

Is Faulty Workmanship an “Occurrence”?

One of the hottest topics in the insurance industry today is whether faulty workmanship constitutes an “occurrence” under a CGL policy. In other words, can damage to a contractor’s own work (including that of a subcontractor) trigger the CGL insuring agreement? Below is a chart listing known state and federal court decisions to date. To demonstrate how unclear this is, note that some states have decisions on both sides of an issue at the same jurisdictional level. In the “Yes/No” column below, if a court has determined that faulty workmanship IS an occurrence where coverage (or lack thereof) is governed by policy exclusion, the column will have a “Yes.” If a court refused to recognize that coverage has been triggered, so the exclusions (and any exceptions to an exclusion) are a moot point, the column will have a “No.” For additional information, see the following article on our Virtual University:

“The CGL ‘No Occurrence’ Claim Denial”

<http://www.iiaba.net/VU/Lib/Ins/CL/CGL/WilsonNoOccurrence.htm>

State Courts

State	Federal Circuit	Occurrence?	Court Case Citations	Commentary
AL	11th	No	<i>Reliance Ins. Co. v. Gary C. Wyatt, Inc.</i> (Sup. Ct. 1988)	<i>Reliance</i> ruled that breach of contract is not an occurrence.
		Yes	<i>United States Fidelity & Guaranty Co. v. Bonitz Insulation Co. Of Alabama</i> (Sup. Ct. 1982)	
AK	9th	Yes	<i>Fejes v. Alaska Ins. Co.</i> (Sup. Ct. 1999)	
AZ	9th	Yes	<i>Lennar Corp. v. Auto Owners Ins. Co.</i> (App. Ct. 2007) – review denied by Sup. Ct.	Courts have ruled that if damage is limited to the work itself, it’s not an “occurrence
		No	<i>United States Fidelity & Guaranty Corp. v. Advance Roofing & Supply Co., Inc.</i> (App. Ct. 1989)	
AR	8th	No	<i>Essex Ins. Co. v. Holder</i> (Sup. Ct. 2008)	
CA	9th	Yes	<i>Vandenberg v. Superior Court</i> (Sup. Ct. 1999) <i>Geddes & Smith, Inc. v. St. Paul-Mercury Indemnity Co.</i> (Sup. Ct.	

			1959)	
CO	10th	No Yes	<i>General Security Indemnity Co. v. Mountain States Mutual Cas. Co., et al.</i> (App. Ct. 2009) <i>Union Ins. Co. v. Hottenstein</i> (App. Ct. 2003) <i>Hoang v. Monterra Homes</i> (App. Ct. 2005) <i>Colard v. American Family Mutual Ins. Co.</i> (App. Ct. 1985)	The <i>General Security</i> decision led to 2010 legislation (HB 10-1394) that statutorily (Colo. Rev. Stat. 13-20-808) defined faulty workmanship to be an "occurrence": http://tinyurl.com/29xnggc
CT	2nd	No	<i>Time Fiber Communications v. Travelers Indemnity Co.</i> (Sup. Ct. 2005)	
DC	DC	No	<i>Western Exterior Co. v. Hartford A&I Co.</i> (App. Ct. 1984)	Includes U.S. Tax Court and appeals from many administrative agencies of the federal government.
DE	3rd	No	<i>Brosnahan Builders, Inc. v. Harleysville Mutual Ins. Co.</i> (App. Ct. 2001)	
FL	11th	Yes	<i>United States Fire Ins. Co., et al. v. J.S.U.B., Inc.</i> (Sup. Ct. 2007) <i>Auto-Owners Ins. Co. v. Pozzi Window Company, et al.</i> (Sup. Ct. 2007) <i>Joe Banks Drywall & Acoustics, Inc. v. Transcontinental Ins. Co.</i> (App. Ct. 2000)	
GA	11th	Yes No	<i>American Empire Surplus Lines Ins. Co. v. Hathaway Dev. Co.</i> (Sup. Ct. 2011) <i>Hathaway Dev. Co. v. Am. Empire Surplus Lines Co.</i> (App. Ct. 2009) <i>Sawhorse, Inc. v. Southern Guar. Ins. Co. of Ga.</i> (App. Ct. 2004) <i>Custom Planning & Dev., Inc. v. National Fire Ins. Co.</i> (App. Ct. 2004)	
HI	9th	No	<i>Group Builders, Inc. v. Admiral Ins. Co.</i> (App. Ct. 2010)	

