IN THE
INDIANA SUPREME COURT

Cause No. _____

THOMSON INC. n/k/a, TECHNICOLOR USA, INC. Appellant/Cross-Appellee, vs. INSURANCE COMPANY OF NORTH AMERICA n/k/a CENTURY INDEMNITY COMPANY, et al. XL INSURANCE AMERICA INC. f/k/a WINTERTHUR INTERNATIONAL AMERICA INSURANCE COMPANY, TRAVELERS PROPERTY CASUALTY CO., et al, Appellees/Cross-Appellants.	)	Appeal from Court of Appeals No. 49A05-1109-PL-470 Marion Superior Court 49D07-0807-PL-30747 Hon. Michael D. Keele, Judge

ADDENDUM TO *AMICUS CURIAE* UNITED POLICYHOLDERS' BRIEF IN SUPPORT OF APPELLANT/CROSS-APPELLEE THOMSON INC.'S PETITION TO TRANSFER

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Attorneys for Amicus Curiae United Policyholders

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STATE OF NEW YORK

INSURANCE DEPARTMENT

324 STATE STREET

ALBANY 10

APPOINTMENT NO. 14696

I, JULIUS S. WIKLER, Superintendent of Insurance of the State of New York, DO HEREBY APPOINT

CHARLES N. KAPLAN and LESTER B. LEOPKIN

as proper persons to examine into the affairs of the NATIONAL BUREAU OF CASUALTY UNDERWRITERS, of New York, N. Y., and to make a full report to me in writing as to the methods and manner of operating the said Organization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this Department at the City of Albany, New York, this 29th day of September, 1958.

JULIUS S. WIKLER
Superintendent of Insurance

By John Joyce
Acting Deputy Superintendent

Addendum 1

May 15, 1961

NATIONAL BUREAU OF CASUALTY UNDERWRITERS

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Subscribers - State of New York

- - -

National Bureau Services for which Non-Members subscribe in New York

Companies	Auto.(1)	Gen. Liab.(2)	Boiler & Mach.	Burg.	Glass
Agricultural Ins. Co.,	x	x	x	x	x
Alliance Assurance Co., Ltd.		x			x
Alpina Insurance Co., Ltd.		x		x	x
American Automobile Ins. Co.	x	x		x	x
American Casualty Co. of Reading, Pa.	x	x	x		x
American Druggists' Ins. Co., The		x		x	x
American Employers' Ins. Co.	x	x	x	x	x
American Equitable Assurance Co. of N.Y.		x	x	x	x
American Fidelity and Casualty Co., Inc.	x	x			
American Fidelity Fire Ins. Co.	x				
American Guarantee and Liability Ins. Co.		x	x	x	x
American Home Assurance Co.	x	x	x	x	x
American Ins. Co., The	x	x		x	x
American National Fire Ins. Co.	x	x	x	x	x
Associated Indemnity Corp.	x	x		x	x
Assurance Co. of America	x	x		x	x
Atlantic National Ins. Co.	x*				
Automobile Mutual Ins. Co. of America		x		x	x
Balboa Ins. Co.	x	x		x	x
Baloise Marine Ins. Co., Ltd., The	x	x		x	x
Bankers and Shippers Ins. Co. of N.Y.	x	x	x	x	x
Berkshire Mutual Ins. Co.		x		x	x
Bituminous Casualty Corp.	x	x			
Bituminous Fire & Marine Ins. Co.	x	x			
Boston Indemnity Ins. Co.	x	x		x	x

* Excluding insurance on vehicles rated under the Public Automobile section of the Manual.

(Continued)

Subscribers - New York

Companies	Auto(1)	Gen. Liab.(2)	Boiler & Mach.	Burg.	Glass
Boston Ins. Co.	x	x	x	x	x
Buffalo Ins. Co.	x	x	x	x	x
Central [illegible] Ins. Co.	x	x	x	x	x
Charter Oak Fire Ins. Co., The	x	x	x	x	x
Citizens Casualty Co. of N.Y.	x†	xø		x#	
Connecticut Indemnity Co., The	x	x	x	x	x
Consolidated American Ins. Co.		x		x	x
Continental Casualty Co.	x*†	x*		x	x
Eagle Star Ins. Co., Ltd.		x			
Employers' Fire Ins. Co., The	x	x	x	x	x
Employers' Liability Assur. Corp., Ltd., The	x	x	x	x	x
Factory Mutual Liability Ins. Co. of America	x	x		x	
Farmers Fire Ins. Co., The		x		x	x
Federal Ins. Co.	x	x			x
Fireman's Fund Ins. Co.	x	x		x	x
Founders' Ins. Co.	x	x		x	x
General Acc., Fire and Life Assur. Corp., Ltd.	x	x	x	x	x
General Fire and Casualty Co.	x**	x		x	x
Globe & Republic Ins. Co. of America		x	x	x	x
Grange League Federation Ins. Co.				x	
Granite State Ins. Co.	x	x		x	x
Great American Ins. Co.	x	x	x	x	x
Home Fire and Marine Ins. Co. of Calif.	x	x		x	x
Illinois Ins. Co.	x	x	x	x	x
Indemnity Marine Assurance Co., Ltd., The	x	x	x	x	x
Insurance Co. of North America	x	x		x	x
Insurance Co. of the State of Pa., The	x	x	x	x	x
Jefferson Ins. Co. of N.Y.		x	x	x	x
Jersey Ins. Co. of N.Y.	x	x	x	x	x
London Assurance, The	x	x	x	x	x

* Excluding insurance on vehicles rated under the Public Automobile section of the Manual.

† Excluding increased limits insurance in excess of $10,000/20,000 bodily injury and $5,000 property damage on assigned risks, or in excess of such higher limits as an assigned risk may request to satisfy the financial responsibility laws of other states.

ø Excluding insurance on risks rated under the Hospital Professional Liability Manual.

\# Excluding Warehousemen's Liability insurance.

* Excluding insurance on risks rated under the Miscellaneous Medical Professional Liability Manual and the Lawyers Professional Liability Manual.

** Excluding insurance on vehicles rated under public livery and taxicab rules in Territories 16, 17, 18, 19 and 55.

(Continued)

Mutual Insurance Rating Bureau

733 THIRD AVENUE NEW YORK, N. Y. 10017

CIRCULAR NO. PFC 64-14

TO THE POLICY FORMS COMMITTEE:

Minutes of Joint Forms Committee Meeting
September 21-23, 1964

A copy of the minutes of the Joint Forms Committee Meeting held on September 21-23, 1964 is attached.

Very truly yours,

Joseph Marrone
Attorney

JM:el
Attach.

1100-1984

Kent 62

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64-3926

Addendum 4

JOINT FORMS COMMITTEE MEETING
SEPTEMBER 21, 22 and 23, 1964

e Joint Forms Committee met on September 21, 22 and 23, 1964 at the offices of
ie National Bureau of Casualty Underwriters.

ie following attended the meeting:

For the Mutual Insurance Rating Bureau

American Mutual Liability Insurance Company	R. M. Holley
Employers Mutual Liability Insurance Company	R. J. Vanderff
Hardware Mutual Casualty Company	R. P. Hamm
Liberty Mutual Insurance Company	R. A. Schmalz
	S. J. MacLellan (1)
Lumbermens Mutual Casualty Company	F. O. Terbell
Utica Mutual Insurance Company	E. C. Foster (2)
Staff	J. Marrone
	E. W. Bowen

For the National Bureau of Casualty Underwriters

Aetna Casualty & Surety Company	G. Katz
	D. R. Edwards
·lty & Casualty Company	F. W. DeCamp (3)
is Falls Insurance Company	A. P. Gown
Hartford Accident & Indemnity Company	R. P. Schoen
New Amsterdam Casualty Company	J. O. Honeywell
United States Fidelity & Guaranty Company	S. E. McCoy
Staff	E. P. Earle
	N. Machman
	E. B. Brown

1) Present only first day
2) Not present third day
3) Not present first day

he meeting convened at 10:00 A.M., Mr. Earle presiding. The Committee agreed to
r. Earle's suggestion that they work from (1) "Explanatory Memorandum - July 15,
964 Drafts of General Liability Policy Revisions", and (2) a memorandum dated
eptember 21, 1964 which contained J. D. C. suggested changes in the July 15, 1964
rafts.

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Addendum 5

entary Payments - GA-5a

e Committee was referred to the changes in the provision which were indicated the first page of the July 15 and September 21 memorandums. It was noted at these changes had not yet been approved by both the general liability and e automobile liability rating committees of the National Bureau. The Committee rongly recommends that the extensions of Supplementary Payments be approved for l policies. The Committee approved the following changes:

A. The additional provision added for bail bonds and the increase in the amount from $100 to $250.

B. The last line of (b) reads, "but the company shall have no obligation to apply for or furnish any such bonds;"

C. In the last line of (d), insert a comma after "$25 per day".

ference Note 5 - Page GA-2

ie Committee approved the change noted on the first page of the September 21 morandum so that this reference note will read:

"These declarations and additional declarations of this type, ...etc."

id' riod - Page GA-4

Katz stated that this provision was not required for automobile, but is quired for some general liability and suggested that the Committee amend the ange indicated on the September 21 memorandum to place the brackets around the tire provision. The companies might then place the "Audit Period" provision ly on the declarations of these parts which require it. Mr. Honeywell expressed ie opinion that the companies should have broad discretion on how to word this revision and was in agreement with this suggestions.

r. Earle asked if this change would require an amendment of the premium condition, nce it contains a reference to "audit period". The Committee felt this would ot cause any harm; that the reference would only be superfluous when no provision is made for an audit period in the declarations.

ie Committee approved the following language for the Audit Period line:

"[Audit Period: Annual, unless otherwise stated_____]1."

tem 3 of the Declarations - Page GA-4

r. Schmalz remarked that there are some advantages for placing the limits of liability on each coverage part, and consolidating premiums on one sheet. If ther people thought this a good idea and an option was allowed, the Committee ou ave to change the second sentance of item 3, at least to make it optional.

Addendum 6

:: .ions of "Automobile", "Collapse Hazard" and "Completed Operations Hazard" -
GA-6

ie Committee considered the changes in these definitions indicated on the first ige of the September 21 memorandum next to "Page GA-6".

1) "automobile"

r. Foster stated that the word "or" in the phrase "or the ways immediately ad- oining" was disjunctive. Mr. Schmalz added that this involved a fringe coverage id there was no intention to cover automobiles used only on the premises adjoin- ig which "or" suggests.

r. Nachman asked if it was intended to cover automobiles on a trip to a repair hop. Mr. Schmalz replied in the affirmative, provided the repair shop was in the icinity. He qualified his remarks by adding that it is difficult to determine recisely what the intention is, but probably there was no intention to insure a rip to a repair shop any appreciable distance away.

ie Committee approved the substitution of "including" for "or" in the last line f the definition of "automobile" so that the last phrase will read, "including he ways immediately adjoining;" and also deleted the comma which follows "named nsured".

