PRODUCT PUBLIC LIABILITY INSURANCE

BY

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The casualty insurance companies have suffered severely from the decrease in premium volume which has been a natural consequence of the depression. The Casualty Experience Exhibit shows that for all stock companies entered in New York the country-wide volume of earned premiums in calendar year 1933 was approximately 26% less than the peak volume attained in calendar year 1930. The effort to regain casualty premium volume seems to be concentrated in using greater sales pressure on the favored lines such as Accident, Auto Liability, Burglary, and the more common forms of Liability lines, other than Automobile. From the standpoint of the possibility of developing a material increase in premium volume, no consideration appears to have been given to a line which has shown a steady increase in premium volume, even during the depression, ever since it was inaugurated. This line is Product Public Liability insurance, the rates for which were first shown in the manual effective July 1, 1925. The steady increase in the volume of business developed under this line during the last ten years is shown by the following exhibit:

EXHIBIT I

STOCK COMPANIES' PRODUCT PUBLIC LIABILITY EXPERIENCE

Policy Year*	Earned Premium	Incurred Losses (Incl. Allocated Claim Adjustment Expense)	Loss Ratio
1924	$ 115,500	$ 46,607	40%
1925	224,325	94,016	42
1926	392,895	143,285	36
1927	441,996	180,747	41
1928	566,103	180,043	32
1929	672,721	295,012	44
1930	676,633	379,968	56
1931	771,053	525,230	68
Calendar Year**			
1932	822,031	563,573	69
1933	1,010,355	763,345	76
Permissible Loss Ratio = 51%			

* Data compiled by National Bureau of Casualty and Surety Underwriters from classification experience reports of stock companies.

** Taken from Exhibit 21 of the Supplement to the New York Casualty Experience Exhibit.

The trend of the loss ratios will largely explain why no effort has been made to develop this comparatively new line. This phase will be discussed more fully in a later section of this paper.

Product Public Liability is a line of insurance which does not stand in good favor with the insurance companies at the present time. The agency forces have been led to believe that the writing of this business should be discouraged and that no attempt should be made to solicit this form of coverage. As a result, most of the business written has been coverage for the sale of foods, cosmetics, or manufactured articles on which retailers have demanded insurance protection from the manufacturer. The result of this underwriting practice has undoubtedly been to produce a very adverse selection of business against the insurance companies.

In view of the increase in premium volume which has resulted in spite of the restrictive attitude of the insurance companies, it is apparent that if an attempt were made to develop the line there would be great possibilities for premium expansion and, incidentally, better selection of business. As a matter of fact, whether the companies desire an increase in Product Public Liability premium volume or not, it is certain that the volume will increase substantially in the future because of the great need of manufacturers, distributors, and retailers for this coverage. Although the annual premium volume is now only approximately $1,000,000, it is likely that this line will become in the course of the next few years one of the most important under Liability lines, other than Automobile. With increasing frequency, it is becoming the policy of chain stores, department stores, wholesale associations, etc., to require that manufacturers furnish them with "hold harmless" agreements. The writing of this coverage on a contractual liability basis is a distortion which should be corrected, since this coverage should properly be provided through Product Public Liability policies.

Growing Need for Product Public Liability Coverage

The need of manufacturers and dealers for Product Public Liability coverage is a fairly recent development. Previously, the spirit of the law was opposed to the imposition of liability which might tend to handicap the expansion of business. In

dealing with the problem, the courts have reflected the attitude of their times and the result has been a changing body of law, with the trend at present towards greater liberality.

Under common law, there are three legal theories available for the protection of the consumer. First, the seller can be held liable because he contracted to supply a good article (either on an express warranty or an implied warranty of fitness or merchantability) and broke his contract. Second, the party responsible for the defect or impurity can be held for negligence in permitting or causing its existence, where this negligence was the proximate cause of the injury. Third, if the consumer can prove that the dealer knew of the defect or impurity, the dealer can be held liable in a tort action for deceit.

The common law rules governing warranty have been codified by the Uniform Sales Act which is in force in about thirty states. This Act provides that (1) where the buyer expressly, or by implication, makes known to the seller that he relies on his skill and judgment in the purchase of goods for a particular purpose, there is an implied warranty of fitness for that purpose, and (2) where the buyer purchases from the dealer by description, there is an implied warranty of merchantability. The Act further provides for the implication of these warranties regardless of whether the seller is a dealer instead of a grower or a manufacturer. If a dealer is held liable for damages to an injured consumer, he may be able to recover from the grower or the manufacturer on the basis of either implied or express warranty according to their contract or on the basis of negligence. Claims involving negligence on the part of a manufacturer are usually handled directly by the latter for his ultimate protection.

