

Require Contractors Professional Liability Insurance — Only When It Is Truly Needed.

Over the past few years, Contractors Professional Liability Insurance has become an important insurance coverage for contractors. As a result, many project owners have begun requiring professional liability insurance not only for all design professionals but for all of the contractors on the project as well. This, however, presents a unique problem for those contractors not performing true professional services.

A contractor may ask, "Why or how do I buy the coverage when I don't even have an exposure?" Many times the purchase of such insurance, as well as its cost is used to negotiate the insurance requirement out of the contract. In those instances, where it can not be negotiated out, contractors will attempt to secure the coverage. If they can obtain it, they evidence coverage, perform the work, get paid and everyone is happy.

However, it would be prudent for all to understand that in the event of a claim against the policy they purchased, there is a good chance the claim will not be covered. Why? The contractor's work does not meet the definition of professional services under the policy — "those services that the insured is legally qualified to perform as an architect, engineer, surveyor or construction manager" — or something to that effect.

It is ironic when you think about it, the contractor may have no coverage but benefits by getting the job. The owner's representative, thinking he or she is doing well for the organization, inadvertently

increases the cost of the project with no added protection because someone probably said, "I don't know, make sure they all buy it and we won't have to worry about it".

Although it will take some work on the part of the owner, requiring professional liability coverage only when it is truly needed will reduce the overall cost of insurance on the project. The results could be significant since professional liability insurance is fairly expensive. In addition, it expands the owner's choice of qualified construction firms for the project.

If you encounter a situation where your client is being required to purchase professional liability insurance New Day can assist in the evaluation and buying process.

WELCOME TO JOHN HEFT

The newest member of the New Day team — John Heft — joined in March as a vice president. For New Day Underwriting, John Heft not only adds 17 years of environmental underwriting experience, but he brings a solid base of real estate-focused work experience — working with a major brokerage firm, an insurance carrier and an environmental consultant. Throughout his professional career, John has provided environmental risk management solutions for a variety of



Upcoming Events

Jeff Lejfer and Jeff Slivka will be taking to the road this fall. You'll find them:

NAPSLO Convention
September 13 – 15
Hilton Chicago,
Chicago, IL

IRMI Conference
October 8-12
San Diego Marriott,
San Diego, CA

Please let us know if you would like to meet with us at these conventions. Call us to arrange a meeting.

industry sectors including chemical, petrochemical, energy, manufacturing, real estate, universities and healthcare.

To provide the right risk management solutions, John honed his expertise in environmental liability assessment, quantification, loss control, as well as insurance program development and placement. John's specialty is

transactional business where he is well-trained to address clients' legacy liability issues and prospective portfolio insurance programs.

In his most recent position as a Vice President/Client Advisor in Marsh's

Meet John Heft, continued

Environmental Practice, John was responsible for working with large domestic and international Fortune 100 to middle market clients. Prior to joining Marsh, John was a Manager of the ECS/XL Environmental Chemical Facilities Unit, where he was responsible for underwriting and managing all types of environmental insurance products. John also has environmental consulting experience with Consulting Services, Inc. (CSI) where he was responsible for environmental risk assessment surveys for facilities throughout the US.

John received his BS degree in General Science and a MS Degree in Water Resource and Environmental Engineering from Villanova University. He is currently pursuing his Associate in Risk Management (ARM) designation.

HOW CAN NEW DAY HELP WITH YOUR POLLUTION AND CONSTRUCTION-RELATED PROFESSIONAL LIABILITY RENEWALS?

Do you have existing construction-professional and/or pollution coverage in place now? At renewal, New Day can help you! New Day will:

- Validate that the insured has the appropriate coverage in place
- Negotiate with other markets, if necessary
- Work to enhance the coverage from last year's policy, and
- With New Day doing all the negotiations on your behalf, the bottom line is that you maintain your revenue, pass off a good portion of the work to New Day and obtain the value of New Day's experience working the markets!

Call us to find out how to take advantage of this New Day service.



IT HARDLY SEEMS LIKE A YEAR ALREADY!!!

At the end of March, New Day observed the first anniversary of binding our first policy. Our team celebrated with nothing but healthy foods – pizza, Buffalo wings (hot!) and fried calamari!

