RUMINATIONS ON CONSTRUCTION DEFECTS AS AN “OCCURRENCE:”
DEVELOPMENTS AND IMPLICATIONS

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I INTRODUCTION

If you want to start a fight, walk into a room full of insurance coverage lawyers and shout “What is an “occurrence”?” Then watch and be entertained as mayhem ensues.

The South Carolina Supreme Court recently addressed this issue and, while the Court may have gotten it wrong (it decided that property damage resulting from faulty construction is not caused by an “occurrence”), it certainly got it right when it said:

In analyzing difficult and complex issues which arise in these cases, courts have taken differing approaches. The result is an intellectual mess.


Indeed, the fuzzy thinking about this issue abounds. For example, a newsletter recently published by a Midwest law firm contains this headline:

In Arizona, Construction Defects Are Not “Occurrences.”

At the same time, another commentator declares that Arizona has “adopt[ed] the majority position that faulty workmanship can constitute an occurrence.” Bruner & O’Connor on Construction Law, Ch. 11, §11:76, referring to Lennar Corp v. Auto-Owners Ins. Co., 214 Ariz. 255, 151 P.3d 538, 545-546 (2007).1

Today’s discussion focuses on the third prong of the three-prong prima facie coverage formula (i.e., (1) “property damage” (2) “during the policy period” (2) “caused by an occurrence”), the “occurrence” requirement and, specifically, this question: “When do construction defect claims satisfy the “occurrence” requirement?”

We will focus on the following issues:

1. What is the current state of the law on the issue? Is there a majority and/or a trend? If so, what is it?

2. How do we explain the widely divergent views expressed by courts on the issue?

3. Is there a solution to the lack of certainty and predictability created by these divergent views?

II. WHAT IS THE CURRENT STATE OF THE LAW?

The answer, of course, is “It depends.” It depends on the facts of the case. Here are the real questions:

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1 Bruno & O’Connor actually got it right.
1. When faulty workmanship does not result in physical injury of any kind, is it an “occurrence?”

2. When faulty workmanship does result in “property damage,” but only to the faulty work (or defective component) itself, is that “property damage” caused by an occurrence?

3. When faulty workmanship results in “property damage” to other components of the finished structure, but not to other property, is that “property damage” caused by an occurrence?

4. When faulty workmanship results in “property damage” not only to other components of the finished structure, but also to other property, is that property damage caused by an “occurrence?”

And these questions break down, in turn, into even still another level based on

(a) whether the work was performed by the insured itself (i.e., the general contractor), or on the insured’s behalf by someone else (i.e., a subcontractor);

(b) whether the “property damage” was concurrently caused by an event or condition other than faulty workmanship or defective components; and

(c) whether the third-party claim against the insured sounds in contract or tort.

Given these variations on the factual theme, it is not surprising that courts have reached widely divergent conclusions on the issue. These may be broken down into the following categories:

1. Faulty workmanship itself is not an “occurrence.”

2. Faulty workmanship itself is an “occurrence.”

3. Faulty workmanship that results only in physical injury to the faulty work itself is not an “occurrence.”

4. Faulty workmanship that results only in physical injury to the faulty work itself is an occurrence.

5. Faulty workmanship that results in physical injury to other components of a finished structure is still not an “occurrence.”

6. Faulty workmanship that results in physical injury to other components of a finished structure is an occurrence.
7. Faulty workmanship that results in “property damage” to third-party property is not caused by an “occurrence.”

8. Faulty workmanship that results in “property damage” to third-party property is caused by an “occurrence.”

Notwithstanding dicta in some opinions to the contrary, the majority view appears to be that when faulty workmanship or defective components result in “property damage,” that property damage is “caused by an occurrence.”

One survey concludes that of the forty-eight states that have addressed the issue,² thirty conclude that construction defects resulting in property damage are an “occurrence,” eight conclude they are not, four conclude they are, but only when property damage to other property results, and in six states the law is unclear. *Defective Construction As An “Occurrence,”* www.sdvlaw.com.

Our survey of cases decided since January 1, 2008, concludes that:

(1) If we do not include the “faulty workmanship standing alone” cases (i.e., cases in which there was no “property damage”), twenty-five cases applying the law of twenty states held that when property damage results from faulty workmanship or defective components, it is caused by an “occurrence.” Seven cases applying the law of six states held to the contrary.

