

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 articles on our Virtual University:

“The CGL ‘No Occurrence’ Claim Denial”

<http://www.independentagent.com/Education/VU/Insurance/Commercial-Lines/CGL/Coverages/WilsonNoOccurrence.aspx>

“The CGL ‘No Occurrence’ Claim Denial Revisited”

<http://www.independentagent.com/Education/VU/Insurance/Commercial-Lines/CGL/Coverages/WilsonNoOccurrence02.aspx>

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From Randy Maniloff’s “Coverages Opinions” newsletter, May 8, 2013:

“Everyone knows what an accident is until the word comes up in court. Then it becomes a mysterious phenomenon, and, in order to resolve the enigma, witnesses are summoned, experts testify, lawyers argue, treatises are consulted and even when a conclave of twelve world-knowledgeable individuals agree as to whether a certain set of facts made out an accident, the question may not yet be settled and it must be reheard in an appellate court.” - *Brenneman v. St. Paul F. & M. Ins. Co.* (Pa. Sup. Ct. 1963)

State Courts

State	Federal Circuit	Occurrence?	Court Case Citations	Commentary
AL	11th	Yes/Maybe	<i>Owners Ins. Co. v. Jim Carr Homebuilder, LLC</i> (Sup. Ct. 2013)	The policy in <i>Owners</i> did not include the Exclusion L. sub exception, which might be a factor in future decisions. <i>Reliance</i> ruled that breach of contract is not an
		Yes	<i>United States Fidelity & Guaranty Co. v. Bonitz Insulation Co. Of Alabama</i> (Sup. Ct. 1982)	
		No	<i>Shane Traylor Cabinetmaker, LLC v. American Resources Ins. Co.</i> (Sup. Ct. 2013)	

			<p><i>Town & Country Prop., LLC v. Amerisure Ins. Co.</i> (Sup. Ct. 2011)</p> <p><i>Reliance Ins. Co. v. Gary C. Wyatt, Inc.</i> (Sup. Ct. 1988)</p>	occurrence.
AK	9th	Yes	<i>Fejes v. Alaska Ins. Co.</i> (Sup. Ct. 1999)	
AZ	9th	Yes No	<p><i>Lennar Corp. v. Auto Owners Ins. Co.</i> (App. Ct. 2007) – review denied by Sup. Ct.</p> <p><i>United States Fidelity & Guaranty Corp. v. Advance Roofing & Supply Co., Inc.</i> (App. Ct. 1989)</p>	Courts have ruled that if damage is limited to the work itself, it's not an "occurrence"
AR	8th	No	<i>Essex Ins. Co. v. Holder</i> (Sup. Ct. 2008)	July 27, 2011 Statute: A.C.A. § 23-79-155 requires all CGL policies to incorporate a definition of "occurrence" that includes BI or PD resulting from faulty workmanship but allows for exclusions to restrict or remove coverage.
CA	9th	No	<i>Maryland Casualty Co. v. Reeder</i> (App. Ct. 1990)	
CO	10th	No Yes	<p><i>General Security Indemnity Co. v. Mountain States Mutual Cas. Co., et al.</i> (App. Ct. 2009)</p> <p><i>Union Ins. Co. v. Hottenstein</i> (App. Ct. 2003)</p> <p><i>Hoang v. Monterra Homes</i> (App. Ct. 2005)</p> <p><i>Colard v. American Family Mutual Ins. Co.</i> (App. Ct. 1985)</p>	May 21, 2010 Statute: § 13-20-808 requires courts interpreting unintentional faulty workmanship cases to presume that the work is accidental.
CT	2nd	Yes No	<p><i>Capstone Building Corp. v. American Motorists Ins. Co.</i> (Sup. Ct. 2013)</p> <p><i>Time Fiber Communications v. Travelers Indemnity Co.</i> (Sup. Ct. 2005)</p>	<i>Capstone</i> ruled that faulty workmanship, in and of itself, is not an "occurrence."