ID	9th	Yes	<i>Western Heritage Ins. Co. v. Green</i> (Sup. Ct. 2002)	
IL	7th	Yes No	<i>County Mutual Ins. Co. v. Carr</i> (App. Ct. 2007) <i>State Farm Fire & Cas. Co. v. Tillerson</i> (App. Ct. 2001)	<i>County Mutual</i> cites <i>USF&G v. Wilkin Insulation Co.</i> (Sup. Ct. 1991)
IN	7th	Yes	<i>Sheehan Construction Co. v. Continental Casualty Co.</i> (Sup. Ct. 2010) Supersedes opposing viewpoints in: <i>Amerisure v. Wurster Construction Co.</i> (App. Ct. 2004) <i>R.N. Thompson & Associates, Inc., v. Monroe Guaranty Ins. Co.</i> (App. Ct. 1997)	
IA	8th	No	<i>Pursell Construction v. Hawkeye-Security</i> (Sup. Ct. 1999) <i>Alan Yegge v. Integrity Mutual Ins.</i> (Sup. Ct. 1995)	
KS	10th	Yes	<i>Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co.</i> (Sup. Ct. 2006) <i>Fidelity & Deposit Co. of Maryland v. Hartford casualty Ins. Co.</i> (Sup. Ct. 2002)	
KY	6th	No	<i>Cincinnati Ins. Co. v. Motorists Mutual Ins. Co.</i> (Sup. Ct. 2010)	
LA	5th	Yes	<i>Broadmoor Anderson v. National Union Fire Ins. Co. of Louisiana</i> (App. Ct. 2005) – review denied by Sup. Ct. 2006	
ME	1st	No	<i>Peerless Ins. Co. v. Robert C. Brennon</i> (Sup. Ct. 1989)	
MD	4th	No	<i>Lerner Corp. v. Assurance Co. of America</i> (App. Ct. 1998)	
MA	1st	No	<i>Mello Constr. Co. v. Acadia Ins. Co.</i> (App. Ct. 2007) <i>Lusalon, Inc. v. The Hartford Accident and Indemnity Co.</i> (Sup. Ct. 1987)	

			<i>Bond Bros., Inc. v. Odell Robinson</i> (Sup. Ct 1984)	
MI	6th	No Yes	<i>Groom v. Home-Owners Insurance Co.</i> (App. Ct. 2007) <i>Hawkeye-Security Ins. Co. v. Vector Constr. Co.</i> (App. Ct. 1990) <i>Radenbaugh v. Farm Bureau General Ins. Co. of Michigan</i> (App. Ct. 2000)	
MN	8th	Yes	<i>Wanzek Construction v. Employers Ins. Co.</i> (Sup. Ct. 2004) <i>O'Shaughnessy v. Smuckler Corp.</i> (App. Ct. 1996)	
MS	5th	Yes	<i>Architex v. Scottsdale Ins. Co.</i> (Sup. Ct. 2010)	
MO	8th	No Yes	<i>St. Paul Fire & Marine Ins. Co. v. Bldg. Constr. Ent.</i> (App. Ct. 2007) <i>Amerisure Mut. Ins. Co. v. Paric Corp.</i> (App. Ct. 2005) <i>American States Ins. Co. v. Herman C. Kempker Constr. Co., Inc.</i> (App. Ct. 2002)	
MT	9th	Yes	<i>Revelation Industries v. St. Paul Fire & Marine</i> (Sup. Ct. 2009) <i>Portal Pipeline Co. v. Stonewall Ins. Co.</i> (Sup. Ct. 1993)	
NE	8th	No	<i>Auto-Owners v. Home Pride Companies, Inc.</i> (Sup. Ct. 2004)	Only damage to third party property can be an "occurrence."
NV	9th	Yes	<i>Gary G. Day Construction Co. v. Clarendon America Ins. Co.</i> (App. Ct. 2006)	
NH	1st	Yes	<i>High Country Associates v. New Hampshire Insurance Corp.</i> (Sup. Ct. 1994) Effectively superseded <i>McAllister v. Peerless Ins. Co.</i> (Sup. Ct. 1984)	
NJ	3rd	No	<i>Penn National Mutual Ins. Co. v. Parkshore Development Corp.</i> (App. Ct. 2009)	

