

What's Happening...

It is hard to believe that the summer has come and gone and we are quickly approaching Thanksgiving.

Despite the quick passage of time, we are pleased that we continue to dedicate the time to grow our client relationships and assist you in providing optimal solutions for your clients. Our environmental business continues to grow and anecdotally it seems to be result of many new environmental insurance purchasers. While the prime driver of this business seems to be contractual requirements, we still see insureds with a risk management mindset buying the coverage.

While construction related professional liability business for New Day continues to grow, we are seeing some signs of over saturation in certain pockets of construction that is affecting insurance purchases. We will talk more about the marketplace in the next few months and how it is affecting all of us on a daily basis.

We have just returned from the National Association of Surplus Lines Offices (NAPSLO) national conference and International Risk Management Institute (IRMI) conference. The NAPSLO conference is for the Surplus Lines Market and is an excellent venue to revisit the carriers and gauge their current risk appetites. We took advantage of that opportunity to meet with many of our carriers. At IRMI, we had the opportunity to visit with several insureds, our construction related professional liability carriers and some of our agency partners. Jeff Slivka led a roundtable discussion about environmental insurance. IRMI's sessions are always first class and we took time to sit in on several of them. **We recommend that you consider attending the next IRMI Conference, to be held in Orlando, Florida, October 31 – November 3, 2007.**

We will update you before the year end on further developments in the marketplace and at New Day Underwriting Managers. In the interim, enjoy your holiday turkey.

WEBSITE UPDATES.

www.newdayunderwriting.com – The New Day Underwriting Managers website – has been updated. If you haven't been there lately, visit to check up on the latest: we define our business philosophy, provide product outlines and new applications. You can also catch a glimpse of our growing staff and our home office in Bordentown, NJ.

The Risk Management Area (a secure section of the website) includes:

- Industry risk profiles for both environmental and construction related professional liability
- Product profiles explaining the features and benefits of coverage
- Tips on managing environmental and professional liability risk via contracts
- Information and guidance with developing mold programs
- Sample CPL and professional liability insurance requirements
- Loss Prevention Programs
- Guidance on developing environmental data searches for both real estate transfers and construction job sites
- Loss control programs for disposal liability (from audit checklists to sample surveys of facilities)
- Multitude of articles giving guidance and advice on a variety of different topics – from Owner's Protective Professional Indemnity (OPPI) to Natural Resource Damages (NRDs)

If you are looking for information and guidance to assist in the sale of coverage, this is the information you have been looking for – and we have been telling you about! Passwords are available to customer agencies of New Day.



NEW DAY SUCCESS STORIES

Concrete Contractor –

A \$300 million revenue concrete contractor was looking to secure Contractors Pollution Liability (CPL) for its concrete operations and Professional Liability (PL) for pre-construction consulting, value engineering and field/installation design. The company was purchasing a bifurcated CPL policy from their CGL carrier which only addressed silica and mold. The program provided a \$2 million limit with a \$1 million retention. New Day assessed the current program and identified various environmental exposures associated with the contractor's work using an environmental risk profile. New Day discovered that several exposures were not being addressed by the current program and assisted the contractor's retail broker in advising the client on a solution to addressing the uninsured exposure. New Day was able to structure a combined CPL (much broader pollution coverage than just silica/mold) and PL program addressing their professional liability exposure as well. New Day secured a \$5 million program, with a \$500,000 retention (\$500,000 less than the original program) for a premium that was less than the Insured was paying for a policy with lower limits and reduced coverage.

Petroleum Terminal –

New Day obtained authority from a partner broker to work a Pollution Legal Liability (PLL) renewal that was coming off a 5 year policy. The risk was a petroleum company which has a portfolio of five bulk terminal facilities and ten bulk petroleum warehouses.

The expiring program included blanket contamination exclusions for soil and groundwater and an on-site pipeline. There was also no coverage on the expiring program for first and third party transportation, non-owned disposal sites, or business interruption and extra expense.

