

Damage to “good work” to access “resulting damage” is covered

- Alaska** *Clear, LLC v. American & Foreign Ins. Co.*, 2008 WL 818978 (D. Alaska March 24, 2008).
- Insured general contractor built a faulty roof, leading to water damage.
 - ▶ Court found coverage for undamaged portions of roof removed to access the resulting water damage
 - ▶ Court applied exception to the “Impaired Property” exclusion for the “loss of use of property that result[ed] from a sudden or accidental physical injury to work done by [the general contractor] or its subcontractors.”

Damage to “defective work” to access “resulting damage” is covered

- Texas** *Lennar Corp v. Great American Ins. Co.*, 200 S.W.3d 651 (Tex. App. 2006), abrogated on other grounds by *Gilbert Texas Constr., L.P. V. Underwriters at Lloyd’s London*, 327 S.W.3d 1).
- Insured installed defective stucco that caused resulting water damage to homes
 - ▶ Cost to remove stucco to access resulting damage was covered
- Alabama** *Pennsylvania Nat. Mut. Cass. Ins. Co. v. St. Catherine of Siena Parish, et al.*, No. 14-12151 (June 10, 2015).
- Insured installed defective roof shingles causing resulting water damage to underlying gypsum deck.
 - ▶ Cost to remove shingles to access resulting damage was covered
- Florida** *Carithers v. Mid-Continent Cas. Co.*, 782 F.3d 1240 (11th Cir., April 7, 2015).
- Insured installed defective balcony, resulting in water damage to home interior
 - ▶ Court found coverage for cost to remove defective balcony, which was necessary to access damaged interior

However, some courts have reached the opposite conclusion. For example, in *NAS Surety Grp. v. Precision Wood Prod., Inc.*, where an insured cabinet contractor caused property damage to non-defective work, the Court held that the costs incurred to repair the property damage to non-defective work was not covered because the damage was a foreseeable consequences of the replacement of defective work. 271 F. Supp.2d. 776 (M.D.N.C. 2003). Therefore, there was no “accident” and thus no “occurrence.” Notably, such rulings that focus on the “occurrence” definition are especially significant, because they do not rely on exclusions and their exceptions.

Damage to “defective work” to access “resulting damage” is NOT covered

Georgia	<i>Gentry Machine Works Inc. v. Harleysville Mutual Insurance Co.</i>, 621 F.Supp.2d 1288 (M.D. Ga. 2008). - Insured installed pedestal on boiler machines. ► Court held that: (1) cost to remove defective pedestal was not covered; (2) incidental access costs necessary to remove the defective pedestal were not covered; but (3) that resulting damages, caused by defective pedestal but not incidental to repairs of the pedestal, were covered.
Arizona	<i>Desert Mountain Prop. Ltd. P’ship v. Liberty Mut. Fire Ins. Co.</i>, 236 P.3d 421 (Ariz. App. 2010). - Insured general contractor was sued for cracks in home walls and slabs - Cracks were caused by defective soil conditions, which had to be redone - Access to soil required workers to cut open concrete floors. ► Court ruled that (1) cost to redo soil conditions was not covered; (2) costs incurred to access soil were not covered; but (3) resulting damage to home walls were covered.
North Carolina	<i>NAS Surety Grp. v. Precision Wood Prod., Inc.</i>, 271 F. Supp.2d 776 (M.D.N.C. 2003). - Insured subcontractor provided defective cabinets to new building - Water damage resulted behind the cabinets - Replacing the defective cabinets with good ones required damage and repair to drywall, repaint the walls, and reinstall sinks, wiring and plumbing. ► Court ruled that these access costs were foreseeable consequences of the replacement of defective work and therefore not an accidental “occurrence”

Damage caused by access to “defective work” is covered

Colorado	<i>Colorado Pool Sys. Inc. v. Scottsdale Ins. Co.</i>, No. 10CA2638, 2012 WL 52 65981 (Col. App., Oct. 25, 2012). - Insured built a pool that had defective concrete shell; replacement demanded - Other builder’s pool deck and retaining wall were damaged during work ► Court found coverage for access costs as “damages because of property damage”
Washington	<i>Dewitt Constr. Co. v. Charter Oak Fire Ins. Co.</i>, 307 F.3d 1127 (9th Cir. 2002) (Wash. Law). - Insured negligently installed cement piles in a building foundation - Redo required removal/reinstallation of other subcontractors’ completed work.