It follows that if an injured consumer can prove a breach of warranty, either express or implied, on the part of the seller, he may recover to the extent of the damage suffered. Theoretically, there must be privity of contract between the purchaser and the warrantor in order to provide the basis for recovery. It should be mentioned, however, that the common law regarding warranties is being broadened by current decisions. Decisions in 1932 against prominent manufacturers held that such manufacturers were liable to the final purchaser, despite the privity of contract rule, on the basis of advertisements which were construed to be

warranties.[1] Also, in 1928, a consumer was successful in a suit against a manufacturer on the basis that the manufacturer's implied warranty to the dealer was a contract on which the consumer could sue as a third party beneficiary.[2]

It should be pointed out that, generally, neither the benefit nor the burden of the warranty "runs with the goods", but that it benefits only the purchaser, although others may be injured by the same unwholesome food or defective article. Lack of privity of contract prevents a recovery by the others.[3]

Written guarantees, labels, etc., are express warranties. In addition, there is a tendency to construe advertisements to be express warranties where radio, billboards, printed matter, etc., are used to create a demand for goods by representing that they possess certain qualities. The definition of an express warranty which is contained in the Uniform Sales Act is as follows:

> "Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty."

It will be observed that it is not material whether it is the intent of the seller to warrant. A positive representation of fact is enough to render him liable. The rule seems to be that those statements of fact concerning his product contained in a manufacturer's advertisements are express warranties as regards a

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(1) Baxter v. Ford Motor Co., 168 Wash. 456, 12 P. (2d) 409 (1932). The court said, "Since the rule of caveat emptor was first formulated, vast changes have taken place in economic structures of the English speaking peoples. Methods of doing business have undergone a great transition. Radio, billboards and the products of the printing press have become the means of creating a large part of the demand that causes goods to depart from factories to the ultimate consumer. It would be unjust to recognize a rule that would permit manufacturers to create a demand for their products by representing that they possess qualities which they, in fact, do not possess, and then, because there is no privity of contract existing between the consumer and manufacturer, deny that consumer the right to recover if damage results from the absence of those qualities, when such absence is not readily noticeable." Curtis Candy Co. v. Johnson, 163 Miss. 426, 141 So. 762 (1932).

(2) Ward Baking Co. v. Trizzino, 161 N. E. 557 (Oh. App., 1928).

(3) Williston, On Sales (2d ed. 1924) Sec. 244.

consumer who, justifiably relying on those statements, purchases the product.

It is worthy of mention that there is good authority that an action in tort as well as an action in contract may be brought for a breach of certain express warranties, with the resulting liability being regarded as imposed by law.(4)

It is probable that suit is instituted more frequently on the basis of alleged breach of warranty than on a negligence basis, because it is often quite difficult to prove negligence in these cases. The difficulty of proof is lessened in some jurisdictions by the fact that evidence of the presence of a foreign substance in food or drugs practically establishes a case of negligence and further, in a minority of jurisdictions, by the rule of tort law that where normally an injury would not occur without negligence and where the means of preventing it or explaining its cause are within the control of the defendant, the plaintiff need not introduce evidence of negligence. Regardless of whether there is a warranty, the injured consumer can secure damages if negligence can be proven. It is in actions based on this theory that the manufacturer or distributor can best be reached. An action in negligence is ordinarily the only basis under which an injured non-purchaser can obtain damages.

Violation of pure food and drug acts has been held sufficient to show negligence and permit a recovery, since these statutes are enacted for the public's protection from the very harm suffered. If the pure food and drug acts are made broad enough, the difficulties of proof in negligence actions largely disappear. The Product Public Liability policies of some companies exclude coverage, however, if the goods contain any article in violation of any Federal, State or Municipal Law.

It may safely be stated that the common law is changing to meet changing conditions. Yet even today, injured persons face the possibility of a test case, since the more stringent rules imposing liability are not yet decided law in most jurisdictions. Although the common law is still a maze of conflicting theories and old precedents which may operate to bar the injured consumer from damages, the tendency will undoubtedly be to develop a law imposing liability, which will induce those supplying goods to settle quickly with injured consumers.

