



Construction Defect Resource Guide

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Edited by:

Andrew Sanchez
Munich Reinsurance America, Inc.
www.munichreamerica.com

Special thanks to:

William E. McGrath, Jr.
Smith, Stratton, Wise,
Heher & Brennan, LLP
2 Research Way
Princeton, New Jersey 08540
Tel.: +1 609 924-6000
Fax: +1 609 987-6651
www.smithstratton.com

Introduction

Munich Re is pleased to provide this guide that may be helpful in understanding certain key issues impacting construction defect claims. This review consists of a survey of case law and statutes that aid in the analysis of insurance coverage issues impacting construction defect claims. 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 the fifty state surveys of case law on the issues that arise in nearly every claim: whether the alleged construction defect constitutes an occurrence; does property damage exist; the applicable trigger of coverage; and the allocation of loss, perhaps over multiple years and policies. Please note that there are many other insurance coverage issues that arise, but the issues we have surveyed appear in virtually all construction defect 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 the 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.

Cases are grouped by state and contain the citation, an 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. 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. Legislative action on construction defect claims is an active area in the law, and should always be reviewed in addition to case law.

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, approach, or positions of Munich Re, its affiliates or subsidiaries. Rather, it is simply offered as an aid to your independent analysis and research.

Is there an occurrence?

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. An analysis of coverage in a construction defect claim should focus on determining whether the underlying claim or suit comes within the scope of the insuring agreement of the policy including whether the injury or property damage was caused by a policy-defined occurrence.

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

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Alabama	Pennsylvania Nat'l. Mut. Cas. Ins. Co. v. Snider, 2015 U.S. App. LEXIS 5550 (11th Cir. 2015)	Homeowners asserted several claims against developer, including cost of completing unfinished work, diminution in value, and repairing faulty work.	No occurrence	No occurrence where damages largely caused by contractor abandoning job and where homeowner failed to prove covered property damage.
	Pennsylvania Nat'l. Mut. Cas. Ins. Co. v. Snider, 996 F. Supp. 2d 1173 (M.D. Ala. 2014) aff'd 2015 U.S. App. LEXIS 5550 (11th Cir. 2015)	Homeowners claim against their own insurer for construction defects couched as contract and warranty claims.	No occurrence	Breach of contract claims are essentially the opposite of an accident.
	FCCI Ins. Co. v. Capstone Process Sys., LLC, 49 F. Supp. 3d 995 (N.D. Ala. 2014)	Contractor's work on agricultural vessel failed.	No occurrence	Faulty workmanship itself is not an occurrence.
	Owners Ins. Co. v. Jim Carr Homebuilder, LLC, 157 So. 3d 148 (Ala. 2014)	Contractor asserted claim for coverage for arbitration award obtained by homeowners for various defects.	Occurrence	While repair or replacement of faulty workmanship is not covered, resulting damage to other work of insured contractor may still constitute an occurrence.
	Berry v. S.C. Ins. Co., 495 So. 2d 511 (Ala. 1985)	Contractor sued for faulty construction of a home addition.	No occurrence	Damage related to the work done pursuant to contract is not an accident.
	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.
	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.
Alaska	Fejes v. Alaska Ins. Co., 984 P.2d 519 (Alaska 1999)	Contractor sued for faulty work on curtain drain leading to damaged septic system.	Occurrence	Drain failure was an accident, which was neither expected nor intentional.
Arizona	Quanta Indem. Co. v. Amberwood Dev. Inc., 2014 U.S. Dist. LEXIS 40211 (D. Az. 2014)	Multiple actions against developers alleged foundation, excavation, and construction defects.	Occurrence	Allegations of faulty workmanship and soil movement constitute an occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
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.
	Lennar Corp. v. Auto-Owners Ins. Co., 151 P.3d 538 (Ariz. Ct. App. 2007)	Developer sued by homeowner for cracks, baseboard separation, and sticking doors.	No occurrence	Continued exposure to faulty construction leading to property damage constitutes an occurrence.
	U.S. Fid. & Guar. Corp. v. Advance Roofing & Supply Co., 788 P.2d 1227 (Ariz. Ct. App. 1990)	Roofing contractor sued for faulty work on roofs.	No occurrence	Faulty workmanship alone does not constitute an occurrence.
Arkansas ¹	J-McDaniel Constr. Co. v. Mid-Continent Cas. Co., 761 F.3d 916 (8th Cir. 2014)	Contractor sued for breach of contract arising from defective construction of home.	No occurrence	Defective workmanship standing alone—resulting in damages only to the work product itself—is not an occurrence.
	Lexicon, Inc. v. ACE Am. Ins. Co., 634 F. 3d 423 (8th Cir. 2010)	Contractor sued for defective fabrication of six silos, leading to collapse, damaged silos and equipment.	Occurrence and no occurrence	Damages arising solely from faulty workmanship does not constitute occurrence; coverage exists for other damage.
	Allstate Indem. Co. v. Bobbitt, 2010 U.S. Dist. LEXIS 135190 (E.D. Ark. 2010)	Home purchasers sued building contractor, alleging defective siding and construction work resulted in exterior wall and stucco cracks.	No occurrence	Alleged defective siding and construction work is not an accident and, hence, not an occurrence.
	Essex Ins. Co. v. Holder, 261 S.W. 3d 456 (Ark. 2008)	Homebuilder sued for construction delays and defective construction.	No occurrence	Faulty workmanship is not an accident; instead it is a foreseeable occurrence for which risk performance bonds exist.
California	Ameron Intl. Corp. v. Am. Home Assurance Co., 2011 U.S. Dist. LEXIS 61486 (C.D. Cal. 2011)	Contractor sued for supplying defective concrete for highway project, leading to project delays and failed drill shafts.	Occurrence	Unintentional supplying of defective products constitutes occurrence, if contractor did not intentionally supply faulty product.
	Allstate Ins. Co. v. Morgan, 806 F. Supp. 1460 (N.D. Cal. 1992)	Home purchasers sued seller for not disclosing certain facts.	No occurrence	Misrepresentation does not constitute an accident leading to property damage.

¹Arkansas legislature passed a law in 2011 defining “occurrence” more broadly than the listed decisions, but has not been applied retroactively. See A.C.A. § 23-79-155 (2011)

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Colorado	TCD, Inc. v. Am. Family Mut. Ins. Co., 296 P.3d 255 (Colo. Ct. App. 2012)	Contractor sued for faulty roof installation.	No occurrence	Poor workmanship alone does not constitute an occurrence.
	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 improper installation of, and resulting damage to, wood floors.	No occurrence	Damages arising solely from faulty workmanship are not considered as resulting from an occurrence.
	Greystone Constr., Inc. v. Natl. Fire & Marine Ins. Co., 661 F. 3d 1272 (10th Cir. 2011), modified, 2011 U.S. App. LEXIS 26082 (10th Cir.)	Contractor sued for defective construction of foundation.	Occurrence	Damage to other property caused by poor workmanship is neither expected nor intended.
Connecticut	Travelers Cas. and Sur. Co. of Am. v. Netherlands Ins. Co., 95 A.3d 1031 (Conn. 2014)	Insurer sought contribution from other insurers for defense of contractor in construction defect litigation.	Occurrence	Continuing damage resulting from water intrusion is an occurrence in each year of property damage.
	Capstone Bldg. Corp. v. Am. Motorists Ins. Co., 67 A.3d 961 (Conn. 2013)	Contractor sued for defective construction of university housing, leading to water damage and structural problems.	Occurrence	Unintended defective work that damaged nondefective property could constitute an occurrence.
	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.
	Philbin Bros., LLC v. Hartford Fire Ins. Co., 2008 Conn. Super. LEXIS 3301 (Conn. Super. 2008)	Homebuyers sued builder, asserting faulty construction and failure to warn of related risks.	No occurrence	CGL policy does not cover insured's work itself; it insures against negligence from performance of work.
Delaware	Westfield Ins. Co., Inc. v. Miranda & Hardt Contr. & Bldg. Servs., LLC, 2015 Del. Super. LEXIS 160 (Del. Super. 2015)	Defendant-contractor sued for various defects in home construction.	No occurrence	No occurrence or duty to defend where allegations are of defective workmanship and property damage caused by a third-party.
Florida	Auto-Owners Ins. Co. v. Pozzi Window Co., 984 So. 2d 1241 (Fla. 2008)	Contractor sued for faulty installation of windows, leading to water damage.	Occurrence	Defective installation of windows constitutes an occurrence.
	U.S. Fire Ins. Co. v. J.S.U.B., Inc., 979 So. 2d 871 (Fla. 2007)	Subcontractor's use of poor soil and faulty work led to damaged foundation and drywall.	Occurrence	Faulty workmanship not expected by the insured constitutes an occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Florida	Rolyn Cos., Inc. v. R & J Sales of Tex., Inc. 671 F. Supp. 2d 1314 (S.D. Fla. 2007)	Subcontractor 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 expected nor intended from the standpoint of insured, faulty work was an occurrence.
Georgia	Taylor Morrison Services Inc. v. HDI-Gerling America Insurance Co., 746 S.E. 2d 587 (Ga. 2013)	Homeowner sued for defective construction of homes, leading to water intrusion and cracks in foundation.	Occurrence	Damage to property other than the insured's completed work is not required to establish an occurrence.
	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 faulty workmanship.	Occurrence	Faulty workmanship constitutes an occurrence where it causes unforeseen or unexpected damage to other property.
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 lanai's waterproofing.	No occurrence	Abitrators found insured deliberately failed to waterproof the lanais, and such intentional actions do not constitute an occurrence.
	Group Builders, Inc. v. Admiral Ins. Co., 231 P.3d 67 (Haw. Ct. App. 2010)	Contractor sued for faulty work leading to mold and hotel closure.	No occurrence	Construction defects do not constitute an occurrence and breach of contract and tort-based claims are based on defective work.
	Burlington Ins. Co. v. Oceanic Design & Constr., Inc., 383 F.3d 940 (9th Cir. 2004)	Homeowner asserted breach of contract and negligence claims for faulty construction of foundation, causing settling and related damage.	No occurrence	Breach of contract claims, even with related negligence claims, does not constitute an occurrence.
Illinois	Nautilus Ins. Co. v. Board of Directors of Regal Lofts Condominium Ass'n., 764 F.3d 726 (7th Cir. 2014)	Developer sued for faulty workmanship in condominium construction.	No occurrence	Damages that are the ordinary consequences of faulty workmanship do not constitute an occurrence.
	Design Concrete Foundations, Inc. v. Erie Ins. Prop. & Cas. Co., 2014 Ill. App. Unpub. LEXIS (Ill. App. Ct. 2014)	Homeowners sued contractor for faulty work in constructing foundation.	No occurrence	Repair of defectively-constructed foundation was the natural consequence of faulty workmanship; hence there is no occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
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	Damage is to materials furnished by the insured; no occurrence is alleged.
	Milwaukee Mut. Ins. Co. v. J.P. Larsen, Inc., 956 N.E. 2d 524 (Ill. App. Ct. 2011)	Contractors sued for installing leaking windows and remedial work.	Occurrence	The faulty work caused damage beyond work performed by subcontractor.
	Country Mut. Ins. Co. v. Carr, 867 N.E. 2d 1157 (Ill. App. Ct. 2007)	Contractor sued for faulty backfill operations, causing damage to basement walls.	Occurrence	Insured did not expect nor intend for damage to the basement wall.
Indiana	Sheehan Constr. Co., Inc. v. Cont'l Cas. Co., 938 N.E. 2d 685 (Ind. 2010)	Contractor sued for faulty work leading to water leaks in the home.	Occurrence	Faulty workmanship constitutes an occurrence if unexpected and not foreseeable.
	Trinity Homes, LLC v. Ohio Cas. Ins. Co., 629 F. 3d 653 (7th Cir. 2010)	Contractor sued for faulty work at home allowing water to enter property and cause damage.	Occurrence	Damage to a home from defective work constitutes occurrence unless such work was intentionally faulty.
Iowa	Liberty Mut. Ins. Co. v. Pella Corp., 650 F.3d 1161 (8th Cir. 2011)	Window manufacturer sued for defective product, resulting in damage to products and building.	No occurrence	Knowledge of defect establishes that faulty work was not an unexpected event.
	W.C. Stewart Constr., Inc. v. Cincinnati Inc. Co., 2009 Iowa App. LEXIS 273 (Iowa Ct. App. 2009), aff'd, 770 N.W.2d 850 (Iowa Ct. App. 2009)	Insured contractor 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 work done by insured, no occurrence.
	Pursell Constr., Inc. v. Hawkeye- Sec. Ins. Co., 596 N.W.2d 67 (Iowa 1999)	Contractor hired to build homes above flood plain. Houses improperly constructed in flood plain requiring owner to raise the level of the houses.	No occurrence	Contractor's failure to build the houses above the flood plain constituted defective workmanship.
	Yegge v. Integrity Mut. Ins. Co., 534 N.W.2d 100 (Iowa 1995)	Contractor sued for failing to complete home construction.	No occurrence	The alleged failures giving rise to the homeowners' claims did not involve accidental conduct.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Kansas	Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co., 137 P.3d 486 (Kan. 2006)	Homebuilder sued after defective construction led to water leaks and damaged walls.	Occurrence	Faulty materials and workmanship caused continuous exposure of home to moisture that was unforeseen and unintended.
	American 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.
	Fidelity & Deposit Co. of Md. v. Hartford Cas. Ins. Co., 189 F. Supp. 2d 1212 (D. Kan. 2002)	Faulty work on school project included deteriorated walls, cracked joints and slabs and improper drain lines.	Occurrence	Damages as a result of faulty or negligent workmanship constitute an occurrence if the insured did not intend for the damage to occur.
Kentucky	Essex Ins. Co. v. Ricky Robinson Constr., Inc. 2015 U.S. Dist. LEXIS 26425 (E.D. Ky. 2015)	Insurer sought declaratory relief for claims asserted by homeowner against defendant contractor.	Possible occurrence	Not fortuitous and hence, no occurrence, where claims center on substandard construction over which insured had control.
	Liberty Mutual Fire Ins. Co. v. Kay & Kay Contracting, 545 Fed. Appx. 488 (6th Cir. 2013)	Subcontractor's foundation work caused settling.	No occurrence	Faulty work within insured's control is neither accidental nor fortuitous.
	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.
	Cincinnati Ins. Co. v. Motorists Mut. Ins. Co., 306 S.W. 3d 69 (Ky. 2010)	Homeowners sued contractor for faulty construction requiring home to be razed as beyond repair.	No occurrence	Defective construction claim against a builder alone is not a claim for property damage caused by an occurrence.
	Global Gear & Mach. Co., Inc. v. Capitol Indem. Corp., 2010 U.S. Dist. LEXIS 86745 (W.D. Ky. 2010)	Contractor sued for faulty work, leading to damaged vessels and owner's reputation.	No occurrence	Alleged intentional conduct and contractual claims are not fortuitous and therefore, not an occurrence.
	Bituminous Cas. Corp. v. Kenway Contracting, Inc., 240 S.W. 3d 633 (Ky. 2007)	Contractor hired to demolish carport causing substantial damage to home.	Occurrence	Damage to the property was unexpected and unintended by the insured.

