

**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
South Carolina	Pending	<i>**L-J, Inc. v. Bituminous Fire & Marine Ins. Co.</i> , 621 S.E.2d 33 (S.C. 2005); ⁱ <i>Auto-Owners Insurance Co. v. Newman</i> , 2002-C.P. 10-4390. ⁱⁱ <i>But see **Okatie Hotel Group v. Amerisure Ins. Co.</i> , 2006 WL 91577 (D. S.C. Jan. 13, 2006) and <i>Bituminous Cas. Corp. v. Altman Builders, Inc.</i> 2006 WL 2137233 (D. S.C. 2006). ⁱⁱⁱ	<i>Century Indemn. Co. v. Golden Hills Builders, Inc.</i> , 561 S.E.2d 355 (S.C. 2002); ^{iv} <i>Auto-Owners Ins. Co. v. Essex Homes Southeast, Inc.</i> , 136 Fed. Appx. 590 (4th Cir. 2005). ^v

ⁱ ****South Carolina:** *L-J, Inc. v. Bituminous Fire & Marine Ins. Co.*, 621 S.E.2d 33 (S.C. 2005). The premature cracking in roadwork due to the negligence of a subcontractor was not an occurrence, since the only damage done was to the road, the insured's own work product itself.

ⁱⁱ **South Carolina:** *Auto-Owners Insurance Co. v. Newman*, 2002-C.P. 10-4390. The hearing of this case was expedited by the South Carolina Supreme Court for its occurrence issues involving water intrusion. Oral arguments were heard in that case in early January 2008. It is expected that the South Carolina Supreme Court will issue a detailed opinion regarding defective work as occurrence, particularly as to the issue of resulting damages and the court's previous reliance on *High Country Associates v. New Hampshire Ins. Co.*, 648 A.2d 474 (N.H. 1994), as cited in the *L-J v. Bituminous* case.

ⁱⁱⁱ ****South Carolina:** *But see Okatie Hotel Group v. Amerisure Ins. Co.*, 2006 WL 91577 (D. S.C. Jan. 13, 2006), in which the court determined that *L-J v. Bituminous*, stands for the proposition that no occurrence exists if the damage is restricted to the defective work itself. However, if the damage extends beyond the defective work to otherwise non-defective work, there is an occurrence; upholding coverage for a claim involving water intrusion damage to the interior of a hotel resulting from other defective work. The issue of "defective workmanship as occurrence," and the determination of the South

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Carolina Supreme Court in *L-J v. Bituminous*, has spawned a raft of litigation in the federal courts of South Carolina. The court in *Okatie Hotel* was the first of several courts to limit the scope of *L-J v. Bituminous*, but other courts have refused to do so. See *Bituminous Casualty Corp. v. Altman Builders, Inc.*, 2006 WL 2137233 (D. S.C. July 28, 2006), in which the court invoked Dante's *The Divine Comedy (Inferno)*, to admonish contractors seeking coverage for defective work to "abandon hope, all ye who enter here," in light of *L-J v. Bituminous*. A listing of all of the South Carolina cases on this issue is beyond the scope of this matrix, and several of them are on appeal to the Fourth Circuit, so the issue appears to be far from decided under South Carolina law despite the sweeping holding in *L-J*. Recently, a federal district court in South Carolina certified questions to the South Carolina Supreme Court regarding coverage for faulty workmanship. See *Builders Mut. Ins. Co. v. The Burton Co., Inc.*, 2007 WL 2284576 (D. S.C. Aug. 7, 2007); *Builders Mut. Ins. Co. v. C.C.W. Marketing Inc.*, 2007 WL 2284584 (D. S.C. Aug. 7, 2007); *Fid. & Guar. Ins. Underwriters v. Robert W. Booher Constr. Co.*, 2007 WL 23511010 (D. S.C. Aug. 5, 2007). The certified questions involve whether coverage is available when the claim against the contractor involves faulty workmanship that resulted in continuous exposure to moisture, and ultimately moisture damage.

^{iv} **South Carolina:** *Century Indem. Co. v. Golden Hills Builders, Inc.*, 561 S.E.2d 355 (S.C. 2002). Exclusion j(6), the Faulty Workmanship Exclusion, barred coverage for the cost to repair the substrate and framing of a house that was damaged by a subcontractor's improper installation of a stucco exterior.

^v **South Carolina:** *Auto-Owners Ins. Co. v. Essex Homes Southeast, Inc.*, 136 Fed. Appx. 590 (4th Cir. 2005). Exclusion m barred coverage as to the failure of builders and developers to investigate and remove ordnance and explosive wastes from a development site, since that failure constituted defects, deficiencies, or inadequacies in the performance of their work.