(4) Williston, On Sales (2d ed. 1924) Sec. 197.

In addition to needing insurance protection against their legal liability for injuries resulting from actual defects and mistakes, manufacturers and dealers need protection against the numerous faked claims and hold-up suits which are instituted on the basis of alleged defects in goods. These are very frequent under this line of insurance, particularly in connection with food or drug coverage. Certain territories are notorious for the legal and medical situations in connection with liability claims.

Present Coverage and Rates

The coverage under Product Public Liability is defined in the manual as follows: Insurance against claims in connection with the possession, consumption, handling or use away from the assured's premises by any person or persons, except employees of the assured while engaged in the business of the assured, of any merchandise or product manufactured, sold, handled or distributed by the assured on account of accidental bodily injury including death at any time resulting therefrom. This coverage includes the explosion or rupture of any container within which the product is delivered by the assured. The policy also covers such immediate medical and surgical relief as is imperative at the time of the injury.

Although the policy contracts specifically mention accidental bodily injury, it should be understood that illness and disease are construed to be accidental bodily injuries when it is obvious that in the chain of causation there was a contributing factor whose presence was so unintentional, unexpected and unusual as to bring the whole series of causative acts within the accepted definition of accidental. It is worthy of mention, however, that the courts do not allow damages for fright and shock unless the fright actually causes a physical injury.[5]

The coverage afforded by Product Public Liability insurance is normally effective only for accidents occurring away from the assured's premises, but in the case of restaurants and similar enterprises this coverage applies also for food consumption accidents on the assured's premises. On risks other than of the restaurant type, the Owners', Landlords' and Tenants' Public

(5) Kenney v. Wong Len, 81 N. H. 427, 128 A. 343 (1925).

Liability policy or the Manufacturers' and Contractors' Public Liability policy provides the necessary coverage on the assured's premises.

Neither the manual nor the policies and endorsements used by most companies are specific as to whether the coverage protects the assured in the case of suits brought on the basis of (1) negligence, (2) breach of implied warranty, or (3) breach of express warranty. The phraseology of most policies is that the insurance company agrees to indemnify the assured against loss by reason of the liability imposed upon him by law for damages because of bodily injuries as defined in the policy. This phraseology is apparently generally interpreted to cover suits alleging either negligence or breach of implied warranty. The policies are not interpreted to cover in the case of alleged breach of express warranty, because of the general belief that such cases are definitely of a contract nature and generally arise out of liability voluntarily assumed by the assured. In view of the fact that the policies are not worded definitely as to whether implied or express warranty coverage is provided, there is considerable doubt on the part of many agents as to whether retailers, for instance, are properly protected at the present time.

The rates for Product Public Liability coverage are in most cases applicable to the total sales of the risk in hundreds of dollars. Sales are defined as the entire amount of money (including taxes) charged for all merchandise or products sold or distributed by the assured during the policy period. No policy may be written covering only a part of the merchandise or products of a given risk, leaving uninsured other merchandise or products sold or distributed. Exceptions to this rule may be authorized upon application to the National Bureau. In the case of a few classifications, the rates apply per 1,000 fillings, per 1,000 gallons, etc., but the usual basis of exposure is sales.

The manual rule for additional interests' coverage is that individual risks involving additional interests must be submitted to the National Bureau for rating.

The coverage of a Product Public Liability policy is in effect only during the policy period and not beyond it. The coverage is, therefore, limited to accidents arising during the policy term. The policy period is normally one year, but in the case of risks where the Product Public Liability coverage is provided by en-

dorsement on a three year Owners', Landlords' and Tenants' Public Liability policy, the coverage may likewise be written for three years subject to annual premium adjustment without discount.

The Product Public Liability policy also provides that the coverage applies only to such merchandise as is actually sold to a purchaser for a consideration which appears in the amount of gross sales reported to the insurance company. In the case of food products and similar goods where the products are normally consumed within a relatively short time after sale, the insurance company accepts all claims incurred during the policy period. Perhaps the reasoning is that the hazard incurred on goods sold before the policy period but not actually consumed is offset by the goods which will be sold towards the end of the policy period but which will not be consumed before the policy expires. It would also be very difficult to identify the date of sale of most such products.

