

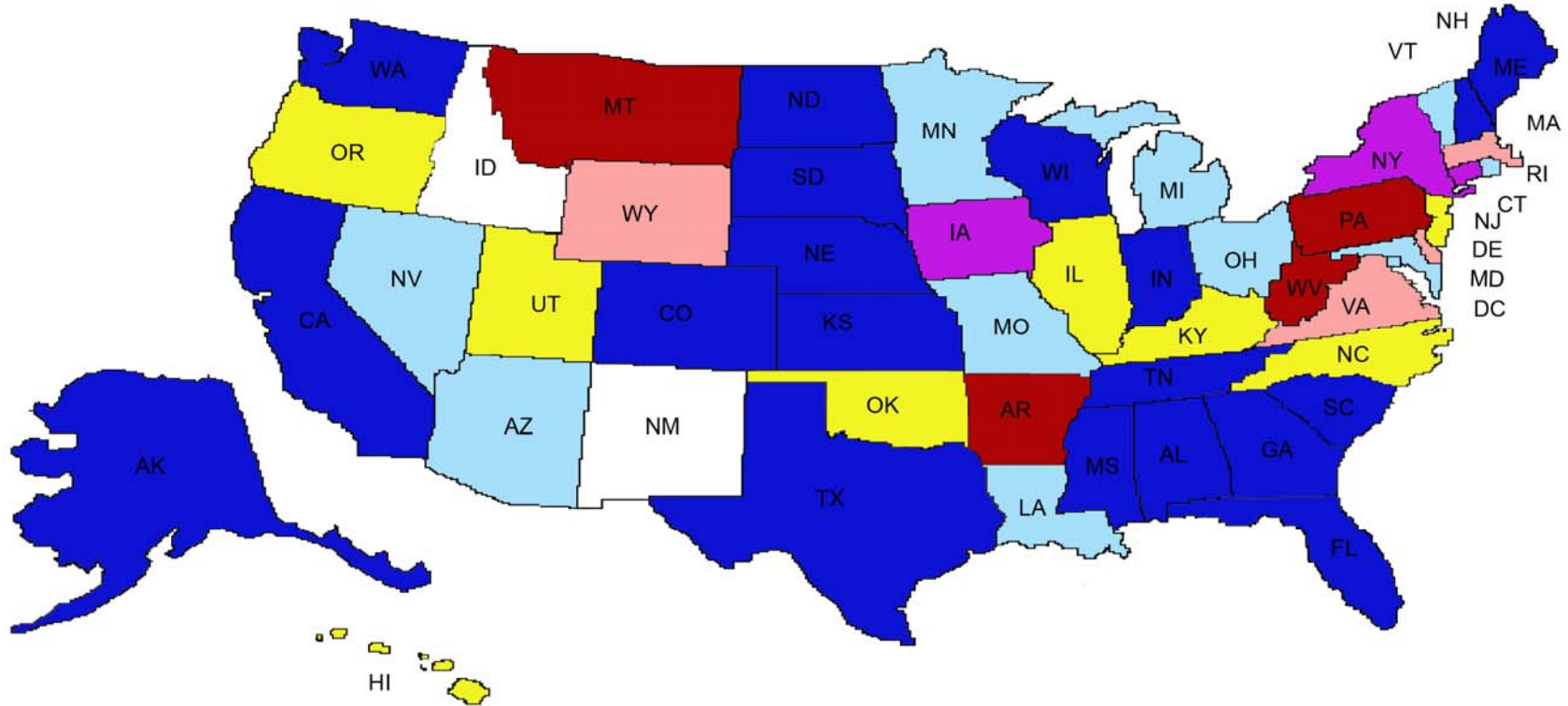


# **DEFECTIVE CONSTRUCTION AS AN “OCCURRENCE”**

*“Attorneys For Policyholders in Insurance Coverage Disputes”*

[www.sdvlaw.com](http://www.sdvlaw.com)

# DEFECTIVE CONSTRUCTION AS AN “OCCURRENCE”



- Highest Court has found defective construction to be an occurrence (or by state statute).
- Tending towards coverage; only lower state court or federal court authority exists.
- Highest Court has found defective construction not to be an occurrence.
- Tending against coverage; only lower state court or federal court authority exists.
- Defective construction only an occurrence when there is damage to third-party property.
- Unclear, cases/legislation conflict.
- No decision

\*Policy exclusions may apply to preclude coverage despite a finding of an occurrence.  
 \*\*This survey is as of January 7, 2011, except for cases/statutes cited after that date. Courts may change their views at any time.