2) ollapse hazard"

ter Mr. Brown pointed out that the change indicated in the September 21 memo- andum made the definition consistant with the definition of "underground pro- erty damage hazard", the Committee approved the change so that "at any time" as inserted before "resulting therefrom" in the first sentance of the definition.

3) "completed operations hazard"

ie Committee considered and approved the amendment of the first three lines of his definitions set forth in the September 21 memorandum which reads as follows:

> "'completed operations hazard' includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily...."

r. Schmalz explained that the Joint Drafting Committee removed the phrase "per- ormed by or on behalf of the named insured" because they believed that there are perations which are not "performed by or on behalf of the named insured", but which re in the scope of the completed operations hazard. He related the following ctual case: A New York named insured was charged with liability for the negligent oading of a freight car in Canada. The named insured's merchandise was loaded n the car in Canada by an independant corporation which did not have a contrac- ua' elation to the named insured. Bodily injury was sustained in New York when h r was opened and the merchandise fell out. The claim made against the New ork named insured was that it had "procured" the loading and was responsible for he completed operation. The named insured had not purchased completed operations

Addendum 7

...rage, but the insurer felt it could not deny coverage because it could not claim that the car was loaded "by or on behalf of the insured". Mr. Katz synopsized the case by saying that the insured had merely ordered the goods and it could not be said that the loading was "by or on behalf of the named insured".

Mr. Schmalz referred to the Reed Roller Bit case (Reed Roller Bit Co. vs. Pacific Employers Ins. Co.; 198 F.2d 1), and stated that since the word "performed" was in the past tense an argument could be made that the definition did not apply to a representation during an operation, which is related to an accident after the operation is completed. The Joint Drafting Committee believes the change strengthens the definition against this sort of situation and that a further reinforcing is achieved by the insertion of the words "at any time" in the phrase "made at any time with respect thereto".

Definition of "Insured" - Page GA-8

The Committee examined the change in the September 21 memorandum which provides for a substitution in the first line of the definition of "qualifying as an insured" for "described". Mr. Earle expressed the opinion that this was a more apt expression. Mr. Schmalz explained that in the "Persons Insured" sections there are limitations on the scope of coverage and this amendment emphasizes that a person has to qualify as insured in the face of limitations and not merely be described.

Mr. Hamm questioned the phrase "to which the word relates" at the end of the first sentence of the definition, feeling that it was ambiguous. Mr. Earle suggested that "provision" be substituted for "word". Mr. Schoen feared the introduction of so many new words. Mr. Honeywell asserted that "word" was ambiguous. Mr. Schmalz was of the opinion that the essential matter was to identify which "Persons Insured" provision was meant. Mr. Schoen suggested that the last portion of the first sentence read, "of the applicable coverage provision to which the word relates". It was thought this language would encounter difficulty if you have more than one coverage part.

The Committee agreed on the phrase "of the applicable insurance coverage" and approved the following text for the first sentance of the definition:

> " 'insured' means any person or organization qualifying as an insured in the 'Persons Insured' provision of the applicable insurance coverage."

"Products Hazard" - Page GA-9

The Committee considered the amendment of the first two and a half lines of this definition set forth in the September 21 memorandum which reads as follows:

> " 'products hazard' includes bodily injury and property damage arising out of the named insured's products or reliance upon a representation or warranty made at any time with respect thereto,...".

...amm suggested that the Committee consider substituting "to such products" ...thereto". Mr. Schmalz thought this might limit application of the definition ...products only, rather than to "goods or products".

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Addendum 8

e committee approved the change in the first two and a half lines set forth bove.

Territorial Limitation - CA-10

The Committee considered the change suggested in the September 21 memorandum that the last three lines beginning with the words, "but the company shall have no obligation etc" be deleted.

Mr. Schmalz said that the reason for removing the above language is because it was considered to be redundant. He suggested that the word "if" be added near the end of the remaining language which would then read, "...and if the original claim or suit for damages is brought therein."

Mr. Earle asked what reason there was for requiring that the claim be originally brought in the United States. Mr. Schoen was of the opinion that the companies would not preclude coverage if a claim is originally made in Europe and the suit is originally brought later in the United States.

The Committee approved the deletion of the lines and the addition of the word if" as noted above.

Damages" Definition - Page CA-7

The committee then considered the change in this definition contained in the ly 15, 1964 draft and explained in the July 15 memorandum. The memorandum explains that the phrase "and damages for loss of use of property resulting therefrom" replaced "and damages for loss of use of property physically injured or destroyed". The memorandum further explains that the amendment "ties in with the change in the property damage' definition and emphasizes the intent that all loss of use of covered property is included, not just that of the property physically injured." The Committee approved the change already contained in the July 15, 1964 draft which reads as follows:

> " 'damages' means those damages which are payable because of bodily injury or property damage to which this policy applies, including, respectively, damages for death and for care and loss of services, and damages for loss of use of property resulting therefrom;"

The Committee agreed that the further consideration requested by Mr. Tarbell, regarding the removal of the word "death" from the definition of "bodily injury" and placing it in the definition of "damages", was to be postponed until after the problem of defining "occurrence" is resolved. Nevertheless, discussion was held on this matter at this time.

Mr. Katz described the background for having placed the word "death" in the definition of "damages." Essentially, he said that if the definition of occurance is that it is triggered at the time of bodily injury or property damage, then to exclude death in bodily injury would make it possible for a policy to cover

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bodily injury sustained before the policy period, if death occurred during the ...cy period. Mr. Katz read a quote from Sawyer that "...death is clearly included in damages for bodily injury...". Hence, the Joint Drafting Committee placed "death" in the definition of "damages". Mr. Terbell felt that this was a very blunt change in the policy. Mr. Katz stated the problem is interrelated with the definition of "occurrence", and possibly, if the Committee found another approach for "occurrence" it may solve the problem of "death". Mr. Terbell maintained that if our exclusions do not apply to "death" the courts would make a shambles of the policy because of the ambiguity.

Mr. Schoen expressed sympathy with Mr. Terbell's view, but explained that the problem of triggering coverage and defining "occurrence" are important considerations which may force the Committee to do some things it did not like. Mr. Molloy urged the Committee to defer further discussion on this topic. The Committee agreed that Mr. Terbell shall have the right to raise this question again after a definition of "occurrence" is agreed to.

"Named Insured" Definition - Page CA-8

The Committee considered this definition which is new in the July 15, 1964 draft. Mr. Katz explained that it would be awkward to italicize "insured" and not "named". Mr. McCoy asked if the use of italics and bold face for defined words was to be optional. Mr. Katz replied in the affirmative, and added that this new definition makes it clear to whom cancellation is to be mailed.

Schmalz said that the definition of "named insured" might be too narrow, so that possibly:

(1) The company could not cancel by notice to the legal representative of the named insured, and

(2) The named insured's legal representative could not cancel.

Mr. Terbell asked why the "provided" clause in the Assignment condition of current policies had not been used. The Joint Drafting Committee could not recall the reason, though Mr. Katz thought that the clause was probably believed to be surplusage.

Mr. Gowan said that if the company knows of the new address of the named insured you must mail to the new address. He did not believe that the courts will require the companies to mail to a representative they do not know about, or whose address is unknown. Mr. Earle added that the companies want to be able to mail to the deceased named insured.

Mr. Schoen suggested that we could add the provise clause to the Assignment condition, although this clause has been removed from the Garage and Comprehensive Personal Liability Policies. Mr. Earle brought the attention of the Committee to the minutes of the May 2-4, 1961 J.P.C. Meeting, where the Committee had approved the present draft of the Assignment condition.

r. .arbell made a motion to reinstate the proviso clause at the end of the .ssignment condition. The motion was defeated. Four members of the Committee ...oted in favor of this motion and five were opposed.

Mr. Brown noted that Mr. William Aldridge, Secretary of the National Council should be informed of the Committee's action to no longer use the proviso language. Mr. Marrone is to notify Mr. Aldridge.

October Meeting

The dates for the next meeting were changed from October 13, 14 and 15, 1964 to October 20, 21 and 22, 1964. The meeting will be held at the Mutual Bureau offices.

"Occurrence" Definition - Page GA-9

Mr. Terbell asked Messrs. Katz and Schmalz to explain, for the benefit of the Committee, the nature of the problems encountered in defining this term.

Mr. Schmalz replied that the policy requires that bodily injury or property damage be caused by something, which means we must then define the causative element to trigger off the coverage. The word "accident" is not satisfactory because it can mean something other than the immediate contact with the means of injury. He cited the following examples:

(1) Mrs. Murphy swallows poison which is an accident, but another accident was also involved in that the wrong pills had been placed in the bottle, or perhaps, the bottle had been incorrectly labeled.

(2) Assume a policy period which is the entire year of 1964. A number of persons were injured by exposure to conditions during 1964 and several others are injured by the same conditions, but at a later time, in 1965, after the policy period. This latter group could claim to have been injured by the same occurrence which caused injury in 1964, and conceivably the policy will apply because the policy covers exposure to conditions which cause bodily injury during the policy period, and those sustaining injury in 1965 have been injured by precisely the required kind of exposure (i.e., one which caused bodily injury during the policy period).

(3) Another problem is encountered in circumstances where there is intentional harm to some and not to others, but all injuries arise from one occurrence. Since the policy covers an occurrence which causes unintentional harm, the policy will cover the occurrence, but the intentional harm from this same occurrence would also be covered.

Mr. Schmalz suggested that the alternatives would appear to be (1) go to pure cause during the policy period, or (2) cover all bodily injury or property damage during the policy period. Mr. Katz drew the following diagram on the board to explain ...e #2:

-3910 (4)

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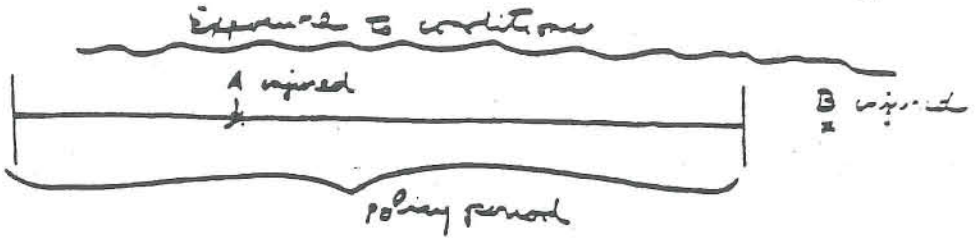

(B's exposure is to the same "occurrence" (exposure to conditions) which caused A's injury during the policy period and so may be insured under the policy.)

Mr. Schmalz explained that the Mutual Bureau wanted "neither expected nor intended" to be more general, and did not want the quoted phrase to apply to "the bodily injury or property damage". The Mutual Bureau desired to be assured of the right to deny coverage for all bodily injury or property damage if any bodily injury or property damage is intended.

Mr. Schoen asserted that coverage should be triggered on the impact or the initial injury. In response to this, Mr. Cowan gave an example of a switch on a refrigerator being turned off by error during the policy period, but the food does not begin to spoil until after the policy period. Mr. Schoen's response was that he intends to cover all damage to the food, even if spoiled after the policy period. His reason for this position is that minutely examined, the damages commenced immediately when the switch was turned off.

