



CGL Policies of 1941 to 1966: Origins of Product Liability

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The Comprehensive General Liability (CGL) policy was introduced in January 1941. Many insurers had their own “comprehensive” coverage before, but the variability of terms and conditions of policy language convinced most market participants that standardization was needed. The mutual bureau (Mutual Insurance Rating Bureau) and the stock bureau (National Board of Casualty Underwriters) agreed to meet and jointly create a standard policy.¹ The 1941 policy covered many of the same exposures as the modern and renamed Commercial General Liability policy. It was rated on the basis of (1) premises: square feet and frontage; (2) operations: remuneration; (3) elevators: per elevator; (4) independent contractors: per \$100 of cost; (5) teams [horses]: per team; (6) products (including completed operations): per \$1,000 of sales; and (7) contractual: per contract.

This article traces product liability insurance coverage as it developed over the next three decades. Throughout this period, the insurance industry, as reflected in the CGL policy forms, provided ever-broader coverage for the American marketplace, including a more blanket approach to coverage as reflected in the rating of independent contractors, teams, and contractual liability. Product liability was likewise broadened. In the course of broadening and extending coverage, the policy became increasingly complex.

The 1941, 1943, 1947, and 1955 CGLs had two liability insuring agreements:

Coverage A—Bodily Injury Liability

To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law, or assumed by him under contract as defined herein, for damages, including damages for care and loss of services, because of bodily injury, sickness or disease, including death at any time resulting there-from, sustained by any person or persons and **caused by accident.**

Abstract

This article traces the development of product liability insurance since standard coverage first appeared in 1941. This article is restricted to analysis of the first five editions of the CGL: 1941, 1943, 1947, 1955, and 1966, with some limited comment on later editions. The pattern revealed is one of generally broadening coverage, including the elimination of the batch clause and the change from accident to occurrence coverage. The reader should be mindful that either accident or occurrence-triggered policies have the potential to “live forever.” Injuries beginning 60 or more years ago continue to trigger claims on those policies so the importance of these policies is not strictly “academic.”

Coverage B—Property Damage Liability.

To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law, or assumed by him under contract as defined herein for damages because of injury to or destruction of property, including the loss of use thereof, **caused by accident**.

There were many cases and disputes about the meaning of the bolded words (by the writer), a brief discussion of which will ensue later in this article. Basically, an accident is a sudden and unexpected event that was not intended (by the insured) to happen, something untoward, unforeseen, and unexpected. Coverage restricted to accidents is much narrower than coverage for occurrences and much less complex.

1941 Edition

The 1941 edition included Condition 6:

(6—Limits of a Liability—Aggregate Products)

The limit of bodily injury liability stated in the declarations as “aggregate products” is the total limit of the company’s liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, caused by the handling or use of or the existence of any condition in goods or products manufactured, sold, handled or distributed by the named insured or caused by operations, other than pick-up and delivery and/or the existence of tools, uninstalled equipment and abandoned or unused materials, when the accident occurs away from premises and rented or controlled by the named insured and after the named insured has relinquished possession of such goods or products to others or after the operations have been completed or abandoned at the place of occurrence of the accident. The limit of property damage liability stated in the declarations as “aggregate products” is the total limit of the company’s liability for all damages arising out of injury to or destruction of property, including the loss of use thereof, caused as aforesaid.

Condition 6 is unwieldy and difficult to decipher. The first sentence delineates the policy year aggregate for bodily injury arising from product and completed operation liability (PCO), and the second sentence delineates the policy year aggregate for property damage liability from PCO. The remarkably long first sentence defines the PCO hazard and differentiates it from premises liability and operations liability. This approach apparently proved cumbersome, and in the 1943 edition a definition of products hazard appeared. The language in the 1941 edition establishes that the product hazard is about accidents arising from products (1) off-premises; and (2) no longer in the control of the insured, and that a completed operation is indeed (1) completed; and (2) off the premises of the insured. This language defines the nature of product and completed operations liability as used in modern CGL coverage.

