

# Defective Construction as an “Occurrence”

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Standard commercial general liability (“CGL”) policies cover bodily injury and property damage caused by an “occurrence,” which is in turn defined as an “accident.” For claims arising out of defective construction, courts have applied different interpretations of the “occurrence” definition.

There are many nuances among the states on this issue, although generally most fall into one of three analytical camps:

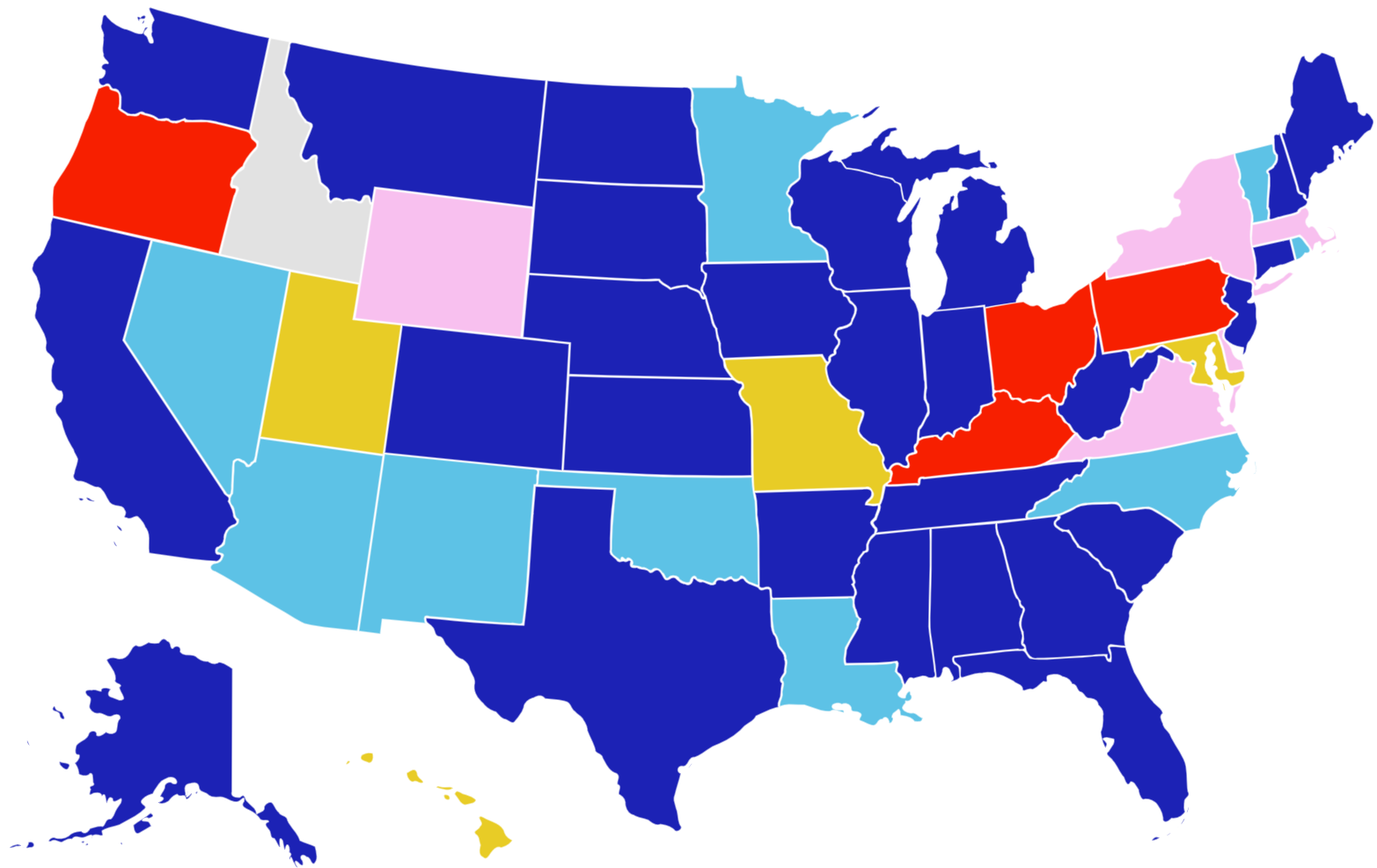
- (1) Some states hold that defective or faulty workmanship is an “occurrence,” provided the construction contractor did not intend to cause damage. This analytical framework reserves the analysis concerning whether certain aspects or items of damage (for example, the faulty work itself) are uncovered due to exclusionary provisions.
- (2) Many states have held that defective or faulty workmanship which causes damage to other work or property is an “occurrence.” This framework can often lead to coverage for most damage that results from the faulty work – for example, the cost to replace wet dry wall as a result of faulty window installation. However, the analysis may be complicated by court interpretation of what constitutes “other work or property.” For general contractors in some states, the entire construction project might be considered their work, leaving them without coverage despite the fact that, at first glance, the case law seems favorable.
- (3) Finally, a small number of states find that defective or faulty workmanship is never an “occurrence.” Courts taking this approach typically cite to one of two rationales: either the contractor was contractually obligated to provide work free from defect; or the contractor should have foreseen that it would be responsible for correcting defects in its work. Courts will often cite to the concept that correcting deficient work is a “business risk” for contractors which is not intended to be covered by insurance.

