TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 144 **August 16, 1999**

SUBJECT: **CGL: Completed Operations v. Discontinued Operations**

BACKGROUND: When insureds retire and cease business operations, some retain a substantial coverage exposure for BI and PD losses that occur after the cessation of operations. Many cancel their insurance upon retirement, and such future losses are not covered under the CGL.

MAIN POINTS: One of the most common situations an agency will encounter is a building contractor, who frequently will cancel his CGL insurance upon retirement. As an example of the continuing exposure, suppose the contractor builds a deck onto a customer's home in August 1999. He retires at the end of the year, and sees no reason to keep a CGL policy in force. In March of 2000, the deck breaks loose from the house, and injures several people.

The contractor has no coverage for this loss. Some incorrectly believe that since he had a CGL policy in force when he built the deck, that policy's Completed Operations coverage would apply. However, building the deck is not an "occurrence" covered by the policy. The coverage trigger is **bodily injury** and **property damage** which *occur during the policy period*.

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In the rare event that the contractor's CGL policy was claims-made, the loss would still not be covered. The double coverage trigger in claims made is bodily injury and property damage which occur *on or after the retro date, and before expiration*. Future occurrences are not covered; only future claims which are reported after expiration (under the ERP), but which occurred during the policy.

The solution to this exposure is Discontinued Operations coverage. The CGL carrier on the last policy often will write the coverage, essentially keeping the CGL policy in force, but at a discounted price. If that avenue is not available, the coverage is usually available through surplus lines.

While contractors are probably one of the most common types of insureds who need Discontinued Operations coverage, there are others the agency should be alert to. Manufacturers of products with a long operational life (heavy duty machinery or appliances, for example) also have the exposure. By contrast, a bakery's products exposure lasts only a few days after operations are terminated.

Given the view of most courts today that agents have a fiduciary duty to insureds, it is critical that this important exposure be discussed with any insureds who need continuing coverage after retirement.

NECESSARY ACTION: Circulate copies of this Technical Advisory to all Commercial Lines staff. Also, other staff who handle any retirement-related products should be advised of the exposure, and reminded to alert the Commercial Lines P&C staff if an insured's retirement is known to be approaching.