

HOW TO LOCATE LOST OR MISSING POLICIES: RECONSTRUCTING INSURANCE COVERAGE FOR ENVIRONMENTAL DAMAGE CLAIMS FROM SECONDARY SOURCES

By William J. Brady, Esq.

June 11, 1998

The Standard Form Comprehensive General Liability Policy

The Standard Form Comprehensive General Liability Insurance Policy or ("CGL") has been drafted on an industry-wide basis through organizations such as the Insurance Services Office (ISO), and its predecessor, the Insurance Rating Board. The Standard Form Comprehensive General Liability Policy contains common insuring agreements, definitions, exclusions, terms, and conditions, and in most respects varies insignificantly from one policy to another when analyzing for environmental damage claims coverage. Much has been written regarding CGL coverage for environmental damage claims over the past several years.¹

CGL policies generally provide insurance "for **all sums** the insured shall become legally obligated to pay as damages because of . . . **property damage** caused by an **occurrence**, including continuous and repeated exposure to such conditions."

Standard CGL insurance policies are legal liability policies. Therefore, coverage exists whenever someone imposes or attempts to impose legal liability on a policyholder unless a specific exclusion applies. Once the analysis has established an "occurrence" under the applicable trigger of coverage theory,² the next inquiry focuses upon any policy conditions which might **exclude** coverage under the applicable facts. In the absence of a clear and explicit exclusion, the CGL policy provides coverage to policyholders for liability arising out of pollution or environmental impairment.³

It is well settled that insurance companies must establish that the exclusion claimed applies in the particular case and the exclusion is not subject to any other reasonable interpretation.⁴ If there is more than one reasonable interpretation, the provision is ambiguous and must be construed in favor of the policyholder.⁵

The 1973 Standard Form Comprehensive General Liability Policy excludes from coverage:

Property damage arising out of the discharge, dispersal, release or scape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals liquids or gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

Prior to the early 1970's, before the standard CGL policy was revised to include a pollution exclusion clause, coverage was afforded. Much of the insurance coverage litigation subsequent to its inclusion has revolved around the interpretation of the phrase "sudden and accidental," as the exception to the exclusion as drafted is not applicable to such a discharge.

At the present time, the supreme courts of eleven states, including Colorado, have found the "sudden and accidental" clause in the pollution exclusion to be ambiguous, resulting in coverage for policyholders. In reading the clause in the light most favorable to the policyholders, these courts have held that the term "sudden" does not have a temporal connotation.⁶

The supreme courts of fourteen other states have held that the "sudden and accidental" clause is not ambiguous, and have subsequently ruled that "sudden" has a temporal aspect to it, meaning "abrupt" or "quickly."⁷ Under this interpretation, there is only coverage for spontaneous events resulting in immediate environmental damage, and not gradually occurring, episodes of contamination commonly experienced at landfills, airports, military installations, refineries, and other industrial sites.

Beginning with CGL policies issued in 1985 and continuing thereafter, the insurance industry modified the 1973 "sudden and accidental" pollution exclusion because of case law granting coverage for environmental claims. This current exclusion is referred to as the "absolute pollution" exclusion and is common in most CGL policies in the insurance industry today.⁸ While very few jurisdictions have allowed coverage for property damage when confronted with the absolute pollution exclusion, the policyholder's counsel should be mindful of several cases finding coverage for "personal injury" under the same CGL policy when defined as "the wrongful entry of or eviction or other invasion of the right of private occupancy."⁹ Groundwater contamination has been covered under the "personal injury" provision of CGL policies because the absolute pollution exclusion typically only applies to bodily injury and property damage.¹⁰ In Colorado, unappropriated, nontributary groundwater is considered property of the state and any contamination may be construed as interference with the use of another's property, triggering the liability provisions of a CGL policy.¹¹

In addressing coverage for environmental claims, the first issue to be considered is which insurance policies potentially provide coverage. It is initially necessary to determine which policy years apply. For example, if an insured has been disposing of hazardous waste at a targeted cleanup site for a period from 1977 through 1985, then each of the policy years during the period of discharge or dispersal of contaminants should be considered. Additionally, if the claim is made against the insured many years later for damage still ongoing at the site through the date of claim, then coverage through the notification date and any period of contamination ongoing thereafter should be considered. It is also important to remember that the insured may be held jointly and severally liable for all response costs because of his status as a PRP, including costs for remediation prior to the date of his discharge or dispersal, even though caused by others prior to 1977 (as in the above example).