			<i>Firemans Ins. Co. of Newark v. Nat'l Union Fire Ins. Co.</i> (Sup. Ct. 2006)	
NM	10th	Yes	<i>O'Rourke v. New Amsterdam Cas. Co.</i> (App. Ct. 1961)	
NY	2nd	No	<i>Baker Residential Limited Partnership v. Travelers Ins. Co.</i> (App. Ct. 2004) <i>George A. Fuller Co. v. U.S. Fid. & Guar. Co.</i> (App. Ct. 1994)	
		Yes	<i>C.O. Falter, Inc. v. Crum & Forster Ins. Cos.</i> (Sup. Ct. 1974)	
NC	4th	No	<i>Holz-Her U.S., Inc. v. United States Fidelity and Guaranty Co.</i> (App. Ct. 2000)	
ND	8th	Yes and No	<i>Acuity v. Burd & Smith Constr., Inc.</i> (Sup. Ct. 2006)	
		Yes	<i>Fisher v. Am. Family Mutual Ins. Co.</i> (App. Ct. 1998)	
OH	6th	Yes	<i>Dublin Bldg. Systems v. Selective Ins. Co. of America</i> (App. Ct. 2007) <i>Erie Insurance Exchange v. Colony Development Corp.</i> (App. Ct. 2003) <i>Indiana Insurance Co. v. Alloyd Insulation Co.</i> (App. Ct. 2002) <i>Acme Steak Co., Inc. v. Great Lakes Mechanical Co.</i> (App. Ct. 2000)	
		No	<i>Heile v. Herrmann</i> (App. Ct. 1999) <i>Ferro Corp. v. Blaw Knox Food & Chemical Equipment Co.</i> (App. Ct. 1997)	
OK	10th	No	<i>Dodson v. St. Paul Ins. Co.</i> (Sup. Ct. 1991)	
OR	9th	No	<i>Oak Crest Constr. Co. v. Austin Mut. Ins. Co.</i> (Sup. Ct. 2000)	
PA	3rd	No	<i>Kvaerner Metal Division of Kvaener U.S. Inc., et al. vs. Commercial Union Ins. Co., et al.</i> (Sup. Ct. 2006) <i>Redevelopment Authority of Cambria County v. International Insurance Co.</i> (App. Ct. 1996) <i>Solcor Equipment Leasing v. Pennsylvania Manufactures' Association</i>	