The map on the following page identifies how each state has analyzed the issue of whether defective construction qualifies as an “occurrence.” A state colored dark blue indicates that the jurisdiction’s highest court has found defective construction to be an “occurrence.” These states, almost universally, follow the reasoning set forth in number 1, above. States with statutes to the same effect are likewise shaded dark blue, and the statute identified in the table under Relevant Authority.

A state colored dark red, conversely, indicates that the jurisdiction’s highest court has held that defective construction is never an occurrence. These states generally follow the framework set forth in number 3, above.


















Light blue and light red shading show trends, based on lower court or federal court authority. In these jurisdictions, courts may take the “middle of the road” approach set out in number 2, above. Often, in these states, whether the insured has coverage is dependent upon other factors, such as whether the court views the entire project as the contractor’s work.


Lastly, where caselaw and/or statutes are conflicting or unclear, the state is shaded yellow.
















## Defective Construction as an “Occurrence”

- Highest Court found defective construction 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.
- Unclear, cases/legislation conflict.
- No decision.

| STATE   | POLICYHOLDER IMPACT | RELEVANT AUTHORITY  |
|---|---------------------|---|
| <br>Alabama                | Favorable           | <i>Owners Ins. Co. v. Jim Carr Homebuilder, LLC</i> , 157 So.3d 148 (Ala. 2014).  |
| <br>Alaska                 | Favorable           | <i>Fejes v. Alaska Ins. Co.</i> , 984 P.2d 519 (Alaska 1999).   |
| <br>Arizona                | Favorable           | <i>Lennar Corp. v. Auto-Owners Ins. Co.</i> , 151 P.3d 538 (Ariz. Ct. App. 2007).   |
| <br>Arkansas               | Favorable           | Ark. Code Ann. § 23-79-155; <i>J-McDaniel Co., Inc. v. Mid-Continent Cas. Co.</i> , 761 F.3d 916 (8th Cir. 2014); <i>Lexicon, Inc. v. Ace Am. Ins. Co.</i> , 634 F.3d 423 (8th Cir. 2011); <i>Essex Ins. Co. v. Holder</i> , 261 S.W.3d 456 (Ark. 2008).  |
| <br>California             | Favorable           | <i>Navigators Specialty Ins. Co. v. Moorefield Constr., Inc.</i> , 6 Cal. App. 5th 1258 (2016); <i>Anthem Elecs., Inc. v. Pac. Employers Ins. Co.</i> , 302 F.3d 1049 (9th Cir. 2002); but see <i>Hogan v. Midland Nat'l Ins. Co.</i> , 476 P.2d 825 (Cal. 1970).   |
| <br>Colorado              | Favorable           | <i>Greystone Constr. Inc. v. Nat'l Fire &amp; Marine Ins. Co.</i> , 661 F.3d 1272 (10th Cir. 2011); Colo. Rev. Stat. § 13-20-808 (2010).  |
| <br>Connecticut          | Favorable           | <i>Capstone Bldg. Corp. v. Am. Motorists Inc. Co.</i> , 67 A.3d 961 (Conn. 2013); <i>Scottsdale Ins. Co. v. R.I. Pools Inc.</i> , 710 F.3d 488 (2d Cir. 2013).  |
| <br>Delaware             | Unfavorable         | <i>Builders, Inc. v. Harleysville Mut. Ins. Co.</i> , 137 F. Supp.2d 517 (D. Del. 2001), aff'd 2003 WL 146486 (3rd Cir. Jan. 21, 2003).   |
| <br>District of Columbia | Favorable           | <i>Commonwealth Lloyds Ins. Co. v. Marshall, Neal &amp; Pauley, Inc.</i> , 32 F. Supp.2d 14 (D.D.C 1998).   |
| <br>Florida              | Favorable           | <i>Auto-Owners Ins. Co. v. Pozzi Window Co.</i> , 984 So. 2d 1241 (Fla. 2008); <i>U.S. Fire Ins. Co. v. J.S.U.B., Inc.</i> , 979 So.2d 871 (Fla. 2007).   |
| <br>Georgia              | Favorable           | <i>Am. Empire Surplus Lines Ins. Co. v. Hathaway Dev. Co., Inc.</i> , 707 S.E.2d 369 (Ga. 2011).  |
| <br>Hawaii               | Unclear             | <i>Evanston Ins. Co. v. Nagano</i> , 891 F. Supp. 2d 1179 (D. Haw. 2012); Haw. Rev. Stat. § 431:1-217 (2011); <i>State Farm Fire &amp; Cas. Co. v. Vogelgesang</i> , 834 F. Supp. 2d 1026 (D. Haw. 2011); <i>Group Builders, Inc. v. Admiral Ins. Co.</i> , 231 P.3d 67 (Haw. 2010); <i>Burlington Ins. Co. v. Oceanic Design &amp; Constr., Inc.</i> , 383 F.3d 940 (9th Cir. 2004). |
| <br>Idaho                | No authority        | N/A   |
| <br>Illinois             | Favorable           | <i>ACUITY, a Mut. Ins. Co. v. MI Homes of Chicago, LLC, et al.</i> , 234 N.E.3d 97 reh'g denied (Jan. 22, 2024)   |
| <br>Indiana              | Favorable           | <i>Sheehan Constr. Co., Inc. v. Cont'l Cas. Co.</i> , 935 N.E.2d 160 (Ind. 2010).   |
| <br>Iowa                 | Favorable           | <i>Nat'l Sur. Corp. v. Westlake Invs.</i> , 880 N.W.2d 724 (Iowa 2016).   |
| <br>Kansas               | Favorable           | <i>Wilson v. Farmers Ins. Exch.</i> , 233 P.3d 767 (Kan. Ct. App. 2010); <i>Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co.</i> , 137 P.3d 486 (Kan. 2006).   |