Insurance coverage from the date of the first episode of contamination at a targeted site should be viewed as a potential resource in addressing the question of funding hazardous waste cleanup. The panoply of policies available to the policyholder beyond CGL coverage may also include first party property coverage, environmental impairment coverage, excess insurance beyond the primary CGL policy, and under some circumstances, airport liability, products liability, automobile insurance, and other specialized activity

coverage. By combining and stacking such policies, the insured policyholder may avoid catastrophic financial burdens threatening economic survival.

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Obviously, the first step in reconstructing coverage is to identify any witnesses who may help in locating the policies or supplying or locating secondary evidence of coverage. As memories sometimes fade, affidavits should be prepared, preferably in a format properly authenticating the document and laying any necessary foundation. Key witnesses should also be prepared to conduct an exhaustive search, and to testify as to the results of the search. Certainly, in the case of older witnesses consideration should be given to taking depositions to preserve their testimony in anticipation of protracted litigation.

The requirements to authenticate and lay a proper foundation for the admission of secondary documents into evidence may vary depending on whether state or federal law governs the action. Choice of forum is critical in the environmental insurance coverage area, even though the federal courts will presumably apply the law of the state with the most significant or "greatest center" of contacts to the parties and the action. Some policies contain a "choice of law" provision which would control in most circumstances. However, it has been held that a "choice of law" provision only becomes "critical" when determining the admissibility of evidence at trial, and not during the discovery phase.¹²

In any environmental insurance coverage case involving more than a single policy period, an insurance profile is essential. An insurance profile is a chart which shows in graphic form exactly which policies were in force at what times, what the liability limits were, and what the position of each insurer was with respect to others after notice. Certainly, the most critical aspect of the case once the process of reconstruction has started is to provide proper notice to each identified insurance carrier once coverage has been ascertained. An appropriate philosophy in this area is to "file early and often," meaning the earlier you file your notice, the better. The insurance company must be kept abreast of all developments in the case until an agreement to defend is forthcoming. This includes copying the insurance company on all pleadings, discovery, correspondence between the parties in the underlying environmental damage action, etc.

If prior occurrence-based CGL policy coverage was bought and paid for, and defense and indemnity expenses are arguably within the coverage, the duty to defend and indemnify should be borne by the carrier who profited by the sale of such insurance.

Claims for environmental damage to property often arise many years or even decades after a party's ownership interest in the property ceases, the insurance policies expire, or the individuals with knowledge of the party's daily activities on the property can no longer be located. Over the intervening years the original insurance policies issued to the insured property owners may be lost or destroyed. Often insurance companies do not maintain paper files of the policies issued to their insureds over the years.

Even in the absence of hard copies of insurance policies, coverage may be reconstructed by using secondary evidence. A policyholder may prove the existence of coverage based upon the testimony of witnesses, including oral histories obtained from present and previous employees, past and present insurance brokers or agents, risk managers familiar with the company's insurance history, government

agency files, outside counsel files, and underwriting and claims personnel of carriers with whom the corporation did business.

Federal Rule of Evidence (FRE) 1004(1) provides that the original of a lost or destroyed document is not required to prove its contents. Other evidence of the contents of an insurance policy is admissible subject to the general requirement of trustworthiness. While Rule 1004(1) does not apply where the proponent of the document lost it or destroyed it in bad faith, the Rule has been applied to cases involving missing insurance policies on several occasions.¹³

For the secondary evidence to be an acceptable substitute for the actual policies, the policyholder must demonstrate that a diligent but unsuccessful search and inquiry has been made of every accessible place where the policies could be located, or where information could be located which would be useful in searching for the policies.¹⁴ A diligent but unsuccessful search was established in New York v. Blank, 820 F. Supp. 697 (N.D.N.Y. 1993). Through affidavits of the insured's counsel, the insured described in detail the measures it took in searching for the missing policy.¹⁵ Counsel sent interrogatories, requests for the production of documents, and requests for admissions which all revealed that a policy likely existed.¹⁶ However, the issuer of the policy was unable to locate it.¹⁷ The insured also attempted to contact a New York insurance agency that apparently issued the policy, but the agency no longer existed.¹⁸ The court held that such efforts were at least as thorough as those in Burroughs Wellcome and were therefore sufficiently diligent.¹⁹

Further, internal business records of the policyholder or its agents may be fertile ground for coverage reconstruction, e.g., claims files, files of key legal, insurance and claims handling personnel, corporate documents including public filings, annual reports, minutes of board of directors meetings and committee meetings within the corporation.

