

**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
Kentucky	Yes	<i>Lenning v. Commercial Union Ins. Co.</i> , 260 F.3d 574 (6th Cir. 2001); ⁱ <i>James Graham Brown Foundation, Inc. v. St. Paul Fire & Marine Ins. Co.</i> , 814 S.W.2d 273 (Ky. 1991); ⁱⁱ <i>Bituminous Cas. Corp. v. Kenway Contracting, Inc.</i> , 2007 WL 1790685 (Ky. June 21, 2007). ⁱⁱⁱ	<i>Westfield Ins. Co. v. Dan "K" Service Co.</i> , 2006 WL 250480 (W.D. Ky. February 1, 2006); ^{iv} <i>Bituminous Cas. Corp. v. Kenway Contracting, Inc.</i> , 2007 WL 1790685 (Ky. June 21, 2007). ^v

ⁱ **Kentucky:** *Lenning v. Commercial Union Ins. Co.*, 260 F.3d 574 (6th Cir. 2001). A complaint in which the homebuyers alleged that the insured vendor and builder of a home negligently constructed the home in breach of its contract did not set out an occurrence since it merely alleged economic losses for the damages incurred by the homebuyers after the vendor left the job unfinished.

ⁱⁱ **Kentucky:** *James Graham Brown Foundation, Inc. v. St. Paul Fire & Marine Ins. Co.*, 814 S.W.2d 273 (Ky. 1991). Whether there was an occurrence under the 1973 definition of occurrence depends upon whether the insured intended or expected the environmental contamination at its wood preserving treatment plant, and in order to deny coverage under the definition, the insured must specifically and subjectively intend the injury giving rise to the claim.

Copyright © International Risk management Institute, Inc. (IRMI). Further reproduction strictly prohibited.

This information becomes outdated quickly. A frequently updated version is provided in the online versions of Insurance for Defective Construction by Patrick J. Wielinski. For more information, go to the products section of www.IRMI.com

**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

ⁱⁱⁱ **Kentucky:** *Bituminous Cas. Corp. v. Kenway Contracting, Inc.*, 2007 WL 1790685 (Ky. June 21, 2007). The insured contractor's employee's inadvertent demolition of part of a home when the contractor was hired only to demolish the home's carport, constituted an "accident" and therefore "occurrence" since, although the demolition act was intentional, the resulting damage was not.

^{iv} **Kentucky:** *Westfield Ins. Co. v. Dan "K" Service Co.*, 2006 WL 250480 (W.D. Ky. February 1, 2006). Exclusion I, the Your Work Exclusion, applied to the damages arising out of a misrepresentation claim against the insured inspection service for failing to discover the defects in a home prior to purchase.

^v **Kentucky:** *Bituminous Cas. Corp. v. Kenway Contracting, Inc.*, 2007 WL 1790685 (Ky. June 21, 2007). Exclusions j(5) and j(6), the Operations and Faulty Workmanship Exclusions, did not apply to a claim which arose out of the unintentional demolition of a home when only the carport was to be demolished. Both exclusions were ambiguous since the policy did not define the phrases "that particular part of real property" or "operations," and there was no allegation that any of the work on the carport itself was faulty.