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)	Contractor sued for faulty installation of wall board.	Occurrence	Faulty wall board installation caused damage to the building.
	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.)	Contractor hired to perform plant improvements, leading to tank and valve failure.	Occurrence	Defects in construction that result in damage subsequent to completion constitute an occurrence.
	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 alleged 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.
	Joe Banks Drywall & Acoustics, Inc. v. Transcontinental Ins. Co., 753 So. 2d 980 (La. Ct. App. 2000)	Vinyl flooring installed by contractor stained by seepage.	Occurrence	Since there was no allegation that the damage was intentional, the damage constituted an occurrence.
Maine	Oxford Aviation, Inc. v. Global Aero, Inc., 680 F.3d 85 (1st Cir. 2012)	Contractor sued for negligent work on aircraft, leading to defective seats and windows.	Occurrence	Cracks in window were unintended and could be accidental.
Maryland	French v. Assurance Co. of Am., 448 F.3d 693 (4th Cir. 2006)	Contractor applied synthetic stucco to exterior of home, leading to water damage and moisture five years later.	Occurrence and no occurrence	Damage to the nondefective wall caused by moisture intrusion was unexpected and unintended. Damage to stucco itself from faulty work did not result from an occurrence.
	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 façade installed by subcontractor.	No occurrence	The obligation to repair the building's façade did not result from an "accident" but simply from the insured's failure to satisfy its obligation under the contract.
	IA Constr. Corp. v. T&T Surveying, Inc., 822 F. Supp. 1213 (D. Md. 1993)	Contractor sued for faulty work, requiring removal and replacement of other nondefective work.	No occurrence	Some faulty work was only item to repair, no occurrence or property damage.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Maryland	Reliance Ins. Co. v. Mogavero, 640 F. Supp. 84 (D. Md. 1986)	Contractor sued for improper drywall, missing insulation, and inadequate water heater capacity.	No occurrence	Occurrence does not include the normal, expected consequences of poor workmanship.
	Friel Luxury Home Constr., Inc. v. Probuilders Specialty Ins. Co. RRG, 2009 U.S. Dist. LEXIS 121775 (D. Mass. 2009)	Contractor sued for faulty renovation work.	No occurrence	Faulty workmanship alone does not constitute an occurrence.
	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)	Contractor sued for building faulty dock system.	No occurrence	Faulty workmanship alone does not constitute an occurrence. Only docks themselves sustained damage.
	Am. Home Assurance Co. v. Libbey-Owens-Ford Co., 786 F.2d 22 (1st Cir. 1986)	Window manufacturer sued for defective product and failure to meet contract specifications.	Occurrence and no occurrence	Coverage for damages resulting from physical injury to windows, but no coverage for repairs to and replacement of windows.
	Oak Creek Apt's., LLC v. Garcia, 2013 Mich. App. LEXIS 550 (Mich. Ct. App. 2013)	Faulty roofing repairs caused mold and other interior damage.	Occurrence	Extensive water and mold damage caused by an occurrence.
Michigan	Houseman Constr. Co. v. Cincinnati Ins. Co., 2010 U.S. Dist. LEXIS 39961 (W.D. Mich. 2010)	Contractor sued for faulty work, leading to sinking floors.	Occurrence and no occurrence	Damage to other parts of store or loss of store's use is an occurrence. Repairing sinking floor is not an occurrence.
	Ahrens Constr., Inc. v. Amerisure Ins. Co., 2010 Mich. App. LEXIS 290 (Mich. Ct. App. 2010)	Contractor sued for defective roof, requiring replacement.	Occurrence	Damages not rising solely from faulty workmanship are considered resulting from an occurrence.
	Radenbaugh v. Farm Bureau Gen. Ins. Co. of Mich., 610 N.W. 2d 272 (Mich. Ct. App. 2000)	Mobile home seller provided erroneous schematics to contractors to build basement and foundation.	Occurrence	There were other damages to property (i.e., the homeowners' basement and foundation).
	Aten v. Scottsdale Ins. Co., 511 F.3d 818 (8th Cir. 2008)	Builder sued for defective home construction, leading to uneven basement and water damage.	Occurrence	Damage to other property due to faulty workmanship.
Minnesota	Bor-Son Bldg. Corp. v. Emp'rs Commercial Union Ins. Co. of Am., 323 N.W. 2d 58 (Minn. 1982)	Contractor sued for defective construction of building and breach of construction agreement.	No occurrence	Faulty workmanship only led to damage of building. Damages arose only from a breach of contract.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Minnesota	Ohio Cas. Ins. Co. v. Terrace Enters., Inc., 260 N.W. 2d 450 (Minn. 1977)	Contractor took precautions for freezing soil in building project, which subsequently failed.	Occurrence	The insured was aware of the dangers and took precautions that ultimately failed. Such conduct was negligent and constituted 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.
	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.
	Architex Ass'n, Inc. v. Scottsdale Ins. Co., 27 So. 3d 1148 (Miss. 2010)	Contractor sued for deficiencies in construction of inn foundation.	Possible occurrence	Potential coverage for unexpected or unintended property damage resulting from faulty work.
	Nationwide Mut. Fire Ins. Co. v. Hayes, 2010 U.S. Dist. LEXIS 92988 (S.D. Miss. 2010)	Construction company sued for negligent home construction.	Occurrence	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 subcontractor's work was intentional but poor.
	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 faulty soil conditions.	No occurrence	Builder chose not to test soil and home was damaged by problematic soil conditions.

