to pay all sums for which insured becomes legally obligated, up to the policy limits.
Washington	Gruol Constr. Co., Inc. v. Ins. Co. of N. Am., 524 P.2d 427 (Wash. Ct. App. 1974)	Construction Defect	Builder sued to recover cost of defending claims for damages caused by dry rot, which resulted from improper backfilling.	All sums	When an insured sustains damages of a continuing nature, its insurers are jointly and severally liable.
West Virginia	Wheeling Pittsburgh Corp. v. Am. Ins. Co., 2003 WL 23652106 (W. Va. Cir. Ct. 2003)	Environ. PD	Insured sought coverage for pollution damage at four sites.	All sums	Once a policy is triggered, the insured may select which insurer shall respond and collect full indemnity, not exceeding policy limits. The insurer can seek contribution from other policies or the insured for those periods of self-insurance.

## Anti-Indemnification Statutes, Right to Repair/Cure and Statutes of Limitations and Repose

Outside the case law which impacts the analysis of insurance coverage for construction defect claims, many states have also enacted legislation which further defines, creates or restricts rights among owners, developers, and contractors. This statutory framework may include anti-indemnity statutes, “right-to-repair” or “right-to-cure” statutes, and statutes of limitation and repose.

Transfer of risk by contract, via indemnity or hold-harmless agreements, is a common practice in the construction industry. In response to such contractual arrangements, many states have case law or statutory regulations that set up anti-indemnity rules for construction projects, to strictly regulate and in some cases prohibit contractual risk transfer.

Several states have passed legislation, known as “right-to-repair” or “right-to-cure” statutes. The intent of these statutes is to protect the construction trade and offer an alternative to immediately proceeding to costly litigation. Key provisions of these statutes include:

- Requiring written notice regarding alleged defects from homeowners to builder, with such notice usually required up to 90 days prior to proceeding with filing a suit.
- Allowing the builder to inspect the premises.
- Providing for a response to the homeowner’s claim, including an offer to repair, pay a monetary compromise, or decline the claim.
- Limitations for the “reasonable” cost of repairs and possible reimbursement of legal fees.
- Requirement that the right-to-repair provisions are stated in the sales contract.

A “statute of limitations” is a period of time in which a claim may be brought, beginning from the time of discovery of an injury. A “statute of repose” acts as a bar on any claims, and usually starts on a certain date, such as the close of escrow, transfer of title or occupancy, varying by state. Where the periods of time differ, the statute of limitations may be tolled or extended for reasons set forth in the statute. Most states have many, often overlapping statutes of limitations.

The following is a summary by state of anti-indemnity statutes, right to repair/cure statutes and statutes of limitations and repose.