Mr. Schmalz directed the following example particularly to Mr. Schoen: Assume a plant dumps acid into a sewer over three years in which three separate policies and insurers are involved. After the third year the city discovers the holes and sues the plant, alleging the dumping of acid over the three-year period. Are the three companies to prorate, or was there no injury until the third year when the holes were made?

Mr. Schoen asserted that the companies should prorate because the injury took place over the three years; in addition, if there was no insurer on the risk in the second and third year the company on the risk the first year should still only prorate. He alleged that the underwriters won't distinguish between: (1) boom injury which causes slowly growing injuries, and (2) the continuing impact case. The first case, he asserted, is really an accident, and only in the second type of injury should the damages be prorated. Mr. Katz stated that the "exposure to conditions" wording causes problems in the first type of case. ("occurrence" also discussed in items 15, 20 and 22.)

Assignment Condition - Page GA-14

No question was asked as to what was intended by the phrase "subject otherwise ... a 'Persons Insured' paragraph" in subparagraph (2) of this condition. It was also remarked that granting coverage to "any person having proper temporary

Addendum 12

ustody of any owned or hired vehicle, as an insured" went too far, because the intention was to insure this person only with respect to the particular vehicle he has custody of, and the language makes him an insured for anything covered by the policy. Mr. Katz pointed out that the reason for subparagraph (2) is to show continuation of coverage for the financial responsibility law in the case of death of the owner. The subparagraph was further criticized for being ambiguous as to whose "owned or hired vehicle" the reference applied to. Mr. Schmalz said that the phrase "subject otherwise to the 'Persons Insured' paragraph" appears to be wrong because this condition creates a new class of insureds separate from the "Persons Insured" provision.

Mr. Bowen brought the Committee's attention to the fact that if the named insured did not purchase auto insurance, this condition nevertheless would grant auto insurance on his death. The Committee thereupon deleted the phrase, "this policy shall cover" which follows "the named insured shall die," and replaced it with "such insurance as is afforded by this policy shall apply".

Mr. Katz suggested that it be considered that subparagraph (2) be broadened to include all property in the proper temporary custody of a person after the death of the named insured. A partial reason for this suggestion was that the Mutual Bureau Rating Committee had suggested that subparagraph (2) include saddle animals and watercraft.

After further discussion the Committee considered the following draft of subparagraph (2) which was suggested by Mr. Katz:

> "(2) with respect to the maintenance or use of automobiles or registered mobile equipment owned or hired by the named insured, to the person having proper temporary custody thereof, as insured, subject otherwise to the 'Persons Insured' paragraph, but only until the appointment and qualification of the legal representative."

Mr. Katz thought that companies may want to cover a person who steps in after the named insured's death with regard to other property, but the policy will express the intention only as to registered automobiles, which is an area all companies presumably intend to cover.

Mr. Schmalz noted that by the terms of paragraph (a) of the "Persons Insured" provision of the Comprehensive General Liability Coverage Part (Page CGL-4), the exceptions to coverage in the subparagraphs to (a) would not apply to the new insureds added under this condition. He stated that the alternatives were (1) add these additional interests to the "Persons Insured" provision, or (2) add the exceptions to (a) of the "Persons Insured" provision to the end of the language now being considered for subparagraph (2).

Mr. Katz made a motion which was carried, to delete "subject otherwise to the 'Persons Insured' paragraph,". The language finally approved for the Assignment condition is the following:

Addendum 13

" 'occurrence' means an accident or injurious exposure to conditions, provided bodily injury or property damage is neither expected nor intended from the standpoint of the insured."

In conjunction with this definition, the insuring agreement would include restrictions with regard to policy period and the policy territory. Mr. Schmalz stated that in a sense "injurious" is redundant (the exposure has to be injurious to cause bodily injury or property damage), but when you consider the word "occurrence" by itself, it is helpful. Mr. Schoen said the word suggests that we are talking about the impact, the injury itself.

Mr. Schmalz thought that "injurious exposure" was better than "injurious conditions", because the latter suggests something collective, whereas, the former suggests injury to individuals. He added that the insuring agreement would contain the phrase, "...during the policy period and within the policy territory, and the company shall have the right...".

Mr. Wendorff said that the draft would not eliminate the case where negligence took place during the policy period, but the bodily injury was sustained after the policy period. Mr. Katz said that the courts could go back to the negligence in manufacturing and allow them to say this negligence was the occurrence and so, the policy would cover the injury after the policy period.

Mr. Schoen said that as a fundamental principle we want to cover everything that flows from an impact in the policy period, and also everything flowing from an injurious exposure during the policy period. Mr. Schmalz said his understanding was the same, though it was not the approach he would choose. He thought Mr. Katz believed that as to a protracted exposure, the policy in effect at the time the injury became manifest should pay and there should not be proration. Mr. Katz said he did not completely agree with Mr. Schmalz's remarks, and went on to explain that prorating cannot be effectuated between the insurer and the claimant. Between two insurers, of course, they would prorate. We cannot ask our Claims Departments to adjust parts of claims; also, we cannot defend our pro rata share of claims, but must defend the entire claim. As to the word "accident", Mr. Katz said it will cause the same problems as before, but the companies will live with it as they have done.

Mr. Schoen said his underwriters don't want to accept full liability because they are on a risk the last week of exposure. Also, once off a risk they don't want to be concerned about future claims. The main aim is to give the underwriters a starting point and a stopping point. He cited two types of cases:

(1) dust falls continuously on surrounding property, and

(2) one day's inhalation of cement during the policy period and six years later the person suffers from silicosis.

Mr. Schoen said that (2) is not an exposure case and his company intends to pay

Addendum 14

"9. ASSIGNMENT. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, such insurance as is afforded by this policy shall apply (1) to the named insured's legal representative as the named insured but only while acting within the scope of his duties as such, and (2) with respect to the maintenance or use of automobiles or registered mobile equipment owned or hired by the named insured, to the person having proper temporary custody thereof, as insured, but only until the appointment and qualification of the legal representative."

"Property Damage" Definition - Page GA-9

The Committee considered the change in this definition contained in the 7/15/64 draft and which is explained in the July 15 memorandum. The memorandum explains that "the word 'physical' before 'injury' has been deleted at the request of the rating committees." Thus, the intent is clarified that the injury or destruction must be to "tangible" property but such property need not be physically damaged, e. g. the damages sustained by reason of the closing down of a building would be within the definition.

Messrs. Katz and Schmalz were in favor of the word "tangible", though Mr. Katz felt more strongly in favor of the use of this word. They explained that the language of the definition is not rigid and will allow for interpretation.

Mr. Bowen offered the example of a generating plant failing to deliver electric power because of an accident which causes:

(1) a manufacturing plant to shut down,

(2) food spoilage, and

(3) injury to a patient on an operating table.

Mr. Katz said that the language was broad enough for companies to administer their claims. The Committee approved the change in the definition.

"Occurrence" Definition - Page GA-9

Mr. Katz said he believed that tying coverage to "resulting bodily injury or property damage during the policy period" is more effective because the courts have determined "accident" to mean the cause of the bodily injury or property damage and the cause is not necessarily the event at time of impact.

Mr. Schmalz said he would agree to use of "injurious exposure to conditions". He added that people still feel that injury occurs when manifest and not at the time of the exposure, and the underwriters want to cover the immediate cause and not the manifestation. He placed the following definition on the board which is the last language agreed to at an informal meeting the previous evening:

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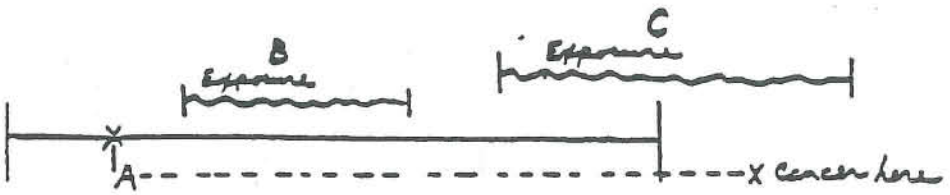
for the silicosis six years later. Mr. Katz said that the difficulty in (2) is that it can be argued that injury actually took place six years later. In response to a question by Mr. Molloy, Mr. Schmalz added that the Committee had rejected the approach of covering when the injury becomes manifest.

Mr. Katz asked for a showing of hands on how many of the members approved of the common practice of writing occurrence coverage on the double condition that both the exposure and the injury must be during the policy period. Six of the members of the Committee were in favor, and three (Messrs. Schoen, Schmalz and Katz) thought the approach wrong primarily because of the coverage gaps that could develop.

Mr. Schoen drew the following diagram on the board:



Mr. Schoen said he intends to cover A who suffers an accident during the policy period which develops into cancer after the policy period. As to B, he intends to cover everything which follows from an exposure wholly in the policy period. Mr. Schmalz stated that as to C, where there has been exposure over two policy periods, Mr. Schoen intends to prorate the loss.

Mr. Nachman offered the case of a toxic substance being dumped into a stream during the policy period, but cows ingest it after the policy period. Mr. Schoen agreed that there was no intention to cover the cows which ingested the toxic substance after the policy period. He said this is what the companies do now with products insurance. In the case of ingestion over two policy periods, each company should pay for part of the injury. Mr. Schoen cited his company's soya bean case as being one which involved repeated impacts.

Mr. Honeywell asked the Committee what they believed the result in the soya bean case would have been had there not been a second insurer. The consensus was that probably Mr. Schoen's company would have had to pay all of the damages.

Mr. Schmalz directed the following example to Mr. Schoen: Assume the ingestion of poison over two policy periods. Five days in the first and fifteen days in the second. If the person had stopped ingesting after five days he may not have even gone to a doctor, yet Mr. Schoen says the liability should be prorated because injury was over the entire spectrum of the exposure. Others would say the first

five days of ingestion were inconsequential and injury was done in the last fifteen [illegible], so the second insurer should pay all. Still others would say the company insuring at the time of the first ingestion should pay all because this was when the injury started.

Mr. Katz stated that proration would encourage insureds to recall and admit other instances in the past where they were guilty of the act complained of in order to bring in other companies or policies. This will only encourage confusion and litigation between companies.

Mr. Schoen referred to a Louisiana case in which a negligently wielded pick ax caused a leak in a gas pipe during the policy period, which then caused an explosion after the policy period. He said the explosion should be covered in the second policy only. (Even though there may have been an accumulation of gas during the first policy period, which would not be unlike the accumulation of poison in the soya bean case.)

Mr. Katz modified the definition on the board to read:

> " 'occurrence' means the accident or ~~the~~ injurious exposure to conditions which is the immediate cause of the bodily injury or property damage, provided bodily injury or property damage is neither expected nor intended from the standpoint of the insured."

Mr. Katz's objection to the prior draft was that the word "occurrence" could go back to the remote cause of the injury and the above language would require the court to find the immediate cause. Another advantage of this language is that if a company was on the risk during a period of innocent exposure it could argue that this was not the exposure that was the immediate cause of the injury.