In the case of products such as washing machines, electric refrigerators, lamps, etc., where the goods are expected to last many years, the insurance companies do not provide coverage for such articles sold before the inception date of insurance unless an additional premium is paid by the assured. If the assured desires coverage on outstanding articles, as well as on those which will be sold during the policy period, the usual practice is to determine a flat additional premium charge for such coverage. The method of calculation varies somewhat, depending upon the type of product to be insured. Usually it is assumed that there will be no liability for articles more than five years old, because any inherent weakness in the product would have shown up by that time and because the manufacturer or dealer would have the defense that wear and tear rather than structural defects would be responsible for any injuries resulting at that late date. The general method is to apply the manual rate to the sales of the preceding years weighted by percentages totaling to 150%. For example, the weights applicable to the sales of the five preceding years are 50%, 40%, 30%, 20% and 10% respectively. In the event that it is not possible to determine the sales for each of the previous five years and it is estimated that the sales during each of those years were approximately the same as the current sales, a flat additional premium charge of 150% is made for

coverage on products previously sold. The payment of this additional premium assures coverage for all products in use during the policy period but, of course, no coverage beyond the expiration date of the policy. The calculation must be repeated on renewal in order to again provide the coverage for both current and prior sales.

No coverage is provided for sample products which may be distributed by an assured unless the money value equivalent of such samples is included with the gross sales in determining the premium. In the case of goods which are left with prospective customers on demonstration, the merchandise to be used by the prospective customer for the time being, coverage is provided for such demonstration hazard, with no extra premium charge. While the goods are actually being demonstrated by the assured's employees, the necessary coverage is afforded by the direct liability policy, of course, and not by the Product Public Liability policy.

The manual rates provide for a limit of $5,000 for all damages arising out of bodily injuries to or death of one person; and, subject to that limit for each person, a total limit of $10,000 for all damages arising out of bodily injuries to or death of two or more persons in any one accident. If merchandise or product from one prepared or acquired lot after the sale produces injuries to more than one person, the injuries to all persons proceeding from that common cause are considered as constituting one accident. Subject to the foregoing limits, an aggregate limit of $25,000 for all damages arising out of bodily injuries or death during the policy period is provided. The purpose of the aggregate limit is to provide some degree of protection to the insurance company where a whole series of claims may develop in such a way that the accident limit is of no value whatsoever, because there is no provable relationship between the specific cause and the specific effect.

Limits higher than 5/10 and $25,000 are written upon application of the factors shown in designated excess limits tables. Table A is used with a number of the more hazardous classes and Table B applies in the case of the remainder. If the accident limit exceeds $25,000, the aggregate limit becomes the same amount automatically. If an aggregate limit in excess of $25,000 and in excess of the accident limit is desired, the factor used is

20% of the factor for the desired per person/per accident limit plus 80% of the factor for the same per person limit combined with an accident limit equal to the desired aggregate limit.

EXAMPLE

$5,000 per person/$50,000 per accident/$100,000 aggregate

20% of 1.14 (Table B factor for $5,000/ 50,000)	=	.228
80% of 1.19 (Table B factor for $5,000/100,000)	=	.952
Total (Table B factor for $5,000/50,000/100,000	=	1.180

In the case of large risks where the difference between the risk premium and the amount of the aggregate limit is considerably less than in the average sized risk, the risk may be submitted to the National Bureau for individual consideration and treatment as respects the aggregate limit feature. In general, the annual premium for risks to receive such individual consideration should be not less than $5,000 at standard limits.

If the aggregate limit under the policy becomes almost or fully exhausted, the carrier notifies the policyholder. The carrier continues to investigate and defend all claims that may arise until the coverage is actually terminated. Earned premiums are determined on the basis of only the actual earned exposure during the period of coverage, regardless of the amount of incurred losses. If, after the development of losses on a policy with a corresponding reduction in the aggregate limit, the assured desires to increase the aggregate limit for the remainder of the policy period, additional limits of liability may be purchased for additional premiums based on the factors in the manual excess limit tables. Such additional limits apply only for the remainder of the policy period, and the increased aggregate limit, less claims for accidents which occurred previously, applies only from the date on which the additional aggregate limit is purchased.

An Experience Rating Plan is applicable in three states: Minnesota, New York and Wisconsin. Product Public Liability risks which develop an exposure during either the latest year or the latest two years of the experience period such that the application thereto of manual rates for standard limits produces a premium of not less than $1,000 qualify for experience rating. The Plan is applied on an intrastate basis. Classifications which are (a) rated are not subject to experience rating.