## Anti-Indemnification Statutes, Right to Repair/Cure and Statutes of Limitations and Repose

State	Anti-Indemnification Statutes	Right to Repair/Cure	Statute of Limitations	Statute of Repose
<b>Alabama</b>	None. See City of Montgomery v. JYD Int'l, Inc., 534 So. 2d 529 (Ala. 1988); Cochrane Roofing & Metal Co. v. Callahan, 472 So. 2d 1005 (Ala. 1985); Indus. Tile, Inc. v. Stewar, 388 So. 2d 171, 175 (Ala. 1980)	None.	Ala. Code §§ 6-2-34, 6-2-38 (2012) Baugher v. Beaver Constr. Co., 791 So. 2d 932 (Ala. 2000) (while statute is labeled as limitation, it is actually a statute of repose)	Ala. Code §§ 6-5-218, 6-5-221, 6-5-225, 6-5-227(2012)
<b>Alaska</b>	Alaska Stat § 45.45.900 (2012)	Alaska Stat § 09.45.881 to 09.45.899 (2012)	Alaska Stat. §§ 09.10.054, 09.10.070	Alaska Stat. § 09.10.055 (2012)
<b>Arizona</b>	Ariz. Rev. State. Ann §§ 34-226, 25-86 (2012)	Ariz. Rev. Stat. Ann. § 12-1361 to 12-1366 (2012)	Ariz. Rev. Stat. Ann. §§ 12-542, 12-550 (2012)	Ariz. Rev. Stat. Ann. § 12-552 (2012)
<b>Arkansas</b>	Ark. Code Ann. § 4-56-2014 (2012)	None.	Ark. Code Ann. § 16-56-105 (2012)	Ark. Code Ann. § 16-56-112 (2012)
<b>California</b>	Cal. Civ. Code §§ 2782, 2782.8 (2012)	Cal. Civ. Code § 895 to 945.5 (2012)	Cal. Civ. Proc. Code §§ 312, 337, 335.1	Cal. Civ. Proc. Code §§ 337.1, 337.15 (2012)
<b>Colorado</b>	Colo. Rev. Stat. § 13-50-5-102 (2012)	Colo. Rev. Stat. § 13-20-802 to 13-20-807 (2012)	Colo. Rev. Stat. §§ 13-80-102, 13-80-107(1)(b), 13-20-803.5, 13-20-805 (2012)	Colo. Rev. Stat. § 13-80-104 (2012)
<b>Connecticut</b>	Conn. Gen. Stat. § 52-572k (2012)	None.	Conn. Gen. Stat. §§ 52-584, 52-577, 52-577a (2012)	Conn. Gen. Stat. § 52-584(a) (2012)
<b>Delaware</b>	Del. Code. Ann. tit. 6 § 2704 (2012)	Del. Code. Ann. tit. 25 § 81-321 (2012)	Del. Code. Ann. tit. 10 § 8106 (2012)	Del. Code. Ann. tit. 10 § 8127 (2012)
<b>District of Columbia</b>	None. See N.P.P. Contr. v. John Canning & Co., 715 A.2d 139 (D.C. 1988)	None.	D.C. Code Ann. § 12-301 (2012)	D.C. Code Ann. § 12-310 (2012)
<b>Florida</b>	Fla. Stat. § 725.06 (2012)	Fla. Stat. § 558.001 to 558.005 (2012)	Fla. Stat. § 95.031 (2012)	Fla. Stat. § 95.11 (2012)
<b>Georgia</b>	Ga. Code Ann. § 13-8-2(b) (2012)	Ga. Code Ann. § 8-2-35 to 8-2-41 (2012)	Ga. Code Ann. §§ 9-3-30, 51-1-11 (2012)	Ga. Code Ann. § 9-3-51 (2012)
<b>Hawaii</b>	Haw. Rev. Stat. § 431:10-222 (2012)	Haw. Rev. Stat. § 672E-1 to 672E-13 (2012)	Haw. Rev. Stat. § 657-7 (2012)	Haw. Rev. Stat. § 657-8 (2012)
<b>Idaho</b>	Idaho Code Ann. § 29-114 (2012)	Idaho Code Ann. § 6-2501 to 62504 (2012)	Idaho Code Ann. §§ 501, 5-216 to 5-219, 6-1403 (2012)	Idaho Code Ann. § 5-241 (2012)

## Anti-Indemnification Statutes, Right to Repair/Cure and Statutes of Limitations and Repose

State	Anti-Indemnification Statutes	Right to Repair/Cure	Statute of Limitations	Statute of Repose
<b>Illinois</b>	740 Ill. Comp. Stat. Ann. 35/1 (2012)	None.	735 Ill. Comp. Stat. Ann. §§ 5/13-205, 5/13-213 (2012)	735 Ill. Comp. Stat. Ann. § 5/13-214 (2012)
<b>Indiana</b>	Ind. Code § 26-2-5-1 (2012)	Ind. Code § 32-27-3-1 to 32-27-3-14 (2012)	Ind. Code §§ 34-11-1-2, 34-11-2-4, 34-11-2-7, 34-20-3-1 (2012)	Ind. Code §§ 32-30-1-5, 32-30-1-6 (2012)
<b>Iowa</b>	Iowa Code § 537A.5 (2012)	None.	Iowa Code § 614.1 (2012)	Iowa Code § 614.1 (2012)
<b>Kansas</b>	Kan. Stat. Ann. § 16-121 (2011)	Kan. Stat. Ann. § 60-4701 to 60-4710 (2011)	Kan. Stat. Ann. § 60-510 to 60-513 (2011)	Kan. Stat. Ann. § 60-3303(a)(1) (2011)
<b>Kentucky</b>	Ky. Rev. Stat. Ann. § 371.180 (LexisNexis 2012)	Ky. Rev. Stat. Ann. § 411.250 to 411.266 (LexisNexis 2012)	Ky. Rev. Stat. Ann. §§ 411.250 to 411.264, 411.310 (LexisNexis 2012)	Ky. Rev. Stat. Ann. § 413.135 (LexisNexis 2012)
<b>Louisiana</b>	La. Rev. Stat. Ann. § 38:2216(G) (2012)	La. Rev. Stat. Ann. § 9:3141 to 9:31350 (2012)	La. Civ. Code. Ann. art. 3499 to 3500 (2012)	La. Rev. Stat. Ann. §§ 9:2772, 9:5607 (2012)
<b>Maine</b>	Emery Waterhouse Co. v. Lea, 467 A.2d 986 (Me. 1983)	None.	Me. Rev. Stat. Ann. tit. 14, § 752-A (2011)	Me. Rev. Stat. Ann. tit. 14, § 752-A (2011)
<b>Maryland</b>	Md. Code. Ann., Cts. & Jud. Proc. § 5-401 (2012)	None.	Md. Code. Ann., Cts. & Jud. Proc. § 5-108 (2012)	Md. Code. Ann., Cts. & Jud. Proc. § 5-108 (2012)
<b>Massachusetts</b>	Mass. Gen. Laws ch. 149, § 29C (2012)	None.	Mass. Gen. Laws ch. 260, § 2B (2012)	Mass. Gen. Laws ch. 260, § 2B (2012)
<b>Michigan</b>	Mich. Comp. Law § 691.991 (2012)	None.	Mich. Comp. Law § 600.5839 (2012)	Mich. Comp. Law § 339.2411 to 600.5839 (2012)
<b>Minnesota</b>	Minn. Stat. § 337.01 to 337.02 (2012)	Minn. Stat. § 327A.01 to 327A.08 (2012)	Minn. Stat. § 541.051 (2012)	Minn. Stat. § 541.051 (2012)
<b>Mississippi</b>	Miss. Code. Ann. § 31-5-41 (2012)	Miss. Code. Ann. § 83-58-1 to 83-58-17 (2012)	No general statute of limitations for property, contract, and personal injury claims	Miss. Code Ann. § 15-1-41 (2012)
<b>Missouri</b>	Mo. Rev. Stat. § 434.100 (2012)	Mo. Rev. Stat. § 436.350 to 436.365 (2012)	Mo. Rev. Stat. § 516.120 (2012)	Mo. Rev. Stat. § 516.097 (2012)
<b>Montana</b>	Mont. Code Ann. §§ 18-2-124, 28-2-2111 (2011)	Mont. Code Ann. § 70-19-426 to 70-19-428 (2011)	Mont. Code Ann. §§ 27-2-102, 27-2-202, 27-2-7-204, 27-2-207 (2011)	Mont. Code Ann. § 27-2-208 (2011)

