



Construction Defects

From an Underwriting and Actuarial Perspective

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Why is CD such a hot topic?

- ⇒ Huge construction boom in last 2 decades; especially residential dwellings in California, Arizona, Nevada
- ⇒ Construction of multifamily units (condos, town homes) increased greatly
- ⇒ Builders rush to meet demand by taking shortcuts
- ⇒ In quest to meet deadlines, builders hire more workers
- ⇒ To save money, use unskilled workers and less supervision
- ⇒ Result is substandard housing/CDs

Overview

- ⇒ Background on construction defect (CD)
- ⇒ How commercial general liability (CGL) policy has traditionally applied to CDs
- ⇒ Trends and developments in CD arena causing changes in CGL policy terms and conditions
- ⇒ Modifications to standard actuarial pricing and reserving methodologies in response to CD exposure

Construction Defects - Background

⇒ Definition of CD.

- Any deficiency in the performing or furnishing of the design, planning, supervision, inspection, construction or observation of construction to any new home or building, where there is a failure to construct the building in a reasonably workmanlike manner and/or the structure fails to perform in the manner that is reasonably intended by the buyer.

⇒ CDs are either patent or latent.

Construction Defects - Background

⇒ Categories of defects.

- Defects in design, workmanship, materials and soil conditions.

⇒ Examples of CD.

- Defects from expansive soils, substantial cracks, unstable foundations, defective roofs, insufficient water supply, heating system problems, and plumbing leaks.

Common CDs

- ⇒ Mold.
 - Clean up and repair covered if caused by excess moisture caused by a CD.
- ⇒ EIFS (Exterior Insulation Finishing Systems)
 - A.k.a. “Synthetic Stucco.”
 - Water trapped behind stucco and rots frame, plywood and particle board.
- ⇒ Companies have added exclusions to policies.

Construction Defects & the CGL Policy

- ⇒ CGL policy – provides coverage for bodily injury or property damage occurring after a construction operation is completed but attributed to that operation.
- ⇒ Issues regarding CD claims and the CGL policy.
 - Definition of “property damage.”
 - Did PD occur during the policy period?
 - Definition of “occurrence.”

Property Damage - Definition

- ⇒ Physical injury to tangible property or loss of use of tangible property that is not physically injured.
- ⇒ Courts have held that defective work or materials in and of itself does not constitute “property damage.” However, liability coverage is triggered when the insured’s defective materials or work causes injury to property **other than the insured’s own work or products.**

Example

- ⇒ A court ruling held that a building contractor's use of defective workmanship and materials into a home that it constructed **did not** constitute property damage as defined under the CGL policy. While the defective materials and workmanship definitely produced an inferior home, the court held that this is not property damage within the meaning of the CGL policy.
- ⇒ In other words, replacing and repairing defective materials or poor workmanship is a commercial risk that **is not** to be passed on to the liability insurer.

Did the PD Occur During the Policy Period?

- ➔ No coverage under a CGL policy unless the PD occurs during the policy period
- ➔ Courts ruled that PD, not the negligent or causative act, triggers coverage under the policy
- ➔ For long-tail claims involving multiple years, less clear when PD occurs

Did the PD Occur During the Policy Period?

⇒ Trigger theories

- Exposure theory
- Damage-in-fact theory
- Manifestation theory
- Continuous trigger theory

Definition of “Occurrence”

- ➔ No coverage under CGL policy without an “occurrence,” defined as an accident resulting in property damage neither “expected nor intended” by the insured.
- ➔ CGL policies, therefore, only cover fortuitous events.

Definition of “Occurrence”

- ➔ Court held that natural results of negligent and poor workmanship construction of a building is not an “occurrence” under the CGL policy. The court explained that the cracks in the floor and the loose paint on the exterior of the building are the natural and ordinary (read expected, not fortuitous) consequences of installing defective concrete flooring and applying the wrong type of paint.