DC	DC	No	Western Exterior Co. v. Hartford A&I Co. (App. Ct. 1984)	Includes U.S. Tax Court and appeals from many administrative agencies of the federal government.
DE	3rd	No	<i>Westfield Ins. Co. v. Miranda & Hardt Contracting & Building Services LLC</i> (App. Ct. 2015) <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>Taylor Morrison Services, Inc. v. HDI-Gerling America Ins. Co.</i> (Sup. Ct. 2013) <i>American Empire Surplus Lines Ins. Co. v. Hathaway Dev. Co.</i> (Sup. Ct. 2011) <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)	June 3, 2011 Statute: HRS § 431:1-217 was passed in response to the <i>Group Builders</i> decision but is generally considered to do little, if anything.
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) and <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	Yes No	<i>Drury Co. v. Mo. United Sch. Ins. Counsel</i> (App. Ct. 2014) <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) <i>St. Paul Fire & Marine Ins. Co. v. Bldg. Constr. Ent.</i> (App. Ct. 2007)	
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>Cizek Homes, Inc. v. Columbia National Insurance Co.</i> (App. Ct. 2014) <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)	* <i>Cypress Point Condo. Ass'n v. Adria Towers, LLC</i> (Sup. Ct. 2016) ruled that the Exclusion L. subcontractor exception applied where that was applicable. Legislation introduced in 2014 to define "occurrence" to include faulty workmanship
NM	10th	Yes	<i>O'Rourke v. New Amsterdam Cas. Co.</i> (App. Ct. 1961)	
NY	2nd	No Yes	<i>National Union Fire Ins. Co. of Pittsburg v. Turner Construction Co.</i> (App. Ct. 2014) <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) <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 No	<i>K&L Homes, Inc. v. American Family Mut. Ins. Co.</i> (Sup. Ct. 2013) <i>Fisher v. Am. Family Mutual Ins. Co.</i> (App. Ct. 1998) <i>Acuity v. Burd & Smith Constr., Inc.</i> (Sup. Ct. 2006)	

OH	6th	No	<i>Westfield Ins. Co. v. Custom Agri. Sys., Inc.</i> (Sup. Ct. 2012) <i>Heile v. Herrmann</i> (App. Ct. 1999) <i>Ferro Corp. v. Blaw Knox Food & Chemical Equipment Co.</i> (App. Ct. 1997)	
		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)	
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	Probably Yes	<i>Indalex Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA</i> (App. Ct. 2014 – Sup. Ct. denied review)	In <i>Acuity v. Knisely & Sons, Inc.</i> (W.D. Pa Aug. 9, 2016), the court favored <i>Kvaerner</i> rather than <i>Indalex</i> .
		No	<i>Kvaerner Metal Division of Kvaerner 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 Insurance Co.</i> (Sup. Ct. 1992)	
RI	1st	Yes	<i>Aetna Cas. & Sur. Co. v. Consulting Envtl. Eng'rs, Inc.</i> (Sup. Ct. 1989)	
SC	4th	Yes	<i>Crossman Communities v. Harleysville Mutual Ins. Co.</i> (Sup. Ct. 2011) <i>Auto-Owners v. Newman and Trinity Construction</i> (Sup. Ct. 2008)	<i>Crossman</i> initially ruled “No” but reversed itself in August 2011. In the meantime... May 17, 2011 Statute: § 38-

				<p>61-70 requires all CGL policies to incorporate a definition of “occurrence” that includes BI or PD resulting from faulty workmanship, exclusive of the faulty workmanship itself...which now may make the law in conflict with <i>Crossman’s</i> reversal to find that faulty workmanship IS an “occurrence.”</p>
SD	8th	Yes	<i>Corner Construction Co. v. USF&G</i> (Sup. Ct. 2002)	
TN	6th	Yes	<p><i>Travelers Indemnity Co. of America v. Moore & Associates, Inc.</i> (Sup. Ct. 2007)</p> <p>Supersedes opposing viewpoints in: <i>Vernon Williams & Son Constr. Inc. v. Continental Ins. Co.</i> (Sup. Ct. 1979) and <i>State Auto Ins. Cos. v. Gordon Constr., Inc.</i> (App. Ct. 2001)</p>	
TX	5th	Yes	<p><i>Lamar Homes, Inc. v. Mid-Continent Cas. Co.</i> (Sup. Ct. 2007)</p> <p>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)</p> <p>Supercedes opposing viewpoint in: <i>Hartrick v. Great American Lloyds Ins. Co.</i> (App. Ct. 2001)</p>	
UT	10th	Yes No	<p><i>Cincinnati Insurance Co. v. AMSCO Windows</i> (10th Cir. 2014)</p> <p><i>Great American Ins. Co. v. Woodside Homes</i> (App. Ct. 2006)</p> <p><i>H.E. Davis & Sons, Inc. v. N. Pac. Ins. Co.</i> (App. Ct. 2002)</p>	

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	Yes No	<i>Cherrington v. Erie Ins. Property & Cas. Co.</i> (Sup. Ct. 2013) <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) <i>Erie Ins. Property & Cas. Co. v. Pioneer Home Improvement, Inc.</i> (Sup. Ct. 1999) <i>McGann v. Holders Lumber Co.</i> (Sup Ct. 1965)	
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,	No	<i>American Home Assurance Co. v. AGM Marine Contractors</i> (1st Cir. 2005)	