Most state insurance commissioners require that standard form policies be filed by commercial carriers providing comprehensive general liability insurance ("CGL insurance") within their state. Specimen policies, or other company "standard form" policies in effect for a disputed period, may suffice in the absence of the original policy.²⁰

Form policies adopted by industry organizations such as the ISO, the Merit Ratings Board, the National Bureau of Casualty Underwriters, and other such "clearinghouse" agencies used by the insurance industry are also good sources for reconstructing coverage.

Evidence of coverage for prior specific years may create a presumption that the same or similar coverage was purchased in subsequent years. For example, a "renewal certificate" showing evidence of a prior policy which was renewed, a copy of the prior policy being unavailable, has been used as evidence of prior coverage. Additionally, the Tenth Circuit Court of Appeals has held that evidence that one policy "renewed" another creates a presumption that the terms of the policies are the same.²¹ Even providing the insured with copies of the entire new insurance policy does not serve notice on insured that there had been reduction in coverage.²² However, if the new policy is accompanied by a concise separately attached and boldly worded modification, it would suffice to put insured on notice that there had been a reduction in coverage as was true in this case.²³

Similarly, evidence of excess and reinsurance coverage may be used in an attempt to reconstruct the terms of the original contract or to show the existence of underlying primary or "other" insurance.²⁴ Prior claims can also provide a good basis for coverage, especially where an insurer had agreed to defend, or defended, investigated or made payments of claims under a missing policy. Also, other evidence of conduct by an insurance company consistent with the existence of a policy may be probative of coverage. For example, correspondence between the policyholder and the insurer, broker or outside counsel, accounting records including expense authorization forms, general ledgers, journal entries, balance sheets and cancelled checks to carriers or brokers.

Various insurance policy archaeology services are available to assist attorneys in locating lost and missing policies. Contact Sheila Mulrennen at the Insurance Archaeology Group, 240 Madison Avenue, 6th Floor, New York, New York 10016, phone number (212) 697-2680 for assistance with domestic insurance policies. Since Lloyds of London frequently provides excess and reinsurance coverage for many policyholders, there is an excellent resource for tracing insurance genealogy. Underwriters at Lloyds and the London Market insurers maintain a comprehensive insurance database, including a listing of underlying primary CGL coverage issued by U.S. carriers, which can be accessed by Price Forbes Ltd. Contact M.H.J. (Michael) Wensley, Associate Director, Insurance Archaeology Department at Price Forbes Ltd., Victoria House, Queen's Road, Norwich, United Kingdom NR1 3QQ, phone number 01-603-660202, facsimile number 01-714-815999. While these services are not inexpensive, they are invaluable in discovering potentially millions of dollars in available coverage.

CHOICE OF LAW AND BURDEN OF PROOF

As previously mentioned, choice of law becomes critical at the evidentiary stage. In one case, the Township of Haddon, New Jersey provided sufficient evidence to warrant denial of General Accident Insurance Company's motion for partial summary judgment on missing policies, a federal court held September 19, 1996.²⁵ Haddon Township was impleaded as a defendant in an underlying action for cleanup costs at the Buzby Landfill.²⁶ The Township sought coverage from Royal Insurance Company, Merchants Mutual Insurance Company and General Accident, filing an action after coverage was denied due to missing policies.²⁷ General Accident moved for partial summary judgment based on lack of any 1984 to 1985 policy.²⁸ The United States District Court for the District of New Jersey explained that a plaintiff asserting rights under a lost, missing or destroyed instrument must establish its existence and terms under **a clear and convincing standard**, noting that whether such a standard applies to lost insurance policies is unclear from the case law.²⁹ He noted that New Jersey trial judges have applied the clear and convincing standard in Colloid Chem. Inc. v. Estate of Carl Burnet, No. MRS-L-38-94 (N.J. Super. Ct. Law Div. June 4, 1996) and Cycle Chem v. Great Southwest Ins. Co., No. UNN-L-4929-93 (N.J. Super. Ct. Law Div. April 3, 1995).

