



DEFECTIVE CONSTRUCTION AS AN “OCCURRENCE”

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COMMERCIAL GENERAL LIABILITY COVERAGE FOR DEFECTIVE WORK

Jurisdiction	WHETHER DEFECTIVE CONSTRUCTION IS AN OCCURRENCE	
	Status	Case Law
Alabama	Yes ¹	<i>U.S. Fid. & Guar. Ins. Co. v. Bonitz Insulation Co.</i> , 424 So. 2d 569 (Ala. 1982); <i>U.S. Fid. Guar. Ins. Co. v. Andalusia Ready Mix, Inc.</i> , 436 So. 2d 868 (Ala. 1983)
Alaska	Yes	<i>Fejes v. Alaska Ins. Co.</i> , 984 P.2d 519 (Alaska 1999)
Arizona	Yes	<i>Lennar Corp. v. Auto-Owners Ins. Co.</i> , 151 P. 3d 538 (Ariz. App. 2007)
Arkansas	No ²	<i>Essex Ins. Co. v. Holder</i> , 2008 Ark. LEXIS 138 (Ark. 2008)
California	Yes	<i>Anthem Elec., Inc. v. Pac. Employers Ins. Co.</i> , 302 F.3d 1049 (9th Cir. 2002); <i>Hogan v. Midland Nat'l. Ins. Co.</i> , 476 P.2d 825 (Cal. 1970); <i>Vandenberg v. Centennial Ins. Co.</i> , 21 Cal.4th 815, 982 P.2d 229 (1999)
Colorado	Unclear	<i>Hoang v. Assurance Co. of Am.</i> , 149 P.3d 798 (Colo. Jan. 8, 2007); <i>Colard v. Am. Family Mut. Ins. Co.</i> , 709 P.2d 11 (Colo. App. 1985); <i>Union Ins. Co. v. Hottenstein</i> , 83 P.3d 1196 (Colo. App. 2003)
Connecticut	Unclear	<i>Times Fiber Communications v. Travelers Indemnity Co. of Illinois</i> , 2005 Conn. Super. LEXIS 335
Delaware	No	<i>Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co.</i> , 137 F. Supp. 2d 517 (D. Del. 2001)
District of Columbia	No	<i>Western Exterminating Co. v. Hartford Accident & Indemnity Co.</i> , 479 A.2d 872 (D.C. App. 1984)
Florida	Yes	<i>J.S.U.B., Inc. v. U.S. Fire Ins. Co.</i> , 906 So.2d 303 (Fla. 2007)
Georgia	Unclear	<i>Custom Planning & Dev. Inc. v. Am. Nat'l Fire Ins. Co.</i> , 606 S.E.2d 39 (Ga. App. 2004); <i>Sawhorse, Inc. v. Southern Guar. Ins. Co. of Ga.</i> , 604 S.E.2d 541 (Ga. App. 2004)
Hawaii	No	<i>Keneke Roofing, Inc. v. Island Ins. Co., Ltd.</i> , 98 P.3d 246 (Haw. 2004); <i>Burlington Ins. Co. v. Oceanic Design & Constr., Inc.</i> , 383 F.3d 940 (9th Cir. 2004)
Idaho	Undecided	
Illinois	No	<i>State Farm Fire & Cas. Co. v. Tillerson</i> , 777 N.E.2d 986 (Ill. App. 2002); <i>U.S. Fid. & Guar. Ins. Co. v. Wilkin Insulation Co.</i> , 578 N.E.2d 926 (Ill. 1991)
Indiana	No	<i>Amerisure, Inc. v. Wurster Constr. Co.</i> , 818 N.E.2d 998, 1003 (Ind. App. 2004); <i>R.N. Thompson & Assoc., Inc. v. Monroe Guar. Ins. Co.</i> , 686 N.E.2d 160 (Ind. App. 1997); see also <i>Indiana Ins. Co. v. DeZutti</i> , 408 N.W.2d 1275 (1980) (interpreting pre-1986 policy form)
Iowa	No	<i>Pursell Constr., Inc. v. Hawkeye-Security Ins. Co.</i> , 596 N.W.2d 67 (Iowa 1999)
Kansas	Yes	<i>Lee Builders, Inc. v. Farm Bur. Mut. Ins. Co.</i> , 137 P.3d 486 (Kan. 2006); <i>Fid. & Dep. Co. of Md. v. Hartford Cas. Ins. Co.</i> , 189 F. Supp. 2d 1212 (D. Kan. 2002)
Kentucky	Unclear	<i>Lenning v. Commercial Union Ins. Co.</i> , 260 F.3d 574 (6th Cir. 2001); <i>James Graham Brown Foundation, Inc. v. St. Paul Fire & Marine Ins. Co.</i> , 814 S.W.2d 273 (Ky. 1991)