Key Court Cases Affecting CDs

- ⇒ Montrose Chemical v. Superior court of L.A. County (a.k.a. Montrose I) - 1993.
 - Insurer's obligation to defend with respect to proceedings related to the discharge of hazardous substances.
 - Court ruled that complaint need only allege that damages may have occurred to trigger the insurer's duty to defend.
 - More claims to defend; Increase in severity of ALAE.

Key Court Cases Effecting CDs

- ⇒ Montrose Chemical v. Admiral Insurance Co. (a.k.a. Montrose II) - 1995.
 - Use of continuous injury trigger for duty to defend hazardous waste actions (that is, a continuous property damage).
 - Court ruled that all insurers involved from beginning to end have potential liability.
 - Frequencies increase dramatically because multiple insurers were named on virtually every lawsuit. Severity decreased because each insurer was determined to be only partially involved. In addition, there was less reinsurance protection since claims were not large enough to pierce retentions.
- ⇒ Montrose endorsement restricts application of continuous trigger

Example – Effect of Montrose Decision

Claim of \$3 million incurred in 1992. The primary policy limit is \$500,000 and the reinsurance treaty is \$2.5 million excess \$500,000.

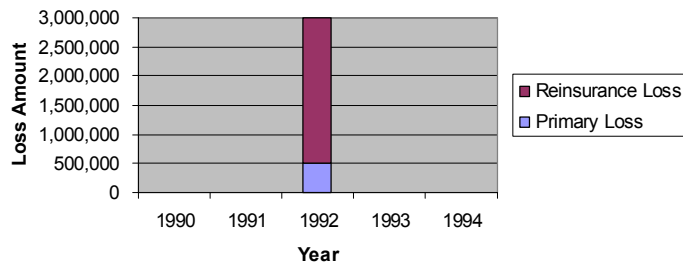
Pre-Montrose

Year	Total Loss Amount	Primary Loss	Reinsurance Loss
1990	0	0	0
1991	0	0	0
1992	3,000,000	500,000	2,500,000
1993	0	0	0
1994	0	0	0
Total	3,000,000	500,000	2,500,000

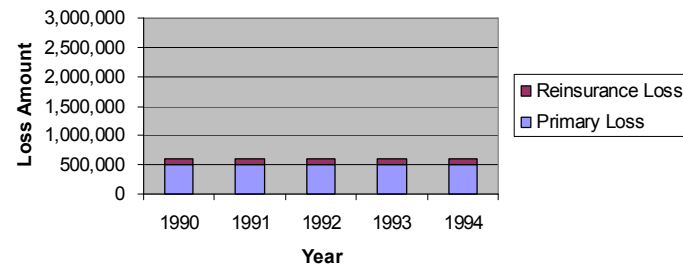
Post-Montrose

Year	Total Loss Amount	Primary Loss	Reinsurance Loss
1990	600,000	500,000	100,000
1991	600,000	500,000	100,000
1992	600,000	500,000	100,000
1993	600,000	500,000	100,000
1994	600,000	500,000	100,000
Total	3,000,000	2,500,000	500,000

Allocation of \$3M Claim in Pre-Montrose Environment



Allocation of \$3M Claim in Post-Montrose Environment



Key Court Cases Effecting CDs

- ➔ Stonewall Insurance Co. v. City of Palos Verdes Estates, CA - 1996.
 - Use of Montrose II ruling to CD cases.
 - Homeowners in Palos Verdes Estates sued the city for damage to their homes due to sinking land.
 - Court ruled that continuous injury trigger does apply to CD cases.
 - Litigation and claim counts increase dramatically.

Key Court Cases Involving CDs

⇒ “Notice and Opportunity to Repair” Legislation.

■ Calderon Bill (1997)— CA Civil Code § 1375.

- Homeowners association must provide notice of its claims to the developer and members of the association before filing a CD lawsuit. The association is required to give written notice to the builder against whom a claim is made, including a list of defects.
- Encourages mediation between parties but generally ineffective in resolving claims and reducing number of lawsuits.

■ Steinberg Mandatory Negotiation Bill (2002) — Amendment to Calderon Bill.