The clear and convincing standard is difficult to meet. In Boyce Thompson Inst. for Plant Research v. Insurance Co. of N. Am., 751 F. Supp. 1137, 1140-41 (S.D.N.Y. 1990), the court held that an affidavit asserting that policies presented to the court were the same as policies always sold by the insurer, as well as ledger sheets showing the purchase of policies over a number of years, were insufficient to show by clear and convincing evidence the existence or contents of lost liability policies. Additionally, in Imcera Group, Inc., v. Liberty Mut. Ins. Co., 50 Cal. Rptr. 2d 583 (Cal. Ct. App. 1996), the court held that the contents of lost policies were not sufficiently established. However, the court did not decide whether the clear and convincing standard or the preponderance of the evidence standard should apply because on review the court only dealt with whether there was substantial evidence to support the trial court's finding.³⁰

The insured tried to establish coverage using "national risk coverage bulletins."³¹ However, although the bulletins did list the subject matter categories, the bulletins did not describe or summarize the terms of the policies.³² Additionally, the claims manager testified that the insurer did not make coverage decisions based upon the bulletins.³³ A less stringent standard of proof of environmental coverage cases has been applied in Remington Arms cited *supra* at note 13, and Baker v. Aetna Cas. & Sur. Co., 1996 WL 451316 (D.N.J. Aug. 5, 1996) (No. CIV. A. 86-4975 (JEI)), holding that proof by only a **preponderance of the evidence** is sufficient. While finding it unclear how the New Jersey Supreme Court would allocate the burden of proof in an environmental coverage lost policy case, the trial court in Haddon found that the evidence was sufficient to defeat General Accident's motion under either standard.³⁴ "Plaintiff's ledger cards, as interpreted by its insurance agent, indicate that GAI [General Accident] issued the missing policy to plaintiff..." according to the court.³⁵ "The GAI-issued policy immediately following the missing policy references it by number in the upper-left corner" and "the nearly identical wording of the relevant terms of the policies immediately preceding and immediately following the lost policy strongly suggests that the relevant terms of the missing policy are, too, nearly identical."³⁶

The preponderance of the evidence standard was applied in Gold Fields Am. Corp. v. Aetna Cas. & Sur. Co., 661 N.Y.S.2d 948, 950-51 (1997). There, the court denied the carrier's motion for summary judgment on environmental claims under lost CGL policies holding that in an action to recover on lost liability insurance policies, the insured bore the burden to prove by a preponderance of the evidence, not by clear and convincing evidence, the existence and terms of lost policies.³⁷ The court further stated that the higher standard of clear and convincing evidence "would only serve to encourage carriers to destroy policies as soon as possible in the hope that those who had paid for insurance would be unable to produce the policies after the lapse of a substantial period."³⁸ In this case, the standard of proof was met because the carrier sent the insured payments for claims with respect to the specific CGL policy numbers that stated the policy periods, there were invoices referring to a premium audit for the stated period containing the same policy number as one of the settlement checks and indicating a returned premium for an overpayment, and there was proof that the insured paid premiums for the periods involved.³⁹ The court also cited Burroughs Wellcome for the proposition that if the policyholder can prove the existence of the policy for the period in question, the burden of proving the limits of the policy are on the carrier.⁴⁰

WASHINGTON STATE'S ANSWER TO RECONSTRUCTING COVERAGE

The state of Washington has codified an attempt to reconstruct lost or destroyed insurance policies.⁴¹ The purpose of the Washington statutes is to realize the timely, efficient and appropriate resolution of claims involving the liability of insureds at polluted sites in the state.⁴² The statute is intended to solve the problems of lost policies and the lack of cooperation between insurers and insureds.⁴³

The Washington statute sets out a retention procedure for policy forms.⁴⁴ By statute, the insurer is required to maintain sufficient records to reconstruct a copy of the general liability insurance policy issued.⁴⁵ The records must be kept in any reasonable format for twenty years following the expiration of the policy.⁴⁶ All records should be maintained by name and policy number, and a copy of the form of general liability insurance policy or the insured's policy must be kept.⁴⁷ The insured's record must include the name of the insured, the address, the name of additional insureds, the policy number, the form number or a copy of the form, the limits of liability, annual premium, the form number or copy of endorsements, and the policy period.⁴⁸

The statute also defines general liability insurance as "a contract of insurance that provides coverage for the legal obligations of an insured for bodily injury or property damage to others," and this includes pollution liability insurance policies.⁴⁹

Finally, the statute provides procedures for resolving lost policy disputes regarding environmental claims and creates unfair trade practices with respect to the insurer's conduct.⁵⁰ The insurer must investigate fully and promptly all claims of lost policies and must provide all facts known or discovered during the investigation (however, this does not include information that is protected by the attorney-client privilege or the work product rule).⁵¹ The insurer must begin the investigation within fifteen working days after receipt of written notice of lost policy and must cooperate with the insured.⁵² If the insurer cannot locate the policy, it must provide copies of all insurance policy forms that are potentially applicable.⁵³ If the policy was most likely issued but the policyholder can't show policy limits, it shall be assumed that minimum limits of coverage were purchased by the insured.