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Louisiana	Yes	<i>Broadmoor Anderson v. Nat'l Union Fire Ins. Co.</i> , 912 So. 2d 400 (La. App. 2 Cir. 2005), cert. denied, 925 So. 2d 1239 (La. 2006); <i>McMath Constr. Co. v. Dupuy</i> , 897 So. 2d 677 (La. App. 2004)
Maine	Yes	<i>Peerless Ins. Co. v. Brennon</i> , 564 A.2d 383 (Me. 1989); <i>Massachusetts Bay Ins. Co. v. Ferraiolo Constr. Co.</i> , 584 A.2d 608 (Me. 1990)
Maryland	Yes	<i>French v. Assurance Co. of America</i> , 448 F.3d 693 (4th Cir. 2006)
Massachusetts	No	<i>Am. Home Assur. Co. v. AGM Marine Contractors, Inc.</i> , 379 F. Supp. 2d 134 (D. Mass. 2005); <i>Davenport v. U.S. Fid. & Guar. Co.</i> , 56 Mass. App. Ct. 1109, 778 N.E.2d 1038 (2002)
Michigan	No	<i>Radenbaugh v. Farm Buerau Gen. Ins. Co.</i> , 610 N.W.2d 272 (Mich. Ct. App. 2000); <i>Hawkeye-Sec. Ins. Co. v. Vector Constr. Co.</i> , 460 N.W.2d 329 (Mich. App. 1990)
Minnesota	Yes	<i>Aten v. Scottsdale Ins. Co.</i> , 511 F.3d 818 (8th Cir. 2008); <i>O'Shaughnessy v. Smuckler Corp.</i> , 543 N.W. 2d 99 (Minn. Ct. App. 1996)
Mississippi	No	<i>ACS Constr. Co. of Mississippi v. CGU</i> , 332 F.3d 885 (5th Cir. 2003)
Missouri	Yes	<i>Taylor-Morley-Simon, Inc. v. Michigan Mut. Ins. Co.</i> , 645 F. Supp. 596 (E.D. Mo. 1986), aff'd, 822 F.2d 1093 (8th Cir. 1987); <i>Amerisure Mutual Ins. Co. v. Paric Corp.</i> , 2005 WL 2708873 (D. Mo. Oct. 21, 2005)
Montana	Yes	<i>Lindsay Drilling & Contracting v. U.S. Fid. & Guar. Co.</i> , 676 P.2d 203 (Mont. 1984); <i>Portal Pipe Line Co. v. Stonewall Ins. Co.</i> , 845 P.2d 746 (Mont. 1993)
Nebraska	Yes	<i>Auto-Owners Ins. Co. v. Home Pride Cos.</i> , 684 N.W.2d 571 (Neb. 2004)
Nevada	Yes	<i>Gary G. Day Constr. Co. v. Clarendon America Ins. Co.</i> , 459 F.Supp. 2d 1039 (D. Nev. 2006)
New Hampshire	Yes	<i>High Country Assoc. v. New Hampshire Ins. Co.</i> , 648 A.2d 474 (N.H. 1994)
New Jersey	No	<i>Firemen's Ins. Co. of Newark v. National Union Fire Ins. Co.</i> , 387 N.J. Super. 434, 904 A.2d 754 (2006); <i>Weedo v. Stone-E-Brick, Inc.</i> , 405 A.2d 788 (N.J. 1979) (not directly addressig "occurrence" but cited for that proposition and "business risk" analysis generally)
New Mexico	Yes	<i>O'Rourke v. New Amsterdam Cas. Co.</i> , 362 P.2d 790 (N.M. 1961)
New York	No	<i>George A. Fuller Co. v. U.S. F.&G.</i> , 200 A.D.2d 255 (App. Div.-1st Dept. 1994); <i>Pavarini Construction Co. v. Continental Ins. Co.</i> 304 A.D. 2d 501 (App. Div.-1st Dept. 2003); see also <i>C.O. Falter, Inc. v. Crum & Forster Ins. Cos.</i> , 361 N.Y.S.2d 968 (N.Y. Sup. Ct. 1974); <i>Willets Ponit Contracting Corp. v. Hartford Ins. Group</i> , 429 N.Y.S. 2d 230 (N.Y. App. Div. 1980), aff'd, 423 N.E.2d 42 (N.Y. 1981); <i>J.Z.G. Resources, Inc. v. King</i> , 987 F.2d 98 (2nd Cir. 1993), cert. denied, 510 U.S. 993 (1993)
North Carolina	No	<i>NAS Sur. Group. v. Precision Wood Products, Inc.</i> , 271 F. Supp. 2d 776 (N.D. N.C. 2003); <i>Wm. C. Vick Constr. Co. v. Pa. Nat'l Mut. Cas. Ins. Co.</i> , 52 F. Supp. 2d 569 (E.D. N.C. 1999), aff'd, 213 F.3d 634 (4th Cir. 2000)