- Builders, including subcontractors, insurers and homeowners must negotiate a solution to specific alleged defects in timely manner before lawsuit can be filed.

Key Court Cases Involving CDs

⇒ Nevada Chapter 40

- Plaintiffs can recover legal, investigative and interest from defendant if plaintiff wins

⇒ California S.B. 800 (2003)

- Building standards to govern claims against builders
- 10 year statute of limitations, mandatory pre-lawsuit process

Effects of Court Rulings

- ⇒ More class-action CD lawsuits.
 - Significant opportunity for plaintiff's attorney in a lawsuit against the contractors, especially if the project is a condominium or apartment building (or any development with common areas or a homeowners' association.).
 - Legal fees can be astronomical, often greater than the original cost of the project.
 - Increase in defense costs.

Effect of Court Rulings on Defense & Adjustment Expenses

Line of Business: Auto Physical Damage - Industry

Accident Yr.	Paid Loss	Defense & Cost Containment Payments	Adjusting & Other Payments	D&CC to Paid Loss Ratio	Adjusting & Other Payments to Paid Loss Ratio
1998	39,997,500	374,325	5,075,677	0.94%	12.69%
1999	42,210,136	361,230	5,555,666	0.86%	13.16%
2000	48,444,182	396,721	6,094,928	0.82%	12.58%
2001	47,201,626	308,504	5,661,195	0.65%	11.99%
2002	50,744,821	419,762	6,853,820	0.83%	13.51%
2003	48,173,725	276,598	6,493,693	0.57%	13.48%
Total	276,771,990	2,137,140	35,734,979	0.77%	12.91%

Line of Business: Other (General) Liability - Insurance Company that writes predominantly in California

Accident Yr.	Paid Loss	Defense & Cost Containment Payments	Adjusting & Other Payments	D&CC to Paid Loss Ratio	Adjusting & Other Payments to Paid Loss Ratio
1998	1,688,000	198,000	106,000	11.73%	6.28%
1999	2,054,000	328,000	160,000	15.97%	7.79%
2000	5,320,000	465,000	232,000	8.74%	4.36%
2001	5,458,000	232,000	348,000	4.25%	6.38%
2002	4,243,000	199,000	480,000	4.69%	11.31%
2003	298,000	258,000	676,000	86.58%	226.85%
Total	19,061,000	1,680,000	2,002,000	8.81%	10.50%

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Actuarial Issues Involving CDs

- ⇒ Definition of CD claim
- ⇒ How is accident date determined (see coverage triggers)
- ⇒ Primary coverage vs. Excess coverage (also reinsurance agreements)
- ⇒ States that have CD exposure (California v. other states)
- ⇒ General contractors (lower freq./higher severity) vs. sub-contractors (higher freq./lower severity)
- ⇒ Mix of business by class
- ⇒ Endorsements/Exclusions
- ⇒ How to determine tail factor (affected by statute of limitations)
- ⇒ Claims handling philosophy/reserve setting practices
- ⇒ Treatment of ALAE (in primary policy and reinsurance treaty)

Example – Montrose Adjustment

Reported Losses - Sub-Contractor

Acc. Yr.	Months of Development										
	12	24	36	48	60	72	84	96	108	120	132
1990	33,006	38,617	45,568	52,403	64,980	98,770	193,589	358,139	587,348	851,655	1,056,052
1991	57,168	65,743	75,605	102,822	272,480	504,087	776,294	1,133,390	1,575,412	2,000,773	
1992	46,678	52,279	67,962	232,432	418,377	661,036	951,892	1,275,535	1,607,174		
1993	80,848	123,697	320,376	611,918	923,996	1,275,114	1,619,395	2,056,632			
1994	140,033	560,130	1,170,673	1,638,942	2,097,845	2,601,328	3,329,700				
1995	242,544	1,263,652	2,400,939	3,265,277	4,277,513	5,560,766					
1996	485,087	2,396,331	3,714,312	4,977,178	6,818,735						
1997	1,283,420	4,992,504	8,637,031	12,696,436							
1998	1,815,030	4,864,280	8,220,634								
1999	2,566,840	4,876,996									
2000	5,739,629										