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	Substandard work and need for grass re-seeding not considered an accident or occurrence.
	Cincinnati Ins. Co. v. Venetian Terrazzo, Inc., 198 F. Supp. 2d 1074 (Mo. 2001)	Contractor sued for failing to test concrete substrate before terrazzo floor installed.	No occurrence	Insured's breach of contract in performance of its work was not an accident or occurrence.
	Taylor-Morley-Simon, Inc. v. Mich. Mut. Ins. Co., 645 F. Supp. 596 (E.D. Mo. 1986), aff'd, 822 F.2d 1093 (8th Cir. 1987)	Concrete slab in residential construction caused walls and ceilings to crack.	Occurrence	Damage to home qualified as an accident resulting in property damage not expected or intended by the insured.
Montana	RQR Dev., LLC, v. Atlantic Cas. Ins. Co., 2014 U.S. Dist. LEXIS 171084 (D. Mont. 2014)	Excavation contractor sued by developer for faulty work in roadway construction.	No occurrence	Since claims arise from non-compliance with applicable standard of care, and not from an accident, there is no occurrence.
	Penn-Star Ins. Co. v. Coyote Ridge Constr., Inc., 2012 U.S. Dist. LEXIS 24882 (D. Mont. 2012)	Contractor sued for misrepresentations and failure to complete construction of home.	No occurrence	Acts or omissions of insured, intentional or negligent are covered, unless injury is expected or intended.
	Haskins Constr., Inc. v. Mid-Continent Cas. Co., 2011 U.S. Dist. LEXIS 127231 (D. Mont. 2011)	Homeowners sued contractor, alleging faulty home construction.	No occurrence	Construction encompasses faulty workmanship alleged by homeowners.
	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, business decisions of insureds not an occurrence.
	Lloyd A. Twite Family P'ship v. Unitrin Multi Line Ins., 192 P.3d 1156 (Mont. 2008)	Architect sued for designs that violated the Fair Housing Act and the Montana Human Rights Act.	No occurrence	Failure to comply with FHA and MHRA requirements is not an accident that meets the definition of occurrence.
	Auto-Owners Ins. Co. v. Home Pride Ins. Cos., 684 N.W. 2d 571 (Neb. 2004)	Roofing contractor sued for improper shingle installation, which damaged roof and structures.	Occurrence	Faulty workmanship causing property damage to something other than the insured's work product constitutes an occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Nevada	Big-D Constr. Corp. v. Take It For Granite Too, 917 F. Supp. 2d 1096 (D. Nev. 2013)	Contractor sued for defective remodeling of building, leading to stone tile displacement.	Occurrence	Faulty workmanship itself is not an accident, but unexpected consequences and faulty workmanship could constitute an occurrence.
New Hampshire	Concord Gen. Mut. Ins. Co. v. Green & Co. Bldg. and Dev. Corp., 8 A.3d 24 (N.H. 2010)	Contractor sued for defective chimneys, leading to carbon monoxide and gases in homes.	No occurrence	Released gases caused no physical apparent damage to property. Loss of use of work product alone does constitute an occurrence.
	Webster v. Acadia Ins. Co., 934 A.2d 567 (N.H. 2007)	Contractor sued for defective roof installation, requiring replacement and repairs.	Occurrence	The school alleges damage to property other than the work of the insured.
New Jersey	Cypress Point Condo. Ass'n v. Selective Way Ins. Co., 2015 N.J. Super. Unpub. LEXIS 721 (Law Div. 2015)	Homeowners Association sued insurers of defaulted contractor for various water damage.	No occurrence	No occurrence under continuous trigger where damage manifests prior to inception of subject policies.
	Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 2015 N.J. Super. LEXIS 114 (App. Div. 2015)	Homeowners Association sued developer, developer's insurers and subcontractors for consequential property damage caused by defective work.	Occurrence	Unintended and unexpected consequential damages caused by subcontractors' defective work are an occurrence.
	Pa. Nat'l Mut. Cas. Ins. Co. v. Parkshore Dev. Corp., 403 Fed. Appx. 770 (3d Cir. 2010)	Contractor sued for water damage caused by improper stucco caulking around windows.	No occurrence	No occurrence where faulty workmanship causes damage to completed project itself.
	S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 680 A.2d 1114 (N.J. App. Div. 1996)	Contractor sued for faulty sewage system installation, causing effluent to seep onto lawn and into residences.	No occurrence	Faulty workmanship caused damage to property other than work product of the insured.
	Weedo v. Stone-E-Brick, Inc., 405 A.2d 788 (N.J. 1979)	Homeowners sued mason after cracks in stucco necessitated replacement.	No occurrence	Replacement or repair of faulty goods and work is a business expense, not an occurrence giving rise to insurable liability.
	O'Rourke v. New Amsterdam Cas. Co., 362 P.2d 790 (N.M. 1961)	Contractor sued for faulty roof installation, leading to leakage and damage to home and contents.	Occurrence	Rain that caused damage was sudden and not predicted and can be considered an accidental cause or result.
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.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
New York	Baker Residential Ltd. P'ship v. Travelers Ins. Co., 782 N.Y.S. 2d 249 (N.Y. App. Div. 2004)	Contractor sued for installing defective structural beams.	No occurrence	No damage to property distinct from insured's own work product.
North Carolina	Harleysville Mut. Ins. Co. v. Hartford Cas. Ins. Co., 2015 U.S. Dist. LEXIS 25362 (E.D. N.C. 2015)	Contractor sought coverage from several insurers for defective roofing liabilities.	Occurrence	There is an occurrence in each period from date of construction through date of claim or suit.
	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 may constitute property damage caused by an occurrence.
	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.
	ABT Bldg. Prods. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Inc., 472 F.3d 99 (4th Cir. 2006)	Siding manufacturer sued for defective product, leading to deterioration and damage to other parts of homes.	Occurrence	Defective product caused damages and negligent manufacture of defective product constitutes an accident under a CGL policy.
	Travelers Indem. Co. v. Miller Bldg. Corp., 97 Fed. Appx. 431 (4th Cir. 2004)	Contractor sued for faulty workmanship leading to water damage cracks in hotel framework.	Occurrence and no occurrence	Correcting faulty work does not constitute an occurrence. Defective work causing damages to guestrooms is an occurrence.
	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 leaking into building due to insured's failure to cover roof.	Possible occurrence	The term accident does not necessarily exclude the contractor's negligence in leaving roof inadequately covered.
North Dakota	K&L Homes, Inc. v. Am. Family Mut. Ins. Co., 829 N.W. 2d 724 (N.D. 2013)	Homeowner sued contractor for breach of warranties related to defective construction.	Possible occurrence	Faulty workmanship may be an occurrence if "unexpected and unintended" by contractor.
	K&L Homes, Inc. v. Am. Family Mut. Ins. Co., 829 N.W. 2d 724 (N.D. 2013)	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	Reggie Constr., Ltd. v. Westfield Ins. Co., 2014 Ohio App. LEXIS 3703 (Ohio Ct. App. 2014)	Developer sought coverage for homeowner's defect claims.	No occurrence	Mold and water infiltration were foreseeable as the result of poor workmanship, therefore not fortuitous.
	Westfield Ins. Co. v. Custom Agri Sys., 979 N.E.2d 269 (Ohio 2012)	Contractor sued for faulty construction of steel grain bin.	No occurrence	Defective construction or workmanship itself does not constitute an occurrence.
	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 work done was faulty.	No occurrence	Damages to the work product itself do not qualify as an occurrence.
	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 damage and whether damage was anticipated.
	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.
Oklahoma	U.S. Fid. & Guar. Co. v. Briscoe, 239 P.2d 754 (Okla. 1951)	Contractor sued for highway construction which caused dust to penetrate home and property.	No occurrence	Claims asserted were predicated upon voluntary, intentional, tortious, and wrongful acts.
Oregon	Willmar Dev, LLC v. III. Nat'l Ins. Co., 2011 U.S. App. LEXIS 25854 (9th Cir. 2011)	Contractor sued for negligent site selection and construction of home.	Occurrence	Damages were unintended, accidental results of builder's alleged negligence.
	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 defective siding.	No occurrence	A breach of contract or warranty is not an occurrence. No allegation of third-party property damage.
	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 subcontractor that did not properly cure.	No occurrence	No accident and no occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Pennsylvania	State Farm Fire & Cas. Co. v. Brighton Exteriors, Inc., 2015 U.S. Dist. LEXIS 25712 (E.D. Pa. 2015)	Insurer sought declaratory relief for homeowner's claims against its contractor-insured.	No occurrence	Faulty workmanship, regardless of how pled, does not constitute an occurrence.
	State Farm Fire & Cas. Co. v. McDermott, 2014 U.S. Dist. LEXIS 147702 (E.D. Pa. 2014)	Contractor sued by developer for faulty work, negligence and breach of warranty.	No occurrence	Faulty workmanship not an accident or unforeseen.
	Indatex Inc. v. Nat'l Union Fire Ins. Co. of Pitts. Pa., 83 A. 3d 418 (Pa. Super. 2013)	Breach of warranty and other claims involving door and window manufacture.	Occurrence	Claims of defective products causing property loss to other than insured's property is an occurrence.
	Westfield Ins. Co. v. Bellevue Holding Co., 856 F. Supp. 2d 683 (E.D. Pa. 2012)	Contractor sued in residential development cases largely arising from stucco issues.	No occurrence	No occurrence for breach of contract for faulty workmanship claims.
	Specialty Surfaces Int'l, Inc. v. Cont'l Cas. Co., 609 F.3d 223 (3d Cir. 2010)	Contractors sued for faulty installation of subdrain system resulting in damage to installed turf.	No occurrence	Faulty workmanship itself is not an occurrence. The damages here were to the insured's own product due to negligence.
	Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co., 908 A.2d 888 (Pa. 2006)	Contract claims for faulty construction against fabricator of industrial ovens.	No occurrence	Faulty workmanship itself is not an accident or occurrence.
	Gene & Harvey Builders, Inc. v. Pa. Mfrs. Ass'n, Inc., 517 A.2d 910 (Pa. 1986)	Builder sued after land subsided and pulled away from the foundation.	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)	General contractor asserted claims against subcontractor for deficiencies in roofing work.	Occurrence	Damage to the building from original roof leaks remained unresolved and the work of other contractors had to be replaced.
	Aetna Cas. & Sur. Co. v. Consulting Env't Engineers, Inc., 1989 R.I. Super. LEXIS 137 (R.I. Super. Ct. 1989)	Design engineers sued for improper grading specifications.	Occurrence	Unexpected settling constituted an occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
South Carolina	Builders Mut. Inc. Co. v. Lacey Constr. Co., LLC, 2012 U.S. Dist. LEXIS 41588 (D.S.C. 2012)	Homeowners 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 damage to another component.
	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 contractor, alleging defects in residential construction.	Occurrence and no occurrence	Failure to repair faulty work is not an occurrence. Flooding of yard constitutes an occurrence because it led to continuous exposure to the harmful conditions in adjacent wetlands.
	Crossmann Cmtys. of N.C. v. Harleysville Mut. Ins. Co., 717 S.E. 2d 589 (S.C. 2011)	Developer sued for faulty construction resulting in water penetration and damage to nondefective components.	Occurrence	The costs of replacing defective stucco were not covered, but damage caused by resulting continuous moisture intrusion was covered.
	L-J, Inc. v. Bituminous Fire & Marine Ins. Co., 621 S.E. 2d 33 (S.C. 2005)	Developer sued contractor for breach of contract, warranty and negligence in road construction.	No occurrence	All of the allegations were based on faulty workmanship, which does not constitute an accident or occurrence.
South Dakota	Corner Constr. Co. v. U.S. Fid. & Guar. Co., 638 N.W. 2d 887 (S.D. 2002)	Contractor sued for faulty construction and design defects in ventilation work at a school.	Occurrence and no occurrence	No coverage for damage caused by and confined to insured's own work. To the extent work caused damage to other property, damages were covered.
Tennessee	Forrest Constr., Inc. v. Cincinnati Ins. Co., 703 F.3d 359 96th Cir. Tenn. 2013)	Contractor sued for defective construction of home, leading to damaged foundation and cracks.	Occurrence	Faulty work led to damage to property and unsafe living conditions.
	Travelers Indem. Co. of Am. v. Moore & Assocs., Inc., 216 S.W. 3d 302 (Tenn. 2007)	Window contractor sued for negligent design and installation, resulting in water damage and deterioration of walls.	Occurrence	Water penetration was unforeseeable, constituting an accident and an occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Texas	Building 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 damage.	Occurrence	Allegation that subcontractor's work was defectively designed and installed does not excuse duty to defend.
	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, constituting an occurrence.
	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.
	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.
	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 resulting from construction defects.	Occurrence	A deliberate act, performed negligently, is an accident if the effect is not intended or expected.
	Lamar Homes, Inc. v. Mid-Continent Cas. Co., 242 S.W. 3d 1 (Tex. 2007)	Homeowners sued contractor for defective foundations.	Occurrence	No suggestion the insured expected or intended its work to damage the home.
Utah	Cincinnati Ins. Co. v. Spectrum Dev. Corp., 2015 U.S. Dist. LEXIS 20635 (D. Utah 2015)	Developer of residence sought coverage for arbitration award in favor of homeowner.	Occurrence	Insurer's claim of no occurrence owing to lack of adequate supervision in construction fails, since damage was not intended.
	Cincinnati Ins. Co. v. Linford Bros. Glass Co., 2010 U.S. Dist. LEXIS 11226 (D. Utah 2010)	Developer sued window and door manufacturer for defects causing damage to other portions of homes.	No occurrence	Negligent manufacture of windows and doors is likely to cause damage to property where defective products are installed.
	Great Am. Ins. Co. v. Woodside Homes Corp., 448 F. Supp. 2d 1275 (D. Utah 2006)	Contractors and developers sued for faulty work, leading to structural damage in homes.	Occurrence	While faulty work itself is not an occurrence, damage resulting from negligent acts can be considered an occurrence.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
Virginia	Dragas Mgmt. Corp. v. Hanover Ins. Co., 798 F. Supp. 2d 758 (E.D. Va. 2011)	Contractor sued for costs to remove and replace Chinese drywall and repair other damage caused by drywall.	Occurrence and no occurrence	Replacing defective drywall itself is not an occurrence; repair or replacement of nondefective components constitutes an occurrence.
	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.	Occurrence	Damage that defective work caused to nondefective work constitutes an occurrence.
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.
	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	Damage to other property resulting from the insured's defective workmanship is an occurrence.
	Far Northwest Dev. Co. LLC v. Cmty. Ass'n of Underwriters of Am., 362 Fed. Appx. 861 (9th Cir. 2010)	Developer sued for failure to investigate and repair potential construction defects, causing property damage to condominium buildings.	Occurrence	It was not "unforeseen, involuntary, unexpected and unusual," as developer admitted overlooking construction problems.
	Mid-Continent Cas. 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 was inadvertent but was defectively manufactured. Absent intentional breach of contract, negligent construction constituted an occurrence.
	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	Unintentional and unexpected improper manufacture of concrete panels is an accident.

Is there an occurrence?

State	Citation	Facts	Finding	Comments
West Virginia	Cherrington v. The Pinnacle Group, Inc., 745 S.E.2d 508 (W.Va. 2013)	Homeowner sued builder for negligence in the construction of residence.	Occurrence	Court reversed earlier decision in Erie Insurance and held that defective workmanship itself constitutes an occurrence, since the damages were not deliberate, expected, or foreseen.
	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	Dahl v. Peninsula Builders, LLC, 855 N.W. 2d 904 (Wisc. App. 2014)	Contractor sued for faulty remodeling.	No occurrence	Faulty workmanship alone is not an occurrence.
	Yeager v. Polyurethane Foam Insulation, LLC, 2012 WI App. 11 (Wisc. Ct. App. 2012)	Homeowner sued insulation contractor, alleging workmanship caused frost pockets, condensation, and other damage to home.	No occurrence	Faulty workmanship, in and of itself, is not an occurrence.
	Acuity, a Mut. Ins. Co. v. VPP Group, LLC, 810 N.W.2d 812 (Wisc. Ct. App. 2012)	Plant owner's insured filed subrogation action against insured contractor, alleging faulty excavation work caused soil to settle and damage to the existing plant.	Occurrence	Faulty workmanship that causes unintended harm to other property is an occurrence.
	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 does not constitute an occurrence.
	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	Soil settlement which resulted from faulty site preparation advice was accidental, not anticipated.
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.	No occurrence	All claims were for subcontractor's negligent roofing work, and natural results of unworkmanlike construction, which does not constitute an occurrence.

