



ENVIRONMENTAL ISSUES AND CONSTRUCTION-RELATED PROFESSIONAL LIABILITY are complicated risk issues. *The Market Update* aims to provide some valuable knowledge transfer and insight into the issues and trends that are driving the market. Brokers will be more equipped to help their clients navigate the available risk management options and find optimal solutions.

NOW AVAILABLE: *The New Day Market Update 2007*

The Market Update was developed by New Day industry experts: Jeff Slivka, Senior Vice President, John Heft, Vice President and Anthony Polini, Assistant Vice President utilizing industry knowledge, surveys and interviews with carriers, insureds and agents.

The New Day Market Update 2007 pinpoints a variety of trends affecting the growth and opportunity in the market. Among the highlights are:

Environmental

Pollution Legal Liability (PLL) continues to be the workhorse of the market and is showing no signs of relinquishing its leadership position. PLL accounts for approximately 65% to 70% of the entire \$2 billion environmental insurance marketplace.

Regulatory, contractual, financial, and

risk management continues to drive the purchase of PLL coverages.

During 2006, available CPL capacity exceeded \$300 million with the most any one carrier can offer remaining at \$50 million.

Construction Related Professional Liability

Annual Contractors Professional Liability (CPrL) premiums are estimated in the \$250 million range and growing at a rate of about 15 to 20% each year.

The professional liability marketplace, as a whole, continues to fight its way back to profitability and even though the past 3 to 4 years have been profitable for many, rates still appear to be increasing.

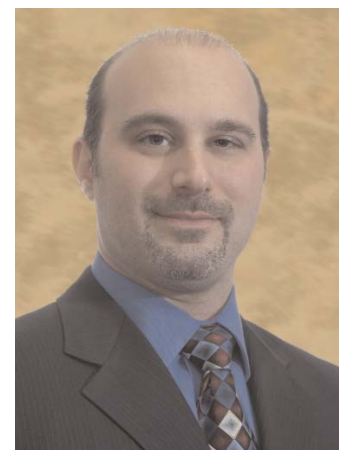
The New Day Market Update 2007 is available at the New Day website:

www.newdayunderwriting.com.

INTRODUCING TONY POLINI

Tony Polini arrived at New Day Underwriting Managers with more than 14 years of hands-on insurance, risk management, safety, and environmental liability experience. Most recently, as an executive underwriter for ACE, USA, Tony developed his considerable underwriting experience servicing the construction industry by providing Contractor Pollution and combined Contractors Pollution and Professional Liability coverages and Owner Controlled Environmental Insurance Programs (OCEIP), a specialized niche offering environmental liability insurance for large scale civil, municipal and private pro-

jects such as, highway interchanges, stadiums and high rise condos including mold coverage. Before joining ACE, Tony served as a senior underwriter for XL Environmental, an XL Capital company, where he underwrote a variety of commercial-based construction risks including general, specialized trade and artisan contractors. Tony's tenure at XL Environmental also included a position as an in-house risk control consultant, performing risk-based evaluations to support the underwriting process and working directly with clients to provide tailored loss control services to meet their specific risk manage-



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Meet Tony Polini, continued

ment needs. Before entering the risk and insurance industry, Tony gained valuable industry knowledge working in a variety of positions within the environmental engineering, consulting and regulatory positions including his time as a corporate health and safety officer for VFL Technology in West Chester, Pa., where he managed the corporate health and safety program for several hundred employees.

Tony remains actively involved in a number of insurance and environmental industry trade organizations and serves as a member on his Township Zoning Hearing Board. He is a sought after speaker by many organizations, including the Insurance & Risk Management Institute (IRMI) and Associated General Contractors of America (AGC), on the topics of environmental insurance solutions and environmental and professional liability risk management.

Tony holds a Bachelor of Science in Occupational Safety and Industrial Hygiene Management from the Millersville University and is currently pursuing his Construction Risk & Insurance Specialist (CRIS) designation.