The Committee considered indenting the words,"the accident" and "injurious exposure to conditions" to be assured that the "which" provision will apply to both. Mr. Katz suggested removing the word "the" before "injurious" saying the courts will then have to refer the "which" phrase to both "accident" and "injurious exposure to conditions". The Committee agreed to remove the word "the" before "injurious."

Several members of the Committee expressed concern that "immediate cause" may be interpreted to mean "proximate cause".

Mr. Schmalz referred to the Louisiana case and said he did not believe that "immediate cause" would stop a court from going back to the pick ax in gas pipe. ("occurrence" also discussed in items 12, 20 and 23).

Premium Condition - Page GA-10

The Committee considered the following revised language of this condition which was set forth in the September 21 memorandum:

> "1. Premium. All premiums for this policy shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

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Premium designated in this policy as 'advance premium' is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the declarations as the audit period the earned premium shall be computed for such period and, upon notice thereof to the named insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the company shall return to the named insured the unearned portion paid by the named insured.

The named insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct."

Mr. McCoy was apprehensive of the reference to "the company's rules, rates, rating plans, ...etc." which are contained in the company's manuals. Other members of the Committee were concerned with not informing the named insured specifically of the kind of records he must keep for premium computation. Mr. Katz suggested that the terms which are used for premium computation be defined on the schedule (perhaps the reverse side), or simply placed on a separate sheet which is given to the named insured. Mr. Brown expressed the opinion that the new language would satisfy most cases.

A motion was made and passed to adopt the revised language set forth above.

L/ ' Liability Arising Out of Casualty Insurance Engineering

Mr. Schoen distributed copies of a memorandum he had prepared which was captioned as is this item. He thought that the companies should, somehow, disavow that a partial inspection is a complete inspection and so, at least not be liable for acts of omission. Mr. Brown said there was no difference between omission and commission. In reply, Mr. Schoen said that if the company examines only one of fifteen buildings the company might be able to disavow responsibility for the buildings not inspected. Mr. Schmals said he did not believe that a flat disclaimer of liability would be effective and also, it would damage relations with the public. Mr. Schoen explained that his company wants to accept responsibility only for what it does and not for those parts or buildings not inspected. Mr. Brown said the answer was for the companies to buy their own insurance.

The consensus of opinion was that it will be difficult to limit the companies' liability arising from inspections, but that an effort should be made to find policy language to attempt to remedy, or at least mitigate the situation. Mr. Schoen's memorandum is to be reviewed and the subject will be discussed at the next meeting of the Committee.

Inspection and Audit Condition - Page GA-11

It was noted that the words "the premium basis or" which appear in this condition are no longer in the revised Premium Condition. A motion was made and passed to d e the words "the premium basis or" from this condition.

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General Instructions, Assembly of Parts - Page GA-1

Mr. Molloy was concerned about the assembly of parts because his company wanted to be able to print several separate policies. Mr. Brown said that to accomodate all the differences to provide for separate policies would play havoc with the Standard Provisions Program. Mr. Katz said he will make changes in the present Standard Provisions Part to adapt it for use as an automobile policy. Mr. Schmalz supported Mr. Molloy's position, saying that if Mr. Molloy's company wanted to print separate policies he should not have to include non-applicable portions of the Standard Provisions Part. (For example, the financial responsibility language.)

Mr. Katz made a motion which was passed, to delete the words "these provisions" from number 2 of the General Instructions, and substituting therefor, "such of these Standard Provisions as pertain thereto." Also, a comma was added after the word "assembled". The purpose of this change is to give greater flexibility in combining parts.

Placing of Exclusions

Some of the members thought that the companies should have the option to place the exclusions elsewhere than immediately after the insuring agreement. Messrs. Katz and Schmalz felt that it was extremely important to place the exclusions immediately after the insuring agreement. They felt this was a substantive matter and not merely one of form, especially on the M & C and O. L. & T. parts. Mr. Katz maintained that the exclusions are a part of the insuring agreements. Mr. Tarbell felt that the placing of the exclusions should be the prerogative of the companies. Mr. Schoen supported his view.

Mr. Tarbell made a motion to amend the last clause in General Instruction #2 beginning with "except", to read "except that it is recommended the exclusions appear at the end of the coverage agreement of which they form a part." The motion was defeated. Five members of the Committee voted in favor of the change and six against it.

"Occurrence" Definition - Page GA-9

Mr. Schmalz distributed copies of three possible definitions of occurrence, which were as follows:

1. "occurrence" means the accident or injurious exposure to conditions, which is the immediate cause of the injury for which claim is made or suit is brought, provided injury is neither expected nor intended from the standpoint of the insured.

2. "occurrence" means (1) the accident or (2) the injurious exposure to conditions, which is the immediate cause of the bodily injury or property damage with respect to which the claim is made or the suit is brought.

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3. "occurrence" means the contact (including a related series of contacts or continuous exposure) with harmful conditions, substances or forces which results without further cause in the injury for which claim is made or suit is brought, provided injury is neither expected nor intended from the standpoint of the insured.

The Committee considered definition #1. Mr. Earle suggested that "bodily injury or property damage" be substituted for the word "injury" where it first appears in the phrase "cause of the injury", because "injury" may relate only to bodily injury. Mr. Schmalz thought to retain the word "injury" where it first appears because it has the connotation of a wrong. He cited the example of an insured cutting down a tree because he thought he had the right to do so. The Rating Committee wanted to cover this incident if the cutting down was innocent, that is, if there was no intention of "injury". Mr. Molley was concerned by the possibility that the insured who does something which he knows will cause injury to someone in general, might successfully find coverage by claiming he did not expect injury to "Mrs. Smith in particular." Messrs. Schmalz and Katz thought the courts would not stretch the language this far. Mr. Molley added that the second "injury" may not be interpreted to have the different connotation from the first "injury", which is intended. Mr. Honeywell gave an example of a truck which deliberately crosses a field, the driver being aware that he is tearing up the field. Mr. Schmalz thought the language would successfully deny coverage for the incident. Mr. Schmalz read the definition of "injury" from Webster's Abridged Dictionary. Mr. Schmalz said he believed the second use of "injury" in definition #1 was superior to the use of "bodily injury and property damage" because use of the latter phrase in this place would probably deny coverage for a man who "innocently" cuts down the tree.

The Committee then amended definition #1 to replace the first "injury" with "bodily injury and property damage". Mr. Earle noted that this change emphasizes the possibility that the second "injury" may not refer to property damage. The Committee agreed to add "or damage" after the second "injury" to make certain that the "provided" clause would also apply to property damage. Also, it was agreed that "with respect to which" should replace "for which", because the phrase "for which" may have narrowed coverage to actions for bodily injury and property damage, and not include suits for loss of use and loss of services, etc. The Committee removed the comma after the word "conditions" because the word "the" before "accident or injurious exposure to conditions" would tie both types of events to the clause beginning with "which". Messrs. Molley and Brown voiced objections to the phrase, "which is the immediate cause of", because they believed intention was not clear and there may be confusion with proximate cause. Mr. Schmalz replied to their contention saying that the phrase made it relatively certain that where two accidents have lead to the injury, as in the case where poison was accidentally included with canned food and later a consumer is accidentally injured when he eats the food, the courts will say in all cases that the last accident is what the policy intends to cover.

Mr. Gowan recited an example case where a named insured builds a dam knowing there is a flood every spring. In the spring there is a flood and the back-up of

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water from the dam causes damage to a neighbor's land. Was the immediate cause of the damage the "flood" or the "dam"?

A motion was made and passed to approve the first definition of "occurrence" as amended. Eight members of the Committee voted in favor and three were opposed.

The text of the approved definition is as follows:

> " 'occurrence' means the accident or injurious exposure to conditions which is the immediate cause of the bodily injury or property damage with respect to which claim is made or suit is brought, provided injury or damage is neither expected nor intended from the standpoint of the insured."

Messrs. Haam and Vanderff thought the definition would gain by the deletion of the word "immediate". Mr. Schmalz thought the best alternative would be the draft considered at the informal meeting the evening before, although recognising its weakness with regard to "accident". There is an ALR section which favors the interpretation of accident which the Committee desires to trigger coverage. ("occurrenc also discussed in items 12, 15 and 23).

1. Insuring Agreement, CGL Part - Page CGL-2

ecause of the definition of "occurrence" which was approved, the Committee agreed to change the insuring agreement of this part so that "caused by an occurrence" is replaced by "resulting from an occurrence which takes place during the policy peri and within the policy territory;".

2. Territorial Limitation Page GA-10

Mr. Katz thought it would be better if this provision made a positive statement of where the policy does cover. At Mr. Schmalz's suggestion, the Committee agreed the discussion be postponed until the next meeting, at which time he and Mr. Katz will present new text for this provision.

3. "Occurrence" Definition - Page GA-9

Mr. Schmalz stated that the new definition of "occurrence" is so personal to the person who is hurt that the courts will consider each person's injury to be a separate occurrence, though the facts be what would ordinarily constitute one occurrence. He urged the Committee to delete "with respect to which claim is made or suit is brought" from the definition agreed to. Mr. Katz thought no change was necessary. He and Mr. Schmalz agreed that the cases have sustained "one accident" when injuries to several persons are reasonably close in space and time.

Mr. Katz explained Mr. Schmalz's concern as being that if you identify the "immediate cause" as the accident, the courts will say that if there is a split seco difference in time you will have separate accidents.

Mr. Honeywell cited the example of the Cocoanut Grove fire where there was one maj occurrence, however, separate causes particularly caused the injuries and the dea of various persons. Some persons were trampled, some suffocated or were injured

when a balcony collapsed, etc. Mr. Schmalz said the words "immediate cause" will allow the courts to find individual accidents and apply separate limits.

Mr. Katz suggested that the Committee go back to using bodily injury or property damage for the time trigger in "occurrence", pointing out that this is the means used for completed operations. Mr. Schoen said that using bodily injury or property damage in completed operations fails safe.

Mr. Schmalz said he thought the Committee had agreed to follow the "causation" approach. He suggested that we "clean up" the definition of "occurrence" agreed to, stating that it had the advantage of allowing the companies to rely upon the precedents for "accident". Mr. Katz suggested the Committee use the July 15 draft of "occurrence".

Mr. Schmalz thought that the word "the" at the beginning of the definition should be replaced with "an", so the phrase would read, "means an accident". He placed the following on the board:

> "'occurrence' means the [an] accident or injurious exposure to conditions[3] [which is the immediate cause of [4] [the] [3] bodily injury or property damage] [4] [5] [for which claim is brought] [6], provided ....etc."

Mr. Schmalz said the questions were whether to delete everything between brackets 1 to 6, or only 5 and 6, and also to substitute "an" for "the". He believed it was essential at least to remove the words between brackets 5 and 6.

Mr. Katz suggested substituting, "which results during the policy period, in the inception" for "which is the immediate cause".