(2) With respect to the “faulty workmanship standing alone” scenario, eight cases in eight states held that faulty workmanship in the absence of resulting property damage does not constitute an “occurrence.” Two cases in two states held that it does.

(See spreadsheet attached.)

**III. HOW DO WE EXPLAIN THE APPARENT INCONSISTENCIES AMONG THESE DECISIONS?**

How does one explain these apparently inconsistent results? There are a number of common themes that run through these cases:


² These cases include opinions by the state’s highest appellate court, intermediate appellate courts and U.S. District Courts or Circuit Courts applying state law.
2. Some decisions conflate the notion of intentionally committing an act (without regard to what the insured may intend the consequences of the act to be) and committing an act with the intention of causing (or the reckless disregard for the likelihood of causing) harm. See, e.g., Lamar Homes v. Mid-Continental Ins. Co., 242 S.W. 3d 1 (Tex 2007), which correctly points out this distinction and rejects the notion that “intentionally” performing work that turns out to be faulty, without intending that the work result in damage, is not an “occurrence.” See also Lennar Corp. v. Auto-Owners Ins. Co., 214 Ariz. 255, 151 P.3d 538, at ¶26-29 (2007)

3. A few cases rely on obsolete precedent. For example, a recent New Jersey case, Pennsylvania Natl. Mut. Cas. Ins. Co. v. Parkshore Development Corp., 2010 WL 5027147 (December 10, 2010), relies on a 1979 New Jersey Supreme Court case, Weedo v. Stone-E-Brick, Inc., 81 N.J. 233, 405 A.2d 788 (1979), which construed the 1966 ISO “your work” exclusion without the Broad Form Endorsement that creates the “subcontractor exception” to the exclusion as negating coverage for construction defect claims. Weedo did not undertake an analysis of the threshold “occurrence” issue. But this has not stopped courts from later relying on it for the proposition that construction defects are not an “occurrence.” See also Kvaerner Metals v. Commercial Union Ins. Co., 589 Pa. 317, 908 A.2d 888 (2006), which relies on earlier authority interpreting the long-obsolete “actively malfunctioning” language used in the “business risk” exclusion used in ISO policy forms until the early 1970’s.

4. The “no occurrence” cases are conceptually inconsistent with the architecture of the insurance policy. Specifically, the “your work” exclusion contained in the standard ISO CGL form that is the platform for almost every commercial liability policy includes the “work of others” exception. This language contemplates that when there is property damage to the insured’s work, but that work was “performed on [the insured’s] behalf by a subcontractor,” there may be coverage under the policy. Thus, cases holding that property damage to a structure sold by a homebuilder but built entirely by subcontractors is not caused by an “occurrence” ignore this policy architecture.

5. Refusing to consider “extrinsic evidence” may result in a “no occurrence” holding that is skewed by the arbitrary pleading of the third-party claimant. For example, Kvaerner, supra, refused to consider evidence outside the pleadings, ignoring, among other things, expert reports that clearly outlined resulting property damage.

6. Some cases simply apply an inherently narrow – some would say too narrow – definition of “occurrence,” or “accident:”

[W]e believe that, even if the person performing the act did not intend or expect the result, if the result is the ‘rational and probable” consequence of the act [citation omitted] or, stated differently, the ‘natural and ordinary’ consequence of the act [citation omitted], it is not an ‘accident.”

Stoneridge Development Co., Inc. v. Highland Glen Assoc., 382 Ill. App. 3d 831, 888 N.E.2d 633 (2008)(progressive damage to townhome consisting of cracking and, ultimately, its

3 See, e.g., Lennar Corp. v. Auto-Owners Ins. Co., 214 Ariz. 255, 151 P.3d 538 (2007)(rejecting the insurers’ argument that the “your work” exclusion buttresses their “no occurrence” argument)
uninhabitability, resulting from the movement of “unsuitable structural bearing soils,” is not caused by an “occurrence”).

The Stoneridge definition is arguably inconsistent with the notion of “subjective fortuity” that is the foundation of the “occurrence” requirement. And, were it applied to common negligence scenarios, it would render most liability coverage illusory. For example, an ugly collision with another vehicle is the “rational and probable” consequence of speeding through a red light. No one would argue that there is no coverage for a personal injury lawsuit against the driver whose negligent running of the red light causes such an accident. But that is the result of the reasoning employed by Stoneridge.