Is there property damage?

Key in a construction defect claim is whether an insured's liability is based on actual physical injury to tangible property or a loss of use of such property. Where the construction defect claim against the contractor does not involve tangible, physical injury, courts have generally found there is 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 resulting diminution in value because of defective construction work or materials with no physical injury, are not claims for property damage. Typically, defective workmanship or use of non-conforming materials in and of itself, does 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 damage to personal property or nondefective portions of the facility constitute property damage.
	U.S. Fid. & Guar. Co. v. Warwick Dev. Co., 446 So. 2d 1021 (Ala. 1984)	Home purchasers sued builder for unworkmanlike construction and misrepresentation.	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 contractor, alleging improper curtain drain construction caused failure of septic system.	Property damage	The failure of the curtain drain caused destruction of the septic system, which constitutes "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 do provide coverage for the damages to other property.
	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 in housing complex.	Not property damage	Allegations not claims for property damage; cost of repairing defects does not constitute property damage.
	Univ. Mech. Contractors of Ariz., Inc. v. Puritan Ins. Co., 723 P.2d 648 (Ariz. 1986)	Contractor hired to build solar heating facility sued piping supplier, alleging defects in material, requiring repair of entire system.	Property damage	Installation of faulty piping constituted physical injury to the solar facility, and loss of use of facility.
Arkansas	Cooley v. St. Farm Fire & Cas. Co., 2009 U.S. Dist. LEXIS 97144 (E.D. Ark. 2009)	Home purchasers sued prior owners, alleging breach of contract, misrepresentation, and fraud.	Not property damage	The alleged nondisclosure, misrepresentation, and breach of contract were not accidents that resulted in property damage, but rather, events that caused economic damages.
	Geurin Contractors, Inc. v. Bituminous Cas. Corp., 636 S.W. 2d 638 (Ark. Ct. App. 1982)	Business owner sued highway contractor, alleging negligent performance of highway contract caused road closure and loss of business.	Property damage	Loss of use of tangible property caused by an occurrence constitutes property damage.

Is there property damage?

State	Citation	Facts	Finding	Comments
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 defective construction of pipeline caused irrigation water to be lost.	Not property damage	While the definition of property damage would cover damages related to the loss of use of the water, the loss of water is not insured.
	Ameron Int'l Corp. v. Am. Home Assurance Co., 2011 Dist. LEXIS 61486 (C.D. Cal. 2011)	General contractor on highway project sued subcontractor, alleging use of substandard concrete resulted in the failure of drill shafts and project delays.	Property damage	Allegations that the supply of defective concrete caused project delays, resulting in consequential damages, constitutes property damage as loss of use of property.
	McGranahan v. Ins. Corp., 544 F. Supp. 2d 1052 (E.D. Cal. 2008)	Developer asserted claims against drywall installer, alleging improper installation of moldy drywall.	Property damage	Lot discounts, concessions, and carrying costs constitute property damage since they arose from defective drywall installed by the insured.
	F & H Constr. v. ITT Hartford Ins. Co. of the Midwest, 12 Cal. Rptr. 3d 896 (Cal. Ct.App. 2004)	Subcontractor sued for supplying pipe caps for driven piles determined to be of inferior grade.	Not property damage	Damages alleged by contractor arose from cost of modifying the caps and lost bonuses, not covered damages under the policy.
	Allstate Ins. Co. v. Morgan, 806 F. Supp. 1460 (N.D. Cal. 1992)	Home purchasers sued seller for failing to disclose issues.	Not property damage	Claims seek economic damages and do not constitute property damage under the policy.
	N.H. Ins. Co. v. Vieira, 930 F.2d 696 (9th Cir. 1991)	Contractor sued for failing to properly secure drywall and install drywall in attics to prevent fire.	Not property damage	Diminution in value does not constitute property damage as defined by the policy.
	Maryland Cas. Co. v. Reeder, 270 Cal. Rptr. 719 (Cal. Ct. App. 1990)	Owners sued developer and builder, alleging that settling of the slab, soil subsidence caused cracking and separation in floor and walkways.	Property damage	The allegations of defects in material and workmanship in project allege property damage within the meaning of the policy.
	St. Paul Fire & Marine Ins. Co. v. Coss, 145 Cal. Rptr. 836 (Cal. Ct. App. 1978)	Contractor sued over quality of work and was removed from work site. 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 is not property damage within the terms of the policy.
Colorado	Cool Sunshine Heating & Air Cond., Inc. v. Am. Family Mut. Ins. Co., 2014 U.S. Dist. LEXIS 174818 (D. Colo. 2014)	Policyholder sued insurer for defense in construction defect case brought against it by homeowner.	Not property damage	When allegations do not include damage to "non-defective portion" of insured's work, no property damage.

Is there property damage?

State	Citation	Facts	Finding	Comments
Colorado	TCD, Inc. v. Am. Family Mut. Ins. Co., 296 P.3d 255 (Colo. Ct. App. 2012)	Developer sued insured general contractor, alleging defective roof installation.	Not property damage	Allegations sounding in contract and tort do not fit within the meaning of property damage.
	St. Paul Fire & Marine Ins. Co. v. Alstom Power, Inc., 2010 U.S. Dist. LEXIS 90016 (D. Colo. 2010)	Energy company sued power plant contractor, alleging defective welding caused latent defects.	Not property damage	Allegations that faulty workmanship in the use of improper materials resulted in latent defects does not constitute property damage.
	Am. Family Mut. Ins. Co. v. Teamcorp., Inc., 659 F. Supp. 2d 1115 (D. Colo. 2009)	Homeowners sued home designer, asserting faulty plans resulted in home 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.
	Colard v. Am. Fam. Mut. Ins. Co., 709 P.2d 11 (Colo. Ct. App. 1985)	Homeowners terminated contract with contractor because of negligent and unsatisfactory construction, requiring other contractors to correct and complete 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	Capstone Bldg. Corp. v. Am. Motorists Ins. Co., 67 A. 3d 961 (Conn. 2013)	Contractor sued for defective construction of university housing, including water damage and structural problems.	Property damage	On certified questions, court held that unintended defects or faulty workmanship causing damage to insured's nondefective work are property damage.
	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.
	Times Fiber Communs., Inc. v. Travelers Indem. Co. of Ill., 2005 Conn. Super. LEXIS 335 (Conn. Super. Ct. 2005)	Telephone company sued seller of cable, alleging failure to meet building code requirements required removing and replacing the cable.	Property damage	Repairs to drywall necessitated by removing defective cable does not constitute physical injury to tangible property; however, displacement of tenants and lost rental revenue constitutes loss of use of tangible property.
Florida	Voeller Const., Inc. v. Southernr-Owners Ins. Co., 2015 U.S. Dist. LEXIS 31176 (M.D. Fla. 2015)	Contractor sued for building code violations and warranty claims by association.	Possible property damage	Allegations that faulty workmanship damaged other property sufficient to trigger duty to defend.

Is there property damage?

State	Citation	Facts	Finding	Comments
Florida	Amerisure Mut. Ins. Co. v. Auchter Co., 673 F.3d 1294 (11th Cir. 2012)	Inn owner sued contractor, alleging defectively installed roof was aesthetically deficient and its repair would cause lost profits.	Not property damage	A claim for the cost of repairing faulty roof does not constitute a claim for property damage.
	Precise Constr., Inc. v. W. Sur. Group, 417 Fed. Appx. 871 (11th Cir. 2011)	Building contractor sued for costs incurred in demolishing and rebuilding a foundation improperly installed by subcontractor.	Not property damage	Property damage under a CGL policy does not include costs associated with removing and replacing defective work.
	Mid-Continent Cas. Co. v. Frank Casserino Constr., Inc., 721 F. Supp. 2d 1209 (M.D. Fla. 2010)	General contractor sued roofing subcontractor, alleging construction defects caused water damage.	Property damage and not property damage	Although subcontractor's defective workmanship may have caused water intrusion (and resulting property damage to the buildings), faulty workmanship alone does not constitute property damage.
	Mid-Continent Cas. Co. v. Basdeo, 742 F. Supp. 2d 1293 (S.D. Fla. 2010)	Condominium association and unit owner sued roofing contractor for water damage caused by faulty roof repairs.	Property damage	While costs for repairing or removing defective work are not covered by the definition of property damage, costs of repairing damage caused by defective work are.
	Homes By Deramo, Inc. v. Mid-Continent Cas. Co., 661 F. Supp. 2d 1281 (M.D. Fla. 2009)	Homeowner asserted claim against building contractor, alleging construction defects in deck installation.	Possible property damage	There is a difference between a claim for the cost of remediating defective work (not property damage), and a claim for the cost of repairing damage caused by the defective work (property damage).
	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 defective windows does not constitute injury to tangible property, but repair or replacement of windows that were damaged by defective installation constitutes physical injury to tangible property.
	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 caused damage to foundation, drywall and interior of home.	Property damage	Structural damage to completed homes caused by subcontractor's defective work is property damage.

Is there property damage?

State	Citation	Facts	Finding	Comments
Florida	W. Orange Lumber Co. v. Ind. Lumbermens Mut. Ins. Co., 898 So. 2d 1147 (Fla. Dist. Ct. App. 2005)	Contractor failed to use proper grade of cedar siding, requiring owner to remove and replace with substitute product.	Not property damage	Breach of contract claims are not property damage.
Georgia	Transcon. Ins. Co. v. R. Larry Phillips Constr. Co., 376 Fed. Appx. 885 (11th Cir. 2010)	Owner sued general contractor for faulty workmanship, causing water seepage and rot.	Not property damage	No property damage alleged to have been caused by an occurrence.
	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 in protected wetlands without necessary permits.	Property damage	Negligent construction on wetlands caused losses due to physical damage and loss of use of the project.
Hawaii	Group Builders, Inc. v. Admiral Ins. Co., 231 P. 3d 67 (Haw. Ct. App. 2010)	Hotel owner sued finishing subcontractor, alleging construction defects caused mold and closure of 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 associated with the repair or replacement of the faulty window caulking and sealant.
	Lagestee-Mulder, Inc. v. Consol. Ins. Co., 2011 U.S. Dist. LEXIS 129308 (N.D. Ill. 2011)	Building owner sued general contractor and window/door subcontractor, alleging that defective workmanship caused water infiltration.	Property damage and not property damage	While water damage to building other than windows and doors does not qualify as property damage, such work fell outside the scope of the subcontractor's work and qualified as property damage.
	W. Bend Mut. Ins. Co. v. People, 929 N.E. 2d 606 (Ill. App. Ct. 2010)	Homeowners and the Attorney General sued 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 performance bond.
	Lyerla v. AMCO Ins. Co., 536 F.3d 684 (7th Cir. 2008)	Homeowners sued contractor, alleging failure to recover costs of completing home and for project, storage fees, finance charges and other expenses.	Not property damage	Breach of contract claims did not allege physical injury to tangible property.

Is there property damage?

State	Citation	Facts	Finding	Comments
Illinois	Country Mut. Ins. Co. v. Carr, 867 N.E. 2d 1157 (Ill. App. Ct. 2007)	Homeowners sued contractor, alleging that he or his subcontractor negligently performed backfill operations, causing damage to the basement walls.	Property damage	The homeowners allege physical injury to tangible property, their basement walls, which falls within the definition of property damage.
	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 for repair or replacement of defective products, which does not constitute property damage.
Indiana	Trinity Homes LLC v. Ohio Cas. Ins. Co., 864 F.Supp. 2d 744 (S.D. Ind. 2012)	Homeowners sued general contractor, alleging faulty work resulted in water damage to their homes.	Property damage	Physical injury to tangible property qualifies as property damage.
	Cont'l Cas. Co. v. Sycamore Springs Homeowner's Ass'n Inc., 652 F.3d 804 (7th Cir. 2011)	Homeowners association sued building contractor for damages caused by overflow of retention pond.	Not property damage	Because the damages sought were for work that would reduce future flooding, as opposed to the cost of restoring the subdivision to its original condition, claims were not for property damage.
	Amerisure, Inc. v. Wurster Constr. Co., 818 N.E. 2d 998 (Ind. Ct. App. 2004)	Subcontractors installed exterior sheathing and finish systems for construction projects that required general contractor to correct defects in the work.	Not property damage	Damage to the projects due to faulty workmanship or defective materials does not involve property damage.
	R.N. Thompson & Assocs., Inc. v. Monroe Guar. Ins. Co., 686 N.E. 2d 160 (Ind. Ct. App. 1997)	Homeowners' association sued developer, alleging improper ventilation.	Not property damage	No property damage where 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 for breach of contract and warranty, seeking damages to complete work.	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)	Claims for work performed on school project determined to be defective, including deteriorated walls, broken blocks, cracked joints and slabs and improper drain lines.	Property damage	Injury to the project allegedly caused by the insured's faulty workmanship is property damage within the terms of the policy.