Colorado should consider adopting a similar statutory scheme to assist policyholders in avoiding protracted, expensive litigation over the existence of insurance already purchased. The insurance industry greatly profited from selling "comprehensive" and "general" coverage by making broad promises in insuring agreements designed to cover unanticipated events giving rise to liability. The law provides that unless the contaminating event was clearly and specifically identified in a policy exclusion, it is covered. The fact that unexpected, unforeseen liability has arisen is just the type of event the CGL policy was designed to insure against. A legislative enactment designed to ease the burden and expense on the policyholder in reconstructing coverage, and placing the duty of cooperation squarely on the shoulders of the insurance industry, erases the insurance industry's built in disincentive to discover policies issued years earlier and discarded by both insured and insurer, and legitimately comports with the goal of providing insurance under a missing policy presently triggered. By the passage of such legislation, policyholders would receive no more than the benefit of their bargain.

Endnotes

1. See Penny R. Warren, "Sudden and Accidental" Pollution Exclusions: The Battle Between Insurance Carriers and Insureds Continues, 12 J. Nat. Resources & Envtl. L. 243 (1996-1997); Irene A. Sullivan & Timothy G. Reynolds, Hazardous Waste Litigation: Comprehensive General Liability Insurance Coverage Issues, Practising Law Institute, Litigation and Administrative Practice Course Handbook Series, PLI Order No. H4-5259 (May 1997); Jim L. Julian & Charles L. Schlumberger, Essay--Insurance Coverage for Environmental Clean-up Costs Under Comprehensive General Liability Policies, 19 U. Ark. Little Rock L. J. 57 (Fall 1996); Chen Min Jaun, Note, Environmental Litigation: Coverage Under the Comprehensive General Liability Insurance Policy, 16 J. Energy Nat. Resources & Envtl. L. 423 (1996); Brette S. Simon, Comment, Environmental Insurance Coverage Under the Comprehensive General Liability Policy: Does the Personal Injury Endorsement Cover CERCLA Liability?, 12 UCLA J. Envtl. L. & Pol'y 435 (1994); Nicholas J. Guilliano, Comment, The Sudden & Accidental Exception to the Pollution Exclusion Solution, 13 Temp. Envtl. L. & Tech. J. 261 (Fall 1994); Kevin Murphy, Comment & Case Note, Hurry Up and Have an Accident: Comprehensive General Liability Contract Standard Pollution Exclusion Clause Includes a Temporal Element, 3 Mo. Envtl. L. & Pol'y Rev. 222 (1994); Katie Noble, Intentional Discharge of Hazardous Waste Violates Terms of Comprehensive General Liability Insurance Policy, 13 J. Energy Nat. Resources & Envtl. L. 303 (1993); Eugene R. Anderson & Paul H. Liben, Why the Courts are Finding that Insurance Covers Environmental Damage, C864 ALI-ABA 335 (Oct. 28, 1993).