- Heavy equipment used in replacing the piles damaged underground lines
- Court found coverage

Missouri *Columbia Mut. Ins. Co. v. Epstein*, 239 S.W.3d 667 (Mo. App. 2007).
 - Insured poured a foundation using concrete that did not meet local code.
 - To remove and repour concrete, insured had to remove and reconstruct the framing and subfloor.
 ► Coverage was afforded for costs incurred to access the defective concrete.

Michigan *Bundy Tubing Co. v. Royal Indem. Co.*, 298 F.2d 151 (6th Cir. 1962).
 - Insured installed defective radiant heat tubing in concrete floor.
 - Non-defective concrete floor had to be removed to access tubing.
 ► Court found coverage for cost to access the tubing.

Ohio *Moraine Materials Co., Inc. v. The Ohio Casualty Ins. Co.*, 1979 WL 208510 (Ohio App. Dec. 12, 1979).
 - Insured installed defective concrete which was incorporated into a retaining wall that otherwise contained correctly comprised concrete.
 - It was determined that the entire wall had to be removed; it was impossible to remove the defective concrete without disturbing the rest of the structure.
 ► Court found coverage for the cost of complete replacement of the retaining wall.

Oklahoma *Employers Mut. Cas. Co. v. Grayson*, 2008 WL 2278593 (W.D. Okla. May 30, 2008)
 - Insured mixed concrete for the construction of a bridge
 - Concrete did not harden properly, causing rebar to loosen and bridge to crack.
 - The deck, rails and rebar all had to be repaired to access the concrete.
 ► Court found access costs, but not concrete repairs, to result from “occurrence”
 ► Court did not apply “Impaired Property” exclusion because the bridge could not be restored to use by only replacing the defective concrete.

Cost to access defective work is NOT covered

Georgia *Sapp v. State Farm Fire & Cas. Co.*, 226 Ga. App. 200 (1997).
 - Insured installed a hardwood floor that warped after installation
 - Removal of bad wood caused additional damage to good work in project.
 ► Court reasoned that damages to house during removal of floor and restoration of house to condition it was prior to the insured’s work were merely incidental to the plaintiff’s claim that the insured negligently

performed contract.

**South
Carolina**

Builders Mut. Ins. Co. v. Lacey Constr. Co., Inc., C.A. No. 3:11-cv400-CMC, 2012 WL 1032539 (D.S.C. March 27, 2012)

- Insured negligently constructed two retaining walls in the common area of a development in South Carolina.
- The retaining walls failed to adequately retain the soil behind the walls, causing cracks in the foundation of the walls.
 - Court held that neither the cost of repairing and replacing the walls, nor “any incidental demolition or reconstruction necessitated by the repair,” qualified as “property damage.”

Maryland

OneBeacon Insurance v. Metro Ready-Mix, Inc., 427 F. Supp.2d 574 (D. Md. 2006).

- Insured provided defective grout to construction project
- All concrete pilings had to be damaged to replace the grout.
 - Court ruled that access costs were not covered.

Minnesota

Bright Wood Corp. v. Bankers Standard Ins. Co., 665 N.W.2d 544 (Minn. Ct. App. 2003).

- Insured supplied wood window sashes that rotted due to lack of preservatives. - To remedy the defect, the entire window had to be replaced.
 - Court held that all damages incurred were based solely on repairing the defective product, and access costs did not constitute an “occurrence” because they were deliberately undertaken.