Is there property damage?

State	Citation	Facts	Finding	Comments
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 repair services caused damage to other parts of the boat and damage to owner's reputation.	Not property damage	Alleged injury to reputation and goodwill, does not allege physical injury to tangible property and, therefore, is 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 general contractor and drywall subcontractor, alleging faulty workmanship in the installation of wallboard.	Property damage	Allegations that faulty workmanship caused water damage, the failure of floor and wall systems, and the permanent deterioration of the buildings constitute an allegation of property damage.
	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.)	Building owner sued contractor for damages caused by breach of contract and negligence.	Property damage	Evidence presented by plant owner established property damage in the form of physical injury to property and loss of use.
	Stewart Interior Contractors, L.L.C. v. Metal Pro Indus., L.L.C., 969 So. 2d 653 (La. Ct. App. 2007)	Framing subcontractor sued subcontractor for damages caused by use of defective steel studs.	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, constitutes allegations of property damage.
	Grimaldi Mech., L.L.C. v. Gray Ins. Co., 933 So. 2d 887 (La. Ct. App. 2006)	Mechanical contractor sought the cost of defending claims against it for damages resulting from defective installation of piping system.	Possible property damage	Because the complaint alleges both breach of contract and damages resulting from breach, there may have been an occurrence and property damage.
Maryland	IA Constr. Corp. v. T&T Surveying, Inc., 822 F. Supp. 1213 (D. Md. 1993)	General contractor sued subcontractor, alleging that repairs to remedy faulty work required removal and replacement of other nondefective work.	Property damage	Nothing to suggest damages sustained by the general contractor were not for property damage.
	Reliance Ins. Co. v. Mogavero, 640 F. Supp. 84 (D. Md. 1986)	Owner of fire-damaged apartment building sued contractor for improper renovation, including openings in drywall, insulation, inadequate electric water heater capacity and uninsulated 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.

Is there property damage?

State	Citation	Facts	Finding	Comments
Massachusetts	Essex Ins. Co. v. BloomSouth Flooring Corp., 562 F.3d 399 (1st Cir. 2009)	Tenant sought damages from contractors for installation of odor-emitting carpeting.	Property damage	Odor can constitute physical injury to property and loss of use, both constituting property damage.
	Friel Luxury Home Constr., Inc. v. Probuilders Specialty Ins. Co. RRG, 2009 U.S. Dist. LEXIS 121775 (D. Mass. 2009)	Homeowners sued, alleging contractor's faulty workmanship resulted in costs and damages.	Not property damage	The homeowners' claim did not allege faulty work constituted physical injury to their home, thus no property damage within the meaning of the policy.
	Davenport v. U.S. Fid. & Guar. Co., 778 N.E. 2d 1038 (Mass. App. Ct. 2002) (unpublished)	Painting subcontractor sued for failing to apply a primer before final coat of exterior paint, resulting in peeling and flaking.	Not property damage	The cost of repairing defective work does not constitute property damage.
Michigan	Houseman Constr. Co. v. Cincinnati Ins. Co., 2010 U.S. Dist. LEXIS 39961 (W.D. Mich. 2010)	Store owner sued general contractor, alleging construction defects caused the store's floor to sink.	Property damage	Property damage is alleged if the insured's work physically deteriorates.
Minnesota	Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co., 806 N.W. 2d 82 (Minn. Ct. App. 2011)	Homeowners sued contractor, alleging negligent failure to inform them of pre-existing moisture damage visible during remodeling.	Not property damage	No property damage because the moisture damage was pre-existing and not traceable to the insured contractor.
	Grinnell Mut. Reinsurance Co. v. Wollak Const., Inc., 2010 U.S. Dist. LEXIS 110036 (Dist. Minn. 2010)	Homeowners sued general contractor, alleging that negligent construction diminished value of home.	Not property damage	Diminution in value does not constitute property damage.
	Grinnell Mut. Reinsurance Co. v. Ripley, 2009 Minn. App. Unpub. LEXIS 1349 (Minn. Ct. App. 2009)	Homeowners sued builder for repair costs, alleging faulty construction caused their home to flood.	Property damage	Injuries could constitute property damage, since the insured might become obligated to pay for "physical injury to tangible property."
	Federated Mut. Ins. Co. v. Concrete Units, Inc., 363 N.W. 2d 751 (Minn. 1985)	Claims against contractor for pre-mixed concrete in construction of grain elevator, allegedly causing damage to the concrete when the forms were moved, damage to the forms and reinforcing rods and loss of use.	Property damage in part	The cost of replacing defective concrete 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 construction company, asserting breach of contract 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.

Is there property damage?

State	Citation	Facts	Finding	Comments
Missouri	The Village at Deer Creek Homeowners Ass'n. v. Mid-Continent Cas. Co., 432 S.W. 3d 231 (Mo. Ct. App. 2014)	Homeowners sustained substantial water damage as the result of defective construction.	Property damage	The court found that the cost of repairing defectively installed exterior cladding, as well as the resulting water damage, were both covered property damage.
	Esicorp, Inc. v. Liberty Mut. Ins. Co., 266 F.3d 859 (8th Cir. 2001)	Contractor purchased steel pipe for construction of hydroelectric plant. Inspections later revealed defects in the welding, requiring repair and replacement.	Not property damage	The defectively welded pipe sections did not collapse, burst, or cause injury to the property as a result of the insured's negligent inspection. The cost of repairing the defective welds was not considered property damage.
	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.	Property damage	The cracking of walls, ceilings, and floors, the stress on water and gas lines, and the loosening of ducts throughout the home, constitute physical damage to tangible property.
Montana	Penn-Star Ins. Co. v. Coyote Ridge Constr., Inc., 2012 U.S. Dist. LEXIS 24882 (D. Mont. 2012)	Homeowners sued contractor for misrepresentation and failure to complete the construction.	Possible property damage	There is at least a possibility that the homeowners suffered property damage resulting from the loss of use of their home.
	Haskins Constr., Inc. v. Mid-Continent Cas. Co., 2011 U.S. Dist. LEXIS 127231 (D. Mont. 2011)	Homeowners sued construction company, alleging faulty workmanship caused numerous defects in construction.	Property damage	Allegations of failing to install settling devices, defectively installed doors and windows and the like are property damage.
	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 construction package 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)	Owner of apartment buildings alleged that roofing shingles were improperly installed, causing damage to roof structures and buildings, as well as use of defective shingles.	Property damage	Claimants alleged that shingles were breaking apart and falling, resulting in damage to the roof structures and buildings. Such allegations stated cause for physical injury to tangible property.

Is there property damage?

State	Citation	Facts	Finding	Comments
Nevada	Aetna Cas. & Sur. Co. v. McIbs, Inc., 684 F. Supp. 246 (D. Nev. 1988)	Cement block manufacturer produced blocks that were improperly sized for project and which were covered by stucco and plaster, 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 contractor, alleging defective roof installation required replacement 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.
	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 and wood framing. Insurer covered costs of repairing actual damage, but denied 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.
	Hull v. Berkshire Mut. Ins. Co., 427 A.2d 523 (N.H. 1981)	Claims asserted against contractor discharged during construction who was then sued for defective work performed.	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. App. Div. 2006)	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.
	Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 2015 N.J. Super. LEXIS 114 (App. Div. 2015)	Homeowners Association sued developer, developer's insurers and subcontractors for consequential property damage caused by defective work.	Property damage	Where claim centers on the cost of damage to common areas and individual units, rather than defective roofing and related work, there is policy-defined property damage.
New Mexico	Sadler v. Pac. Indem. Co., 363 Fed. Appx. 560 (10th Cir. 2010)	Home purchasers sued sellers, alleging intentional, negligent and innocent misrepresentation of home's condition.	Not property damage	The buyers' claims for misrepresentation 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.

Is there property damage?

State	Citation	Facts	Finding	Comments
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 subcontractor for cost of repairing a defective gas pipe installed by subcontractor.	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 for 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.
	Jakobson Shipyard, Inc. v. Aetna Cas. & Sur. Co., 961 F.2d 387 (2d Cir. 1992)	Purchaser of tugboats sued manufacturer, alleging defective steering apparatus and 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.
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 association sued general contractor, asserting bulkhead construction 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.
	Builders Mut. Ins. Co. v. Mitchell, 709 S.E. 2d 528 (N.C. Ct. App. 2011)	Homeowner sued contractor hired to make home repairs, alleging faulty workmanship caused further water damage.	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.
	Breezewood of Wilmington Condo. Homeowners Ass'n, Inc. v. Amerisure Mut. Ins. Co., 335 Fed. Appx. 268 (4th Cir. 2009)	Condominium association sued general contractor, alleging defects in construction and design necessitated repairs and reconstruction of major portions of the common elements.	Not property damage	The cost of repair or replacement of faulty workmanship is not property damage, nor is damage to the insured's own work caused by such faulty workmanship.
	Amerisure Mut. Ins. Co. v. Superior Constr. Corp., 2008 U.S. Dist. LEXIS 62458 (W.D. N.C. 2008)	Condominium association sued general contractor, seeking to recover costs of repairing construction defects caused by a subcontractor's faulty workmanship.	Property damage	Damages to upgraded portions of condominiums that occurred after insured had finished construction would be within the meaning of property damage.

Is there property damage?

State	Citation	Facts	Finding	Comments
North Carolina	Travelers Indemn. Co. v. Miller Bldg. Corp., 221 Fed. Appx. 265 (4th Cir. 2007)	Developer sued general contractor hired to construct a hotel, alleging numerous construction defects.	Property damage and not property damage	The cost of correcting the insured's work does not constitute property damage, but damages to the owner's own property that was separate from the hotel, does constitute property damage.
	ABT Bldg. Prod. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Inc., 472 F.3d 99 (4th Cir. 2006)	Homeowners sued hardboard siding manufacturer, alleging defective because siding absorbed moisture and prematurely deteriorated.	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.
	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 lines in manufacturing plant but use of defective bolts impaired operation.	Not property damage	No property damage because the claim was to repair the defects caused by faulty workmanship.
Ohio	Ohio Cas. Ins. Co. v. Hanna, 2008 Ohio 3203 (Ohio Ct. App. 2008)	Homeowners sued construction company, alleging faulty framing created several other problems with 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 sag.
	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 and construction of 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.
Oklahoma	Boggs v. Great N. Ins. Co., 659 F. Supp. 2d 1199 (N.D. Okla. 2009)	Home purchasers sued sellers claiming fraud, misrepresentation and negligence, in connection with improperly constructed fireplaces.	Not property damage	The purchasers' claims are economic in nature and do not constitute property damage.
Oregon	Willmar Dev., LLC v. Ill. Nat'l Ins. Co., 2011 U.S. App. LEXIS 25854 (9th Cir. 2011)	Homeowners alleged damage to their home was caused by 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.

Is there property damage?

State	Citation	Facts	Finding	Comments
Oregon	State Farm Fire & Cas. Co. v. Am. Family Mut. Ins. Co., 253 P.3d 65 (Or. Ct. App. 2011)	Homeowners sued builder, alleging negligent installation of EIFS.	Not property damage	None of the allegations assert water damage to the components or contents of the residence, or beyond the EIFS itself.
	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 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.
Pennsylvania	Prudential Prop. & Cas. Ins. Co. v. Boyle, 305 Fed. Appx. 35 (3d Cir. 2008) (unpublished)	Buyers sued home seller after discovering rot inside the 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.
	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 stone manufacturer as a result of deteriorating stone fascia applied to the outside units.	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 roofing subcontractor seeking damages resulting from defective work and failure to obtain warranty.	Property damage	Property damage is alleged because damage from roof leaks may require repair to the roof, and the work of others.
	Aetna Cas. & Sur. Co. v. Consulting Envtl. 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 destroyed to be injured. It will suffice if it is or becomes so damaged 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 contractor, alleging defects in home construction.	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 loss of use of their yard and damage to garage.