On Mr. Schmalz's motion, the Committee voted to delete the words between brackets 1 to 6. Mr. Schmalz explained the insuring agreement would then be amended to read "...caused by an occurrence...". Six members of the Committee voted in favor and four against the motion.

Mr. Schoen explained that he voted against the motion because he feels "the immediate cause" is important. Mr. Hamm was opposed to the use of the phrase because it would upset the word "accident" which the companies fairly well know how the courts will react to.

Mr. Wenderff said we should use a double anchor. Tie the policy down to (1) occurrences during the policy period, and (2) bodily injury and property damage during the policy period. Mr. Schmalz said the choice should not be made to use causation and result. One or the other, but not both. Mr. Katz thought we could use both, and proposed that the insuring agreement read, "...caused by an occurrence which takes place during the policy period and within the policy territory...", and that "occurrence" be defined as follows:

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- 'occurrence' means an accident or injurious exposure to conditions which results in bodily injury or property damage during the policy period, provided bodily injury or property damage is neither expected nor intended from the standpoint of the insured."

Mr. Govan said that the above approach would follow what has been done with completed operations.

Mr. Schmalz pointed out that this double test allows for gaps in coverage where you have an accident in one policy period and emergence of injury in the second policy period. He cited the Louisiana case where the pick ax struck th gas pipe causing leak during the policy period and the explosion was after the policy period. Mr. Katz thought this double test was best because it is what the companies have been doing and they have had no trouble with it.

At Mr. Schmalz's suggestion, it was agreed that he and Mr. Katz will prepare an analysis of all the pros and cons for the various approaches to defining occurrenc This analysis is to be distributed before the next meeting. ("occurrence" also discussed in items 12, 15 and 20).

4. General Instructions, Assembly of Parts - Page GA-1

Mr. Terbell desires maximum flexibility in placing parts together. Mr. Katz explained that restrictions have been placed only in one area (exclusions) for substantive reasons, and the policies are more flexible than they have ever been. Any flexibility not preserved is inadvertant and he would be glad to accept any better language. Mr. Terbell agreed that he would submit revisions of the general instructions at the next meeting to afford greater flexibility. Mr. Katz said he would prepare and distribute a supplement to the explanatory memorandum sent out last year on the optional methods of placing the parts together.

25. Insuring Agreement, Defense Language - CGL-2

Mr. Wendorff said his company was disturbed by the thought of leaving out the bracketed language (subparagraph (2)) at the end of the insuring agreement. He believes it is highly desirable for the companies to be able to point to language which says they do not have to defend after the limits are exhausted. Mr. Katz thought subparagraph (2) might induce a primary carrier to pay its limits and say it has no further responsibility, which is something not intended.

It was agreed that further discussion be postponed until the next meeting and that Michigan Mutual, which has expressed an opinion on this matter, be invited to attend. Mr. Schmalz said he would prepare a memorandum on this subject.

6 Insured's Duties in the Event of Occurrence, Claim or Suit, Page GA-12

The Committee was referred to page 2 of the July 15 memorandum which states that the words "other occurrences" have been substituted for "other accidents or other bodily injury or property damage" in the second sentence of (a) because they are more appropriate. Mr. Schmalz explained that the Mutual Bureau Rating Committee

was in favor of the words removed. The Committee examined the language, but could not find good reason for keeping the words replaced. Mr. Katz thought the words replaced might cause confusion. The Committee approved the draft adding only that the word "occurrences" in the last line be underlined.

27. Action Against Company - Page GA-12

The Committee approved the change indicated on page 2 of the September 21 memorandum so that in the second line "there shall have been full complaince" is substituted for "the insured shall have fully complied".

28. Other Insurance - Page GA-13

The Committee approved the changes indicated in the July 15 memorandum. These changes are that "valid and collectible" appears in the first line to conform to the same reference later in the condition, and the "but" clause (last six lines) has been added. The Committee then removed "s" from the word "limits" where it appears in the phrase "has paid its limits" near the middle of the condition, and added "for prorating losses", after "a different provision" in the last sentence. The reason for adding "for prorating losses", was to make it clear that the polic continues to apply even though other insurance contains an excess clause.

29. Changes Condition - Page GA-14

The Committee was referred to the July 15 memorandum which states that the bracket material has been shortened. The Committee rejected this suggested change and agr to amend the condition so that the bracketed portion will read as in present polic Some companies exercise the present option to initial changes in the declarations.

30. Approval of Standard Provisions for General - Automobile Liability Policies

A motion was made and carried which approved the jacket in its present form with the exception of the following items which are to be considered at the next meetir

1. automobile
2. mobile equipment
3. occurrence
4. possible substitution of a definition "Policy Territory" for the present "Territorial Limitation."

31. Exclusion (b) - Automobile and Aircraft - Page CGL-2

The Committee considered the change in this exclusion which is explained in the July 15 memorandum as being that "aircraft" has been transferred to this exclusion (d), and subdivision (1) speaks of automobiles "loaned to" rather than "operated by" the named insured. Also, an exception had been inserted for parking lot operations at the request of the rating committees.

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The Committee agreed to add the words "or operated" after "owned" in subparagraph (1), and to delete subparagraph (ii) of subparagraph (2). Subparagraph (ii) was deleted because it was believed that the persons to whom it was directed would be included in subparagraph (i).

The Committee considered if provision should be made to give coverage to the named insured if he should move the trucks of others on his own premises. Mr. Schmalz thought the companies should attempt to give coverage to the insured who cannot be expected to have his own automobile insurance, i. e., one who does not own or hire automobiles. The alternative would be to ask such an insured to purchase a small piece of automobile insurance.

Mr. Melley asked why the exclusion did not contain exceptions with regard to products and incidental contracts. Mr. Schmalz replied that the language only excludes particular automobiles, so that the exclusion will not really restrict products -- completed operations insurance. With regard to incidental contracts, Mr. Schmalz cited the example of the insured who agrees to hold someone harmless with regard to his owned automobiles or aircraft. The insured should have an automobile or aircraft liability policy and these policies are almost always written with an omnibus clause, which means the insured's indemnitee would be an additional insured under the omnibus provisions, and so would be protected despite the contractural liability exclusion in the automobile or aircraft policy.

Mr. Katz suggested an amendment of subparagraph (2) and the "but" clause immediately following, which was as follows:

> "(2) any other automobile or aircraft operated by any person in the course of his employment by the named insured;
>
> but this exclusion does not apply to the parking of any private passenger automobile not owned by, or rented or loaned to the named insured on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining;"

The Committee approved the language quoted above.

32. Exclusion (c) - Transportation of Mobile Equipment - Page CCL-3

The Committee considered the changes which are explained in the July 15 memorandum as being that the exclusion now requires that the injury arises out of as well as "in the course of" the transportation, and that the automobile doing the transporting be "owned by or rented or loaned to the named insured".

The Committee examined the word "transportation" to determine if it accomplished the desired result. It was felt that the word contained the concept of moving equipment from one job site to another and so it expressed the intention. Some members had misgivings, but no superior word could be found. The Committee added the words "or operated" after "automobile owned", and approved the exclusion.

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Addendum 25

33. Exclusion (d) Watercraft - Page CGL-3

The Committee was referred to the July 15 memorandum which stated that aircraft had been removed to exclusion (b) at the request of the rating committees. Messrs Katz and Schmalz explained that watercraft were not included in exclusion (b) because they believed that the intention is to give on premises watercraft coverage. (Exclusion (b) excludes on premises exposure for automobiles and aircraft. The Committee approved the exclusion as it appears in the July 15 draft.

34. Elevator Coverage

The Committee considered the granting of automatic coverage for elevators on the O. L. & T. and M & C parts. Mr. Schmalz thought the elevator exclusion on these parts might be eliminated and it would be a matter of only picking up the premium. Mr. Bowen stated that the Mutual Bureau Rating Committee opposes such action. Messrs. Schmalz and Katz pointed out that the automatic coverage for elevators would only apply to described premises and newly acquired premises and the present drafts require the insured to report both the new premises and the elevators they contain.

Mr. Bowen added that the Mutual Bureau Rating Committee desires that the definition of elevator exclude hoists used to transport people. There was some sentiment that this would be awkward, however, Mr. Schmalz pointed out that this was not unlike including dumbwaiters used exclusively for materials.

Respectfully submitted,

Joseph Marrone

Joseph Marrone

JM:nm

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Ex. C350-0037 Exhibit C
6-21-84
CAM-WP

MUTUAL INSURANCE TECHNICAL CONFERENCE
NOVEMBER 15-18, 1965

C399-0007

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MARC-WP

New Comprehensive General Liability and Automobile Program
R. A. Schaale, Ass't. Counsel, Liberty Mutual Insurance Company

I. Introduction

The general subject of today's program has been considered at previous sessions of this Conference. Four years ago I had the pleasure of speaking to the Conference in a general way about the growing need for rather extensive revisions of general liability policies. Two years ago, when things had become pretty well crystalized, I recall a panel discussion during which actual policy changes were reviewed in considerable detail.

As the revised program had not then been filed, however, there was no real sense of urgency about coming to grips with the practical impact of the new programs on the various stages of company operations.

As you know, the Mutual and National Bureaus have filed a completely revised program for general liability insurance which is scheduled to become effective on May 1, 1966. Revisions of a number of business lines automobile policies will be made simultaneously in order to take advantage of the packaging possibilities inherent in the new approach. The General Liability Program has already been approved in a number of States and we are rather confident that the May 1, 1966 effective date is solid.

Rather than repeat much of the material which has been covered in the past, our panel this afternoon will concentrate on the practical impact of the new programs on company operations with heavy emphasis on the underwriting aspects in the contracting, mercantile and manufacturing areas. Before turning the program over to our three anchor men, however, I should like to mention a few of the changes which, although not involving underwriting considerations primarily, will affect a number of the other phases of company operations. 0767

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II. Policy Preparation

The revised programs introduce a new approach to standard provisions forms. Instead of separate standard provisions policies, there is a single booklet which contains those provisions common to the whole field of liability insurance. These provisions are to be printed or assembled with one or more Standard Coverage Parts to form a complete policy.

Other features of the new approach are an extensive use of definitions and the placement of the exclusions immediately following the coverage grant.

The changes in format were made for two reasons. First, from the standpoint of contract interpretation, it seemed necessary to give greater precision to the expression of the more refined underwriting concepts underlying the new program. The old schedule liability policies were subject to criticism because they contained a number of optional coverages activated by a premium entry in the declarations. Thus the policy on its face often promised a great deal more coverage than the premium charge contemplated. The new Standard Coverage Parts are tailored to give the exact scope of coverage actually bought. We hope this will help to eliminate misunderstandings with policyholders and enable companies to achieve a better enforcement of underwriting intent if it should become necessary to litigate coverage questions.

Secondly, the new format is designed to permit a greater degree of packaging than is permissible under the present standard provision rules. A rather free combination of general liability and automobile liability coverages will be possible, along with Premises Medical Payments Coverage and Automobile Physical Damage Coverages.