| STATE  | POLICYHOLDER IMPACT | RELEVANT AUTHORITY  |
|--|---------------------|---|
|  Kentucky         | Unfavorable         | <i>Martin/Elias Properties, LLC v. Acuity</i> , 544 S.W.3d 639 (Ky. 2018), <i>Cincinnati Ins. Co. v. Motorists Mut. Ins. Co.</i> , 306 S.W.3d 69 (Ky. 2010); but see <i>Bituminous Cas. Co. v. Kenway Contracting Inc.</i> , 240 S.W.3d 633 (Ky. 2007).   |
|  Louisiana        | Favorable           | <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            | Favorable           | <i>Baywood Corp. v. Maine Bonding &amp; Cas. Co.</i> , 628 A.2d 1029 (Me. 1993); <i>Peerless Ins. Co. v. Brennon</i> , 564 A.2d 383 (Me. 1989).   |
|  Maryland         | Unclear             | <i>French v. Assurance Co. of Am.</i> , 448 F.3d 693 (4th Cir. 2006); <i>Lerner Corp. v. Assurance Co. of Am.</i> , 707 A.2d 906 (Md. Ct. Spec. App. 1998); but see <i>Harbor Court Assocs. v. Kiewit Constr. Co.</i> , 6 F. Supp. 2d 449 (D. Md. 1998).  |
|  Massachusetts    | Unfavorable         | <i>All Am. Ins. Co. v. Lampasona Concrete Corp.</i> , 120 N.E.3d 1258, 1261-62 (Mass. App. Ct. 2019); <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         | Favorable           | <i>Skanska USA Building Inc. v. MAP Mechanical Contractors, Inc.</i> , 939 N.W.2d 446, (Mich. 2020); <i>Radenbaugh v. Farm Bureau Gen. Ins. Co. of Michigan</i> , 610 N.W.2d 272 (Mich. Ct. App. 2000).   |
|  Minnesota        | Favorable           | <i>King's Cove Marina, LLC v. Lambert Commer. Constr. LLC</i> , 937 N.W.2d 458 (Minn. Ct. App. 2019); <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     | Favorable           | <i>Architex Ass'n v. Scottsdale Ins. Co.</i> , 27 So.3d 1148 (Miss. 2010).  |
|  Missouri       | Unclear             | <i>Am. Family Mut. Ins. Co. v. Mid-American Grain Distributors, LLC</i> , No. 19-2050, 958 F.3d 748 (Mo. Ct. App. 2020); <i>Village at Deer Creek Homeowners Ass'n, Inc. v. Mid-Continent Cas. Co.</i> , 432 S.W.3d 231 (Mo. Ct. App. 2014); <i>D.R. Sherry Constr., Ltd. v. Am. Family Mut. Ins. Co.</i> , 316 S.W.3d 899 (Mo. 2010); <i>Columbia Mut. Ins. v. Epstein</i> , 239 S.W.3d 667 (Mo. Ct. App. 2007). |