IV. THE PROBLEM: “DO I HAVE COVERAGE OR DON’T I?”

These inconsistent results lead to a fundamental problem for policyholders: Managing the liability risks presented by construction defect claims when they may have coverage under their liability insurance policies in one state, but not in another, under the same policy.

For example, insurers responding to construction defect claims in California have acknowledged for decades that construction defect claims satisfy the “occurrence” requirement. Indeed, California courts settled this issue long ago.4 Thus, homebuilders whose experience with construction defect claims began (as most did) in California would have a reasonable expectation that their liability insurance policies provide the same coverage elsewhere.

This panel does not have an answer to the problem. But it does ask these questions:

- Does it make sense that an insurance policy mean one thing in one state and mean something else in another state?
- Does it make sense that a developer, homebuilder or contractor be protected against construction defect claims in one state, but not in another state?
- How do we respond to the insurance industry mantra that “We are bound to follow the law? Our job is simply to interpret our policies as the courts in a given state tell us to interpret them?”
- Is there an underwriting solution to this problem?
- If insurance companies really intended not to insure against property damage claims arising out of faulty workmanship, why didn’t they amend their policy forms or endorse their policies to this effect when courts started finding coverage for such claims many, many years ago?

### RECENT DEVELOPMENTS: OCCURRENCE VS. NO-OCCURRENCE

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<thead>
<tr>
<th>No Occurrence</th>
<th>Faulty workmanship standing alone</th>
<th>Property damage only to faulty workmanship</th>
<th>Property damage to other components of structure caused by insured’s own work</th>
<th>Property damage to other components caused by work of others</th>
<th>Property damage to other components caused by faulty work and a discrete cause</th>
<th>Property damage to property other than the structure</th>
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5 The court found that to the extent the damage was caused by the insured’s having induced the homeowner to enter into the remodeling contract by making intentional misrepresentations, the damage was not caused by an “occurrence.” But the court also acknowledged that to the extent the damage was caused by negligent construction, it may have been caused by an occurrence, but was, in either event, excluded by the policy’s “your work” exclusion. Stuart v. Weisflog’s Showroom Gallery, Inc., 311 Wis. 2d 492 (2008).

6 See Colo. Rev. Stat. §13-20-808(3), which states that “In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured.”
RECENT CONSTRUCTION DEFECT “OCCURRENCE” CASES

- **Breezewood of Wilmington Condominiums Homeowners’ Ass’n, Inc. v. Amerisure Mut. Ins. Co.,** 335 Fed.Appx. 268 (4th Cir 2009) (Table) (applying North Carolina law) (holding that costs of repair, bringing property to contractual expectations and homeowners’ association’s loss of use of the property due to contractor’s faulty workmanship were not covered by the builder’s policy because they were not allegations of actual “property damage;” additionally, water damage due to the faulty workmanship of the insured’s subcontractor was excluded from coverage pursuant to the “your work” exclusion)

- **Lyerla v. AMCO Ins. Co.,** 536 F.3d 684 (7th Cir. 2008) (applying Illinois law) (holding that homeowner’s claim against insured homebuilder for failure to follow agreed-upon plans, specifications and failure to complete construction on time was not an occurrence).

- **Forster v. State Farm Fire & Cas. Co.,** 2010 WL 4751714 (Ga. App. Nov. 24, 2010) (holding that failure to complete renovations or improper renovations by subcontractor hired by insured renovator were not an occurrence because it was unclear whether the claims related strictly to the work contemplated or to damage to other property).

- **CMK Development Corp. v. West Bend Mut. Ins. Co.,** 395 Ill.App.3d 830 (1st Dist. 2009) (holding that defects to home built by insured developer was not an occurrence because there were no allegations of damage to “other property” than the home itself; additionally, there was no coverage arising from the homeowner’s breach of contract claims to recover losses due to the diminished value of their home)

- **T.R. Bulger, Inc. v. Indiana Ins. Co.,** 901 N.E.2d 1110 (Ind. App. 2009) (reversing summary judgment in favor of insurer because genuine issue of material fact as to whether the damages alleged related only to the replacement and repair costs of faulty installation of heating system or economic damages for breach of contract, in which case there would be no occurrence, or whether the damages alleged related to damages to other parts of the house, in which case there would be an occurrence)