## Anti-Indemnification Statutes, Right to Repair/Cure and Statutes of Limitations and Repose

State	Anti-Indemnification Statutes	Right to Repair/Cure	Statute of Limitations	Statute of Repose
Nebraska	Neb. Rev. Stat. § 25-21,187 (2012)	None.	Neb. Rev. Stat. §§ 25-201, 25-205, 25-212, 25-224 (2012)	Neb. Rev. Stat. § 25-223 (2012)
Nevada	Nev. Rev. Stat. § 616B.609 (2012)	Nev. Rev. Stat. § 40.600 to 49.695 (2012)	Nev. Rev. Stat. §§ 11.010, 11.190 (2012)	Nev. Rev. Stat. § 11.203 to 11.205 (2012)
New Hampshire	N.H. Rev. Stat. Ann. § 338-A:1 (2012)	N.H. Rev. Stat. Ann. § 359-G:1 to 359-G:8 (2012)	N.H. Rev. Stat. Ann. § 507-D:2, 508:4 (2012)	N.H. Rev. Stat. Ann. § 508:4-b (2012)
New Jersey	N.J. Stat. Ann. § 2A:40A-1 to 2A:40A-2 (2012)	None.	N.J. Stat. Ann. § 2A:14-1 (2012)	N.J. Stat. Ann. § 2A:14-1.1 (2012)
New Mexico	N.M. Stat. Ann. § 56-7-1 (2012)	None.	N.M. Stat. Ann. §§ 37-1-1, 37-1-3, 37-1-4 (2012)	N.M. Stat. Ann. § 37-1-27 (2012)
New York	N.Y. Gen. Oblig. Law §§ 5-322.1, 5-324 (McKinney 2012)	None.	N.Y. C.P.L.R. 213, 214, 214-d (McKinney 2012)	None.
North Carolina	N.C. Gen. Stat. § 22B-1 (2012)	None.	N.C. Gen. Stat. §§ 1-15, 1-52, 1-53 (2012)	N.C. Gen. Stat. § 1-50 (2012)
North Dakota	N.D. Cent. Code § 9-08-02.1 (2012)	N.D. Cent. Code § 43-07-26 (2012)	N.D. Cent. Code §§ 28-01-16, 28-01.3-08 (2012)	N.D. Cent. Code §§ 28-01-44, 28-01.3-08 (2012)
Ohio	Ohio Rev. Code Ann. § 2305.31 (LexisNexis 2012)	Ohio Rev. Code Ann. § 1312.01 to 1312.08 (LexisNexis 2012)	Ohio Rev. Code Ann. §§ 2305.06, 2305.07, 2305.09, 2305.10 (LexisNexis 2012)	Ohio Rev. Code Ann. §2305-131 (LexisNexis 2012)
Oklahoma	Okla. Stat. Ann. tit. 15, § 422 to 424 (2012); Wallace v. Sherwood Constr. Co., Inc., 877 P.2d 632 (Okla. Ct. App. 1994)	Okla. Stat. Ann. tit. 15, § 765.5 to 765.6 (2012)	Okla. Stat. Ann. tit. 12, § 95 (2012)	Okla. Stat. Ann. tit. 12, § 109 (2012)
Oregon	Or. Rev. Stat. § 30.140 (2011)	Or. Rev. Stat. § 701.560 to 701.595 (2011)	Or. Rev. Stat. §§ 12.080, 12.110, 12.115, 30.905 (2011)	Or. Rev. Stat. § 12.135 (2011)
Pennsylvania	68 Pa. Stat. Ann. § 491 (West 2012)	None.	42 Pa. Cons. Stat. Ann. § 5524, 5525 (West 2012)	42 Pa. Cons. Stat. Ann. § 5536 (West 2012)
Rhode Island	R.I. Gen. Laws § 6-34-1 (2012)	None.	R.I. Gen. Laws § 9-1-13 to 9-1-14 (2012)	R.I. Gen. Laws § 9-1-29 (2012)
South Carolina	S.C. Code Ann. § 32-2-10 (2011)	S.C. Code Ann. §§ 40-59-810 to 40-59-860, 40-11-500 to 40-11-570 (2011)	S.C. Code Ann. §§ 15-3-20, 15-3-530 (2011)	S.C. Code Ann. § 15-3-640 (2011)
South Dakota	S.D. Codified Laws §§ 56-3-16, 56-3-18 (2012)	S.D. Codified Laws § 21-1-15 to 21-1-16 (2012)	S.D. Codified Laws § 15-2-13 to 15-2-14 (2012)	S.D. Codified Laws §§ 15-2A-3, 15-2A-7 (2012)