The changes in format will have a considerable impact on those companies which print their own policy forms, as they will have to decide which combinations are the most practical for their operations.

Material has already been sent to the companies explaining the various options available. A completely revised portfolio of Standard Provisions Endorsements will shortly be filed. The endorsement portfolio has been given a great deal of attention in order to reduce the number of forms and the need for preparing a particular endorsement in several slightly different ways to handle manual variations. The portfolio has been broken down into sections according to the primary function of the endorsement, such as, for example, to add additional insureds or to introduce additional exclusions. Each section will have a separate index with cross references. It is also planned when new manual pages are re-printed to insert a reference to the appropriate endorsement which has been prepared to handle the footnotes to the manual classes.

While a certain amount of nostalgia for the old forms is only natural, we think that the policy preparation people will be able to adjust to the changes without difficulty and will appreciate the improved indexing system.

III. Claims and Claims Legal Departments

In general the new program should ease the burden on the Claims and Claims Legal Departments, as a number of the revisions are specifically designed to clarify areas of coverage which have grown somewhat hazy over the years owing to a number of conflicting and unfavorable court decisions.

For many years there has been some doubt as to whether the Claims Department should defend suits after the policy limits had been exhausted by payment of prior settlements or judgments. The intent has always been that no such defense was required on what seems to me to be the very salutary ground that a company should not be put in the awkward position of having to defend a suit if it has no financial stake in the outcome. Contrary to the intent, however, such a general feeling seemed to be growing to the effect that the obligation to defend is completely separate from the obligation to pay that the claims people were having a great deal of difficulty in upholding the intent. The new policy spells out clearly that a company is not obligated to defend after its limit of liabil-

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The completed operations hazard has become a growing source of problems for the Claims Department. In the first place, there has been no clear line of demarcation between those operations which are regarded as within the scope of standard premises operations coverage and those which require completed operations coverage. The new program specifically establishes a line of demarcation at the earlier of three times:

(1) when the contract work is completed, or

(2) if the contract involves work at more than one site when the operations at the particular site involved have been completed, or

(3) when the portion of the work out of which the injury or damage arises has been put to its intended use by the owner or some other person not connected with the construction of the project.

There has also been a very marked tendency of the courts to view the completed operations hazard as but a rather minor subdivision of the products hazard. As a result many courts have held that the completed operations hazard has no application to a risk in the contracting business. Temporary endorsements have been developed to overcome these holdings. The new program provides for a complete separation between the products hazard and the complete operations hazard in order to achieve even greater clarity in this area.

The concept of consequential damages has often raised difficult coverage questions for claims men and claims attorneys, particularly in the property damage area. All sorts of intangible property damage losses have been urged as candidates for coverage under standard liability policies, including such specialized forms as Director's Liability Coverage and Employer Benefit Plans Coverage.

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This is partly because the grant of coverage is currently expressed in terms of "injury to or destruction of property, including the loss of use thereof." Not only is the word "property" unqualified, thus embracing intangible as well as tangible property, but there appears to be a separate grant of coverage with respect to the loss of use of property.

Under the new policy, loss of use is treated purely as a consequential damage and no consequential damages are payable unless the policy applies to the injury or destruction of the underlying tangible property. Thus, for example, if a machine essential to the production line is damaged while in the care, custody or control of the insured, there is clearly no coverage under the new policy for the loss of production. Other speakers will have a great deal more to say about the coverage in this area.

The Claims Department will also be aided by some tightening up of the old exclusions with respect to damage to the insured's products or work out of which the accident arises. In the past the tendency has been to urge that the accident arose out of some relatively insignificant part of the total product or the total work, whereas the intent is that the exclusion applies to the insured's whole unit or the insured's whole project if the accident arises out of any part of it. A special broad form property damage coverage is available at additional premium charge. The new policy provisions should greatly aid the Claims Department in enforcing the underwriting intent when broad form property damage coverage is not given.

On the other hand, there are some provisions in the new program which may cause the claims people some difficulty. In products failure cases they will have to do a more extensive investigation than has been necessary in the past because of the new distinction between design errors and production errors. This is an important underwriting concept which I will not discuss, as it will be covered by one of our subsequent speakers.

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I merely point out that a more detailed technical investigation to determine the precise cause of a products failure will be essential in many cases.

The policy applies under the new program to bodily injury or property damage which occurs during the policy period. Inasmuch as the new policies afford blanket occurrence coverage it is possible that where the injury actually occurs over two or more policy periods, the Claims Department will have to make some sort of reasonable allocation to each. There is no pro-ration formula in the policy, as it seemed impossible to develope a formula which would handle every possible situation with complete equity.

IV. Loss Prevention

Loss Prevention Departments have had to do some serious thinking about the best method of making their services available following the recent cases holding their engineers liable for accidents occurring at projects with respect to which inspections or recommendations have been made. The new policy contains a provision in the inspection and audit condition to the effect that neither the company's right to make inspections nor the making of any inspections or any reports thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe. This language is designed to put the services of the Loss Prevention Department in their true perspective.

V. Sales and Merchandising

The Sales and Merchandising aspects of company operations have also been given attention in the new program. I've already mentioned the format changes which permit packaging, a concept which many regard as one of the most powerful merchandising tools available today. The introduction of occurrence coverage on a blanket basis is also a strong merchandising point.

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The policy territory has been expanded to include the air space and the high seas for local and coastwise trade although not for international travel except between the United States and Canada. Products accidents are also covered anywhere in the world if the original suit for damages is brought within the United States or Canada and the product was sold for use or consumption in these two countries.

VI. Underwriting

But unquestionably the impact of the new program on the Underwriting Department will be the greatest of all. Now I would like to turn the balance of the discussion over to our three underwriting experts. I shall ask each of them to outline for you in turn the underwriting impact of the new program on his particular field with the request that you hold your questions until the last speaker has concluded his formal remarks. We will then have a general question period on the ground covered by all of the speakers.

Thank you very much for you attention to my remarks. I now call on Mr. Rose to tell you about the changes of especial interest to contracting risks.

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INSURANCE SERVICES OFFICE

160 WATER STREET NEW YORK, N. Y. 10038

5-5-78

TO MEMBERS OF THE AD HOC COMMITTEE ON SPECIAL COMPREHENSIVE FORMS AND RULES

Continental Casualty Company	- M. Donaldson
Employers Insurance of Wausau	- R. Rice
Hartford Accident and Indemnity Company	- E. Brown
Liberty Mutual Insurance Company	- J. C. Morrow
Travelers Insurance Company	- Z. Rinehimer
U. S. Fidelity and Guaranty Company	- S. E. McCoy

Gentlemen:

Minutes of the April 18-20, 1978 Meeting

Attached are the minutes of the April 18-20, 1978 meeting of the Ad Hoc Committee on Special Comprehensive Forms and Rules.

Very truly yours,

M. D. Jendrasiak
General Liability Division

mdj:lf
Attachment
cc: General Liability Rating Committee
General Liability Rules and Forms Committee
Ad Hoc Committee on Comprehensive Rates

DEPOSITION EXHIBIT

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Addendum 34

MINUTES OF THE MEETING OF THE AD HOC COMMITTEE ON SPECIAL COMPREHENSIVE FORMS AND RULES HELD ON TUESDAY, WEDNESDAY AND THURSDAY, APRIL 18-20, 1978

Present:

Continental Casualty Company	- R. Donaldson
Employers Insurance of Wausau	- R. Rice
Hartford Accident and Indemnity Company	- E. Brown
Liberty Mutual Insurance Company	- J. C. Morrow*
Travelers Insurance Company	- E. Rinehimer
U. S. Fidelity and Guaranty Company	- S. E. McCoy

Others Present:

Liberty Mutual Insurance Company	- W. Harrell
Insurance Services Office	- G. Boyd**
	- R. Flynn***
	- A. Francis**
	- E. Jendrasak
	- W. Wang

*Present April 18
**Present April 19
***Present April 19 and 20

The meeting convened at 9:00 a.m. on April 18, 1978 with Mr. R. Rice presiding.

A statement from ISO's General Counsel relative to the insurance laws in Colorado, Illinois, New York and Virginia was read, and a copy of this statement is attached.

The attached is a breakdown, by item, of action taken by the committee at this meeting regarding the development of the Commercial General Liability Policy:

1. War Exclusion

After reviewing studies made by previous committees addressing the need for a war exclusion, the committee reaffirmed its position to retain this exclusion in the revised policy. It was noted that, due to the new method of covering contractual liability, this exclusion may not be needed; however, the majority felt that removal of this exclusion could create question as to whether the drafter's intent has been changed - it has not. A member pointed out that the war exclusion used in the current policies eliminates coverages for liability assumed, first aid and medical payments for bodily injury, and property damage due to war. Since the first aid and medical expense coverages are offered under the new policy, it was proposed that the scope of the war exclusion to be used in the revised policy should be the same as in the present policy. The committee concurred with this proposal and adopted the following language:

> "first aid, medical expense or liability of others assumed for injury arising out of war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;"

2. Insured's Premises Definition

The definition of "Insured's Premises", developed at the March meeting in connection with the Medical Expenses coverage, was accepted by the committee as a method to eliminate extra language in the policy. The "Insured's Premises" definition will, therefore, be used in the revised policy in conjunction with the automobile and mobile equipment exclusion, the watercraft exclusion, and the mobile equipment definition, in addition to the first aid and medical expense coverage. Staff was asked to make these changes in the policy draft for further review at the committee's next meeting. Staff was also asked to review the endorsement portfolio to determine necessary changes as a result of adopting the "Insured Premises" definition.

3. Products and Completed Operations

Because the NAIC has specifically requested that statistics be maintained separately for products liability insurance, the committee has attempted to achieve a method that will keep product data separately without interfering with the single policy concept. One suggested method was to define product exposures in the Statistical Plan so that product experience can be separately reported. The committee decided to study other avenues that will give the same results and discuss them during the next meeting.

4. Anti-Stacking of Limits

The committee was advised by staff that the General Liability Rules and Forms Committee, at its March 28, 1978 meeting, considered the pros and cons of the "occurrence" concept vs. "manifestation" concept. They agreed to endorse the principle of anti-stacking of limits as suggested by this Ad Hoc Committee as a viable solution to the problems associated with the occurrence concept. The General Liability Rules and Forms Committee also agreed that the "manifestation" concept was not the direction to pursue for the purpose of anti-stacking of limits.

In connection with this a member representative presented a draft of the proposed Language of the Limits of Liability Provision which was developed in an attempt to accomplish the anti-stacking of limits. A copy of the proposed language, which also reflects the amendments made by the committee thereafter, is attached.

The proponent pointed out that the language was based on an idea expressed in a recent Federal Court case relating to a situation in which cumulative injuries arose out of a single occurrence involving a long period of time. The court ruled that "an insurer should be held liable in any one case to indemnify the insured for more than the highest single yearly limit that existed during the period of the claimant's exposure for which judgment was obtained".

Since this case, known as the "Asbestosis Case", represents a typical complex situation with which the revised policy intends to deal, it was felt that to build the idea behind the judgment of this case into the revised policy would help resolve the problems of stacking of limits.