Is there property damage?

State	Citation	Facts	Finding	Comments
South Carolina	Builders Mut. Ins. Co. v. Oak Tree Homes, Inc., 2012 U.S. Dist. LEXIS 49333 (D.S.C. 2012)	Homeowners sued construction company, alleging breach of contract for defective construction and for fraud for representing 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.
	Builders Mut. Ins. Co. v. Lacey Constr. Co., Inc., 2012 U.S. Dist. LEXIS 41588 (D.S.C. 2012)	Homeowners association sued developer and contractor for defects in the construction of 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.
	Crossman Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co., Inc., 717 S.E. 2d 589 (S.C. 2011)	Condominium owners sued developer, alleging negligent construction of exterior components, resulting in progressive water damage to otherwise nondefective portions.	Property damage and not property damage	Defective construction resulting in damage to otherwise nondefective components may constitute property damage, but the defective construction itself would not.
	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.
South Dakota	Corner Constr. Co. v. U.S. Fid. & Guar. Co., 638 N.W. 2d 887 (S.D. 2002)	Claims by school district, alleging design and construction defects in general contractor's and subcontractors' work.	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.
Tennessee	Forrest Constr., Inc. v. Cincinnati Ins. Co., 728 F. Supp. 2d 955 (M.D. Tenn. 2010)	Homeowners sued home contractor, alleging faulty workmanship that caused cracking in the foundation.	Property damage	Complaint allegations leave open the possibility that 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.

Is there property damage?

State	Citation	Facts	Finding	Comments
Tennessee	Travelers Indem. Co. of Am. v. Moore & Assocs., Inc., 216 S.W. 3d 302 (Tenn. 2007)	Claims against window subcontractor allege a negligent design, supervision and installation, resulting in water and moisture penetration, and premature deterioration of and damage to other portions of structure.	Property damage	The claim was not limited to faulty workmanship and alleged the defective installation resulted in water penetration causing further damage.
Texas	American Home Assur. Co. v. Oceaneering Int'l. Inc., 2015 U.S. App. LEXIS 6867 (5th Cir. 2015)	Use of faulty bolts to repair ship's hull required replacement with conforming bolts at a cost of some \$3 million.	Not property damage	No property damage for replacing non-conforming bolts where no evidence such bolts caused damage to other aspects of ship.
	Mid-Continent Cas. Co. v. Academy Dev., Inc., 2012 U.S. App. LEXIS 8056 (5th Cir. 2012)	Homeowners sued developer and builder of waterfront community for diminution in property value, alleging that the walls of lakes were failing.	Property damage	Allegations of diminution in the value of homes caused by defectively constructed lakes constitute property damage.
	Bldg. Specialties, Inc. v. Liberty Mut. Fire Ins. Co., 712 F. Supp. 2d 628 (S.D. Tex. 2010)	Homebuilder sued HVAC subcontractor, alleging subcontractor's defective work caused water damage.	Not property damage	Because the petition did not allege that the defective work caused physical injury and loss of use, it did not allege property damage.
	Landstar Homes Dallas, Ltd. v. Mid-Continent Cas. Co., 2010 U.S. Dist. LEXIS 131516 (N.D. Tex. 2010)	Homeowner sued homebuilder, alleging damages to home as a result of defective foundation.	Property damage	Awards for diminution in value and cosmetic repairs constitute property damage because they are physical injuries to tangible property.
	Sigma Marble & Granite – Houston, Inc. v. Amerisure Mut. Ins. Co., 2010 U.S. Dist. LEXIS 137096 (S.D. Tex. 2010)	General contractor sued subcontractor, alleging faulty stone work increased costs and delayed completion.	Property damage	Physical injury to tangible property, including the resulting loss of use of property, constitutes property damage.
	Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co., 279 S.W. 3d 650 (Tex. 2009)	Homeowners sued builder, alleging defective construction caused water damage to 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.
	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 addition, alleging the roof was faulty and leaked.	Property damage and not 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.

Is there property damage?

State	Citation	Facts	Finding	Comments
Texas	Lamar Homes, Inc., v. Mid-Continent Cas. Co., 242 S.W. 3d 1 (Tex. 2007)	Home buyers sued developer, alleging latent defects in foundations.	Property damage	Negligent design and construction of foundation and defective workmanship caused the sheetrock and stone veneer to crack, which constitutes physical injury to tangible property.
	Lennar Corp. v. Great Am. Ins. Co., 200 S.W. 3d 651 (Tex. App. 2006)	Application of synthetic stucco to numerous homes caused water to be trapped behind it, causing wood rot, mold, and termite infestation. Builder then sued for costs of remediation.	Property damage and not property damage	The stucco's entrapment of moisture caused water damage, which constitutes physical injury to tangible property. The costs to remove and replace the synthetic stucco as a preventative measure does not constitute property damage.
Washington	Big Constr., Inc. v. Gemini Ins. Co., 2012 U.S. Dist. LEXIS 71350 (W.D. Wash. 2012)	Homeowners sued homebuilder, alleging incomplete, nonconforming, and unsatisfactory work resulted in additional construction expenses and diminution in value.	Not property damage	For faulty workmanship to give rise to property damage, there must be property damage separate from the defective product itself.
	Mut. of Enumclaw Ins. Co. v. T & G Constr., Inc. 199 P.3d 376 (Wash. 2008)	General contractor of condominium project sued siding contractor, alleging improperly 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.
	Diamaco, Inc. v. Aetna Cas. & Sur. Co., 983 P.2d 707 (Wash. Ct. App. 1999)	The City of Seattle sued contractor, alleging defects in the insured's work delayed completion of a highway project.	Property damage	Property damage is not limited to damage to third-party property.
	Yakima Cement Prod. Co. v. Great Am. Ins. Co., 608 P.2d 254 (Wash. 1980)	Building contractor sued manufacturer of concrete wall panels, alleging concrete panels were defective, requiring removal and repair.	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 contractor for damages to home resulting from negligent site and masonry work.	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 and damage to 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 claimed damages resulting from alleged misrepresentations and construction defects, related to remodeling project.	Property damage	Damage to the homeowners' property that came after, and was caused by, the insureds' statutory misrepresentations, constitutes property damage.
	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 which were defective, but had not yet leaked.	Not property damage	Physical injury does not occur until it is caused by the defective component.
	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.
	Kalchthaler v. Keller Constr. Co., 591 N.W. 2d 169 (Wis. Ct. App. 1999)	Building leaked causing water damage to interior.	Property damage	Ruined 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 potentially implicate a particular policy period. Construction defect claims typically do not arise from a discrete or catastrophic event, but more frequently, latent or progressive damage that may take place over an extended period of time.

Courts have adopted several different theories for determining when an event triggering coverage occurs and which policies may respond. The four familiar trigger theories developed in other long-tail claims that are typically molded to construction defect losses include:

Exposure

Each insurance policy on the risk during damage to property is triggered.

Manifestation

The insurance policy on the risk when property damage is discovered is triggered.

Injury-in-fact

Circumstance where each insurance policy on the risk when covered property damage occurs is triggered. May begin upon first exposure or damage through to manifestation.

Continuous Trigger

All insurance policies on the risk beginning at the time of first property damage through the date of manifestation are triggered.

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, in which case we have included those decisions.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
Alabama	Essex Ins. Co. v. J&J Masonry, LLC, 2015 U.S. Dist. LEXIS 11725 (N.D. Ala. 2015)	Construction defect	Various construction defect claims by homeowners against contractor.	Manifestation	Policy in effect when damage occurred, rather than when work was performed, is triggered.
	Cincinnati Ins. Co. v. Amerisure Ins. Co., 2012 U.S. Dist. LEXIS 129953 (S.D. Ala. 2012)	Construction Defect	Water infiltration caused balconies to sag requiring extensive repair.	Injury-in-fact	The occurrence happened when the balconies actually began to sag, not as water damage may have weakened the structures over time.
	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 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).
	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.
	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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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).
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.
	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.
	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.
	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.
	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	Types 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.
	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.
	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.
	Village Homes of Colo., Inc. v. Travelers Cas. and Sur. Co., 148 P.3d 293 (Colo. Ct. App. 2006), aff'd, 155 P3d 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.
	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 construction defect claims asserted against insured mason causing 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.
	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	Types 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.
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.
	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.
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).
	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	Carithers v. Mid-Continent Cas. Co., 2015 U.S. App. LEXIS 5540 (11th Cir. 2015)	Construction defect	Homeowners obtained \$90,000 judgment and assignment of builder's rights against insurer for various defects in construction.	Injury-in-fact	In a limited holding, court found no error in district court's application of injury-in-fact trigger.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
Florida	Voeller Constr., Inc. v. Southern-Owners Ins. Co., 2014 U.S. Dist. LEXIS 61862 (M.D. Fla. 2014)	Construction defect	Homeowners' association sued builder for breach of warranty and building code violations.	Injury-in-fact	Court found Trizec decision persuasive since policy required damage during policy period, but no requirement of actual manifestation.
	Trovillion Cons't. & Dev., Inc. v. Mid-Continent Cas. Co., 2014 U.S. Dist. LEXIS 6265 (M.D. FL. 2014)	Construction defect	Insured general contractor sought coverage concerning condominium defects.	Injury-in-fact	Court noted disparate treatment of trigger in Florida cases, but adopted injury-in-fact as more consistent with occurrence policies.
	Axis Surplus Ins. Co. v. Contravest Constr., Inc., 921 F. Supp. 2d 1268 (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 during the period.
	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.
	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.
	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.
	Trizec Props., Inc. v. Biltmore Constr. Co., 767 F.2d 819 (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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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 policy period to conditions that result in property damage constitutes an occurrence.
	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 damage 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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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.
	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.
	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.
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.
	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.
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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
Louisiana	Colville Plumbing & Irrigation, Inc. v. Century Ser. Co., 2013 U.S. Dist. LEXIS 1665 (W.D. La. 2013)	Construction defect	Contractor sought coverage for liabilities arising from underground plumbing and sewer work.	Manifestation	Recognizing a split between manifestation and exposure authorities, court held that damage that results after construction are occurrences upon manifestation.
	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.
	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.
	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.
	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.
	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.
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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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.
	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.
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.
	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.
	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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
Michigan	Continental Cas. Co. v. Indian Head Ind., Inc., 2012 U.S. Dist. LEXIS 51555 (E.D. Mich. 2013)	Asbestos BI	Insured sought coverage for asbestos claims.	Injury-in-fact	Injury-in-fact is proper trigger, regardless of allocation methodology.
	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.
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.
	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.
	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.
	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.
	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 triggered the policy in effect at the time of the damage.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
Nebraska	Nat'l. Fire & Marine Ins. Co. v. Redland Ins. Co., 2014 U.S. Dist. LEXIS 107382 (D. Nev. 2014)	Construction defect	Construction defect claims in residential development gave use to insurer's subrogation claims.	Manifestation	Noting that construction defects do not necessarily coincide with timing of property damage, court found as a fact issue, when property damage actually occurred.
	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.
New Hampshire	Energy North 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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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	Cypress Point Condo. Ass'n. v. Selective Way Ins. Co., 2015 N.J. Super. Unpub. LEXIS 721 (Law Div. 2015)	Construction defect	Homeowners Association sued insurers of defaulted contractor for various water damage.	Continuous	Recognizing that continuous trigger applies to third-party claims and manifestation for first-party claims, court applied continuous trigger.
	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 was manifest before policy inception.
	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.
	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.
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 (applying New York law).