Need for Clarification of Coverage and Endorsements

In view of the probability that the premium volume of the Product Public Liability line will increase substantially within the next few years, it is essential that the policy forms and coverage be revised to conform with present day needs. The insuring agreements should be made so clear and definite that the coverage will be easily understood by the average layman and insurance producer who are not often familiar with the interpretations which may be placed upon policy coverages by the claim departments of the companies.

It seems quite likely that Product Public Liability coverage will always be provided by an endorsement attached to either an Owners', Landlords' and Tenants' Public Liability policy or to a Manufacturers' and Contractors' Public Liability policy. The coverage provided by the Product Public Liability endorsement consists essentially of eliminating the standard exclusion of the direct liability policy to the effect that there is no coverage for injuries caused by the possession, consumption, or use elsewhere than on the assured's premises of any article manufactured, handled, or distributed by the assured unless covered by written permit endorsed on the policy. It might be desirable, however, to give consideration to the preparation of a separate policy form limited to Product Public Liability insurance.

The Product Public Liability endorsement should specifically state that coverage is provided for claims alleging breach of implied warranty in addition to those alleging negligence. It would be desirable definitely to exclude coverage for any liability based upon an express warranty or any liability voluntarily assumed by the assured, whether orally or in writing. The endorsement should also state clearly that illness and disease are covered. In order to furnish assureds with the coverage they actually need, it might be well to broaden the policy coverage to include illness and disease without the restriction that they be of a nature which can properly be construed to be accidental.

Liability based on express warranties as a general rule cannot safely be covered without careful examination of the express warranties by the home office of the insurance company. For this reason, such coverage should be specifically excluded from the general Product Public Liability endorsement. It should be

permissible, however, for an assured to purchase, by payment of an additional premium, coverage for any liability which may be incurred as the result of express warranties. Such coverage would be subject to careful underwriting and it would be necessary to receive copies of all express warranties issued and also of all labels and advertising material, so far as practicable. The insurance company would necessarily have to maintain a fairly close contact with certain types of assureds in order to be certain that the advertising material, labels, etc., were not changed to a degree which would seriously affect the insurance hazard. As a safeguard, the insured express warranties could be quoted in the Product Public Liability endorsement.

The endorsements used by the various companies should be standardized. At least three separate endorsements should be prepared: one for restaurants, etc., where the coverage is both on and away from the assured's premises; one for other food or drug risks; and a third for use in writing coverage on products of a durable nature.

The classifications which cover products of a durable nature should be definitely indicated in the manual as compared with those which cover such products as foods which are normally consumed relatively soon after their manufacture and sale. A uniform method of writing the coverage on durable merchandise previously sold should be developed and printed in the manual. It is not practicable to merely increase the manual rate applicable to current sales in order to reflect the hazard assumed on previous sales because the degree of hazard thus assumed varies widely from risk to risk. The possible liability in connection with a firm which has been in business for many years is much greater than that of a firm which only recently commenced operating. The volume of business transacted from year to year also varies greatly. Although the degree of liability which exists in connection with products sold prior to the effective date of insurance may also vary somewhat between classifications, nevertheless it would be desirable to develop a general rating method for this coverage. It would be a fair basis to assume, for example, that in general some degree of liability exists on products sold during the previous three year period and that the total premium for all products of the assured previously sold should approximate the premium charged for a single year's current

coverage, using a standardized system of weights against the exposure of the three preceding years.

The subject of additional interests' coverage for this line deserves thorough study in an effort to develop definite rules for inclusion in the manual. Admittedly, the degree of liability assumed through additional interests' coverage varies considerably among different risks, but it should be possible to formulate definite rules for the additional premium charge for inclusion in the manual. The standard additional premium charge of 25% should apply only where the product is sold by the distributor in the form received from the manufacturer without alteration. If the product is altered in any manner by the distributor before being sold, a substantial increase in the premium charge becomes necessary for such additional interests' coverage, since it is often difficult to determine which party was negligent where the form of the product was altered by the distributor. Obviously, no coverage should be afforded to the additional interest in this manner for any liability resulting from sole negligence on his part.

