

**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
Minnesota	Yes	<i>National Mutual Ins. Co. v. Barbes</i> , 2006 WL 1704201 (Minn. App. June 20, 2006); <sup>i</sup> <i>Ohio Cas. Ins. Co. v. Terrace Enters., Inc.</i> , 260 N.W.2d 450 (Minn. 1977); <sup>ii</sup> <i>Aten v. Scottsdale Ins. Co.</i> , 2008 WL 65595 (8th Cir. Jan. 8, 2008). <sup>iii</sup>	<sup>**</sup> <i>Wanzek Construction, Inc. v. Employers Insurance of Wausau</i> , 679 N.W.2d 322 (Minn. 2004); <sup>iv</sup> <sup>**</sup> <i>O’Shaughnessy v. Smuckler Corp.</i> , 543 N.W.2d 99 (Minn. App. 1996), <i>rev’d on other grounds</i> , <i>Gordon v. Microsoft Corp.</i> , 645 N.W.2d 393 (Minn. 2002); <sup>v</sup> <i>Thommes v. Milwaukee Ins. Co.</i> , 641 N.W.2d 877 (Minn. 2002); <sup>vi</sup> <sup>**</sup> <i>Bor-Son Building Corp. v. Employers Commercial Union Ins. Co.</i> , 323 N.W.2d 58 (Minn. 1982); <sup>vii</sup> <sup>**</sup> <i>Knutson Construction Co. v. St. Paul Fire &amp; Marine Ins. Co.</i> , 396 N.W.2d 229 (Minn. 1986). <sup>viii</sup>

<sup>i</sup> **Minnesota:** *National Mutual Ins. Co. v. Barbes*, 2006 WL 1704201 (Minn. App. June 20, 2006). The damage to a third party homeowners’ property caused or necessitated by the repair and replacement of the insured’s own faulty work was not accidental, and thus not an occurrence under its CGL policy.

<sup>ii</sup> **Minnesota:** *Ohio Cas. Ins. Co. v. Terrace Enters., Inc.*, 260 N.W.2d 450 (Minn. 1977). The settling of an apartment building as a result of the negligent backfilling by the insured constituted an occurrence.

<sup>iii</sup> **Minnesota:** *Aten v. Scottsdale Ins. Co.*, 2008 WL 65595 (8th Cir. Jan. 8, 2008). Relying on *O’Shaughnessy v. Smuckler Corp.*, 543 N.W.2d 99 (Minn. Ct. App. 1996), the Eighth Circuit held that under Minnesota law, the defective construction of a home, which led to water damage to that home, was an accident, and thus an “occurrence.” The court remanded the case to the trial court for a determination as to whether the defective workmanship had been performed by a subcontractor.

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<sup>iv</sup> **\*\*Minnesota:** *Wanzek Construction, Inc. v. Employers Insurance of Wausau*, 679 N.W.2d 322 (Minn. 2004). The business risk doctrine did not apply to prevent the application of the subcontractor exception to the Your Work Exclusion in order to preserve coverage for the insured general contractor, that, pursuant to a contractual obligation to the owner, incurred the costs of repairing defective coping stones provided by a supplier/subcontractor.

<sup>v</sup> **\*\*Minnesota:** *O'Shaughnessy v. Smuckler Corp.*, 543 N.W.2d 99 (Minn. App. 1996) *rev'd on other grounds*, *Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002). The subcontractor exception applied to allow coverage for an insured general contractor for the defective work of its subcontractor in building a home.

<sup>vi</sup> **Minnesota:** *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877 (Minn. 2002). Exclusions j(5) and j(6), the Faulty Workmanship and Operations Exclusions, did not apply to exclude coverage for insured's mistaken clearing of trees on a third party's land.

<sup>vii</sup> **\*\*Minnesota:** *Bor-Son Building Corp. v. Employers Commercial Union Ins. Co.*, 323 N.W.2d 58 (Minn. 1982). The court applied a business risk rationale, expressing its unwillingness to convert a CGL policy into a performance bond, while ignoring the subcontractor exception to the BFPDE Work Performed Exclusion, in denying coverage to a general contractor for property damage caused by faulty workmanship and materials provided by subcontractors on a high rise apartment project.

<sup>viii</sup> **\*\*Minnesota:** *Knutson Construction Co. v. St. Paul Fire & Marine Ins. Co.*, 396 N.W.2d 229 (Minn. 1986). The court applied a business risk rationale to deny coverage to a general contractor for property damage caused by its subcontractor's use of a defective mortar additive in brick masonry, observing that the replacement of the 1973 Work Performed Exclusion by the BFPDE Work Performed Exclusion constituted only a slight difference in wording. The business risk rationale employed in the *Knutson/Bor-Son* cases (see prior endnote also) has since been limited by the Minnesota Supreme Court in *Wanzek v. Employers of Wausau* (see endnote above).