Acc. Yr.	Age-to-Age Factors										
	12 - 24	24 - 36	36 - 48	48 - 60	60 - 72	72 - 84	84 - 96	96 - 108	108 - 120	120 - 132	
1990	1.170	1.180	1.150	1.240	1.520	1.960	1.850	1.640	1.450	1.240	
1991	1.150	1.150	1.360	2.650	1.850	1.540	1.460	1.390	1.270		
1992	1.120	1.300	3.420	1.800	1.580	1.440	1.340	1.260			
1993	1.530	2.590	1.910	1.510	1.380	1.270	1.270				
1994	4.000	2.090	1.400	1.280	1.240	1.280					
1995	5.210	1.900	1.360	1.310	1.300						
1996	4.940	1.550	1.340	1.370							
1997	3.890	1.730	1.470								
1998	2.680	1.690									
1999	1.900										

Average, Latest 4 Yrs	3.350	1.720	1.390	1.370	1.380	1.380	1.480	1.430	1.360	1.240	
Cumulative	96.750	28.880	16.790	12.080	8.820	6.390	4.630	3.130	2.190	1.610	1.300

Example – Montrose Adjustment

Accident Year	12	24	36	48	60	72	84	96	108	120	132
1990	33,006	5,611	6,951	6,835	12,577	33,790	94,819	164,550	229,209	264,307	204,397
1991	57,168	8,575	9,861	27,218	169,657	231,608	272,207	357,095	442,022	425,361	
1992	46,678	5,601	15,684	164,469	185,945	242,659	290,856	323,643	331,639		
1993	80,848	42,849	196,679	291,542	312,078	351,118	344,281	437,237			
1994	140,033	420,098	610,542	468,269	458,904	503,483	728,372				
1995	242,544	1,021,108	1,137,287	864,338	1,012,236	1,283,254					
1996	485,087	1,911,243	1,317,982	1,262,866	1,841,556						
1997	1,283,420	3,709,084	3,644,528	4,059,405							
1998	1,815,030	3,049,250	3,356,353								
1999	2,566,840	2,310,156									
2000	5,739,629										

Accident Year	Age-to-Age Factors										
	12 - 24	24 - 36	36 - 48	48 - 60	60 - 72	72 - 84	84 - 96	96 - 108	108 - 120	120 - 132	132 - Ult
1990	0.17	1.24	0.98	1.84	2.69	2.81	1.74	1.39	1.15	0.77	
1991	0.15	1.15	2.76	6.23	1.37	1.18	1.31	1.24	0.96		
1992	0.12	2.80	10.49	1.13	1.31	1.20	1.11	1.02			
1993	0.53	4.59	1.48	1.07	1.13	0.98	1.27				
1994	3.00	1.45	0.77	0.98	1.10	1.45					
1995	4.21	1.11	0.76	1.17	1.27						
1996	3.94	0.69	0.96	1.46							
1997	2.89	0.98	1.11								
1998	1.68	1.10									
1999	0.90										

Average Below Line	2.720	0.970	0.940	1.310	1.270						
Selected	2.720	0.970	0.940	1.200	1.200						

Example – Montrose Adjustment

Adjusted Incremental Reported Losses

Accident Year	Months of Development										
	12 - 24	24 - 36	36 - 48	48 - 60	60 - 72	72 - 84	84 - 96	96 - 108	108 - 120	120 - 132	132 - Ult
1990	9,461	25,735	24,963	23,465	28,158	33,790	94,819	164,550	229,209	264,307	204,397
1991	57,006	155,057	150,405	141,381	169,657	231,608	272,207	357,095	442,022	425,361	
1992	66,316	180,379	174,967	164,469	185,945	242,659	290,856	323,643	331,639		
1993	74,545	202,761	196,679	291,542	312,078	351,118	344,281	437,237			
1994	154,448	420,098	610,542	468,269	458,904	503,483	728,372				
1995	242,544	1,021,108	1,137,287	864,338	1,012,236	1,283,254					
1996	485,087	1,911,243	1,317,982	1,262,866	1,841,556						
1997	1,283,420	3,709,084	3,644,528	4,059,405							
1998	1,815,030	3,049,250	3,356,353								
1999	2,566,840	2,310,156									
2000	5,739,629										