The 1941 CGL edition had only four exclusions, compared to 16 in the 2004 edition, of which only one exclusion pertained to PCO. The PCO exclusion was tacked onto the end of the care custody and control exclusion, which read:

d. [under coverage B.] to injury to or destruction of (1) property owned, occupied or used by or rented to or, except with respect to the use of elevators or escalators, in the care custody, or control of the insured, or (2) any goods or products manufactured, sold, handled or distributed by the named insured or work completed by or for the named insured, out of which the accident arises.

This exclusion makes plain that PCO insurance covers the injuries caused by products and/or completed operations, but not the value of the products or of the work itself. The most recent CGL edition has nearly the same limitation, although in the form of two separate exclusions.

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Another provision in the 1941 edition is of particular note. This provision became known as the “batch clause.” The batch clause was tacked onto the bodily injury limits of liability section and thus did not even apply to property damage. There will be more on this very interesting provision later.

1943 Edition

The joint forms committee of the bureaus recognized they had made some mistakes or oversights and introduced the 1943 edition on February 1, 1943. First it recognized that the products aggregate language was long and awkward and contained a single sentence with 140 or so words. The 1941 edition had only three definitions: automobiles, contract, and assault and battery. In 1943, a fourth definition was added:

Products Hazard. The term “products hazard” shall mean:

1. the handling or use of, the existence of any condition in or a warranty of goods or products manufactured, sold, handled or distributed by the named insured, other than equipment rented to or located for use of others but not sold, if the accident occurs after the insured has relinquished possession thereof to others and away from premises owned, rented or controlled by the insured or on premises for which the classification stated in division (a) of the declarations or in the company’s manual excludes any part of the foregoing;
2. operations, if the accident occurs after such operations have been completed or abandoned at the place of occurrence thereof and away from premises owned, rented or controlled by the insured, except (a) pick-up and delivery, (b) the existence of tools, uninstalled equipment and abandoned or unused materials and (c) operations for which the classification stated in division (a) of the declarations or in the company’s manual specifically includes completed operations; **provided, operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to a service or maintenance agreement.**

Two ambiguities contained in the 1941 edition were addressed. First, the reference to division (a) of the declarations applies to restaurants, hotels, and others, where the PCO exposure is included in the premises coverage. The ambiguity resulted because food served by restaurants and others, while a product, is generally consumed on the premises. The other major change pertains to the bolded words, which were not included in the 1941 edition. One must infer there had been litigation on the question of when a completed operation is completed. As a result of the clarification in the 1943 edition, a job “improperly or defectively performed” or subject to a service or maintenance agreement can still be completed and thus included in the **products hazard**.

A problem with the new language is that the clause is labeled the “products hazard” but it includes both the products and the completed operations hazards. Litigation ensued in which contractors, installers, and others providing a service as opposed to providing tangible products claimed that their work was not included in the “products hazard.” Therefore, they would argue, they were not subject to the same terms and conditions as manufacturers of products were. The suits came later. The concept of a single definition of the products hazard remained through the 1955 edition. In the 1966 edition, two separate hazards, one for products and a second for completed operations, were defined.

A second important change in the 1943 edition was that the batch clause was moved. The batch clause as it appeared in the 1941 edition was tacked onto the bottom of Condition 5 Limits of Liability Coverage A. The language in 1941 was as follows:

(5—Limits of Liability—Coverage A)

The limit of bodily injury liability stated in the declarations as applicable to “each person” is the limit of the company’s liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease including death at any time resulting therefrom, sustained by one person in any one accident; the limit of such liability stated in the declarations as applicable to “each accident” is, subject to the above provision respecting each person, the total limit of the company’s liability for all damages, including damages for care and loss of services arising out of bodily injury, sickness or disease, including death at any time resulting therefrom sustained by two or more persons in any one accident. **If goods or products from one prepared or acquired lot shall produce, after the named insured has relinquished possession thereof to others and away from premises owned, rented or controlled by the named insured, bodily injury to or sickness, disease or death of more than one person, all bodily injuries, sickness, diseases and deaths proceeding from such common cause shall be considered as arising out of one accident.**