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	Maryland Cas. Co. v. W.R. Grace & Co., 23 F.3d 617 (2d Cir. 1993)	Asbestos PD	Insured sought coverage for asbestos in building claims.	Injury-in-fact	Property damage occurs upon the installing of asbestos products and continues until it is discovered.
North Carolina	Harleysville Mut. Ins. Co. v. Hartford Cas. Ins. Co., 2015 U.S. Dist. LEXIS 25362 (E.D.N.C. 2015)	Construction defect	Contractor's claims for coverage for defective roofing liabilities.	Injury-in-fact	Rejecting date work was completed, and because precise dates of damage were not ascertainable, court adopted a "multiple approach" injury-in-fact trigger.
	Erie Ins. Exch. v. Builders Mut. Ins. Co., 742 S.E. 2d 803 (N.C. Ct. App. 2013)	Construction defect	Newly graded slope and retaining wall collapsed causing extensive damage to home.	Injury-in-fact	Where the timing of the injury-in-fact can be ascertained with certainty, the policy then in effect is triggered.
	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.
	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.
	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 took place when the leak occurred as opposed to the date of improper installation.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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 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.
	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 actual, 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.
	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 among the insurance carriers that insured the property during the course of the damage.
	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 among insurance carriers that insured the property during the course of the damage.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
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.
	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.
Pennsylvania	Wausau Underwriters Inc. 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 in a way that would put a reasonable person on notice of damage.
	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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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 is appropriate because environmental property damage is a progressive, indivisible harm.
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.
	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 Cmtys 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 damage.	Modified continuous	Coverage is triggered for the time of an injury-in-fact and continuously thereafter to allow coverage under all policies in effect from the time of an injury-in-fact during the progressive damage.
	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.
	Stonehenge Eng'g Corp. v. Employers 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.
	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 of an injury-in-fact and continuously thereafter.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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 the home suffered wood rot or other physical damages.
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.
	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.

Coverage trigger

State	Citation	Types of Case	Facts	Finding	Comments
Virginia	C.E. Thurston & Sons, Inc. v. Chi. Ins. Co., No. 2:97 CV 1034 (E.D. Va., Oct. 2, 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.
	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.
	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.
	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. Erie 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 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).

Allocation of loss

After determining the applicable trigger of coverage, damages may be allocated over multiple triggered years and policies.

Courts have applied two primary methods for determining how policies will respond to a loss:

Pro Rata

Cases that conclude that policies in a particular policy period respond in proportion to the amount of injury or damage that takes place during that policy period are known as “pro rata” cases. This approach relies on the policy language that limits coverage to those injuries or damages that take place “during the policy period.” Decisions that require proration sometimes require that the policyholder share in the allocation by requiring it to bear the loss for periods of self-insurance or no insurance.

All Sums

Cases that conclude that policies in a particular policy period respond in full, subject to their limits, are known as “all sums” cases. These decisions generally hold that, based on the all sums language contained in the policies, a policyholder should be permitted to “pick and choose” the insurance policy or policies that are required to pay the covered loss. Under this approach the policyholder may select a policy year and proceed vertically through each successive layer of insurance to pay the loss. In such jurisdictions, courts will also frequently recognize contribution rights of insurers whose policies were selected.

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	Types 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 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. 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, 145 Cal. Rptr. 3d 1(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, does not modify the "all sums" language in the insuring agreement.
	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.
	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 such costs.
	Fireman's Fund Ins. Co. v. Md. Cas. Co., 77 Cal. Rptr. 2d 296 (Cal. Ct. App. 1998)	Construction defect	One insurer 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.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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	Continuous trigger applies, but an insurer may allocate the loss among additional insurers based on the "other insurance" provisions.
Colorado	D.R. Horton, Inc. v. Mountain States Mut. Cas. Co., 2014 U.S. Dist. LEXIS 132563 (D. Colo. 2014)	Construction defect	Allocation of defense costs among six insurers in construction defect litigation.	All sums	The relative liability of subcontractors, respective limits of triggered policies, and each insurer's time-on-the-risk are factors relevant to the ultimate allocation of the defense costs among insurers.
	Travelers Indemn. Co. of America v. AAA Waterproofing, Inc., 2014 U.S. Dist. LEXIS 6334 (D. Colo. 2014)	Construction defect	Allocation of defense costs in construction defect litigation.	All sums	Each subcontractor/insurer has a joint and several duty to provide a complete defense, and no reliable method exists to tie allocation to liability or policy limits.
	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 is allocated proportionately among insurance policies according to both time-on-the-risk and to the degree of risk assumed.
Connecticut	Travelers Cas. & Sur. Co. v. The Netherlands Ins. Co., 95 A.3d 1031 (Conn. 2014)	Construction defect	Allocation of losses in a construction defect claim involving continuous and progressive damages.	Pro rata	Continuous trigger and a pro rata method of allocating losses apply in construction defect claims.
	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. The triggered insurer may seek contribution from other triggered policies.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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	Pro rata time-on-the-risk method determines coverage since an insurer should not provide coverage during periods where bodily injury did not occur.
	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.
Hawaii	Natilus Ins. Co. v. Lexington Ins. Co., 321 P.3d 634 (Haw. 2014)	Construction defect	Supreme Court of Hawaii addressed certified questions from the 9th Circuit Court of Appeals.	Hybrid	Insurers may not avoid a duty to defend based on other insurer's obligations or other insurance clauses. Equitable contribution among insurers permitted.
	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.
	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.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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. Subsequent reallocation among insurers is allowed.
Indiana	Thomson Inc. v. Ins. Co. of N. Am., 11 N.E. 3d 982 (Ind. Ct. App. 2014)	Workplace BI	Insurance company's duty to defend and application of employer's liability exclusion.	Pro rata	Pro rata allocation method was proper and the trial court on remand should determine the injuries and timing of each injury during each contract period and allocate the loss accordingly.
	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 indemnifies insured for all sums insured must pay as a result of an occurrence but subsequent reallocation among insurers is allowed.
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 was self-insured.
Kansas	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	Each insurer responsible for their individual and proportionate share of defense costs of insured.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.	Pro rata	Excess insurers not jointly and severally liable 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.
Kentucky	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.
	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	Each insurer is responsible for its individual and proportionate share of defense costs of insured.
	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.
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.	Pro rata	Court held that each asbestos claimant's judgment should be spread over all triggered policies during the period of exposure.
	Ducree 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.
Maryland	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.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
Maryland	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 uninsured periods.
	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.
Massachusetts	Narragansett Electric Co. v. Am. Home Assurance Co., 999 F. Supp. 2d 511 (S.D.N.Y. 2014) (applying Massachusetts law)	Environ. PD	CERCLA environmental remediation litigation with resulting coverage litigation.	All sums	The Court predicted that Massachusetts would allocate defense costs jointly and severally when the insurer has breached the duty to defend.
	New England Insulation Co., Inc. v. Liberty Mut. Ins. Co., 988 N.E. 2d 450 (Mass. App. Ct. 2013)	Asbestos BI	Liability of insurers in asbestos bodily injury cases.	Pro rata	Applied holding in Boston Gas to asbestos BI claims.
	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, indemnity obligations of insurers should be pro-rated based on time-on-risk, and the insured is responsible for periods without insurance.
	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 U.S. Dist. LEXIS 3170 (E.D. Mich. 2010)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Pro rata	Pro rata time-on-risk method fairly allocates risk that insured entered into when it issued policy to insured.
	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 for duration of pollution.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
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 damage.	All sums	When continuous injuries arise from 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.
	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.
	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.	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.
Missouri	Doe Run Resources Corp. v. Certain Underwriters at Lloyd's, London, 400 S.W. 3d 463 (Mo. App. 2013)	Environ. PD	Insured sought coverage for long-tail liabilities associated with mining operations.	All sums	Court relied on definition of ultimate net loss in reversing trial court's pro rata decision.
	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 producing electricity with inconsistent voltage.	Pro rata	A time-on-the-risk allocation is appropriate since each insurer is only liable for injuries suffered in its coverage period.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
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 the 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.
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-rata by year and limits method.
New Jersey	Potomac Ins. Co. of Ill. v. Pa. Mfr. Ass'n Ins. Co., 73 A.3d 465 (N.J. 2013)	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.
	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 should be by days on the risk.
	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.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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 when it did not provide coverage, and a full deductible is applied to each year.
	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.
North Carolina	Harleysville Mut. Ins. Co. v. Hartford Cas. Ins. Co., 1015 U.S. Dist. LEXIS 25362 (E.D.N.C. 2015)	Construction defect	Contractor sought coverage from several insurers for defective roofing liabilities.	Equal shares	Drawing a distinction with true pro rata method, court opted for equal shares (by insurer) for indemnity and defense.
	Crossman Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co., 769 S.E.2d 453 (N.C. Ct. App. 2015)	Construction defect	Developer of residential communities sued by homeowners for various construction defects.	Pro rata	Court affirmed ruling on time-on-the-risk, pro rata methodology over some ten years.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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, subject to policy limits. The right of excess insurers to demand proration between themselves does not affect the insured’s right to full payment 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.
	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.
	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.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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. Insurer can then seek contribution from other triggered insurers.
Rhode Island	Emhart Indust., Inc. v. Century Indem. Co., 559 F.3d 57 (1st Cir. 2009) aff'd 769 S.E.2d (S.C. 2015)	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.
	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.
South Carolina	Crossman Cmtys. 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 condominium units.	Pro rata	Time-on-the-risk is most consistent with the language of a CGL policy allocating damages caused by progressive injury.
	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.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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.
Virginia	Morrow Corp. v. Harleysville 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.
	C.E. Thurston & Sons Inc. v. Chi. 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.
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.

Allocation of loss

State	Citation	Types of Case	Facts	Finding	Comments
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.
	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.
	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. The insurer can seek contribution from other policies or the insured for those periods of self-insurance.

Anti-indemnification statutes, right to repair/cure statutes, statutes of limitations, and statutes of repose

Legislation impacting construction defect claims has been enacted in many states, including anti-indemnification statutes, right to repair/cure, statutes of limitations, and statutes of repose.

Anti-indemnification statutes

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. This is especially true regarding claims for an indemnitee's own negligence.

Right to repair/cure

Several states have passed legislation to protect the construction trade and offer an alternative to costly litigation. Key provisions of these statutes include: requiring written notice regarding alleged defects from homeowners to builder 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; and a requirement that the right-to-repair provisions are stated in the sales contract.

Statute of limitations

Statutes of limitations provide a specific time within which a claim must be brought. Such statutes typically begin to run from the time injury or property damage is or could be "discovered."

Statute of repose

A statute of repose acts as a bar on any claims, and usually starts on a date certain, such as the close of escrow, transfer of title, or occupancy. 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-indemnification statutes, right to repair/cure statutes, statutes of limitations and statutes of repose.

Anti-indemnification statutes, right to repair/cure statutes, statutes of limitations, and statutes of repose