|  Montana        | Favorable           | <i>21st Century N. Am. Ins. Co. v. Frost</i> , 516 P.3d 148 (Mont. 2022); <i>Farmers Ins. Exch. v. Wessel</i> , 477 P.3d 1101 (Mont. 2020); <i>Employers Mut. Cas. Co. v. Fisher Builders, Inc.</i> , 371 P.3d 375 (Mont. 2016).  |
|  Nebraska       | Favorable           | <i>Drake-Williams Steel, Inc. v. Cont'l Cas. Co.</i> , 883 N.W.2d 60 (Neb. 2016); <i>Cizek Homes v. Columbia Nat'l Ins. Co.</i> , 853 N.W.2d 28 (Neb. App. 2014); <i>Auto-Owners Ins. v. Home Pride Companies</i> , 684 N.W.2d 571 (Neb. 2004).   |
|  Nevada         | Favorable           | <i>Big-D Const. Corp. v. Take it for Granite Too</i> , 917 F. Supp. 2d 1096 (D. Nev. 2013); <i>Gary G. Day Constr. Co. v. Clarendon Am. Ins. Co.</i> , 459 F. Supp. 2d 1039 (D. Nev. 2006).   |
|  New Hampshire  | Favorable           | <i>Concord Gen. Mut. Ins. Co. v. Green &amp; Co. Building &amp; Develop. Corp.</i> , 8 A.3d 24 (N.H. 2010); <i>High Country Assocs. v. New Hampshire Ins. Co.</i> , 648 A.2d 474 (N.H. 1994); <i>Webster v. Acadia Ins. Co.</i> , 934 A.2d 567 (N.H. 2007).   |
|  New Jersey     | Favorable           | <i>Cypress Point Condo Ass'n, Inc. v. Adria Towers LLC</i> , 143 A.3d 273 (N.J. 2016).  |
|  New Mexico     | Favorable           | <i>Pulte Homes of New Mexico, Inc. v. Indiana Lumbermens Ins. Co.</i> , 367 P.3d 869 (N.M. Ct. App. 2015).  |
|  New York       | Unfavorable         | <i>Transp. Ins. Co. v. AARK Constr. Group</i> , 526 F. Supp. 2d 350 (E.D.N.Y. 2007); <i>George A. Fuller Co. v. U.S. Fid. &amp; Guar. Co.</i> , 613 N.Y.S.2d 152 (N.Y. App. Div. 1994); <i>J.Z.G. Resources, Inc. v. King</i> , 987 F.2d 98 (2d Cir. 1993); but see <i>Black &amp; Veatch Corp. v. Aspen Ins. (Uk) Ltd.</i> , 882 F.3d 952, 954 (2018).   |
|  North Carolina | Favorable           | <i>Builders Mut. Ins. Co. v. Mitchell</i> , 709 S.E.2d 528 (N.C. Ct. App. 2011); <i>ABT Bldg. Prods. Corp. v. Nat'l Union Fire Ins. Co.</i> , 472 F.3d 99 (4th Cir. 2006); <i>Travelers Indem. Co. v. Miller Bldg. Corp.</i> , 97 Fed. Appx. 431 (4th Cir. 2004).   |
|  North Dakota   | Favorable           | <i>K&amp;L Homes, Inc. v. Am. Family Mut. Ins. Co.</i> , 2013 ND 57, 829 N.W.2d 724 (2013); <i>ACUITY v. Burd &amp; Smith Contr., Inc.</i> , 2006 ND 187, 721 N.W.2d 33 (2006).   |



