

**COMMERCIAL GENERAL LIABILITY COVERAGE FOR DEFECTIVE WORK
STATE-BY-STATE SURVEY
FEBRUARY 2008**

STATE	IS DEFECTIVE WORK AN OCCURRENCE?		PROPERTY DAMAGE EXCLUSIONS APPLIED?
	Status	Case Law	Case Law
Delaware	No	<i>Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co.</i> , 137 F. Supp. 2d 517 (D. Del. 2001). ⁱ	<i>Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co.</i> , 137 F. Supp. 2d 517 (D. Del. 2001); ⁱⁱ <i>Vari Builders, Inc. v. U.S. F.&G.</i> , 523 A.2d 549 (Del. Super. Ct. 1986); ⁱⁱⁱ <i>A-E Newark Assoc. L.P. v. CNA Ins. Cos.</i> , 2001 WL 1198930 (Del. Super. Oct. 2, 2001). ^{iv}

ⁱ **Delaware:** *Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co.*, 137 F. Supp. 2d 517 (D. Del. 2001). The insured contractor's failure to install waterproofing materials properly was not an occurrence since the installation was within the control of the contractor and not a fortuitous circumstance happening without human agency.

ⁱⁱ **Delaware:** *Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co.*, 137 F. Supp. 2d 517 (D. Del. 2001). CGL coverage was precluded by Exclusion j(5), excluding coverage for damage to a property upon which insured is performing its work, where the contractor's faulty installation of waterproofing materials, as well as Exclusion k, the Your Product Exclusion, ignoring the fact that the home constituted real property within the definition of Your Product.

ⁱⁱⁱ **Delaware:** *Vari Builders, Inc. v. U.S. Fid. & Guar.*, 523 A.2d 549 (Del. Super. Ct. 1986). The court refused to apply the subcontractor exception in the BFPDE Work Performed Exclusion to property damage caused by the work of subcontractors since the entire home constituted the product of the insured builder.

^{iv} **Delaware:** *A-E Newark Assoc. LP v. CNA Ins. Cos.*, 2001 WL 1198930 (Del. Super. Oct. 2, 2001). The subcontractor exception to Exclusion I, the Your Work Exclusion, applied to uphold coverage for the insured contractor for property damage that arose out of the work of a subcontractor.

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