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	Status	Case Law
North Dakota	Yes	<i>ACUITY v. Burd & Smith Constr., Inc.</i> , 721 N.W.2d 33 (N.D. 2006); <i>Fisher v. Am. Family Mut. Ins. Co.</i> , 579 N.W.2d 599 (N.D. 1998)
Ohio	Yes	<i>Heile v. Herrmann</i> , 736 N.E.2d 566 (Ohio App. 1999); <i>Acme Steak Co. v. Great Lakes Mech. Co.</i> , 2000 WL 1506199 (Ohio App. Sept. 29, 2000); <i>Erie Ins. Exch. V. Colony Dev. Corp.</i> , 736 N.E.2d 941 (Ohio App. 1999)
Oklahoma	Unclear	<i>U.S. Fid. & Guar. Co. v. Briscoe</i> , 239 P.2d 754 (Okl. 1951); <i>Dodson v. St. Paul Ins. Co.</i> , 812 P.2d 372 (Okl. 1991) (interpreting older policy form)
Oregon	Unclear	<i>Oak Crest Constr. Co. v. Austin Mut. Ins. Co.</i> , 998 P.2d 1254 (Or. 2000); <i>Kisle v. St. Paul Fire & Marine Ins. Co.</i> , 262 Or. 1, 495 P.2d 1198 (1972)
Pennsylvania	No	<i>Kvaerner Metals v. Commercial Union Ins. Co.</i> , 908 A.2d 888 (Pa. 2006)
Rhode Island	Unclear	<i>Aetna Cas. & Sur. Co. v. Consulting Environmental Engineers, Inc.</i> , 1989 WL 1110231 (R.I. Super. Ct. 1989)
South Carolina	Yes	<i>Auto Owners Ins. Co. v. Virginia T. Newman and Trinity Construction</i> , Opinion No. 26450, March 10, 2008; <i>Okatie Hotel Group v. Amerisure Ins. Co.</i> , 2006 WL 91577 (D.S.C. Jan 13, 2006); <i>Bituminous Cas. Corp. v. Altman Builders, Inc.</i> 2006 WL 2137233 (D.S.C. 2006)
South Dakota	Yes	<i>Corner Constr. Co. v. U.S. Fid. & Guar. Co.</i> , 638 N.W.2d 887 (S.D. 2002)
Tennessee	Yes	<i>Travelers Indemn. Co. of Am. v. Moore & Assocs.</i> , 216 S.W.3d 302 (Tenn. 2007)
Texas	Yes	<i>Lamar Homes, Inc. v. Mid-Continent Casualty Company</i> , 242 S.W.2d 1 (Tex. 2007)
Utah	Unclear	<i>H.E. Davis & Sons, Inc. v. North Pacific Ins. Co.</i> , 248 F. Supp. 2d 1079 (D. Utah 2002); <i>Great Am. Ins. Co. v. Woodside Homes Corp.</i> , 448 F. Supp. 2d 1275 (D. Utah 2006)
Vermont	Undecided	
Virginia	No	<i>Travelers Indemn. Co. v. Miller Bldg. Corp.</i> , 142 F. Appx. 147 (4th Cir. 2004); <i>Hotel Roanoke Conference Center Comm'n. v. Cincinnati Ins. Co.</i> , 303 F. Supp. 2d 784 (W.D. Va. 2004)
Washington	Yes	<i>Yakima Cement Products Co. v. Great Am. Ins. Co.</i> , 608 P.2d 254 (Wash. 1980); <i>Overton v. Consolidated Ins. Co.</i> , 145 Wash.2d 417, 38 P.3d 322 (Wash. 2002)
West Virginia	No	<i>Corder v. Wm. W. Smith Excavating Co.</i> , 556 S.E.2d 77 (W. Va. 2001); <i>Groves v. Erie Ins. Co.</i> , 333 F. Supp. 2d 568 (D.W. Va. 2004)
Wisconsin	Yes	<i>Am. Family Mut. Ins. Co. v. Am. Girl, Inc.</i> , 673 N.W.2d 65 (Wis. 2004); <i>Kalchthaler v. Keller Constr. Co.</i> , 591 N.W.2d 169 (Wis. Ct. App. 1999); <i>Glendenning's Limestone & Ready-Mis Co., Inc. v. Reimer</i> , 721 N.W.2d 704 (Wis. App. 2006)
Wyoming	Undecided	

¹ Please refer to the case law and corresponding color coded chart for further explanation of "Yes."

² Please refer to the case law and corresponding color coded chart for further explanation of "No."