

**WISCONSIN SUPREME COURT**  
**TUESDAY, NOVEMBER 6, 2012**  
**9:45 a.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Monroe County Circuit Court decisions, Judge Michael J. McAlpine, presiding.*

2009AP2432

[Acuity v. Society Insurance](#)

This case examines whether damages arising from faulty construction work performed by a contractor qualifies as an “occurrence” under the terms of a commercial general liability (CGL) insurance policy.

Some background: Ron Stoikes d/b/a RS Construction, and Terry Luethe d/b/a Flint’s Construction, entered into an \$8,500 contract with VPP Group LLC to remove and reinstall a concrete wall on the south side of a building containing VPP’s engine room, which provided refrigeration and utility services to the company’s animal processing plant.

VPP supplied all materials, and RS and Flint provided all labor. Work began in May 2006. RS shored up the engine room and removed the existing wall to grade level. The VPP processing plant continued at full operation during the phase of the work.

On June 12, 2006, during Flint’s excavation of a trench adjacent to the south wall site, the soil began to erode from under the concrete slab of the first floor of the engine room. As a result, the engine room’s first floor slab cracked and a portion deflected downward, as did a portion of the second floor and roof. The engine room’s masonry walls adjacent to the south wall also sustained damage, disrupting utility service and reducing the plant’s refrigeration capacity. As a result, VPP incurred costs of approximately \$380,000.

VPP repaired the engine room by replacing the portion of the first floor concrete slab that had cracked, jacking up the second floor, and replacing portions of the roof slab. VPP contacted its insurer, Acuity, following the loss. Acuity paid a total of \$636,466.39 to VPP in final settlement of the loss claims, including the \$380,000 claimed for extra expenses and damages relating to the repair of the building, excluding costs to VPP related to replacing the south wall. Acuity commenced a subrogation action against RS, Flint, and their insurer, Society Insurance, seeking to recover damages arising from the engine room collapse.

The circuit court concluded the CGL policy did not provide coverage because there was no “occurrence.” The Court of Appeals concluded the damages suffered by VPP were the result of an “occurrence.” The Court of Appeals also concluded the economic loss doctrine did not bar coverage and that no business risk exception in the policy applied.

Society argues the Court of Appeals’ decision is in direct conflict with a Court of Appeals decision in another case, [Yeager v. Society Insurance](#) (2010AP2733).

Society points out that in [Yeager](#), the Court of Appeals held that faulty workmanship was not an “occurrence” and that the damage caused by the faulty workmanship could not itself be the “occurrence” while the Court of Appeals in this case came to the opposite conclusion. Society goes on to argue that the Court of Appeals’ interpretation of Exclusions k.(5) and k.(6) was very narrow and in fact is contrary to the plain language of the exclusions.

Society asks the Supreme Court to review:

- if “faulty workmanship” is not an “occurrence” under a general liability insurance policy, then may an occurrence be found solely from the bad result caused by the faulty workmanship?
- if the exclusion, found in all general liability policies, precluding coverage for damage to property on which the insured is performing operations, limited solely to that specific property on which work is being done at the time of the property damage, or does the exclusion apply to all of the property within the insured’s control and responsibility?
- When a claim clearly falls within the economic loss doctrine, and therefore may only be brought as a breach of contract, and not a tort claim, is there insurance coverage under a standard general liability policy for the breach of contract claim?