- **Lloyd A. Twite Family Partnership v. Unitrin Multi Line Ins.,** 2008 MT 310, 346 Mont. 42, 192 P.3d 1156 (2008) (holding that insured builder’s construction of housing projects that denied equal use and access to persons with disabilities was an occurrence because the denial of access did not cause actual bodily injury)
Concord General Mut. Ins. Co. v. Green & Co. Bldg. and Development Corp., 8 A.3d 24 (N.H. 2010) (holding that carbon monoxide leak caused by faulty chimney construction that was not to code by subcontractor hired by insured developer was not an occurrence because the carbon monoxide caused no physical or tangible alteration to any property)

Westfield Ins. Co. v. R.L. Diorio Custom Homes, Inc., 932 N.E.2d 369 (Ohio App. 12 Dist 2010) (holding that homeowner’s allegations of insured’s failure to construct home in workmanlike manner, failure to construct home in timely manner, and misrepresentation as to time and expense were not occurrences because negligent workmanship is not an accident and because the policy was not intended to protect against business risks)

Architex Ass’n, Inc. v. Scottsdale Ins. Co., 27 So.3d 1148 (Miss. 2010) (holding that allegations that the subcontractor failed to follow contract plans, building codes and repair defects are an occurrence because the insured builder’s policy unambiguously provided coverage for unexpected negligence of its subcontractors)

Liebovich v. Minnesota Ins. Co., 751 N.W.2d 764 (Wis. 2008) (holding that insured homeowner’s building their house too close to a shoreline in violation of a restrictive covenant, thereby causing claim to be brought by neighbor, was an occurrence under a “private client group” policy that included both accidental and non-accidental offenses)

Lexicon, Inc. v. ACE American Ins. Co., 627 F.3d 1087, 1091 (8th Cir. 2010) (applying Arkansas law) (holding that negligent welding of a silo by a subcontractor hired by insured general contractor that caused damage to the silo itself was not an occurrence, but collateral damage to other equipment caused by the collapse of the silo was an occurrence)

Continental Western Ins. Co. v Oaks Development Co., 768 N.W.2d 519 (Iowa App. 2010) (Table) (holding that repairs needed for roof shingles, installation due to defective roofing construction by subcontractor were not occurrences under insured construction manager because the claims only alleged damage to the roof itself, and under Iowa law an “occurrence” requires damage to other property)

United Fire & Cas. Co. v. Boulder Plaza Residential, LLC, 2001 WL 242443 (10th Cir. January 27, 2011) (recognizing that the Colorado Legislature’s enactment of COLO. REV. STAT. § 13-20-808 requires a presumption that faulty construction work is an accident, but failing to reach a determination of whether the facts in this case—damaged hardwood floor allegedly caused by the insured subcontractor’s negligent installation—was or was not an occurrence)

Lenzke v. Brinkmann Pools, LLC, 2010 WL 5158235 (Wis. App. Dec. 21, 2010) (acknowledging that there was no dispute that cracks in pool floor installed by insured were
occurrences, but affirming summary judgment in favor of insurer due to “your work” exclusion)

- **Group Builders, Inc. v. Admiral Ins. Co.**, 123 Hawai‘i 142, 231 P.3d 67, 73 (Haw.App. 2010) (holding that insured subcontractor’s faulty construction, causing mold damage was not an occurrence because the claim was based on breach of contract)

- **Stoneridge Development Co., Inc. v. Essex Ins. Co.**, 382 Ill. App. 3d 731, 321 Ill. Dec. 114, 888 N.E.2d 633, 654 (2d Dist. 2008), appeal denied, 229 Ill. 2d 660, 325 Ill. Dec. 16, 897 N.E.2d 264 (2008) (holding that cracks in the structure’s foundation were not occurrences because they were the natural and ordinary consequences of the insured developer’s faulty soil compaction).