Example – Montrose Adjustment

Accident Year	12	24	36	48	60	72	84	96	108	120	132
1990	9,461	35,196	60,159	83,624	111,782	145,572	240,391	404,941	634,150	898,457	1,102,854
1991	57,006	212,063	362,468	503,849	673,506	905,114	1,177,321	1,534,417	1,976,439	2,401,800	
1992	66,316	246,694	421,662	586,131	772,076	1,014,735	1,305,591	1,629,234	1,960,873		
1993	74,545	277,306	473,985	765,527	1,077,605	1,428,723	1,773,004	2,210,241			
1994	154,448	574,546	1,185,088	1,653,357	2,112,260	2,615,743	3,344,115				
1995	242,544	1,263,652	2,400,939	3,265,277	4,277,513	5,560,766					
1996	485,087	2,396,331	3,714,312	4,977,178	6,818,735						
1997	1,283,420	4,992,504	8,637,031	12,696,436							
1998	1,815,030	4,864,280	8,220,634								
1999	2,566,840	4,876,996									
2000	5,739,629										

Accident Year	Age-to-Age Factors									
	12 - 24	24 - 36	36 - 48	48 - 60	60 - 72	72 - 84	84 - 96	96 - 108	108 - 120	120 - 132
1990	3.720	1.709	1.390	1.337	1.302	1.651	1.685	1.566	1.417	1.227
1991	3.720	1.709	1.390	1.337	1.344	1.301	1.303	1.288	1.215	
1992	3.720	1.709	1.390	1.317	1.314	1.287	1.248	1.204		
1993	3.720	1.709	1.615	1.408	1.326	1.241	1.247			
1994	3.720	2.063	1.395	1.278	1.238	1.278				
1995	5.210	1.900	1.360	1.310	1.300					
1996	4.940	1.550	1.340	1.370						
1997	3.890	1.730	1.470							
1998	2.680	1.690								
1999	1.900									

Average, Latest 4 Yrs	3.350	1.720	1.390	1.340	1.290	1.280	1.370	1.350	1.320	1.230	
Cumulative	69.140	20.640	12.000	8.630	6.440	4.990	3.900	2.850	2.110	1.600	1.300

Example – Montrose Adjustment

Calculation of Adjusted Reported Losses - Pre-Montrose Adjustment

	(1) Actual Reported Losses	(2) Cumulative LDF	(3) = (1) x (2) Ultimate Reported Losses
Accident Year			
1990	1,056,052	1.300	1,372,867
1991	2,000,773	1.610	3,221,244
1992	1,607,174	2.190	3,519,710
1993	2,056,632	3.130	6,437,258
1994	3,329,700	4.630	15,416,510
1995	5,560,766	6.390	35,533,298
1996	6,818,735	8.820	60,141,239
1997	12,696,436	12.080	153,372,948
1998	8,220,634	16.790	138,024,437
1999	4,876,996	28.880	140,847,641
2000	5,739,629	96.750	555,309,064
Total	53,963,525		1,113,196,216

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Example – Montrose Adjustment