Under the proposed language, all companies, insuring the risk during any portion of the exposure period during which a cumulative injury occurred, will contribute to the judgment (losses) proportionally based on the length of their coverage during the exposure period, but the total contribution from all companies involved will be no more than the highest annual limit available to the insured by any one of the involved companies during the period of injury, regardless of how many policy periods were involved in this "occurrence".

Under this concept, the company's liability for any given policy period is still subject to the policy occurrence limit for that given policy period. If the insured is self-insured for a given period during the involved exposure period, the insured will have to contribute to the judgment based on the exposure period self-insured.

The committee recognized that the above concept, when implemented, might have some impact on pricing of insurance and the excess insurance marketplace. However, the committee felt that, since the future policy will restrict the insured's limit to the highest limit available to him during the total exposure period for a given occurrence, the highest limit should include any excess coverage limit because the excess coverage limit represents the protection which the insured intended to obtain for a given annual policy period for any single occurrence.

In view of the complexities of this matter, the committee agreed that this item be continued on the agenda of the next meeting so that each member will have an opportunity to study this matter further. The committee also agreed that, if this concept is finally adopted, the language may present a conflict with the language of the "Other Insurance" Condition. If this is so, the language of that Condition will have to be revised.

5. Definition of Occurrence

The committee had asked members from the legal discipline to review the "factual situation" concept included within the definition of occurrence during the previous meeting. The "factual situation" language was intended to tie bodily injury and personal injury together under one occurrence if the bodily injury arose out of the same factual situation as the personal injury. All of the legal representatives present agreed that these words have no definite legal meaning in civil law. Therefore, the committee voted to remove the "factual situation" reference from the proposed wording of the definition of occurrence.

A member proposed revised language which eliminates the reference to factual situations as agreed by the committee. The revised language also clarifies the intent that different injuries arising out of the same injurious component or ingredient or the same defect or deficiency in design or formula shall be deemed to be one occurrence.

The committee agreed that the new approach will be helpful in dealing with those situations where injuries are caused by a covered product since in the product coverage area, the determination of what constitutes an occurrence has been a problem. Courts have held that common cause, time and place must be present to have one occurrence. This is frequently not the case in product liability.

The committee also agreed that the new language would be discussed at the next meeting so that each member will have a chance to consult with their home office personnel to determine the feasibility of this approach.

6. First Aid and Medical Expense Coverage

The committee noted that, in the April draft, the policy was broadened unintentionally to include independent contractors coverages. Under the current policy, independent contractors are excluded from medical expense coverage. To keep the same intent of the current policy, the following language has been added to the "but" clause of the First Aid and Medical Expenses Coverages section:

> "d. to any person while engaged in maintenance, repair, alteration, demolition, or new construction at the insured's premises."

7. Product Recall Exclusion

The General Liability Rules and Forms Committee, at its March 28, 1978 meeting, agreed that the proposed General Liability Amendatory Endorsement will not be introduced at this time. The concepts of this endorsement would be referred to this Ad Hoc Committee for incorporation into the revised policy.

In view of this action, the committee examined the contents of the proposed amendatory endorsement and agreed that changes in connection with the loss of use exclusion and the Persons Insured Provision regarding joint venture and partnership have already been reflected in the proposed new policy. With respect to changes involving coverage for radioactive isotopes, the committee agreed to wait for the final language to be adopted by General Liability Rules and Forms Committee as a separate amendatory endorsement for general liability insurance.

As respects the Product Recall Exclusion, the committee noted that the language used in the mandatory endorsement is ambiguous because it applies to the property damage coverage in addition to the expenses incurred due to product recall. This approach has always caused problems for companies in interpreting this exclusion in the past.

The committee believed that this exclusion should deal with the expenses incurred by product recall only, and it should address itself to two major areas, i.e., (1) recall expenses incurred due to withdrawal of tangible property other than the named insured's products or work performed and (2) expenses for repair, replacement or modification of the named insured's products or work performed due to recall. The property damage for the named insured's products or work performed is excluded by other Property Damage exclusions and need not be addressed in this exclusion.

Based upon the above discussion, the committee developed the following language:

> expenses incurred by any insured or others for:
>
> a. withdrawal or recall from the market or from use, inspection, destruction or disposal of any tangible property, or
>
> b. repair, replacement or modification of the named insured's products or named insured's work performed, or any part of such product or work
>
> arising out of any known or suspect defect or deficiency in the named insured's products or the named insured's work performed, or part of such product or work;

The intent of the above language is to make this exclusion applicable to any expenses incurred by any one due to product recall. However, it will have no application to property damage coverage provided under the provided policy.

8. Draft

The committee then shifted its attention to review the entire policy for the purpose of improving its readability and consistency. The committee made some editorial changes. The following is a list of more important amendments among the editorial changes:

1. Personal Injury Exclusion

   Provide vicarious liability to the insured for personal injury arising out of any publication or utterance if the insured is not in the business of advertising, broadcasting, public relations, publishing or telecasting.

2. Persons Insured Provision

   With respect to employees as insureds, the language now clearly indicates that "employees" means employees other than executive officers. The language also limits the coverage for employees to bodily injury and property damage only. Personal injury coverage will not be extended to employees under the revised policy.

3. Supplementary Payments

Clarify that reasonable expenses incurred by the insured at the company's request in assisting the company in the investigation or defense of any claim or suit, the reimbursement for actual loss of earning is not to exceed $100.00 per day per person.

In addition, the committee instructed staff to clarify the coverage intent in the minutes for the following policy provisions:

1. Contractual Liability Coverage

The exception to the exclusion for liability assumed under a contract applies only to liability of others for bodily injury or property damage assumed under a written contract. Therefore, no personal injury coverage is provided under the blanket contractual coverage.

2. First Aid and Medical Expenses Coverage

The aggregate limit for the first aid and medical expenses will be subject to the policy aggregate limit. The Limits of Liability Provision will be revised to reflect this intent.

The committee was requested by the General Liability Rules and Forms Committee to develop a revised timetable for the development and implementation of the new Commercial General Liability (CGL) policy. In connection with this, the committee asked staff to reorganize the timetable previously approved by the Commercial Lines Committee based on the same criteria and the anticipated time parameters. The revised timetable should be sent to the members of the committee for approval before being placed on the agenda of the General Liability Rules and Forms Committee meeting of May 24, 1978.

The committee also reviewed the minutes of the February 14-16 and March 14-16, 1978 meetings. The committee approved the minutes of the February meeting and made some substantial changes in the minutes of the March meeting. Staff was instructed to redistribute the revised March minutes as a substitute for the minutes previously distributed.

The following additional meeting schedule was adopted by the committee:

August 22-24, 1978
September 12-14, 1978
October 17-19, 1978
November 14-16, 1978
December 12-14, 1978

The meeting was adjourned at 2:45 p.m. on April 20, 1978.

Respectfully submitted,

M. D. Jendrasiak

LY008403

INSURANCE SERVICES OFFICE

160 WATER STREET NEW YORK, N. Y. 10038

June 12, 1978

TO THE MEMBERS OF THE AD HOC COMMITTEE ON SPECIAL COMPREHENSIVE FORMS AND RULES

Continental Casualty Company	- M. Donaldson
Employers Insurance of Wausau	- R. Rice
Liberty Mutual Insurance Company	- J. C. Morrow
Travelers Insurance Company	- E. Rinehimer
U. S. Fidelity and Guaranty Company	- S. E. McCoy

Gentlemen:

Minutes of the May 16-18, 1978 Meeting

Attached are the minutes of the May 16-18, 1978 meeting of the Ad Hoc Committee on Special Comprehensive Forms and Rules.

Very truly yours,

Barry W. Flynn

Barry W. Flynn
General Liability Division

bwf:vl
Att.
cc: General Liability Rating Committee
General Liability Rules and Forms Committee
Ad Hoc Committee on Comprehensive Rates

DEPOSITION EXHIBIT -75-4

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Addendum 41

MINUTES OF THE MEETING OF THE AD HOC COMMITTEE
ON SPECIAL COMPREHENSIVE FORMS AND RULES HELD ON
TUESDAY, WEDNESDAY AND THURSDAY, MAY 16-18, 1978

Present:

Continental Casualty Company	- M. Donaldson
Employers Insurance of Wausau	- R. Rice***
Liberty Mutual Insurance Company	- J. C. Morrow
Travelers Insurance Company	- E. Rinehimer
U. S. Fidelity and Guaranty Company	- S. H. McCoy

Others Present:

Employers Insurance of Wausau	- R. Anderson
Liberty Mutual Insurance Company	- W. Harrell
Royal Globe Insurance Company	- J. DeLarra*
U. S. Fidelity and Guaranty Company	- W. Seipp**
Insurance Services Office	- B. Flynn
	- A. Francis
	- M. Jendraszak
	- W. Wang

*Present May 16
**Present May 17
***Present May 16 and 17

The meeting convened at 9:00 A.M. on May 16, 1978 with Mr. Rice presiding.

A statement from ISO's General Counsel relative to the insurance laws in Colorado, Illinois, New York and Virginia was read, and a copy of this statement is attached.

The attached is a breakdown, by item, of action taken by the committee at this meeting regarding the development of the Commercial General Liability Policy:

I. Limits of Liability

In reviewing the proposed language as attached to the agenda of this meeting, the committee agreed that the language would basically accomplish the intent of anti-stacking of limits as outlined below:

1) that for one claimant who is injured, he has only one occurrence limit regardless of the number of periods: and
2) that where multiple claimants are involved, where injury arose from the same general conditions within one policy period, these claimants have only one occurrence limit: and
3) that where multiple claimants are involved, where injury arose from the same general conditions spread out over several policy periods, these claimants have only one occurrence limit regardless of the number of periods.

However, the committee noted that the proposed language, which indicates that the company's share of the loss shall be in the same proportion as the policy period of this insurance bears to the number of annual periods during which injury occurred, was undesirable because it precludes assigning a larger proportion of the damages to a particular carrier when damages could be clearly delegated to a particular policy period. The committee, therefore, made a major change in this area in addition to some editorial changes. The following language was developed to reflect this major change:

...the company's share of such highest "occurrence" limit shall be

(i) with respect to damages which can be clearly and distinctly assigned to the respective annual periods, in the same proportion as the damages assignable to the policy period of this insurance bears to the total amount of such damages, and

(ii) with respect to damages which cannot be clearly and distinctly assigned to respective annual periods, in the same proportion as the policy period of this insurance bears to the number of annual periods which injury occurred.

Several committee members felt that since the anti-stacking problem may only arise out of 5% of the policies, and further that this is basically a products situation, that perhaps this problem could best be handled as a special products definition. However, the committee believed that the problem is no longer confined to the products liability area due to the advancement of technology which could determine losses retrospectively. The committee felt that there is surely an increasing trend with this situation in recent years and that now is the time for action.