- **Cincinnati Inc. Co. v. Motorists Mut. Ins. Co.**, 306 S.W.3d 69 (KY 2010) (holding that insured homebuilder’s faulty construction, standing alone, was not enough to qualify as an occurrence)

- **The Cincinnati Ins. Co. v. G.L.H., Inc.**, 2008 WL 2940663 (Ohio App. Aug. 1, 2008) (reversing summary judgment awarded to insurer because claims of water damage to condominiums due to construction defects by insured developer were arguably an occurrence)

- **Crossmann Communities of North Carolina, Inc. v. Harleysville Mutual Ins. Co.**, 2011 WL 93716 (S.C. Jan 7, 2011) (holding that property damage to condominiums caused by insured developer’s negligent construction was not an occurrence where the damage to the property is no more than the natural and probable consequence of faulty workmanship such that the two cannot be distinguished)

- **Stuart v. Weisflog's Showroom Gallery, Inc.**, 2008 WI 86, 311 Wis. 2d 492, 753 N.W.2d 448 (2008) (holding that damages to home caused by insured remodeler’s failure to comply with building codes and the remodeling contract was not an occurrence because the underlying claim was pled as a misrepresentation)

- **Home Owners Management Enterprises, Inc. v. Mid-Continent Cas. Co.** (5th Cir. 2008) (applying Texas law) (following the 2007 Texas Supreme Court holding in holding of Lamar v. Mid-Continent Cas. Co., 242 S.W.3d 1 (Tex. 2007) and finding that structural damage resulting from construction defects were occurrences because the allegations were for unintended defects)
• *Century Sur. Co. v. Hardscape Constr. Specialties, Inc.*, 578 F.3d 262 (5th Cir. 2009) (holding that insured subcontractor’s faulty construction of a swimming pool was an occurrence)

• *Wilshire Ins. Co. v. RJT Constr., L.L.C.*, 581 F.3d 222 (5th Cir. 2009) (holding that structural damage caused by negligent repairs of insured foundation repair company was an occurrence)

• *Aten v. Scottsdale Ins. Co.*, 511 F.3d 818 (8th Cir. 2008) (applying Minnesota law) (holding that water damage caused to other parts of the home by insured homebuilder’s failure to properly pour and grade the basement floor was covered)\(^7\)

• *Desert Mountain Properties, Ltd. Partnership v. Liberty Mut. Fire Ins. Co.*, 225 Ariz. 194 (Ariz. App. Div. 1 2010) (holding that structural damage to homes built by insured homebuilder due to poor soil compaction was an occurrence)\(^8\)

• *QBE Insurance Co. v. Couch Pipeline & Grading, Inc.*, 303 GA.App. 196 (2010) (holding that insured contractor’s defective grading work was an occurrence because there was no evidence that the insured intended to cause the damages)

• *Hathaway Development Co., Inc. v. American Empire Surplius Lines Ins. Co.*, 3601 Ga.App. 65, 686 S.E.2d 855 (GA Ct. App. 2009) (holding that damages caused by insured plumbing subcontractor’s faulty installation of dishwasher plumbing was an occurrence because claim was based on negligence, not breach of contract)


• *Pine Oak Builders, Inc. v. Great American Lloyds Ins. Co.*, 279 S.W.3d 650 (Tex. 2009) (holding that water damage caused by insured homebuilder’s defective installation of stucco was an occurrence)\(^9\)

\(^7\) The court recognized that some of the defective work in this case may have been done by subcontractors, but this does not appear to change the outcome.

\(^8\) It was not clear in this case whether the work was actually done by insured homebuilder or a subcontractor. Also, the court only impliedly holds that there was an occurrence; the opinion isn’t very clear.

\(^9\) It was not clear in this case whether the work was actually done by insured homebuilder or a subcontractor
- **Grimes Const., Inc. v. Great American Lloyds Ins. Co.,** 248 S.W.3d 171 (Tex. 2008) (following the 2007 Texas Supreme Court holding in **Lamar Homes, Inc. v. Mid-Continent Cas. Co.,** 242 S.W.3d 1 (Tex. 2007) and holding that physical damage to home caused by insured homebuilder’s defective workmanship was an occurrence)

- **Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parkshore Development Corp.,** 2010 WL 5027147 (3rd Cir. Dec. 10, 2010) (holding that water damage to condominiums caused by subcontractor’s faulty workmanship in sealing the windows was not an occurrence under insured developer’s policy because the only damage was to the completed property itself)

- **Hathaway Development Co., Inc. v. Illinois Union Ins.,** 274 Fed.Appx. 787 (2008) (insured general contractor’s policy did not cover damage to apartment complexes caused by subcontractor’s faulty pipe and water line installation because, though accidentally caused, it was caused by intentional acts)