2. "Occurrence" is typically defined in Standard Form CGL policies as "an accident including a continuous or repeated exposure to conditions which results, during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured." Colorado follows the majority rule that an occurrence takes place when actual property damage is suffered during the policy period, regardless of when the wrongful act that caused the damage happened. See American Employer's Ins. Co. v. Pinkard Construction Co., 893 P.2d 954 (Colo. App. 1990); accord, Browder v. USF&G, 893 P.2d 132 (Colo. 1995).
3. See Hecla Mining Co. v. New Hampshire Ins. Co., 811 P.2d 1083, 1090 (Colo. 1991) (Hecla Mining is the preeminent case in Colorado for guidance as to when an insurer has a duty to defend against and provide indemnification for claims of environmental damage brought against an insured); see also Englewood and Littleton v. Commercial Union Assurance Co., 940 P.2d 948 (Colo. Ct. App. 1996).
4. See ibid.
5. See id. at 1090-92 ("Since the term 'sudden' is susceptible to more than one reasonable definition, the term is ambiguous, and we therefore construe the phrase 'sudden and accidental' against the insurer to mean unexpected and unintended.")
6. See Alabama Plating Co. v. USF&G, 690 So.2d 331 (Ala. 1996)(per curium); St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co., 923 P.2d 1200 (Or. 1996); American States Ins. Co. v. Kiger, 662 N.E.2d 945 (Ind. 1996); Key Tronic Corp. v. Aetna (Cigna) Fire Ins. Co., 124 Wash.2d 618, 881 P.2d 201 (1994); Queen City Farms v. Central Nat'l Ins. Co., 124 Wash.2d 521, 882 P.2d 703 (1994); Greenville County v. Insurance Reserve Fund, 443 S.E.2d 552 (S.C. 1994); Morton Int'l, Inc. v. General Accident Ins. Co., 134 N.J. 1, 629 A.2d 831 (1993)(New Jersey provides coverage under regulatory estoppel because the insurance companies made representations that "sudden" did not include a temporal element, but the court also held that "sudden" does mean "abrupt," i.e. that it does have a temporal element); Outboard Marine Corp. v. Liberty Mut. Ins. Co., 54 Ill.2d 90, 607 N.E.2d 1204 (1992); Joy Tech., Inc. v. Liberty Mut. Ins. Co., 187 W.Va. 742, 421 S.E.2d 493 (1992); Hecla Mining Co. v. New Hampshire Ins., 811 P.2d 1083 (Colo. 1991); Just v. Land Reclamation, Ltd., 155 Wis.2d 737, 456 N.W.2d 570 (1990); Claussen v. Aetna Cas. & Sur. Co., 380 S.E.2d 686 (Ga. 1989).
7. See Northville Ind. v. National Union fire Ins., 89 N.Y.2d 621, 679 N.E.2d 1044 (1997); Sharon Steel v. Aetna Cas. & Surety Co., 931 P.2d 127 (Utah 1997); E.I. Du Pont de Nemours v. Allstate Ins. Co., 693 A.2d 1059 (Del. 1997); North Pacific Ins. Co. v. Mai, 939 P.2d 570 (Idaho 1997); Iowa Comprehensive Petroleum Underground Tank Fund Bd. v. Farmland Mut. Ins. Co., 568 N.W.2d 815 (Iowa 1997); Sinclair Oil Co. v. Republic Ins. Co., 929 P.2d 535 (Wyo. 1996); American Motorists Ins. Co. v. ARTRA Group, 659 A.2d 1295 (Md. 1995) Anderson v. Minnesota Ins. Guar. Ass'n, 534 N.W.2d 706 (Minn. 1995); Kerr-McGee Corp. v. Admiral Ins. Co., 905 P.2d 760 (Okla. 1995); Board of Regents v. Royal Ins. Co. of America, 517 N.W.2d 888 (Minn. 1994); Dimmitt Chevrolet, Inc. v. Southeastern Fid. Ins. Corp., 636 So.2d 700 (Fla. 1993); Hybud Equip. Corp. v. Sphere Drake Ins. Co., 64 Ohio St.3d 657, 597 N.E.2d 1096 (1992); Upjohn Co. v. New Hampshire Ins. Co., 438 Mich. 197, 476 N.W.2d 392 (1991); Protective Nat'l Ins. Co. v. City of Woodhaven, 438 Mich. 154, 476 N.W.2d 374 (1991); Lumbermens Mut. Cas. Co. v. Belleville Indus., Inc., 407 Mass. 675, 555 N.E.2d 568 (1990); Waste Management of Carolinas, Inc. v. Peerless Ins. Co., 315 N.C. 688, 340 S.E.2d 374 (1986).
8. See Park Ohio Ind., Inc. v. Home Indem. Co., 975 F.2d 1215 (6th Cir. 1992); Blackhawk-Central City Sanitation Dist. v. American Guaranty and Liability Ins. Co., 856 F. Supp. 584 (D. Colo. 1994).
9. Edgerton v. General Cas. Co. of Wisconsin, 493 N.W.2d 768, 780 (Wis. App. 1992), rev'd on other grounds, 184 Wis.2d 750, 517 N.W.2d 463 (1994); Scottish Guarantee Ins. Co. Ltd. v. Dwyer, 19 F.3d 307 (7th Cir. 1994); accord Pipefitters Welfare Educational Fund v. Westchester Fire Ins. Co., 976 F.2d 1037 (7th Cir. 1992); Titan Holding Syndicate, Inc. v. Keene, 898 F.2d 265 (1st Cir. 1990); Hirschberg v.