Influence of Price Trends on Experience

An analysis of the experience under Product Public Liability coverage during the last ten years, as given previously in Exhibit I, shows that this line produced favorable results in the early years after its introduction but that in recent years the experience has become very adverse. Unquestionably, there has been an increase in claim-mindedness with regard to this line as well as other liability lines. In addition, although relatively few cases have actually been decided in court, the tendency to liberalize the law for the benefit of injured consumers has probably been reflected in the experience to some extent.

A major factor in causing the unfavorable trend in recent years has undoubtedly been the fact that the prices of foods and other goods have generally been falling during this period. The exposure basis for approximately 75% of the premium volume of this line is sales, and any downward trend in prices would react adversely on the experience. The premium income of the insurance companies would be reduced proportionately with little, if any, offsetting effect on hazards and claim costs. The trend of wholesale prices for all commodities combined as taken from the

monthly Labor Review of the United States Department of Labor is as follows:

EXHIBIT II

INDEX NUMBERS OF WHOLESALE PRICES

(1926 = 100)

Period	All Commodities
1924	98.1
1925	103.5
1926	100.0
1927	95.4
1928	96.7
1929	95.3
1930	86.4
1931	73.0
1932	64.8
1933	65.9
June 1934	74.6

The trend of wholesale prices of farm goods and foods was more sharply downward than that of other products. These data indicate how severely the premium income of insurance companies on this coverage has been affected, and this fact probably accounts to a considerable extent for the very adverse experience trend. The low point was reached in February 1933, for which the index number was only 59.8, or 40% below the average for 1926, which is generally considered to be a normal year. The trend of prices is now upwards, but it will probably be a considerable time before the price level of 1926 is again reached.

EXPOSURE BASIS

The conclusion to be drawn from this brief analysis of price trends is that the present exposure basis of sales has little to commend it except that sales data are always readily available for audit purposes. It is apparent that a new exposure basis is needed for this line of insurance. It would be desirable to change as soon as possible from a sales basis to a unit or quantity of product basis[6] in the case of all classifications for which such a change is practicable. It seems likely that consideration has been given to similar proposals in the past, but that no change has been made because of the difficulty of establishing an exposure basis, the data for which would be normally ascertainable

(6) For a discussion of the comparative merits of these three exposure bases, see "Notes on Exposure and Premium Bases" by Paul Dorweiler, Proceedings Casualty Actuarial Society, Vol. XVI, p. 341.

for audit. The problem deserves detailed study, however, since it is one which must be faced if a proper unfluctuating exposure basis is to be established for this line. It appears that such a conversion from the sales basis of exposure could be made in the case of most classifications other than those covering stores.

An exposure basis of sales does not satisfactorily meet the requirement that within each classification the hazard per risk should be proportionate to the exposure. There is no reason why the manufacturer of shoes wholesaling at $5.00 per pair should pay twice as much premium per pair as another manufacturer whose shoes sell at wholesale for $2.50 per pair. As a matter of fact, there very likely may be less hazard connected with the more expensive pair because of better manufacturing processes. Most classifications contain wide variations in price range, and the more expensive goods are penalized as compared with low-priced goods although they are probably more carefully prepared and, therefore, less hazardous. Similarly, there is undoubtedly a greater hazard connected with the low-priced electric refrigerators which were manufactured in 1933 and perhaps even more so in connection with the "chest type" refrigerators which are now selling in the neighborhood of $75.00 each than was the case with the more expensive refrigerators previously marketed. It is a fair assumption that increased risk of mechanical defects and leakage of refrigerant goes with cheaply constructed refrigerators. The sales basis of exposure certainly does not properly reflect the hazard, but a unit basis of exposure would eliminate much of this objection. Prior to 1933, the exposure basis for gasoline and allied products was sales including taxes. This was not a proper exposure basis because the price of gasoline fluctuates considerably and also the state taxes vary a great deal. The present exposure basis is per 1,000 gallons and this has corrected the situation. A similar change in exposure basis appears desirable for all classes now rated on a sales basis, where such a change is feasible from the audit standpoint.

Need for Rate Revision

There never has been a general revision of Product Public Liability rates. The rates for the more important classifications have been trued up from time to time as the available experience indicated that they were particularly out of line. A fairly sub-

stantial volume of classification experience covering policy years 1927-1931 has now been compiled by the National Bureau to serve as the basis for a general revision of rates. This experience should offer fairly reliable indications of classification relativity. If the insurance companies are to write this line of insurance with a fair chance of breaking even, it is essential that the general rate level be increased substantially. This revision should be made concurrently with the modernization of coverage and endorsements and with the change in exposure basis from sales, wherever possible.