# Commercial General Liability Coverage for Defective Construction

Jurisdiction	Case Law
Alabama	<i>U.S. Fid. &amp; Guar. Co. v. Bonitz Insulation Co.</i> , 424 So.2d 569 (Ala. 1982); <i>U.S. Fid. &amp; Guar. Co. v. Andalusia Ready Mix, Inc.</i> , 436 So.2d 868 (Ala. 1983).
Alaska	<i>Fejes v. Alaska Ins. Co.</i> , 984 P.2d 519 (Alaska 1999).
Arizona	<i>Lennar Corp. v. Auto-Owners Inc. Co.</i> , 151 P.3d 538 (Ariz. Ct. App. 2007).
Arkansas	<i>Essex Ins. Co. v. Holder</i> , 261 S.W.3d 456 (Ark. 2008); <i>Lexicon, Inc. v. Ace Am. Ins. Co.</i> , 634 F.3d 423 (8 <sup>th</sup> Cir. 2010).
California	<i>Hogan v. Midland Nat'l Ins. Co.</i> , 476 P.2d 825 (Cal. 1970); <i>Anthem Elecs., Inc. v. Pac. Employers Ins. Co.</i> , 302 F.3d 1049 (9th Cir. 2002).
Colorado	COLO. REV. STAT. 13-20-808 (2010).
Connecticut	<i>Times Fiber Commc'ns v. Travelers Indem. Co. of Illinois</i> , 2005 WL 589821 (Conn. Super. Ct. Feb. 2, 2005); <i>Scottsdale Ins. Co. v. R.I. Pools, Inc.</i> , 742 F. Supp.2d 239 (D. Conn. 2010).
Delaware	<i>Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co.</i> , 137 F. Supp. 2d 517 (D. Del. 2001), <i>aff'd</i> 2003 WL 146486 (3rd Cir. Jan. 21, 2003), <i>but see</i> <i>AE-Newark Assocs., L.P. v. CNA Ins. Cos.</i> , 2001 WL 1198930 (Del. Super. Ct. Oct. 2, 2001).
District of Columbia	<i>Commonwealth Lloyds Ins. Co. v. Marshall, Neil &amp; Pauley, Inc.</i> , 32 F. Supp.2d 14 (D.D.C 1998).
Florida	<i>U.S. Fire Ins. Co. v. J.S.U.B., Inc.</i> , 979 So.2d 871 (Fla. 2007); <i>Auto-Owners Ins. Co. v. Pozzi Window Co.</i> , 984 So. 2d 1241 (Fla. 2008).
Georgia	<i>Am. Empire Surplus Lines Ins. Co. v. Hathaway Dev. Co., Inc.</i> , 707 S.E.2d 369 (Ga. 2011).
Hawaii	HAW. REV. STAT. § 431:1 (2011) <i>Burlington Ins. Co. v. Oceanic Design &amp; Constr., Inc.</i> , 383 F.3d 940 (9th Cir. 2004); <i>Group Builders, Inc. v. Admiral Ins. Co.</i> , 231 P.3d 67.
Idaho	No decision.
Illinois	<i>U.S. Fid. &amp; Guar. Co. v. Wilkin Insulation Co.</i> , 578 N.E.2d 926 (Ill. 1991); <i>Lyerla v. AMCO Ins. Co.</i> , 536 F.3d 684 (7th Cir. 2008); <i>but see</i> <i>State Farm Fire &amp; Cas. Co. v. Tillerson</i> , 777 N.E.2d 986 (Ill. App. Ct. 2002).
Indiana	<i>Sheehan Constr. Co., Inc. v. Cont'l Cas. Co.</i> , 935 N.E.2d 160 (Ind. 2010).