State	Anti-Indemnification Statutes	Right to Repair/Cure	Statute of Limitations	Statute of Repose
Alabama	None. See, City of Montgomery v. JYD Int'l, Inc., 534 So.2d 592 (Ala. 1988); Cochrane Roofing & Metal Co. v. Callahan, 472 So. 2d 1005 (Ala. 1985);	None	Ala. Code §§ 6-2-34, 6-2-38 (2014)	Ala. Code §§ 6-5-218, 6-5-221, 6-5-225, 6-5-227(2014)
Alaska	Alaska Stat. § 45.45.900 (2014)	Alaska Stat. § 09.45.881 to 09.45.899 (2014)	Alaska Stat. §§ 09.10.054, 09.10.070 (2014)	Alaska Stat. § 09.10.055 (2014)
Arizona	Ariz. Rev. Stat. Ann. §§ 34-226, 25-86 (2014)	Ariz. Rev. Stat. Ann. § 12-1361 to 12-1366 (2014)	Ariz. Rev. Stat. Ann. § 12-542, 12-550 (2014)	Ariz. Rev. Stat. Ann. § 12-552 (2014)
Arkansas	Ark. Code Ann. § 4-56-2014 (2014)	None	Ark. Code Ann. § 16-56-105 (2014)	Ark. Code Ann. § 16-56-112 (2014)
California	Cal. Civ. Code §§ 2782, 2782.8 (2014)	Cal. Civ. Code § 895 to 945.5 (2014)	Cal. Civ. Proc. Code §§ 312, 337 (2014)	Cal. Civ. Proc. Code §§ 337.1, 337.15 (2014)
Colorado	Colo. Rev. Stat. § 13-50-5-102 (2014)	Colo. Rev. Stat. § 13-20-802 to 13-20-807 (2014)	Colo. Rev. Stat. §§ 13-80-102, 13-80-107(1)(b), 13-20-803.5, 13-20-805 (2014)	Colo. Rev. Stat. § 13-80-104 (2014)
Connecticut	Conn. Gen. Stat. § 52-572k (2014)	None	Conn. Gen. Stat. §§ 52-584, 52-577, 52-577a (2014)	Conn. Gen. Stat. § 52-584(a) (2014)
Delaware	Del. Code. Ann. tit. 6 § 2704 (2014)	Del. Code. Ann. tit. 25 § 81-321 (2014)	Del. Code. Ann. tit. 10 § 8106 (2014)	Del. Code. Ann. tit. 10 § 8127 (2014)
District of Columbia	None. See, N.P.P. Contr. v. John Canning & Co., 715 A.2d 139 (D.C. 1988)	None	D.C. Code Ann. § 12-301 (2014)	D.C. Code Ann. § 12-310 (2014)
Florida	Fla. Stat. § 725.06 (2014)	Fla. Stat. § 558.001 to 558.005 (2014)	Fla. Stat. § 95.031 (2014)	Fla. Stat. § 95.11 (2014)
Georgia	Ga. Code Ann. § 13-8-2(b) (2014)	Ga. Code Ann. § 8-2-35 to 8-2-41 (2042)	Ga. Code Ann. §§ 9-3-30, 51-1-11 (2014)	Ga. Code Ann. § 9-3-51 (2014)
Hawaii	Haw. Rev. Stat. § 431:10-222 (2014)	Haw. Rev. Stat. § 672E-1 to 672E-13 (2014)	Haw. Rev. Stat. § 657-7 (2014)	Haw. Rev. Stat. § 657-8 (2014)
Idaho	Idaho Code Ann. § 29-114 (2014)	Idaho Code Ann. § 6-2501 to 62504 (2014)	Idaho Code Ann. § 5-241(2015)	Idaho Code Ann. § 5-241 (2014)
Illinois	740 Ill. Comp. Stat. Ann. 35/1 (2014)	None	735 Ill. Comp. Stat. Ann. §§ 5/13-205, 5/13-213 (2014)	735 Ill. Comp. Stat. Ann. 5/13-214 (2014)
Indiana	Ind. Code § 26-2-5-1 (2014)	Ind. Code § 32-27-3-1 to 32-27-3-14 (2014)	Ind. Code §§ 34-11-1-2, 34-11-2-4, 34-11-2-7, 34-20-3-1 (2014)	Ind. Code §§ 32-30-1-5, 32-30-1-6 (2014)
Iowa	Iowa Code § 537A.5 (2013)	None	Iowa Code § 614.1 (2013)	Iowa Code § 614.1 (2013)
Kansas	Kan. Stat. Ann. § 16-121 (2013)	Kan. Stat. Ann. § 60-4701 to 60-4710 (2013)	Kan. Stat. Ann. § 60-510 to 60-513 (2011)	Kan. Stat. Ann. § 60-3303(a)(1) (2013)

Anti-indemnification statutes, right to repair/cure statutes, statutes of limitations, and statutes of repose

State	Anti-Indemnification Statutes	Right to Repair/Cure	Statute of Limitations	Statute of Repose
Kentucky	Ky. Rev. Stat. Ann. § 371.180 (2014)	Ky. Rev. Stat. Ann. § 411.250 to 411.266 (2014)	Ky. Rev. Stat. Ann. §§ 411.250 to 411.264, 411.310 (2013)	Ky. Rev. Stat. Ann. § 413.135 (2014)
Louisiana	La. Rev. Stat. Ann. § 38:2216(G) (2013)	La. Rev. Stat. Ann. § 9:3141 to 9:31350 (2014)	La. Civ. Code. Ann. art. 3499 to 3500 (2013)	La. Rev. Stat. Ann. §§ 9:2772, 9:5607 (2013)
Maine	None. See, State Farm Mut. Ins. Co. v. Koshy, 995 A.2d 651 (Me. 2010)	None	Me. Rev. Stat. Ann. tit. 14, § 752-A (2014)	Me. Rev. Stat. Ann. tit. 14, § 752-A (2014)
Maryland	Md. Code. Ann., Cts. & Jud. Proc. § 5-401 (2014)	None	Md. Code. Ann., Cts. & Jud. Proc. § 5-108 (2014)	Md. Code. Ann., Cts. & Jud. Proc. § 5-108 (2014)
Massachusetts	Mass. Gen. Laws ch. 149, § 29C (2014)	None	Mass. Gen. Laws ch. 260, § 2B (2014)	Mass. Gen. Laws ch. 260, § 2B (2014)
Michigan	Mich. Comp. Law § 691.991 (2014)	None	Mich. Comp. Law § 600.5839 (2014)	Mich. Comp. Law §§ 339.2411, et seq. (2014)
Minnesota	Minn. Stat. § 337.01 to 337.02 (2014)	Minn. Stat. § 327A.01 to 327A.08 (2014)	Minn. Stat. § 541.051 (2013)	Minn. Stat. § 541.051 (2014)
Mississippi	Miss. Code. Ann. § 31-5-41 (2014)	Miss. Code. Ann. § 83-58-1 to 83-58-17 (2014)	Miss. Code Ann. § 15-1-41 (2014)	Miss. Code Ann. § 15-1-41 (2014)
Missouri	Mo. Rev. Stat. § 434.100 (2014)	Mo. Rev. Stat. § 436.350 to 436.365 (2014)	Mo. Rev. Stat. § 516.120 (2014)	Mo. Rev. Stat. § 516.097 (2013)
Montana	Mont. Code Ann. §§ 18-2-124, 28-2-2111 (2013)	Mont. Code Ann. § 70-19-426 to 70-19-428 (2014)	Mont. Code. Ann. §§ 27-2-102, 27-2-202, 27-2-7-204, 27-2-207 (2013)	Mont. Code. Ann. § 27-2-208 (2013)
Nebraska	Neb. Rev. Stat. § 25-21,187 (2013)	None	Neb. Rev. Stat. §§ 25-201, 25-205, 25-212, 25-224 (2014)	Neb. Rev. Stat. § 25-223 (2013)
Nevada	Nev. Rev. Stat. § 616B.609 (2014)	Nev. Rev. Stat. § 40.600 to 49.695 (2014)	Nev. Rev. Stat. §§ 11.010, 11.190 (2014)	Nev. Rev. Stat. § 11.203 to 11.205 (2014)
New Hampshire	N.H. Rev. Stat. Ann. § 338-A:1 (2014)	N.H. Rev. Stat. Ann. § 359-G:1 to 359-G:8 (2014)	N.H. Rev. Stat. Ann. § 507-D:2, 508:4 (2014)	N.H. Rev. Stat. Ann. § 508:4-b (2014)
New Jersey	N.J. Stat. Ann. § 2A:40A-1 to 2A:40A-2 (2014)	None	N.J. Stat. Ann. § 2A:14-1 (2014)	N.J. Stat. Ann. § 2A:14-1.1 (2014)
New Mexico	N.M. Stat. Ann. § 56-7-1 (2013)	None	N.M. Stat. Ann. §§ 37-1-1, 37-1-3, 37-1-4 (2013)	N.M. Stat. Ann. § 37-1-27 (2013)
New York	N.Y. Gen. Oblig. Law §§ 5-322.1, 5-324 (McKinney 2014)	None	N.Y. C.P.L.R. 213, 214, 214-d (McKinney 2014)	None
North Carolina	N.C. Gen. Stat. § 22B-1 (2013)	None	N.C. Gen. Stat. §§ 1-15, 1-52, 1-53 (2013)	N.C. Gen. Stat. § 1-50 (2013)
North Dakota	N.D. Cent. Code § 9-08-02.1 (2014)	N.D. Cent. Code § 43-07-26 (2014)	N.D. Cent. Code §§ 28-01-16, 28-01.3-08 (2014)	N.D. Cent. Code §§ 28-01-44, 28-01.3-08 (2014)

Anti-indemnification statutes, right to repair/cure statutes, statutes of limitations, and statutes of repose

State	Anti-Indemnification Statutes	Right to Repair/Cure	Statute of Limitations	Statute of Repose
Ohio	Ohio Rev. Code Ann. § 2305.31 (2014)	Ohio Rev. Code Ann. § 1312.01 to 1312.08 (2014)	Ohio Rev. Code Ann. §§ 2305.06, 2305.07, 2305.09, 2305.10 (2014)	Ohio Rev. Code Ann. § 2305-131 (LexisNexis 2014)
Oklahoma	Okla. Stat. Ann. tit. 15, § 422 to 424 (2014)	Okla. Stat. Ann. tit. 15, § 765.5 to 765.6 (2014)	Okla. Stat. Ann. tit. 12, § 95 (2014)	Okla. Stat. Ann. tit. 12, § 109 (2014)
Oregon	Or. Rev. Stat. § 30.140 (2013)	Or. Rev. Stat. § 701.560 to 701.595 (2013)	Or. Rev. Stat. §§ 12.080, 12.110, 12.115, 30.905 (2013)	Or. Rev. Stat. § 12.135 (2013)
Pennsylvania	68 Pa. Stat. Ann. § 491 (West 2014)	None	42 Pa. Cons. Stat. Ann. § 5524, 5525 (West 2014)	42 Pa. Cons. Stat. Ann. § 5536 (2014)
Rhode Island	R.I. Gen. Laws § 6-34-1 (2013)	None	R.I. Gen. Laws § 9-1-13 to 9-1-14 (2013)	R.I. Gen. Laws § 9-1-29 (2013)
South Carolina	S.C. Code Ann. § 32-2-10 (2013)	S.C. Code Ann. §§ 40-59-810 to 40-59-860, 40-11-500 to 40-11-570 (2013)	S.C. Code Ann. §§ 15-3-20, 15-3-530 (2013)	S.C. Code Ann. § 15-3-640 (2013)
South Dakota	S.D. Codified Laws §§ 56-3-16, 56-3-18 (2014)	S.D. Codified Laws § 21-1-15 to 21-1-16 (2014)	S.D. Codified Laws § 15-2-13 to 15-2-14 (2014)	S.D. Codified Laws §§ 15-2A-3, 15-2A-7 (2014)
Tennessee	Tenn. Code Ann. § 62-6-123 (2014)	Tenn. Code Ann. § 66-36-101 to 66-36-103 (2014)	Tenn. Code Ann. §§ 28-3-103, 28-3-104, 28-3-109 (2014)	Tenn. Code Ann. § 28-3-202 (2014)
Texas	Tex. Ins. Code Ann. § 151.101 to 151.105 (2014); Tex. Civ. Prac. & Rem. Code Ann. § 130.001 to 130.005 (2014)	Tex. Prop. Code Ann. § 27.001 to 27.007 (West 2014)	Tex. Civ. Prac. & Rem. §§ 16.003, 16.012, 16.051, (2014)	Tex. Civ. Prac. & Rem. §§ 16.008, 16.009 (West 2014)
Utah	Utah Code Ann. § 13-8-1 (2014)	None	Utah Code Ann. §§ 78B-2-102, 78B-2-307, 78B-2-309, 78B-2-225 (2014)	Utah Code Ann. § 78B-2-225 (2014)
Vermont	None. See, <i>Tateosian v. State</i> , 945 A.2d 833 (Vt. 2007)	None	Vt. Stat. Ann. tit. 12, § 465, None 511, 512 (2014)	
Virginia	Va. Code Ann. §§ 11-4.1, 11-4.4 (2014)	Va. Code Ann. § 55-70.1 (2014)	Va. Code Ann. §§ 8.01-243, 8.01-246 (2014)	Va. Code Ann. § 8.01-250 (2014)
Washington	Wash. Rev. Code § 4.24.115 (2013)	Wash. Rev. Code § 64.50.010 to 64.50.060 (2014)	Wash. Rev. Code §§ 4.16.050, 4.16.040, 4.16.080, 7.72.060 (2014)	Wash. Rev. Code §§ 4.16.300, 4.16.310 (2014)
West Virginia	W. Va. Code § 55-8-14 (2014)	W. Va. Code § 21-11A-1 to 21-11A-17 (2014)	W. Va. Code §§ 55-2-6, 55-2-12 (2014)	W. Va. Code § 55-2-6a (2014)
Wisconsin	Wis. Stat. § 895.447 (2014)	Wis. Stat. §§ 101.148, 895.07 (2014)	Wis. Stat. §§ 893.43, 893.52, 893.53 (2014)	Wis. Stat. § 893.89 (2014)
Wyoming	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 (2014)	Wyo. Stat. Ann. § 1-3-111 (2014)



Munich Reinsurance America, Inc.
555 College Road East
P.O. Box 5241
Princeton, NJ 08543-5241
Tel: (609) 243-4200
www.munichreamerica.com

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