| STATE  | POLICYHOLDER IMPACT | RELEVANT AUTHORITY   |
|--|---------------------|--|
| <br>Ohio            | Unfavorable         | <i>Ohio Northern University v. Charles Construction Services, Inc.</i> , 155 Ohio St.3d 197, 120 N.E.3d 762 (Ohio 2018); <i>Allied Roofing, Inc. v. W. Reserve Group</i> , 2013 Ohio 1637 (2013); <i>Westfield Ins. Co. v. Custom Agri Sys., Inc.</i> , 2012 Ohio 4712, 979 N.E.2d 269 (Ohio 2012).  |
| <br>Oklahoma        | Favorable           | <i>MTI, Inc. v. Empls. Ins. Co. of Wausau</i> , 913 F.3d 1245 (10th Cir. 2019); <i>Essex Ins. Co. v. Sheppard &amp; Sons Constr.</i> , 2015 WL 4132919 (W.D. Okla. 2015); <i>Employers Mut. Cas. Co. v. Grayson</i> , 2008 WL 2278593 (W.D. Okla. 2008); <i>BP Am., Inc. v. State Auto Prop. &amp; Cas. Ins. Co.</i> , 148 P.3d 832 (2005).                                      |
| <br>Oregon          | Unfavorable         | <i>Oak Crest Constr. Co. v. Austin Mut. Ins. Co.</i> , 998 P.2d 1254 (Or. 2000).   |
| <br>Pennsylvan...   | Unfavorable         | <i>MMG Ins. Co. v. Floor Assocs.</i> , 2017 WL 3394619 (E.D. Pa. Aug. 8, 2017); <i>Kvaerner Metals Division of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.</i> , 908 A.2d 888 (Pa. 2006).   |
| <br>Rhode Island    | Favorable           | <i>General Acc. Ins. Co. of America v. American Nat. Fireproofing, Inc.</i> , 716 A.2d 751 (RI 1998).  |
| <br>South Carolina | Favorable           | S.C. Code Ann. § 38-61-70, <i>Auto-Owners Ins. Co. v. Rhodes</i> , 748 S.E.2d 781 (S.C. 2013); <i>Harleysville Mut. Ins. Co. v. State</i> , 736 S.E.2d 651 (Nov. 21, 2012); <i>Crossman Communities of N. Carolina, Inc. v. Harleysville Mut. Ins. Co.</i> , 717 S.E.2d 589 (S.C. 2011).   |
| <br>South Dakota  | Favorable           | <i>Owners Ins. Co. v. Tibke Constr., Inc.</i> , 901 N.W.2d 80 (S.D. 2017); <i>Corner Constr. Co. v. U.S. Fid. &amp; Guar. Co.</i> , 638 N.W.2d 887 (S.D. 2002).  |
| <br>Tennessee     | Favorable           | <i>Travelers Indem. Co. of Am. v. Moore &amp; Assocs.</i> , 216 S.W.3d 302 (Tenn. 2007).   |