NEW DAY DISTRIBUTION MODEL

New Day conducts business in Bordentown, New Jersey and operates on a national basis holding property & casualty and surplus lines licenses in most states. The distribution model has evolved to be more strategic and focused where we operate aggressively in several geographic areas including the Northeast (from Hartford, Connecticut to Baltimore, Maryland), Texas (predominantly Dallas and Houston) and the San Francisco Bay area including Sacramento. New Day recently has entered the marketplace in St. Louis and Chicago and is finding opportunities to work with select agents. If you are an agent in one of these geographic areas that has opportunities in environmental insurance or a specialty in construction and you would like to discuss how we might be able to help you find the optimal solutions for your client – please contact us at info@newdayunderwriting.com or talk to one of our underwriters at 609-298-3516.

CONTRACTORS PROFESSIONAL LIABILITY AND CGL: CAN YOU SPOT THE DIFFERENCES?

Jeff Slivka recently published this article on [IRMI.com](http://www.irmi.com)

YES, THERE IS A LEVEL of professional liability coverage that can be secured under the commercial general liability (CGL) policy using Insurance Services Office, Inc. (ISO), endorsements or the equivalents. Unfortunately, many insurance professionals offering insurance and risk management services to contractors *are still not sure* about the differences between the alternatives available for professional liability under the CGL policy.

There are vast differences between the CGL and a common Contractors Professional Liability (CPrL) policy, such as:

- The CGL is an occurrence-based policy while the CPrL is always claims-made.
- The CGL policy provides no limit for payment of defense costs while the CPrL limits total payment, including defense, to the limit of liability purchased.
- The CGL usually carries a lower deductible, if any at all, and many CPrL programs typically apply a \$25,000 per-claim deductible or higher.
- The CGL responds to bodily injury and property damages, while the CPrL responds to a broader form of damages.

For the complete text of this article go to: <http://www.irmi.com/irmicom/expert/articles/2007/slivka03.aspx>

CLAIMS – RIGHT FROM THE LOCAL PAPER!!!

We recently read about major mold damage occurring during school construction and the subsequent associated issues.

The Neptune Midtown Community Elementary School – a \$42 million project being built in the shore community of Neptune, New Jersey – has been given the nickname, the “Taj Mahal” of elementary schools. Highlighted in the March 28, 2007 *Asbury Park Press*, the story indicates that the planned September, 2007 opening will be postponed at least a year and that the cleanup and rectification of the problem will cost an additional \$5 to \$10 million. The mold problem was caused by uncontrolled water intrusion in the rear walls of the school.

We are unaware of the insurance coverages available to any of the parties

involved in the school project. However, this story highlights why New Day considers the lines of business that we offer as catastrophic in nature.

We expect that numerous parties will be involved in any settlement including the contractors, material suppliers and design professionals.

When presented with project opportunities such as this one, New Day discusses the various alternatives for the owners and contractors. Ideally, an Owner Controlled Program for the Contractor's Pollution including coverage for mold would fit the needs of all parties involved. We tend to argue for higher limits for all coverages when available and to manage the insurance costs by increasing retentions. In the scheme of things, increasing

the deductible from \$25,000 to \$50,000 or even \$100,000 may make financial sense where a loss like the one described has the potential of putting a contractor out of business and the school district in jeopardy of owning a white elephant – which may never be put to its intended use. On the other hand, Pollution Legal Liability coverage may be an alternative for the owner to insure the pollution/mold for ongoing operations once the school is completed.

In situations like this New Day has been successful securing coverage for both Contractors Pollution Liability and Pollution Legal Liability, then linking the limits between both policies which allows for an efficient cost effective manner to address the exposures.



RESTAURANT REVIEW

Ralph's Italian Restaurant
760 South 9th Street,
Philadelphia, PA

New Day's staff – always looking for a reason to party – recently celebrated its second anniversary at Ralph's Italian restaurant in Philadelphia, Pennsylvania. Only about 45 minutes from the New Day home office, it is located in the heart of the Italian Market. For those of you who have never been exposed to push-cart shopping, we would recommend enjoying an afternoon browsing for all types of imported Italian specialties and home cooked foods. We didn't know that markets like this existed – never mind one practically in our own back yard.