Calculation of Adjusted Reported Losses - Post-Montrose Adjustment

	(1)	(2)	(3)	(4) = (2) x { (3) - 1.0 }	(5) = (1) + (4)
Accident Year	Actual Reported Losses	Restated Reported Losses	Cumulative LDF	Additional Reported Losses	Ultimate Reported Losses
1990	1,056,052	1,102,854	1.300	330,856	1,386,908
1991	2,000,773	2,401,800	1.600	1,441,080	3,441,853
1992	1,607,174	1,960,873	2.110	2,176,569	3,783,742
1993	2,056,632	2,210,241	2.850	4,088,945	6,145,577
1994	3,329,700	3,344,115	3.900	9,697,933	13,027,633
1995	5,560,766	5,560,766	4.990	22,187,458	27,748,225
1996	6,818,735	6,818,735	6.440	37,093,916	43,912,650
1997	12,696,436	12,696,436	8.630	96,873,807	109,570,243
1998	8,220,634	8,220,634	12.000	90,426,969	98,647,602
1999	4,876,996	4,876,996	20.640	95,784,199	100,661,195
2000	5,739,629	5,739,629	69.140	391,098,291	396,837,919
Total	53,963,525	54,933,077		751,200,023	805,163,548

Example – Frequency/Severity Method

Construction Defect Experience - Sub-Contractor

	(1)	(2)	(3) = (1) - (2)	(4)	(5) = (1) x (4)	(6)	(7)	(8) = (6) - (7)	(9) = (8) / (3)
Accident Year	Reported Claim Count	Paid Claim Count	Open Claim Count	Cumulative CDF	Ultimate Claim Counts	Restated Reported Losses	Paid Losses	Outstanding Losses	Average Severity of Open Claims
1990	5	4	1	1.098	5	1,102,854	992,568	110,285	110,285
1991	24	22	2	1.120	27	2,401,800	2,041,530	360,270	180,135
1992	10	9	1	1.150	12	1,960,873	1,568,698	392,175	392,175
1993	16	14	2	1.200	19	2,210,241	1,657,681	552,560	276,280
1994	34	31	3	1.333	45	3,344,115	2,340,880	1,003,234	334,411
1995	82	74	8	1.600	131	5,560,766	3,614,498	1,946,268	243,284
1996	155	140	15	2.000	310	6,818,735	4,091,241	2,727,494	181,833
1997	480	432	48	2.600	1,248	12,696,436	6,983,040	5,713,396	119,029
1998	565	509	56	3.250	1,836	8,220,634	4,110,317	4,110,317	73,399
1999	670	603	67	4.250	2,848	4,876,996	2,194,648	2,682,348	40,035
2000	1,752	1,577	175	6.000	10,512	5,739,629	2,295,851	3,443,777	19,679
Total	3,793	3,415	378		16,993	54,933,077	31,890,952	23,042,124	60,958

(10) Reported Losses @ 12/31/2000 = Sum of Column (6)	54,933,077
(11) Reported Claim Count @ 12/31/2000 = Sum of Column (1)	3,793
(12) Ultimate Number of Claims = Sum of Column (5)	16,993
(13) IBNYR Count = (12) - (11)	13,200
(14) Selected Average Severity (based on Column (9))	52,000
(15) IBNYR Losses = (13) x (14)	686,400,000
(16) Ultimate Losses = (10) + (15)	741,333,077

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Example – Frequency/Severity Method

Construction Defect Experience - Sub-Contractor

Accident Year	(1)	(2)	(3) = (1) x (2)	(4)	(5) = (3) / (4)	From Previous Exhibit (6)	(7) = (6) / (3) Average Severity of Reported Claims
	Reported Claim Count	Cumulative CDF	Ultimate Claim Counts	# Earned Exposures	Frequency	Ultimate Reported Losses	
1990	5	1.098	5	200	0.025	1,386,908	277,382
1991	24	1.120	27	315	0.086	3,441,853	127,476
1992	10	1.150	12	430	0.028	3,783,742	315,312
1993	16	1.200	19	545	0.035	6,145,577	323,451
1994	34	1.333	45	660	0.068	13,027,633	289,503
1995	82	1.600	131	775	0.169	27,748,225	211,819
1996	155	2.000	310	890	0.348	43,912,650	141,654
1997	480	2.600	1,248	1,005	1.242	109,570,243	87,797
1998	565	3.250	1,836	1,120	1.639	98,647,602	53,730
1999	670	4.250	2,848	1,235	2.306	100,661,195	35,345
2000	1,752	6.000	10,512	1,350	7.787	396,837,919	37,751
Total	3,793		16,993	8,525	1.993	805,163,548	47,382