The only instance of the use of territorial differentials for this line of insurance is in the case of the Bakeries classification, where the manual rate for Massachusetts and New York is twice that for the remainder of the country. The classification experience has never been reported to the National Bureau completely subdivided by territories. There is, therefore, no experience available to indicate whether there is any necessity for territory differentials. The statistical plans in use in the insurance companies provide for the coding of the experience by territory, but this information could only be obtained by special calls if the experience were desired by territory. As a practical matter, it would be difficult to introduce territory differentials in the case of goods other than foods which are manufactured largely for local consumption.

A general revision of rates for this line of insurance should recognize not only the known trend of experience but should include a judgment projection factor to recognize the growing tendency to hold manufacturers and dealers liable for damages as a result of defective goods. If such a bill as the Tugwell-Copeland Act were to be enacted by Congress, it would remove many of the difficulties of proof in certain negligence actions since violation of a pure food and drug act has been held sufficient to show negligence and permit a recovery. This adverse effect might be off-set to some extent by the fact that many products containing harmful substances which are now legally marketed would be prohibited by such a statute.

Underwriting Policy

Before the insurance companies can even consider opening up on this line, it is absolutely necessary that the coverage be made

definite and that a general revision of rates including practicable changes in the exposure basis be effected. Even then, it will be necessary to underwrite the line with caution. It would seem to be desirable for each company to endeavor to develop a specialist in the writing of this business. This coverage is still "loaded with dynamite" even though an aggregate policy limit has been introduced in addition to the per person/per accident limit. A good example of what can happen is the case of a certain cream depilatory which was widely advertised several years ago. The American Medical Association made a vigorous attack on this product, reporting that the active ingredient in the cream was thallium acetate, an exceedingly poisonous chemical having no known antidote. In spite of this protest, the product was passed by the New York City Department of Health and many large department stores continued to sell it. The manufacturing concern finally failed with $2,000,000 in claims against it, representing damages sought by persons who had used its product. Voluntary bankruptcy was the convenient expedient by which the promoters evaded settlement. An insurance company must be extremely careful in insuring the Product Public Liability hazard of any such product.

In underwriting Product Public Liability submissions it is important to know how the assured will want claims handled in order to protect his good-will. Most assureds wish to avoid publicity and want payments made to settle claims quickly even though many such cases must be classed as of the nuisance variety. Other concerns will want cases fought, being unwilling to admit that foreign substances or defects could be present in their products. The attitude of the assured concerning the making of good-will settlements has a great deal of effect on the experience of the individual risk.

A particularly effective method of writing many risks is to provide deductible coverage. This is especially true of risks handling food products. If the assured must pay the first $50, $100 or $250 of each claim, it is found that he is more willing to cooperate with the insurance company, especially in the matter of securing witnesses for his own defense. Where the coverage is written on a deductible basis, the assured is likewise more willing to cooperate in the prevention of accidents. Less pressure is brought to bear on the insurance carrier to settle nuisance

cases for the sake of good-will. On the other hand, with this form of coverage care must be taken not to incur excessive legal expense in fighting all claims, justifiable or otherwise, merely because the assured wishes to escape paying up to the amount of his retention on each claim. If properly handled, this form of coverage may be the salvation of the insurance companies in writing Product Public Liability coverage on risks manufacturing or selling food and drug products.

Conclusions

The conclusions to be drawn from this analysis of the Product Public Liability line are as follows:

1. It is probable that the premium volume of this line of insurance will increase substantially in the near future.
2. The policy coverage should be clarified through the preparation of clearly worded, standardized endorsements.
3. Recent experience has been adverse because of the deficiencies of sales as an exposure basis together with the increasing claim-mindedness of the public.
4. A complete revision of manual rates should be made effective within the near future, including a change from an exposure basis of sales to unit or quantity of product so far as possible. A uniform method of determining the premium to be charged for providing coverage on merchandise previously sold should be included in the manual. Definite additional interests rules should be published.
5. A conservative policy of underwriting this line should be followed. Many risks manufacturing or handling food or drug products should be written on a deductible basis.
6. An attempt should be made to develop the premium volume on classes other than those dealing with food or drug products so that a better spread of risk from an insurance standpoint will be obtained.