Lumbermens Mut. Cas. Co., 798 F. Supp. 600 (N.D. Cal. 1992); Blackhawk-Central City, cited *supra*.

10. See Edgerton, cited *supra*; Scottish Guaranty, cited *supra*; Blackhawk-Central City, cited *supra*. "The 'personal injury' endorsement represents an addition or extension of coverage which is not limited by the pollution exclusion clause contained in the property damage portion of the policy." Gould, Inc. v. Arkwright Mut. Ins. Co., 829 F. Supp. 722 (M.D. Pa. 1993).

11. See State v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983); C.R.S. ' 37-90-101, et. seq. For an in depth discussion of personal injury coverage, refer to Pasich, Insurance Under Personal Injury Provisions for Environmental Claims, 3 *Envtl. Claims J.*, 4, Summer, 1991, and Mehr, Cammack and Rose, Principles of Insurance, 310 (Eighth Ed. 1985).

12. See Leksi, Inc. v Federal Ins. Co., 129 F.R.D. 99, 103 (D.N.J. 1989).

13. See Remington Arms Co. v. Liberty Mut. Ins. Co., 810 F. Supp. 1420 (D. Del. 1992); Burroughs Wellcome Co. v. Commercial Union Ins. Co., 632 F. Supp. 1213, 1223 (S.D.N.Y. 1986); accord United States v. Gerhart, 538 F.2d 807, 809 (8th Cir. 1976) (defendant was convicted for making a materially false statement in a loan application, and the court held that a photocopy of a photocopy could be introduced in evidence by the defendant without a preliminary showing of its trustworthiness).

14. See Burroughs Wellcome, 632 F. Supp. at 1223; Whalen v. State Farm Mut. Auto. Ins. Co., 187 N.W.2d 820, 822 (Wis. 1971); Gerhart, 538 F.2d at 809.

15. See Blank, at 702.

16. See id.

17. See id.

18. See id.

19. See id.

20. See Bankers' and Shippers' Ins. Co. v. Murdock, 72 F.2d 292, 294 (8th Cir. 1934); Georgia Farm Bureau v. Latimore, 261 S.E.2d 735, 737 (Ga. App. 1979).

21. See Epperson v. Connecticut Fire Ins. Co., 314 F.2d 486, 489 (10th Cir. 1963); Pearl Assurance Co. v. School Dist. No. 1, 212 F.2d 778, 782 (10th Cir. 1954); accord Massachusetts Bonding & Ins. Co. v. R.E. Parsons Elec. Co., 61 F.2d 264, 268 (8th Cir. 1932).

22. See Government Employees Ins. Co. v. United States, 400 F.2d 172, 175 (10th Cir. 1968).

23. See id.

24. See Leksi, 129 F.R.D. at 106.

25. See Haddon v. Royal Ins. Co., 1996 WL 549301 (D.N.J. Sept. 19, 1996) (No. CIV. A. 95-701 (JEI)).

26. See id.

27. See id.

28. See id.

29. See id.

30. See Imcera Group, 50 Cal. Rptr.2d at 594.

31. Id.

32. Id.

33. See id. at 594-95.

34. See Haddon, 1996 WL 549301.

35. Id.

36. Id.

37. See Gold Fields, 661 N.Y.S.2d at 950-51.

38. Id. at 950.

39. See id. at 951.

40. See id. at 952.

41. See WAC ' 284-20-200; WAC ' 284-30-900; WAC ' 284-30-910; WAC ' 284-30-920.
42. See WAC ' 284-30-900(1).
43. See WAC ' 284-30-900(2), (3).
44. See WAC ' 284-20-200.
45. See id.
46. See WAC ' 284-20-200(1), (2).
47. See WAC ' 284-20-200(3), (4)(a).
48. See WAC ' 284-20-200(4)(b).
49. See WAC ' 284-30-910(2); WAC ' 284-20-200(7).
50. See WAC ' 284-30-920.
51. See id.
52. See WAC ' 284-30-920(1), (1)(b).
53. See WAC ' 284-30-920(2)(b).