	RI			
2nd	NY, VT, CT	Yes No	<p><i>Scottsdale Ins. Co. v. R.I. Pools, Inc.</i> (2nd Cir. 2013)</p> <p><i>Broadmoor Anderson v. National Union Fire Ins. Co. of Louisiana</i> (2nd Cir. 2005)</p> <p><i>Aquatechnics, Inc. v. Hartford Casualty Ins. Co.</i> (2nd Cir. 2012)</p> <p><i>J.Z.G. Resources, Inc. v. King</i> (2d Cir. 1993)</p>	
3rd	PA, NJ, DE	No	<p><i>Pa. Nat. Mut. Cas. Ins. Co. v. Parkshore Development Corp.</i> (3d Cir. 2010)</p> <p><i>Specialty Surfaces International, Inc. v. Continental Cas. Co.</i> (3d Cir. 2010)</p> <p><i>Nationwide Mutual Ins. Co. v. CPB International, Inc.</i> (3d Cir. 2009)</p> <p><i>ProDent, Inc. v. Zurich U.S.</i> (3d Cir. 2002)</p> <p><i>Keystone Filler & Manufacturing Co. v. American Mining Insurance Co.</i> (3d Cir. 2002)</p>	
4th	MD, NC, SC, VA, WV	Yes No	<p><i>Limbach Co., L.L.C. v. Zurich Am. Ins. Co.</i> (4th Cir. 2005)</p> <p><i>Mitchell, Best & Visnic, Inc. v. Travelers Property Cas. Corp.</i> (4th Cir. 2002)</p> <p><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)</p> <p><i>Travelers Indemnity Co. of America v. Miller Building Corporation</i> (4th Cir. 2005)</p> <p><i>Travelers Indem. v. Miller Bldg. Corp.</i> (4th Cir. 2004)</p> <p><i>Hotel Roanoke Conf. Ctr. Comm'n v. Cincinnati Insurance Co.</i> (4th Cir. 2004)</p>	

5th	LA, TX, MS	Yes No	<p><i>Federated Mutual Insurance Company v. Grapevine Excavation, Inc.</i> (5th Cir. 1999)</p> <p><i>Riley Stoker Corp. v. Fidelity & Guar. Ins. Underwriters</i> (5th Cir. 1994)</p> <p><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)</p> <p><i>ACS Construction Co., Inc. of Mississippi v. CGU</i> (5th Cir. 2003)</p>	
6th	MI, OH, KY, TN	No Yes	<p><i>Liberty Mutual Fire Ins. Co. v. Kay & Kay Contracting, LLC.</i> (6th Cir. 2013)</p> <p><i>McBride & McBride Const., LLC v. Acuity Mut. Ins. Co.</i> (6th Cir. 2013)</p> <p><i>Detroit Water Team Joint Venture v. American National Fire Insurance Co.</i> (6th Cir. 2001)</p> <p><i>Lenning v. Commercial Union Ins. Co.</i> (6th Cir. 2001)</p>	<p><i>McBride</i> cites Kentucky law, specifically <i>Cincinnati Ins. Co. v. Motorists Mutual Ins. Co.</i> (KY Sup. Ct. 2010)</p>
7th	IL, IN, WI	No	<p><i>Lyeria v. Amco Ins. Co.</i> (7th Cir. 2008)</p> <p><i>West American Ins. Co. v. Keno & Sons Construction, Inc.</i> (7th Cir. 2000)</p>	
8th	AR, IA, ND, MN, MO, NE, SD	No Yes	<p><i>J-McDaniel Construction Co. Inc. v. Mid-Continent Casualty Company</i>(8th Cir. 2014)</p> <p><i>Lexicon, Inc. v. Ace American Ins. Co.</i> (8th Cir. 2010)</p> <p><i>Decker Plastics, Inc. v. West Bend Mutual Ins. Co.</i> (8th Cir. 2016)</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 Cir. 2001)</p> <p><i>Nabholz Construction Corp. v. St. Paul Fire & Marine Ins. Co.</i> (8th Cir. 2005)</p>	

			<i>St. Paul Fire and Marine Ins. Co. v. Building Construction Enterprises, Inc.</i> (App. Ct. 2007, under appeal)	
9th	AK, AZ, CA, HI, ID, MT, NV, OR, WA, Guam, Northern Mariana Islands	No Yes	<i>Nautilus Ins. Co. v. 3Builders, Inc.</i> (9th Cir. 2013) <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) <i>Anthem DeWitt Construction, Inc. v. Charter Oak Fire Ins. Co.</i> (9th Cir. 2002)	
10th	CO, KS, NM, OK, UT, WY	Yes No	<i>Cincinnati Insurance Co. v. AMSCO Windows</i> (10 th Cir. 2014) <i>Greystone Consts., Inc. v. National Fire & Marine Ins. Co.</i> (10th Cir. 2011) <i>Signature Development Cos., Inc. v. Royal Ins. Co. of Am.</i> (10th Cir. 2000) <i>Cool Sunshine Heating & Air Conditioning, Inc. v. American Family Mutual Insurance Company,</i> (10th Cir. 2014). <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)	
11th	AL, FL, GA	Yes No	<i>Pennsylvania National Mutual Casualty Insurance Company v. St. Catherine of Siena Parish</i> (11th Cir. 2015) <i>Hathaway Dev. Co., Inc. v. Illinois Union Ins. Co.</i> (11th Cir. 2008, appeal pending)	

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August 31, 2011
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December 28, 2010
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