This policy architecture was very likely an oversight by the joint forms committee. The target of the provision clearly is “accumulation type losses,” that is, the case in which numerous claims arise from a single accident. The 1941 edition language applies only to products and not completed operations, and applies only to bodily injury. Accumulation type losses are at least as likely to prevail, if not more so, for property damage. The author’s opinion is that the purpose of the expedited revision of the 1941 CGL edition was to address the oversight. In the 1943 edition, the batch clause was inserted in Condition 5 Limits of Liability—Products. Thus, the batch clause became applicable to both bodily injury and property damage as well as to completed operations:

The limits of bodily liability and property damage liability stated in the declarations as “aggregate products” are respectively the total limits of the company’s liability for all damages arising out of the products hazard. **All such damages arising out of one prepared or acquired lot of goods or products shall be considered as arising out of one accident.**

Any batch clause results in a major limitation on coverage. Suppose a manufacturer makes a batch of 10,000 defective toys that injure 500 children. According to the batch clause, there was only one per accident limit of liability available to pay claims, not 500 per accident limits.² The natural course of action for the policyholder would be to buy a higher per accident policy limit. In early CGL editions, however, limits were split, that is, per person, per accident with a separate limit for property damage.³ In the 1966 CGL edition, the batch clause was quite unceremoniously deleted. Norman Nachman, bureau spokesman, writing in the *CPCU Annals*, explained the deletion by suggesting that the product liability aggregate would accomplish approximately the same end result. Clearly a batching per accident limit is not the equivalent of a policy year limit.⁴

Certainly there were claim adjustment problems concerning the enforcement of the batch clause. Identification of which individual product came from a particular batch or lot is problematic. Substantial litigation ensued. Compilation of batch data might have been difficult in 1943 and doubtless would be easier today. But the failure to address such an ambiguity paves the way for coverage. The argument that the batching clause limitation is fundamentally unworkable is belied in forms underwritten in the excess and surplus lines markets that regularly use “batch clauses.” For example, one form underwritten in the excess and surplus lines market containing the following batch claims:

- R. “Integrated Occurrence” means an Occurrence encompassing actual or alleged Personal Injury, Property Damage and/or Advertising Liability to two or more persons or properties which commences over a period longer than thirty (30) consecutive days which is attributable directly, indirectly or

allegedly to the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such; provided, however, that such Occurrence must be identified in a notice pursuant to Section C of Article V as an "Integrated Occurrence" and is subject to all provisions of paragraphs (1) and (2) of Definition V.

The foregoing is simply an example, and a discussion of the various batching clauses found in the contemporary marketplace is far beyond the scope of this article. In any event, batching clauses of one form or another have been applied to claims in the excess and surplus lines market for many years. For example, the 1960 Lloyd's LUP-3 policy includes the phrase: All such exposure to substantially the same general conditions existing at or emanating from one premises location shall be deemed one occurrence. Different but similar language is contained in the 1986 Lloyd's N.M.A. No. 2233. Batching clauses were incorporated in various policies issued by carriers such as Ace and XL during the hard insurance market in the mid-1980s.

The history of the CGL batch clause is consistent with the author's position that the history of CGL product liability is one of generally broadening coverage. Unfortunately, at the same time the insurance industry was liberalizing coverage, the underlying products liability exposure itself was being dramatically expanded by the courts, with the result being extraordinarily high combined ratios for the insurance industry in the early 1980s and the 1990s.