The concensus of the committee is that with multiple claimants (who are injured from the same general conditions within one policy period), are no different from a single claimant which can be taken care of by the definition of occurrence. However, the stacking of limits from an extended injury period should be handled by the new language in the limits of liability section, which is attached to the agenda for the next meeting.

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The committee also agreed that the paragraph involving the prevention of pyramiding of limits and the provision dealing with the limit for first-aid and medical expenses be discussed at the next meeting.

II. Property Damage

In connection with several member companies' requests, the committee reconsidered the intent of the definition of property damage. Under the present language, if a fire breaks out in someone's home due to a defective appliance and burns down the house, there would be no coverage for the manufacturer of this appliance for all the other appliances that were made by the same manufacturer that were subsequently destroyed. The committee did not feel that this was the original drafting intent. Therefore, the following language was proposed:

1. physical injury to tangible property (other than the named insured's products or the named insured's work performed out of which the physical injury arises) which occurs during the policy period including loss of use of the physically injured tangible property at any time, or

2. loss of use of tangible property which has not been physically injured if the loss of use results from physical injury during the policy period to tangible property (other than the named insured's products or the named insured's work performed out of which the physical injury arises) resulting from an occurrence

The committee believed that this revised language would alleviate the problem since it specifically directs itself only to the product or work performed which caused the physical injury. The committee agreed that this language would be included in the policy draft.

Attention was then directed to paragraph b. under the but clause of this definition which reads as follows:

b. tangible property which has not been physically injured or destroyed resulting from a delay in or lack of performance by or on behalf of the named insured of any contract or agreement;

The committee felt that this paragraph becomes unnecessary under the revised property damage definition, because under paragraph 2. of the new definition coverage for loss of use of tangible property which has not been physically injured is restricted to loss of use that results from physical injury to other tangible property. Under this approach, it is not likely that the language that was designed for precluding coverage for the lack of performance by or on behalf of the named insured would be of any practical value.

The committee also agreed to clarify the intent that the future policy will not cover property which has been stolen or missing as property damage. It was pointed out that insurance companies have been relying on the reference to "physical injury", in the property damage definition of the '73 policy to deny property damage coverage for stolen or missing properties.

The following new language is an attempt to strengthen this intent:

b. property which has been stolen or is missing;

III. Other Insurance Conditions

It was pointed out that the new language of the Limits of Liability provision dealing with the anti-stacking of limits and prevention of the pyramiding of limits on an intra-company basis is interrelated with this condition. The committee felt that the Other Insurance Condition should only address itself to excess insurance. But, since the committee did not have enough information on how these various classes apply in various situations, two committee members volunteered to work with staff to develop an informational chart showing the application of this clause in relation to the Limits of Liability provision. This item was therefore postponed until the next meeting.

IV. Policy Territory

The committee reviewed a member's suggested language for the definition of Policy Territory. Due the complex application of this definition the attached chart was prepared by the committee to show under what circumstances coverage is provided for defense or damages or both. This chart was utilized to determine if 1) it reflects the intent of the new Policy Territory wording, and 2) if this is the drafting intent for the new policy.

In preparing this chart several differences were noted between the new wording and the '73 policy. The most important of these being that if the injury occurs in the United States, its territories or possessions, and the suit is brought in a foreign country, the '73 policy would provide coverage for defense and damages. However, the new wording would not.

The committee decided to keep this item on the agenda in order to receive feedback over whether or not the chart reflects the intent that should be incorporated in the new policy. Therefore, this new wording which is attached will not be included in the policy draft.

V. Definition of Occurrence

In reviewing the proposed definition attached to the agenda of the May 16-18, 1978 meeting, the committee decided to remove the expected or intended wording out of the definition of occurrence since this wording already appears in exclusion #8. It was therefore decided that exclusion #8 should become #1 as to be more noticeable to the policyreader.

By addressing "All injury" under the definition of occurrence, the intent here is to make only one deductible available to each occurrenc The committee came to an agreement with this wording and the following definition was therefore placed in the May policy draft:

"Occurrence" means:

1. an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage, or

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Addendum 45

2. an offense included within Personal Injury.

All injury arising out of continuous or repeated exposure to substantially the same general conditions, shall be deemed as arising out of one occurrence.

The reference to "the same injurious component or ingredient, or the same defect or deficiency in design or formula", which was basically developed to deal with the "bad batch", was eliminated because the committee felt it would be ineffective in practice.

VI. Product Recall Exclusion

The committee decided to amend this exclusion for clarity by splitting sub-paragraph a. into two paragraphs as follows:

a. withdrawal or recall from the market or from use of any tangible property, or

b. the inspection, destruction or disposal of any tangible property, or

The intent here is to make sure that expenses include ripping and tearing of any tangible property other than the named insured's products or work performed. This means that if there were a defective beam inside a wall, for instance, the cost of the destruction of the wall to reach the defective beam is excluded.

VII. Personal Injury From Discrimination

The committee agreed that for Personal Injury the intent is that there should be no coverage for discrimination. To follow through on this intent the committee adopted the following language under the Personal Injury exclusion:

f. discrimination by reason of age, sex, religion, or national or racial origin;

Under the proposed language, vicarious liability will also be excluded from the future policy. The committee believed that in most circumstances it is illegal for any person or organization to commit discrimination by reason of age, sex, religion or national or racial origin and that the insurance industry should not encourage the general public to commit such an offense by providing any coverage for such discrimination.

VIII. Care, Custody and Control Exclusion

The committee decided that the use of the term "any insured" within this exclusion was too severe of a cutback in coverage. Because, there is a difference in most cases, with an insured who damages property owned, occupied or used by or rented to another insured or property in the care, custody or control of another insured, and a property damage case while the property belongs to a third party who is not an insured. This is particularly true under the new policy where employees are covered as insureds. The term "any insured" is obviously too broad when there is no direct insurance interest between two involved insureds when one damages the other's property.

The committee agreed that the term "the insured" be used in place of "any insured". Because of this change, it was necessary to build into the Persons Insured provision the following exclusion in connection with employees as additional insureds:

> property damage to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the same named insured, or by the named insured or, if the named insured is a partnership or joint venture, any partner or member thereof.

IX. Periodic Payments

The committee recognized that this is a possible future problem in regards to the policy aggregate as respects how periodic payments may relate to such an aggregate. However, it would be premature for this committee to deal with it at this time since there is not much information available to determine to what extent that this problem would affect the aggregate limit. Therefore, the committee agreed to drop this item from the agenda until this situation presents itself as a more realistic problem for the new policy to deal with.

The meeting was adjourned at 2:45 P.M., Thursday, May 18.

Respectfully submitted,

Barry W. Flynn

Barry W. Flynn
General Liability Division

Addendum 47

VI. LIMITS OF LIABILITY

1. With respect to I. LIABILITY COVERAGE:

Regardless of the number of (1) insureds, (2) persons or organizations who sustain injury, or (3) claims made or suits brought, the company's liability under this [insurance] is limited as follows:

a. The total liability of the company under this [insurance] for damages shall not exceed the limit of liability stated in the declarations as "aggregate".

b. Subject to the above provisions respecting "aggregate" the total liability (including fire damage liability not to exceed $50,000) of the company for all damages because of injury sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the liability limit stated in the declarations as applicable to "each occurrence".

If during the policy period of this [insurance] injury arises out of continuous or repeated exposure to conditions and begins prior to the effective date of this [insurance] or continues after its expiration date, the company's liability for all damages because of all such injury shall be no more than its share of the highest "occurrence" limit provided by any policy in effect during the period during which such injury occurred, but shall under no circumstances exceed the liability limit shown in the declarations as applicable to "each occurrence". The company's share of such highest "occurrence" limit shall be:

(i) with respect to damages which can be clearly and distinctly assigned to the respective annual periods, in the same proportion as the damages assignable to the policy period of this insurance bears to the total amount of such damages, and

(ii) with respect to damages which cannot be clearly and distinctly assigned to respective annual periods, in the same proportion as the policy period of this insurance bears to the number of annual periods which injury occurred.

If [insurance] provided by any other policy issued by the "company", to the insured, covers damages for which coverage is concurrently provided by this [insurance], the "company's" total liability under all applicable policies shall not exceed the highest limit of liability stated in any such [insurance] as applicable to "each occurrence". This paragraph does not apply, however, to any [insurance] issued by the "company" specifically to apply as excess over this [insurance]. The "company" as used in this paragraph means the company issuing this [insurance], its parent company or companies, and any subsidiary of the issuing or parent company or companies.

INSURANCE SERVICES OFFICE, INC.
425 METRO PLACE NORTH SUITE 200 DUBLIN, OH 43017

September 18, 1985

Keith Kendall
Administrative Officer
Indiana Department of Insurance
509 State Office Building
Indianapolis, Indiana 46204

Dear Keith:

Commercial General Liability Policy

This is in response to the questions you raised at our August 15 meeting on the CGL.

1. Can General Liability and Fire Coverages be written for a risk without the application of the CPP Modifier?

   Yes. Our rule 8A. states minimum ISO standards for eligibility for a CPP Modifier. There are no requirements to apply a modifier for any risk. Also, companies can have additional eligibility requirements, above those of ISO.

2. Why has the wording in the insuring agreement been changed from "pay on behalf of the insured all sums..." to "pay those sums..."?

   The wording has been changed in an effort to avoid creating a reasonable expectation on the part of the insured that the policy will pay for any and all claims against the insured. Obviously, the policy will not respond to claims to which the insurance does not apply, to excluded losses or to losses beyond the policy limits.

3. Why is defense of suits that are "groundless, false or fraudulent ..." not mentioned in the new policy?

   The new CGL states the "right and duty to defend any suit..." without further specification, this wording is broader and simpler, and would of course, include defense of groundless, false or fraudulent claims.

4. Punitive damages are not expressly addressed in the new CGL. What is the intent?

   There is no change in intent from the current policy. Since the courts in various jurisdictions have not consistently ruled whether or not punitive damages are insurable, we are unable at this time to include specific policy language on punitive damages. This topic will remain, as it is today, open to the interpretation of the courts.

5. How do the coverages and limits for Contractual compare between the old and new policies?

   The current Comprehensive General Liability Policy provides coverage for incidental contracts (as listed) without a specific coverage limit. If the Broad Form CGL Endorsement is attached, the definition of an incidental contract is extended to include any oral or written contract or agreement relating to the conduct of the named insureds business, with some exclusions. There is still no specific limit of liability provided for the Contractual Coverage. The current Contractual Liability Coverage part provides coverage for designated contracts specifically scheduled in the policy, with selected BI per occurrence limits and PD per occurrence and aggregate limits.

   The new Commercial General Liability Policy provides coverage for incidental contracts, but the definition of incidental contracts is slightly broader than that contained in the old Broad Form CGL endorsement. This coverage is provided without a specific Contractual Limit of Liability.

I hope this information will be helpful. If you need any further information on this material, or have any other questions on or new CGL, please let me know.

Sincerely,

Tony Shannon

Tony Shannon, CPCU
Regional Representative

ts:cw

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Addendum was served by first-class United States mail, postage prepaid, this 21st day of July 2014, on the following:

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