For those of you that enjoy neighborhood old time Italian – this is a great place. The restaurant has been in business since 1900 and in this location since 1915. And while the dining rooms do not look 100 years old, you feel very comfortable sitting and enjoying your meal. While the waiter was good and let us pick

what we thought we wanted, most of our group selected the cold antipasto, provolone, cheese and celery, olives roasted peppers and anchovies. Wow! What a combination of simple foods that when brought together created a wonderful impression on the palate. For hot appetizers we moved to the Mussels in Red Sauce and Fried Calamari. What can I say – fantastic! You can never have enough of the thick, crusty Italian bread for dipping. When it came to the main course the majority of the table ordered – but what else – one of the house specialties, Veal Rollatine (with mozzarella, prosciutto in a mushroom white wine sauce.) Again, the bread had to be brought to the table to soak up the fantastic sauce on this dish. Others went “light” and ordered another House Specialty, Chicken Sorrento (covered with mozzarella cheese in a white wine sauce). There wasn't much left for doggie bags. We ordered the house white and red wines. They worked well with the meals that we ordered.

We managed to squeeze in a couple of desserts – tiramisu and cannoli cake. A nice “light” finish to a great meal.

For residents and visitors alike we would recommend Ralph's for an enjoyable evening of dining. If you get there early, stroll through the Italian Market – it will be an experience!



Email info@newdayunderwriting.com to have one of our business development managers contact you.

SUCCESS STORIES

STREET AND ROAD CONTRACTOR (\$15 million annual revenue) The client of our retail broker was a current purchaser of an occurrence-based Contractors Pollution Liability program. New Day reviewed the existing program as well as the current renewal quote and identified two critical items to be addressed. First, this account was missing an endorsement that addressed automobile pollution exposure which is critical to this class of business. Secondly, the overall rate that was being charged was high relative to similar risks in the marketplace. As such, New Day approached the market to procure a better program and was able to secure coverage with the automobile endorsement and at a rate that was less than the renewal rate. Additionally, New Day obtained a reduced retention option of \$10,000 (current program was \$25,000). As a result of the rate savings, the client was able to purchase a reduced retention option at approximately the same premium as expiring.

CONSTRUCTION MANAGEMENT One of our broker partners presented for consideration a \$105 million construction firm performing construction management, mostly at-risk, and design/build services for a variety of industries. The insured was purchasing a \$5,000,000 policy with a \$250,000 deductible. At renewal, our broker accessed New Day

for assistance. The insured's single goal was to reduce the deductible as much as possible and maintain the same rate. After developing the risk profile and quantifying the professional liability risk associated with the above procurement methods, New Day was able to secure coverage with an alternative carrier and negotiate a lower deductible – down to \$100,000 per claim. In addition, New Day was also able to expand professional liability coverage associated with the CM At-Risk and reduce the rate by approximately 20% for the client.

INDUSTRIAL TRANSACTION New Day represented the seller of an industrial property which manufactures metal pipe. A private equity (PE) firm was looking to purchase the facility and planning to sell the property in approximately five years. The PE firm required that the Seller purchase a Pollution Legal Liability (PLL) policy covering both legacy environmental liabilities and new pollution conditions. The PE firm also wanted to be added to the policy as an Additional Named Insured. The facility used chlorinated solvents in its processes for approximately 40 years. The Seller only permitted non-intrusive due diligence (Phase I Environmental Site Assessment). Soil and groundwater sampling was not permitted. New Day approached several environmental carriers for quotations.

After several markets declined, two quoted with contamination exclusions, excluding the chlorinated solvent, based on the decades of use. A third carrier offered a quote but included a voluntary site investigation exclusion on the policy, thus limiting the PE firm from allowing Phase II sampling upon its sale of the property in five years. After several meetings with the Buyers' and Sellers' attorneys and environmental consultants, New Day successfully negotiated a ten year policy covering legacy environmental liabilities and a three year policy covering new conditions, without the voluntary site investigation exclusion. The environmental policies allowed the transaction to proceed and provided the PE firm the ability to allow a future buyer the ability to conduct intrusive due diligence. Limits for both policies were \$10 million per occurrence/\$10 million aggregate with a \$250,000 self-insured retention.



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