The third 1943 edition change was the alienated premises exclusion. The 1943 edition exclusion reads as follows:

This policy does not apply: (d) under coverage B, to injury to or destruction of (1) property owned, occupied or used by or rented to the insured, or (2) except with respect to liability assumed under sidetrack agreements and the use of elevators or escalators, property in the care, custody or control of the insured, or (3) any goods or products manufactured, sold, handled or distributed or **premises alienated** by the named insured, or work completed by or for the named insured, out of which the accident arises;

The reader might conclude that this language has nothing to do with PCO coverage and is "sandwiched" in for convenience, possibly to avoid adding a separate exclusion.⁵ The alienated premises exclusion can be found in the Property Damage exclusion of the 2004 edition. It excludes coverage for damage to premises alienated (formerly owned or occupied) if the damage arises out of a condition in the premises. Apparently there must have been a coverage concern between 1941 and 1943 as to whether a building that a policyholder formerly occupied and sold was a completed operation even though it was not constructed for the purpose of selling it at a profit. Condition 6 of the 1941 edition (without the added language) is ambiguous on this point.

The 1966 and 1973 editions had a freestanding alienated premises exclusion. In the 1986 edition it was inserted in the Property Damage exclusion, i.e. the modern care custody, and control exclusion.

1947 Edition

The bureaus issued a new CGL on December 1, 1947. It included some revisions in supplementary payments, a change in conditions, and a new exclusion. The new exclusion addressed the exposure pertaining to liability for water damage from plumbing, heating, etc., from collapsing water tanks and from rain and snow. The product liability coverage remained the same.

1955 Edition

The definition of the products hazard was rewritten. The 1943 and 1947 editions definitions contained the following:

Products Hazard. The term "products hazard" shall mean the handling or use of, the existence of any condition in or a warranty of goods or products manufactured, sold, handled or distributed by the named insured, other than equipment rented to or located for use of others but not sold,

The 1955 edition contains the following revised definition:

Products Hazard. The term "products hazard" means:
(1) goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name if the accident occurs after possession of such goods or products has been relinquished to others by the named insured **or by others trading under his name** and if such accident occurs away from premises owned, rented or controlled by the named insured or on premises for which the classification stated in division (a) of the declarations excludes any part of the foregoing; provided, such goods or products shall be **deemed to include any container thereof, other than a vehicle, but shall not include any vending machine** or any property, other than such container, rented to or located for use of others but not sold;

With respect to the revision, two changes should be noted. One is that containers were specifically included as part of the product but not a vehicle serving as a container, for example, a tanker truck that includes the product; the second change concerns a clarification of coverage for "others trading under [the insured's] name." Also the opening sentence was revised so as to place emphasis upon the product itself rather than the handling and use of the product. There was no corresponding change in the completed operation part of the products hazard.⁶

Observations on the First Generation

The 1941, 1943, 1947, and 1955 CGL editions might be referred to as the first generation. Each of these editions was similar in terms of physical appearance. The date of the policy is not indicated at the bottom of each page of the policy in what is now standard ISO pagination. Absent the first page that includes the words like "third revision July 6, 1955," unless one knows what to look for, the four can be easily mixed up. Aside from physical appearance, these were all accident policies. The 1966 edition and all subsequent policies were occurrence policies.

All CGL coverage before 1966 did not contain the accident trigger. Since 1946, a bodily injury endorsement had been available under which an accident trigger is utilized.⁷ For the next 20 years, insurers became generally willing to write occurrence coverage for bodily injury claims, not but property damage claims.⁸ The significance of this underwriting tendency is ironic because the use of an occurrence trigger for bodily injury claims has certainly cost billions in losses because of asbestos and other toxic substances.

Property damage liability for occurrences was regarded as much more problematic for the liability underwriter. Suppose a manufacturer makes a rust inhibitor, and it "fails to perform." Such a failure is probably not an accident because it is not sudden thus not covered. Or suppose a contractor installs a fan designed to provide artificial heat for the hatching of turkey eggs, but installs the blades backwards. The eggs do not hatch. The claim is not covered because it is not sudden. To write occurrence coverage on property damage products liability required more policy language in order to prevent coverage for these losses.