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State	Anti-Indemnification Statutes	Right to Repair/Cure	Statute of Limitations	Statute of Repose
<b>Tennessee</b>	Tenn. Code Ann. § 62-6-123 (2012)	Tenn. Code Ann. § 66-36-101 to 66-36-103 (2012)	Tenn. Code Ann. §§ 28-3-103, 28-3-104, 28-3-109 (2012)	Tenn. Code Ann. § 28-3-202 (2012)
<b>Texas</b>	Tex. Ins. Code Ann. § 151.101 to 151.105 (West 2012); Tex. Civ. Prac. & Rem. Code Ann. § 130.001 to 130.005 (West 2012)	Tex. Prop. Code Ann. § 27.001 to 27.007 (West 2012)	Tex. Civ. Prac. & Rem. §§ 16.003, 16.012, 16.051, (West 2012)	Tex. Civ. Prac. & Rem. §§ 16.008, 16.009 (West 2012)
<b>Utah</b>	Utah Code Ann. § 13-8-1 (2012)	None.	Utah Code Ann. §§ 78B-2-102, 78B-2-307, 78B-2-309, 78B-2-225 (LexisNexis 2012)	Utah Code Ann. § 78B-2-225 (LexisNexis 2012)
<b>Vermont</b>	None. See <i>Tateosian v. State</i> , 945 A.2d 833 (2007); <i>Hamelin v. Simpson Paper (Vermont) Co.</i> , 702 A.2d 86 (Vt. 1997).	None.	Vt. Stat. Ann. tit. 12, §§ 465, 511, 512 (2012)	None.
<b>Virginia</b>	Va. Code Ann. §§ 11-4.1, 11-4.4 (2012)	Va. Code Ann. § 55-70.1 (2012)	Va. Code Ann. §§ 8.01-243, 8.01-246 (2012)	Va. Code Ann. § 8.01-250 (2012)
<b>Washington</b>	Wash. Rev. Code § 4.24.115 (2012)	Wash. Rev. Code § 64.50.010 to 64.50.060 (2012)	Wash. Rev. Code §§ 4.16.05, 4.16.040, 4.16.080, 7.72.060 (2012)	Wash. Rev. Code §§ 4.16.300, 4.16.310 (2012)
<b>West Virginia</b>	W. Va. Code § 55-8-14 (2012)	W. Va. Code § 21-11A-1 to 21-11A-17 (2012)	W. Va. Code §§ 55-2-6, 55-2-12 (2012)	W. Va. Code § 55-2-6a (2012)
<b>Wisconsin</b>	Wis. Stat. § 895.447 (2012)	Wis. Stat. §§ 101.148, 895.07 (2012)	Wis. Stat. §§ 893.43, 893.52, 893.53 (2012)	Wis. Stat. § 893.89 (2012)
<b>Wyoming</b>	None. See <i>Northwinds of Wyo. Inc. v. Phillips Petroleum Co.</i> , 779 P.2d 753 (Wyo. 1989)	None.	Wyo. Stat. Ann. § 1-3-105 (2012)	Wyo. Stat. Ann. § 1-3-111 (2012)



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