To Estimate Ultimate Losses for Accident Year 2001

(8) Selected Frequency	3.000
(9) 2001 Earned Exposures	1,600
(10) Ultimate Number of Claims = (8) x (9)	4,800
(11) Selected Average Severity	45,000
(12) Accident Year 2001 Ultimate Losses = (10) x (11)	216,000,000

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Example

Accident Year	Date Of Loss	Loss ID	Reported Loss & ALAE
2000	01/03/00		22,615
2000	01/07/00		11,216
2000	01/14/00		4,500
2000	01/22/00		30,000
2000	01/22/00		5,000
2000	01/29/00		5,000
2000	02/02/00		775,000
2000	02/02/00		25,000
2000	02/06/00	CD	2,000,000
2000	02/20/00		55,000
2000	02/21/00		25,000
2000	02/24/00		111,319
Total			3,069,650

Example

Experience Including 1 CD claim

(1) Reported Losses	3,069,650
(2) L.D.F.	1.311
(3) Ultimate Losses (1) x (2)	4,024,386
(4) Exposures	146,510,336
(5) Loss Cost (3)/(4) (a.k.a. Pure Premium)	2.75%

Experience Excluding 1 CD claim

(1) Reported Losses	1,069,650
(2) L.D.F.	1.250
(3) Ultimate Losses (1) x (2)	1,337,063
(4) Exposures	146,510,336
(5) Loss Cost (3)/(4) (a.k.a. Pure Premium)	0.91%

Experience including CD claim amortized over 5 years

(1) Reported Losses Excluding CD claim	1,069,650
(2) L.D.F.	1.250
(3) Ultimate Losses (No CD experience included) (1) x (2)	1,337,063
(4) CD claim amortized over 5 years = 2,000,000/5	400,000
(5) Ultimate Losses (Including CD experience) (3) + (4)	1,737,063
(6) Exposures	146,510,336
(7) Loss Cost (5) / (6) (a.k.a. Pure Premium)	1.19%

Insurer Reactions to CD Liability

- ⇒ Exit market
- ⇒ Huge premium increases (well over 100%)
- ⇒ Changes to CGL policy
 - Addition of Montrose exclusion to policy language
 - Additional Insured Endorsement
 - Adds contractor as an additional insured to policy of sub-contractor
 - Claims-Made versus Occurrence type policies
 - Exclusions by type of contractor, project, materials, damages
 - Exclusion of defense costs
 - Increase deductible limit

Contractors' Reactions to CD Liability

- ⇒ Owner-Controlled Insurance Programs (OCIPs).
 - Formed to lower insurance costs of a project.
 - One master (“wrap-up”) policy to cover all insurance costs for all construction activities during the project or after the project has been completed rather than each contractor/subcontractor purchasing separate policies for each insurance line of business.
 - High risk and low risk trades will be covered in a single policy (blended risk exposure) – one set of experts and attorneys handling litigation.
 - Disadvantage – entire project without coverage if carrier goes out of business.

Contractors' Reactions to CD Liability

- ➔ Risk Management Programs
 - Detailed plans and specifications
 - Geotechnical site investigations
 - Building quality construction
 - Third-party inspections
 - Documentation of critical construction assemblies
 - Responsive customer service programs
- ➔ Self-Insurance and Captive Programs

Conclusion

- ⇒ CD Complicated Issue
 - Definition of CD constantly changing
 - Reporting Lag
 - Statute of Limitations
 - Continuous Trigger
 - Multiple claimants/defendants/insurance companies
 - Litigious environment
 - Changes in insurance policy forms/introduction of policy exclusions
 - Insolvencies

Future

- ⇒ Baby boomers retiring and moving to states that have experienced considerable CD litigation
- ⇒ Shorter statute of limitations
- ⇒ Less use of continuous trigger
- ⇒ Claim frequency rising (may be due to mold or additional insured claims)
- ⇒ Severity decreasing
- ⇒ Ratio of ALAE to loss increasing