1966 CGL

Times were good in 1966. The Dow Jones Industrial reached 1000 only to tumble and not reach 1000 again until the early 1980s. The insurance industry was doing well. From 1931 to 1965, the stock companies failed to turn an underwriting profit only nine times. Privity of contract was the rule as was “let the buyer beware.” Thus, the 1966 edition was generous and open-handed.

The 1966 CGL edition utilized a new format that included a “jacket” of terms and conditions for use with the CGL, the Manufacturers and Contractors (M&C) coverage part, the Owners, Landlords, and Tenants coverage part, and the combination Automobile-General Liability coverage part. Product liability coverage was much in need of comprehensive revision. Nachman enumerated some problems. First, liability insurance (either a M&C or a CGL written not to include product liability coverage) was being interpreted by the courts to include product liability coverage for insureds who provided work or service as opposed to a tangible product. For this reason, the old product hazard definition including both product and completed operations was dropped in favor of two definitions and two exclusions. Coverage was restricted somewhat when the words **any part of such products** and **any portion** were added in place of simply products and completed work.

Nachman also reported that a problem had arisen with the old editions that were unclear as to which policy period was applicable to a particular claim.⁹ There had been cases where the introduction of an injurious substance in one policy period resulted in an injury in a different policy period and led to stacking of limits triggered by the accident, as well as the injury. The intent was that injury would trigger coverage, not the occurrence. According to Nachman:

In some cases injuries will take place over a longer period of time before they manifest. The definition [of occurrence] serves to identify the time of loss for application of coverage in these cases, viz. the injury must take place during the policy period. This means that in exposure type cases, cases involving cumulative injuries, more than one policy contract may come into play....

Clearly, the industry cannot claim ignorance as Nachman clearly acknowledged the effect of the new language. Indeed, stacking problems of a much more serious nature ensued. Doubtless the forms committee never anticipated that the same occurrence could trigger 30, 40, or more policy years.

In 1966, the CGL became an occurrence policy. The definition of “occurrence” is as follows:

Occurrence means an accident, including injurious exposure to conditions, which results, during the policy period in bodily injury or property damage neither expected or intended from the standpoint of the insured.

Inclusion of the phrase “including injurious exposure to conditions” clearly deleted the requirement that an accident be sudden in nature for coverage to be triggered. A second major grant of coverage was the deletion of the batch clause, discussed early.

The third major grant of coverage was the inclusion of a distinction between “management errors” and “bench errors.” Clearly an occurrence trigger as opposed to an accident trigger might provide coverage for the non-functioning rust inhibitor and the incorrectly installed fan blades alluded to above. Thus there was a need for the “failure to perform” exclusion, which became known as the “business risk” exclusion. This exclusion provides as follows:

This insurance does not apply: to bodily injury or property damage resulting from the failure of the named insured’s products or work completed by or for the

named insured to perform the function or serve the purpose intended by the named insured, **if such failure is due to a mistake of deficiency in any design, formula, plan, specifications, advertising material, or printed instructions prepared or developed by any insured;** but this exclusion does not apply to bodily injury or property damage resulting from the active malfunctioning of such products or work;

Nachman was inaccurate when he stated: “It is new only because the concept now appears in print; it has always been intended. The exclusion operates to deny coverage when the product or completed work fails to perform the function or serve the purpose intended.” The bolded words in the exclusion delineate a distinction that did not exist in the earlier policies, despite what NBCU representative Nachman said. For example, consider again the turkey eggs. The fan did not heat the eggs; it failed to perform. Whether it failed because the worker put the fan blades in backwards (a “bench error”) or whether the fan blades were poorly designed (a “management error”) made no difference in the 1955 CGL. Neither claim was covered. Another example: Insecticide does not kill insects; if the failure resulted from a mistake by workers (as opposed to a design error) in the factory, there is coverage in the 1966 edition. Moreover, if the damages resulted from active malfunctioning, there is coverage even if the proximate cause is a design flaw.