Despite the poor eating habits we may have developed, our journey has been rewarding. It has allowed us to do business that is all about bringing value – not just quotes – to you and your clients.

We thank you for your business and the beginning of a long and mutually profitable relationship!

RISK MANAGEMENT REPORT



Talking About FIN 47 To Your Clients?

The new Financial Accounting Standards Board (FASB) Interpretation No. 47 (FIN 47) Accounting for Conditional Asset Retirement Obligations, has changed the way companies must disclose and report their environmental liabilities. FIN 47, effective 12/15/05, obligates public companies to recognize immediately, rather than defer indefinitely, estimated cleanup or disposal costs associated with facilities or equipment being taken out of service. FIN 47 also clarifies when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation.

Teamed with Sarbanes-Oxley requirements, FIN 47 can dramatically affect the balance sheets of many different types of clients. Most directly affected are owners of real properties that will need to undergo some kind of environmental cleanup in the future. These properties may include chemical-storage sites and power plants, manufacturing facilities, warehouses, land holdings, and others. It does not matter if such properties are in service, mothballed or being retired. FIN 47 clarifies that owners must quantify and report the financial liabilities they represent as soon as they arise. To date, the impact of the adoption of FIN 47 has ranged from several hundred thousand to several hundred million dollars!

There is an opportunity to talk to your clients about providing certainties in FIN 47 adoption announcements through environmental risk transfer products. New Day can help you.

New Day Is Also Your Resource For Construction-Related Professional Liability

New Day Underwriting is your resource for construction related professional liability. We can do for you all what we are doing with environmental products.

- Architects & Engineers Professional Liability
- Environmental Consultants/Engineers Professional Liability
- Contractors Professional Liability
- Combined Contractors Professional Liability/Pollution Liability
- Contractor's Protective Professional Indemnity
- Owner's Protective Professional Indemnity
- Project Professional Liability

Professional liability success stories:

CONTRACTOR WITH CLAIMS – A \$1 billion contractor had a number of significant professional liability claims over the course of six years. As a result, the account had no professional liability carrier alternatives. New Day was asked to get involved early in the renewal process. Assessing the claims, the current program and the company's internal changes – made to improve on their loss history – New Day was able to demonstrate to a number of markets that, even though there was still residual exposure, it was minimized and the risk today had improved significantly. The results were

exceptional. New Day worked with the incumbent carrier and was also able to deliver two additional carrier options. The end result: the construction firm was able to double their limits (from \$5 to \$10 million) and maintain the same premium level and cost of their expiring coverage.

DESIGN/BUILDER WITH A TWIST – Due to the fact that the Insured designed, manufactured and fabricated their product (large modular containers), the professional liability marketplace was unwilling to offer a competitive program insuring the risk appropriately. New Day was able to access relationships in the environmental marketplace to get one carrier to make an exception on the risk. Working with the carrier on various coverage issues/exclusions, they accepted various form modification that we negotiated. The result: an extremely aggressively priced \$5M professional and pollution program that addressed their coverage needs. It also included coverage for mold liability.

GENERAL CONTRACTOR, HEAVY HIGHWAY, BRIDGES– New Day was asked to structure a Contractor's Pollution Liability (CPL) and the Pollution Legal Liability (PLL) program. Additionally, New was able to assist our broker in winning back the *professional liability*, which another broker had written the prior year. New Day's underwriter reviewed the UK-based professional policy, pointed out coverage deficiencies, assisted in the sales

process and delivered a cost effective program with greatly expanded coverage.

GC/CONSTRUCTION MANAGER WITH \$155 MILLION IN REVENUES – The existing coverage – Combined Professional Liability (PL) and Contractors Professional Liability (CPL) – had various coverage limitations. New Day was able to structure a program that expanded coverage, adding mold & silica coverage for professional and pollution; expanded the professional liability insuring agreement to include alleged acts, errors or omissions. The key issue: New Day was able to secure mold liability coverage without a mold prevention program at the full \$5 million policy limit. New Day negotiated 90 days to get the mold program to the carrier, then provided guidelines and a template the client used to create the program. This program provided the client with a way to document their mold risk management and secure the proper insurance protection.

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