| <br>Texas         | Favorable           | <i>United States Metals, Inc. v. Liberty Mut. Grp., Inc.</i> , 490 S.W.3d 20 (Tex. 2015); <i>Ewing Constr. Co. v. Amerisure Ins. Co.</i> , 420 S.W.3d 30 (Tex. 2014); <i>Lamar Homes, Inc. v. Mid-Continent Cas. Co.</i> , 242 S.W.3d 1 (Tex. 2007).   |
| <br>Utah          | Unclear             | <i>Cincinnati Ins. Co. v. AMSCO Windows</i> , 921 F. Supp. 2d 1226 (D. Utah 2013); <i>Cincinnati Ins. Co. v. Linford Bros. Glass Co.</i> , 2010 WL 520490 (D. Utah Feb. 9, 2010); <i>H.E. Davis &amp; Sons, Inc. v. N. Pac. Ins. Co.</i> , 248 F. Supp. 2d 1079 (D. Utah 2002); but see <i>Great Am. Ins. Co. v. Woodside Homes Corp.</i> , 448 F. Supp. 2d 1275 (D. Utah 2006). |
| <br>Vermont       | Favorable           | <i>Fine Paints of Europe, Inc. v. Acadia Ins. Co.</i> , No. 2:08-CV-81, 2009 WL 819466 (D. Vt. Mar. 24, 2009); <i>Transcont'l Ins. Co. v. Engelberth Constr., Inc.</i> , 2007 WL 3333465 (D. Vt. Nov. 8, 2007).  |
| <br>Virginia      | Unfavorable         | <i>Stanley Martin Cos. v. Ohio Cas. Group</i> , 313 Fed. Appx. 609 (4th Cir. 2009); <i>Hotel Roanoke Conference Ctr. Comm'n v. Cincinnati Ins. Co.</i> , 303 F. Supp. 2d 784 (W.D. Va. 2004), aff'd 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).   |
| <br>Washington    | Favorable           | <i>Yakima Cement Prods. Co. v. Great Am. Ins. Co.</i> , 608 P.2d 254 (Wash. 1980).   |
| <br>West Virginia | Favorable           | <i>Cherrington v. Erie Ins. Prop. &amp; Cas. Co.</i> , 745 S.E.2d 508 (W. Va. 2013).   |
| <br>Wisconsin     | Favorable           | <i>Uneeda Rest, LLC v. Rick Hexum</i> , No. 2019AP1357, 2020 WL 4300847 (Wis. Ct. App. 2020); <i>Schinner v. Gundrum</i> , 833 N.W.2d 685 (Wis. 2013); <i>Glendenning's Limestone &amp; Ready-Mix Co. v. Reimer</i> , 721 N.W.2d 704 (Wis. Ct. App. 2006); <i>Am. Family Mut. Ins. Co. v. Am. Girl, Inc.</i> , 673 N.W.2d 65 (Wis. 2004).  |
| <br>Wyoming       | Unfavorable         | <i>Great Divide Ins. Co. v. Bitterroot Timberframes of Wyoming, LLC</i> , 2006 WL 3933078 (D. Wyo. Oct. 20, 2006).   |

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For more information or questions on defective construction as an “occurrence”, please contact us at [coverage@sdvlaw.com](mailto:coverage@sdvlaw.com).