			<i>Insurance Co.</i> (Sup. Ct. 1992)	
RI	1st			See 1st Cir.
SC	4th	No	<i>Crossman Communities v. Harleysville Mutual Ins. Co.</i> (Sup. Ct. 2011)...overturning <i>Auto-Owners v. Newman L-J, Inc. v. Bituminous Fire & Marine Ins. Co.</i> (Sup. Ct. 2005)	
		Yes	<i>Auto-Owners v. Newman and Trinity Construction</i> (Sup. Ct. 2008)	
SD	8th	Yes	<i>Corner Construction Co. v. USF&G</i> (Sup. Ct. 2002)	
TN	6th	Yes	<i>Travelers Indemnity Co. of America v. Moore & Associates, Inc.</i> (Sup. Ct. 2007)	
			Supersedes opposing viewpoints in: <i>Vernon Williams & Son Constr. Inc. v. Continental Ins. Co.</i> (Sup. Ct. 1979) <i>State Auto Ins. Cos. v. Gordon Constr., Inc.</i> (App. Ct. 2001)	
TX	5th	Yes	<i>Lamar Homes, Inc. v. Mid-Continent Cas. Co.</i> (Sup. Ct. 2007)	
			Affirms the following decisions: <i>Gehan Homes v. Employers Mut. Cas. Co.</i> (App. Ct. 2004) <i>Archon Investments, Inc. v. Great American Lloyd's Ins. Co.</i> (App. Ct. 2005) <i>Lennar Corp. v. Great American Ins. Co.</i> (App. Ct. 2005) Supercedes opposing viewpoint in: <i>Hartrick v. Great American Lloyds Ins. Co.</i> (App. Ct. 2001)	
UT	10th	Yes	<i>Great American Ins. Co. v. Woodside Homes</i> (App. Ct. 2006)	
		No	<i>H.E. Davis & Sons, Inc. v. N. Pac. Ins. Co.</i> (App. Ct. 2002)	
VT	2nd	Yes	<i>Peerless Ins. Co. v. Wells</i> (Sup. Ct. 1990)	

VA	4th	No	<i>Hotel Roanoke Conf. Ctr. V. Cincinnati Ins. Co.</i> (App. Ct. 2004)	
WA	9th	Yes	<i>Overton v. Consolidated Ins. Co.</i> (Sup. Ct. 2002) <i>Yakima Cement Products Co. v. Great Am. Ins. Co.</i> (Sup. Ct. 1980)	
WV	4th	No	<i>Webster County Solid Waste Authority v. Nationwide Mut. Ins. Co.</i> (Sup. Ct. 2005) <i>Corder v. William M. Smith Excavating Co.</i> (Sup. Ct. 2001)	
WI	7th	Yes	<i>American Family Mutual Ins. Co. v. American Girl, Inc.</i> (Sup. Ct. 2004) <i>Kalchthaler v. Keller Construction Co.</i> (App. Ct. 1999)	
WY	10th	No	<i>Great Divide Ins. Co. v. Bitterroot Timberframes of Wyo.</i> (App. Ct. 2006)	

Federal Courts of Appeal (<http://www.uscourts.gov/images/CircuitMap.pdf>)

District	States	Occurrence?	Court Case Citations	Commentary
1st	ME, MA, NH, PR, RI	No	<i>American Home Assurance Co. v. AGM Marine Contractors</i> (1st Cir. 2005)	
2nd	NY, VT, CT	Yes No	<i>Broadmoor Anderson v. National Union Fire Ins. Co. of Louisiana</i> (2nd Cir. 2005) <i>J.Z.G. Resources, Inc. v. King</i> (2d Cir. 1993)	
3rd	PA, NJ, DE	No	<i>Pa. Nat. Mut. Cas. Ins. Co. v. Parkshore Development Corp.</i> (3d Cir. 2010) <i>Specialty Surfaces International, Inc. v. Continental Cas. Co.</i> (3d Cir. 2010) <i>Nationwide Mutual Ins. Co. v. CPB International, Inc.</i> (3d Cir. 2009)	