The active malfunctioning language became problematic.¹⁰ It was replaced in the 1973 edition by the following phrase:

but this exclusion does **not apply to loss of use of other tangible property** resulting from the **sudden and accidental** physical injury to or destruction of the named insured’s products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured.

Another product liability exclusion was added in the 1966 edition. It excluded coverage for:

damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured’s products or work completed by or for the named insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein

This exclusion became known as the “sister-ship” exclusion. It is reported that a defective airplane led to the recall of an entire batch of planes. Generally, the public statements of bureau representatives such as Nachman are very carefully articulated. There is a tendency to assert that “nothing has changed” because to admit that “we made changes and something is no longer covered” implies that it was covered in earlier editions. Nachman argued that this exclusion merely clarified the intent not to provide coverage. He argued that this clarification was necessary to provide coverage because the CGL no longer was triggered by accident. Thus, an occurrence trigger might include these costs but an accident trigger probably would not. Nachman also argued that the sister-ship exclusion simply reinforces the definition of “property damage.” “Property damage” was not defined in the CGL policy in previous editions. The 1966 edition included the following definition: **property damage means injury to or destruction of tangible property.** Nachman noted that under this definition physical damage to property need not occur; thus loss of use of **any** property would be covered because it falls under this definition. According to Nachman, if under this “the insured’s crane buckles and the street must be closed off, loss of use claims from business owners on the street would be covered.”¹¹ Thus, it became necessary to exclude loss of use claims such as those described in the exclusion.

After the 1966 Edition

The formative years that preceded the modern CGL PCO insurance era were the 1941 to 1966 editions, and this article is limited to an analysis of these editions, leaving subsequent changes and issues for others to analyze. But that is not to say there were no more changes, and I will mention a few. In 1973, the bureaus, now the ISO, recognized they had gone too far in granting coverage for “bench errors” and re-wrote the exclusion to apply to bench errors as well as design flaws, but at the same time broadened coverage by making the exclusion apply only to property damage, unlike 1966, which applied to bodily injury as well.

The first part of the 1973 version is below:

to loss of use of tangible property which has not been physically injured or destroyed resulting from

1. a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or
2. the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured

The addition of paragraph 1 is truly remarkable. Did the bureaus in 1966 forget to say the new policy does not obviate the need for surety bonds? Or was the 1973 paragraph just a clarification? Surely the insurance industry did not stop writing surety bonds for seven years. This interesting question is a topic for future research.

The 1986 CGL arrived at the height of the great hard market. Changes in pollution coverage and the new claims-made CGL took center stage. ISO did add the “Tylenol language.” The recall exclusion was augmented to include “because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.” The 1973 form ended at deficiency. There was also a substantial change to the coverage for completed operations with the words:

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

This major increase in the scope of coverage was important for those who did not have the broad form property damage endorsement to the CGL. This very popular endorsement included 12 coverage enhancements that had been available in the 1970s.¹² A major selling point used by the ISO in seeking approval of the new forms was that these were now built into the policy. Finally, the 1986 included the total rewrite of the business risk exclusion and the adoption of the definition of “impaired property.” With this change the policy became very difficult to understand but the intent was tightened. Donald Malecki, CPCU, and Arthur Flitner, CPCU, agree with me that the coverage remained largely the same in 1973 and 1986.¹³ There has been very little change since the 1986 edition. The coverage and language have become settled.

Conclusion

From the historical perspective, property insurance and liability insurance differ. A study of 1955 fire insurance forms would be of interest to the writer and a few others interested in the history of insurance policy forms. In contrast, a study of the CGLs of the mid-twentieth century should have a much broader appeal including litigators, claims professionals, and underwriters because at this instant claims are being evaluated on the policies discussed in the article. The author hopes that this article is of interest to such persons as well as to his academic colleagues.