- **State Farm Fire & Cas. Co. v. Diner Concepts, Inc.,** 370 Fed.Appx. 56 (11th Cir. 2010) (applying Georgia law) (holding that insured’s breach of sales contract and breach of express warranty of freedom from defect were not occurrences because the insured knew that it was delivering a structure built on a foundation not meant to accommodate it)

- **Kentucky Farm Bureau Mut. Ins. Co. v. Blevins,** 268 S.W.3d 368 (Ky. App. 2008) (holding that water damage to home’s interior by defectively installed counterflashing on the windows and roof by vendor’s builder was not an occurrence under the insured vendor’s policy because the underlying claim was based on breach of contract)

- **Stanley Martin Cos. v. Ohio Cas. Group,** 313 Fed. Appx. 609, 2009 WL 367589 (4th Cir. Feb 12, 2009) (applying Virginia law) (holding that subcontractor’s defective work that caused damage to insured general contractor’s non-defective work was an occurrence).

- **Trinity Homes LLC v. Ohio Cas. Ins. Co.,** 2010 WL 5174967 (7th Cir. Dec. 22, 2010) (applying Indiana law). (reversing summary judgment in favor of insurer of general contractor who was sued for structural problems caused by subcontractor’s faulty work, in light of the holding in **Sheehan Construction Co. Inc. v. Continental Casualty Co.** 935 N.E.2d 160 (Ind. 2010))

- **Mid-Continent Cas. Co. v. Titan Const. Corp.,** 281 Fed. Appx. 766 (9th Cir. 2008) (holding that negligent construction by a subcontractor causing damage to condominium was an occurrence under insured construction company’s policy because there were no allegations of an intentional breach of contract)
- **MW Builders, Inc. v. Safeco Ins. Co. of America**, 267 Fed. Appx. 552 (9th Cir. 2008) (holding that damage to hotel caused by faulty installation of exterior insulation and finishing system by insured’s subcontractor was an occurrence).

- **Auto-Owners Ins. Co. v. Pozzi Window Co**, 984 So.2d 1241 (FL 2008) (holding that subcontractor’s faulty installation of windows was an occurrence because the insured builder did not expect or intend the subcontractor’s negligence).

- **Sheehan Construction Co., Inc. v. Continental Casualty Co.**, 935 N.E.2d 160 (Ind. 2010) (insured contractor’s policy covered leaks caused by subcontractor builder’s faulty sealing of windows, roofing, chimney and vents).

- **Stiggers v. Erie Ins. Co.**, 2008 WL 963138 (Ohio App. 8th Dist. April 10. 2008) (affirming summary judgment for insurer because, although allegations that insured’s subcontractor did not complete construction of addition to home and that the work was defective and had to be removed might be sufficient to invoke coverage as an occurrence, coverage was properly denied due to the “work performed” exclusion).

- **Travelers Indem. Co. of America v. Tower-Dawson, LLC**, 299 Fed.Appx.277 (4th Cir. 2008) (Table) (applying Maryland law) (holding that costs to replace collapsed retaining wall and damages to adjacent federally-protected wetlands caused by the re-installation were not occurrences because the subcontractor was contractually obligated to deliver a capable retaining wall to insured builder, and because the damage to the wetlands was an intentional act necessary to correct the defect in the original wall).

- **National Union Fire Ins. Co. of Pittsburgh, PA v. Modern Continental Const. Co., Inc.**, 27 Mass.L.Rptr. 16 (Mass. Super. 2009) (holding that damage to traveling vehicles, death of a passenger and property damage to roadway caused by collapse of freeway tunnel during construction were occurrences because, while small cracks or leaks might be an expected result of the insured’s faulty workmanship, it was unlikely that the insured intended to expect for a portion of the tunnel to completely collapse).

- **Auto-Owners, Ins. Co. v. Rhodes**, 682 S.E.2d 857 (S.C. App. 2009) (holding that property damage to landowner’s property caused by collapse of poorly erected advertising sign was an occurrence under insured sign company’s policy because the collapse of the sign was unexpected).

- **Toldt Woods Condos. Owner's Ass'n v. Madeline Square, LLC**, 314 Wis.2d 259, 757 N.W.2d 850 (Table) (Wis. Ct. App. 2008) (holding that damage to adjacent property caused by insured’s negligent erosion control were occurrences).