			<p><i>ProDent, Inc. v. Zurich U.S.</i> (3d Cir. 2002) <i>Keystone Filler & Manufacturing Co. v. American Mining Insurance Co.</i> (3d Cir. 2002)</p>	
4th	MD, NC, SC, VA, WV	<p>Yes</p> <p>No</p>	<p><i>Limbach Co., L.L.C. v. Zurich Am. Ins. Co.</i> (4th Cir. 2005) <i>Mitchell, Best & Visnic, Inc. v. Travelers Property Cas. Corp.</i> (4th Cir. 2002) <i>Stonehenge Engineering Corp. v. Employers Insurance of Wausau</i> (4th Cir. 2000)</p> <p><i>North American Precast, Inc. v. General Casualty Co. of Wisconsin</i> (4th Cir. 2011) <i>Travelers Indemnity Co. of America v. Miller Building Corporation</i> (4th Cir. 2005) <i>Travelers Indem. v. Miller Bldg. Corp.</i> (4th Cir. 2004) <i>Hotel Roanoke Conf. Ctr. Comm'n v. Cincinnati Insurance Co.</i> (4th Cir. 2004)</p>	
5th	LA, TX, MS	<p>Yes</p> <p>No</p>	<p><i>Federated Mutual Insurance Company v. Grapevine Excavation, Inc.</i> (5th Cir. 1999) <i>Riley Stoker Corp. v. Fidelity & Guar. Ins. Underwriters</i> (5th Cir. 1994) <i>Hartford Cas. Co. v. Cruse</i> (5th Cir. 1991)</p> <p><i>Jim Johnson Homes, Inc. v. Mid-Continent Casualty Co.</i> (5th Cir. 2003) <i>ACS Construction Co., Inc. of Mississippi v. CGU</i> (5th Cir. 2003)</p>	
6th	MI, OH, KY, TN	<p>Yes</p>	<p><i>Detroit Water Team Joint Venture v. American National Fire Insurance Co.</i> (6th Cir. 2001) <i>Lenning v. Commercial Union Ins. Co.</i> (6th Cir. 2001)</p>	
7th	IL, IN, WI	<p>No</p>	<p><i>Lyeria v. Amco Ins. Co.</i> (7th Cir. 2008) <i>West American Ins. Co. v. Keno & Sons Construction, Inc.</i> (7th Cir. 2000)</p>	
8th	AR, IA, ND, MN, MO, NE, SD	<p>No</p> <p>Yes</p>	<p><i>Lexicon, Inc. v. Ace American Ins. Co.</i> (8th Cir. 2010)</p> <p><i>Aten v. Scottsdale Ins. Co.</i> (8th Cir. 2008)</p> <p><i>Alten</i> superseded opposing viewpoints in: <i>Norwalk Ready Mixed Concrete, Inc. v. Travelers Insurance Co.</i> (8th</p>	

			<p>Cir. 2001) <i>Nabholz Construction Corp. v. St. Paul Fire & Marine Ins. Co.</i> (8th Cir. 2005) <i>St. Paul Fire and Marine Ins. Co. v. Building Construction Enterprises, Inc.</i> (App. Ct. 2007, under appeal)</p>	
9th	<p>AK, AZ, CA, HI, ID, MT, NV, OR, WA, Guam, Northern Mariana Islands</p>	<p>No</p> <p>Yes</p>	<p><i>Mid-Continent Cas. Co. v. Williamsburg Condo. Assn.</i> (9th Cir. 2008, appeal pending) <i>Burlington Ins. Co. v. Oceanic Design & Constr., Inc.</i> (9th Cir. 2004)</p> <p><i>Anthem DeWitt Construction, Inc. v. Charter Oak Fire Ins. Co.</i> (9th Cir. 2002)</p>	
10th	<p>CO, KS, NM, OK, UT, WY</p>	<p>No</p> <p>Yes</p>	<p><i>Davis & Sons, Inc. v. North Pacific Ins. Co.</i> (10th Cir. 2002) <i>DCB Construction Company v. Travelers Indemnity Co. of IL</i> (10th Cir. 2002)</p> <p><i>Signature Development Cos., Inc. v. Royal Ins. Co. of Am.</i> (10th Cir. 2000)</p>	
11th	<p>AL, FL, GA</p>	<p>No</p>	<p><i>Hathaway Dev. Co., Inc. v. Illinois Union Ins. Co.</i> (11th Cir. 2008, appeal pending)</p>	

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