Endnotes

1. Reader should be reminded that this meeting preceded the *South-Eastern Underwriters* case. There was considerable hostility between the mutual and stock agents and their insurers. Notwithstanding, a few years earlier (May 1935) the bureaus had recognized the need for cooperation on forms and developed a standard automobile policy and a standard garage policy.
2. Coverage under a modern CGL would be 500 policy limits because the coverage trigger is bodily injury during the policy period not the manufacture of the product.
3. During the 1950s the industry was becoming increasingly concerned by the tendency for policyholders to buy basic limits and to rely on much less expensive excess or umbrella liability coverage. The source of the price differential was that the CGL had a defense obligation that did not end with exhaustion of the policy limits.
4. See Norman Nachman in "The New Comprehensive General Liability Policy," *CPCU Annals*, Fall 1965. Nachman was manager of the Casualty Division of the NBCU and a member of the joint forms committee. He wrote: "The problem in many cases in determining what constituted one lot of goods or products made retention of the language untenable. Reliance will be placed upon the aggregate limit to establish a cut-off of coverage in the kind of catastrophic incidents where the batch clause had been expected to be effective."
5. The 2004 CGL edition specifically provides that the alienated premises exclusion does not apply to "your work." The term alienated premises was eliminated in 1986 and replaced with "premises you sell, give away, or abandon." The 1943 policy edition makes no distinction between alienated premises and completed operations. Thus a newly constructed building could be either, which might explain why the provision was placed where it was.
6. Many times I have read the revised language and cannot discern the reason for this change in emphasis. I have also consulted colleagues from around the country, some of whom have been closely involved in litigation of the classic CGLs and have learned no more.
7. See John J. Berger, "Coverage Under the Occurrence Clause" in the *Insurance Law Journal*, May 1954. The earliest reference the author found concerning the idea of substituting "occurrence" for "accident" in the bodily injury insuring agreement is in Barent L. Visscher, "The Use of Occurrence for Accident As an Extension of Coverage" *Insurance Law Journal*, October 1944. Visscher opines such a change would definitely be an extension of coverage. According to Bernard McManus and Robert McWilliams, writing in the *CPCU Annals*, in 1950, page 44, another way in which occurrence coverage could apply to bodily injury claims was by simply deleting the phrase "caused by accident" from the insuring agreement.
8. See Richard H. Elliott, executive of the NBCU, "How Comprehensive Is the Comprehensive General Liability Policy?" in the Proceedings of the 5th Semi-Annual Seminar of the Institute of Oregon Underwriters, University of Oregon, 1957. Elliott devoted an entire section of his paper to "Occurrence Coverage-Property Damage Liability." He writes: "Modern progressive thinking is gradually breaking down the barrier but, nevertheless, careful individual risk underwriting is essential if unintended pitfalls are to be avoided."
9. This is generally known as stacking. When there is continuous injury or damage, multiple policies are called upon to pay the same claim. The appeal of claims-made insurance is that it eliminates stacking.
10. For an extensive discussion of the "active malfunctioning" problem, see Howard C. Sorenson, *Insurance Law Journal*, May 1974. Sorenson discusses problems with products such as "chemicals and drugs," "paint and adhesives," and construction. The problem, he writes, is what constitutes "active" in products such as these.
11. Apparently some insurers interpreted the definition more narrowly than Nachman because in 1973 the language was changed to specifically include loss of use of property that has not been physically damaged.
12. See James Trieschmann and E.J. Leverett, "An Analysis of Broad Liability Endorsement," in *CPCU Journal*, September 1979.
13. See Donald Malecki, CPCU, and Arthur Flitner, CPCU, *Commercial General Liability*, 8th edition. They point out the newly named "impaired property exclusion" limited coverage somewhat compared to the 1973 exclusion because it applied to impaired property as well as loss of use. This textbook is the authoritative source on contemporary CGL coverage and issues.