Key			
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Iowa	<i>Pursell Constr. Inc. v. Hawkeye-Security Ins. Co.</i> , 596 N.W.2d 67 (Iowa 1999); <i>Cont'l W. Ins. Co. v. Oaks Dev. Co.</i> , 786 N.W.2d 519 (Iowa Ct. App. 2010).
Kansas	<i>Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co.</i> , 137 P.3d 486 (Kan. 2006).
Kentucky	<i>Bituminous Cas. Corp. v. Kenway Contracting Inc.</i> , 240 S.W.3d 633 (Ky. 2007); <i>but see Cincinnati Ins. Co. v. Motorists Mut. Ins. Co.</i> , 306 S.W.3d 69 (Ky. 2010).
Louisiana	<i>Broadmoor Anderson v. Nat'l Union Fire Ins. Co. of Louisiana</i> , 912 So.2d 400 (La. Ct. App. 2005); <i>McMath Constr. Co. v. Dupuy</i> , 897 So.2d 677 (La. Ct. App. 2005).
Maine	<i>Peerless Ins. Co. v. Brennon</i> , 564 A.2d 383 (Me. 1989).
Maryland	<i>Lerner Corp. v. Assurance Co. of Am.</i> , 707 A.2d 906, 912 (Md. Ct. Spec. App. 1998); <i>Harbor Court Associates v. Kiewit Construction Co.</i> , 6 F. Supp. 2d 449 (D. Md. 1998); <i>French v. Assurance Co. of Am.</i> , 448 F.3d 693 (4th Cir. 2006) (Maryland law).
Massachusetts	<i>Am. Home Assurance Co. v. AGM Marine Contractors, Inc.</i> , 379 F. Supp. 2d 134 (D. Mass. 2005); <i>Davenport v. U.S. Fid. &amp; Guar. Co.</i> , 778 N.E.2d 1038 (Mass. App. Ct. 2002).
Michigan	<i>Randenbaugh v. Farm Bureau Gen. Ins. Co. of Michigan</i> , 610 N.W.2d 272 (Mich. Ct. App. 2000).
Minnesota	<i>O'Shaughnessy v. Smuckler Corp.</i> , 543 N.W.2d 99 (Minn. Ct. App. 1996); <i>Aten v. Scottsdale Ins. Co.</i> , 511 F.3d 818 (8th Cir. 2008).
Mississippi	<i>Architex Ass'n v. Scottsdale Ins. Co.</i> , 27 So.3d 1148 (Miss. 2010).
Missouri	<i>Taylor-Morley-Simon, Inc. v. Michigan Mut. Ins. Co.</i> , 645 F. Supp. 596 (E.D. Mo. 1986); <i>Amerisure Mut. Ins. Co. v. Paric Corp.</i> , 2005 WL 2708873 (E.D. Mo. Oct. 21, 2005); <i>Columbia Mut. Ins. v. Epstein</i> , 239 S.W.3d 667 (Mo. Ct. App. 2007).
Montana	<i>Stillwater Condo. Ass'n v. Am. Home Assurance Co.</i> , 508 F. Supp. 1075 (D. Mont. 1981); <i>Taylor-McDonnell Constr. Co. v. Commercial Union Ins. Cos.</i> , 744 P.2d 892 (Mont. 1987); <i>Ohio Cas. Ins. Co. v. Williams</i> , 2003 ML 3341.
Nebraska	<i>Auto-Owners Ins. v. Home Pride Cos.</i> , 684 N.W.2d 571 (Neb. 2004).
Nevada	<i>Gary G. Day Constr. Co. v. Clarendon Am. Ins. Co.</i> , 459 F. Supp. 2d 1039 (D. Nev. 2006).

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Jurisdiction	Case Law
South Dakota	<i>Corner Constr. Co. v. U.S. Fid. &amp; Guar. Co.</i> , 2002 SD 2, 638 N.W.2d 887.
Tennessee	<i>Travelers Indem. Co. of Am. v. Moore &amp; Assocs.</i> , 216 S.W.3d 302 (Tenn. 2007).
Texas	<i>Lamar Homes, Inc. v. Mid-Continent Cas. Co.</i> , 242 S.W.3d 1 (Tex. 2007).
Utah	<i>H.E. Davis &amp; Sons, Inc. v. N. Pac. Ins. Co.</i> , 248 F. Supp. 2d 1079 (D. Utah 2002); <i>Cincinnati Ins. Co. v. Linford Bros. Glass Co.</i> , 2010 U.S. Dist. LEXIS 11226 (D. Utah Feb. 9, 2010); <i>but see Great Am. Ins. Co. v. Woodside Homes Corp.</i> , 448 F. Supp. 2d 1275 (D. Utah 2006).
Vermont	<i>Transcont'l Ins. Co. v. Engelberth Constr., Inc.</i> , 2007 WL 3333465 (D. Vt. Nov. 8, 2007).
Virginia	<i>Hotel Roanoke Conference Ctr. Comm'n v. Cincinnati Ins. Co.</i> , 303 F. Supp. 2d 784 (W.D. Va. 2004), <i>aff'd</i> 119 Fed. Appx. 451 (4th Cir. 2005); <i>Travelers Indem. Co. of Am. v. Miller Bldg. Corp.</i> , 142 Fed. Appx. 147 (4th Cir. 2005); <i>Stanley Martin Cos. v. Ohio Cas. Group</i> , 313 Fed. Appx. 609 (4th Cir. 2009).
Washington	<i>Yakima Cement Prods. Co. v. Great Am. Ins. Co.</i> , 608 P.2d 254 (Wash. 1980).
West Virginia	<i>Corder v. William W. Smith Excavating Co.</i> , 556 S.E.2d 77 (W. Va. 2001); <i>County Solid Waste Auth. v. Brackenrich &amp; Assocs.</i> , 617 S.E.2d 851 (W. Va. 2005).
Wisconsin	<i>Am. Family Mut. Ins. Co. v. Am. Girl, Inc.</i> , 673 N.W.2d 65 (Wis. 2004).
Wyoming	<i>Great Divide Ins. Co. v. Bitterroot Timberframes of Wyoming, LLC</i> , 2006 WL 3933078 (D. Wyo. Oct. 20, 2006).

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