New Day successfully worked with the incumbent carrier to achieve a multi-year renewal program with the following coverage enhancements:

- Non-Owned Disposal Sites (NODS);
- First- and Third-Party Transportation;
- Affirmative grant of full terrorism (TRIA and non-certified);
- Broader coverage for known pollution conditions;
- Clean-up trigger changed from government mandate only to include third party; business interruption and extra expense (offered);
- Primary insurance; and
- A 90 day notice of cancellation.

NODS and transportation coverage were especially important to the client since they dispose waste at several third party landfills and recently completed construction on a rail siding unloading area on-site. The program was renewed for a 5 –year term with a \$10 million per occurrence /\$10 million aggregate limit with a \$100,000 deductible for a premium approximately 5% less than the expiring program.

IN THE NEWS

We do not have to look far to find environmental claims "horror stories". Many of these stories make a compelling case for environmental insurance – especially to those believe they have no exposure and will never have a claim. While each situation has to be evaluated to determine if and how an environmental insurance policy would respond, take a look at the stories we found in our local papers and trade journals.

ASBESTOS ISSUES

Insurance Journal – July 10, 2006

Naturally occurring asbestos has sent the most recent media exposure in the past year. One article tells of an El Dorado County, CA family that built its dream home near a vein of Tremolite – a mineral containing naturally occurring asbestos. Of course the thought of raising a family near such a carcinogenic hazard squashed whatever dreams they may have had and they simply walked away from the property. Little is said about any potential liability tied to the actual sale or construction of the home.

** Note from New Day: We have been preaching for some time now about the potential pollution issues associated with naturally occurring substances such as silica, mercury, arsenic, radon and probably the most prevalent, asbestos. All these naturally occurring substances have hazardous properties associated with them so they are typically defined as pollutants. Nearly all are recognized as hazardous waste or materials by the Environmental Protection Agency and therefore present unusual exposure to many property owners, developers and contractors. An issue that compounds the problem and makes a complex issue even more complex is the issue of naturally occurring substance/pollutant exclusions in*

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In the News, continued

Contractors Pollution Liability (CPL) policies. Some are fairly recognizable as straight forward exclusions. Other are more cryptic – coming in the definition of pollutants, pollution conditions, etc. Such exclusions will have a tremendous impact on coverage. Buying a CPL policy is a very sound alternative for financing environmental loss, however, if you don't know the pitfalls of such policies (all are manuscript and there are about 75 different CPL forms offered by about 20 different companies) you can be putting yourself and your client at risk – even as you are trying to protect them.

MERCURY FOUND AT DAY-CARE CENTER

Philadelphia Inquirer – August 8, 10, & 20, 2006

An alarming story in South Jersey is unfolding and inevitably heading toward litigation. The owner of the Kiddie Kollege Day-Care Center in Gloucester County closed the facility after state officials told the owner that they had discovered exceedingly high levels (27 times higher than acceptable limit!) of mercury vapors. The building is on the site of a former and now bankrupt thermometer factory.

Elemental mercury is used in thermometers, fluorescent lighting and some electrical switches. Symptoms of exposure to elemental mercury include tremors, mood swings, irritability or other emotional changes, insomnia, neuromuscular weakness, muscle atrophy, twitching, headaches, changes in nerve responses and loss of cognitive function. At higher exposures, there may be kidney effects, respiratory failure and death.

The day-care center owner said that the landlord, – a real estate agent who bought the property for \$1 from an investment company he once worked with, mentioned only that the site was formerly used for 'medical supplies.' Parents of the children – past and present, as well as employees at the center are pressing state, federal and local officials for answers. The landlord and township officials who issued permits for the day-care center to open are at the center of all the inquiries.

** Note from New Day: If either the Day Care or the Landlord purchased Pollution Legal Liability (PLL) coverage on the property, the clean up associated with the mercury and the resulting bodily injury may be insured. (Again, the particular facts of the situation would dictate how the insurance might have responded) However, even with the purchase of a PLL, the policy does not address the damage to a person's or organization's reputation when children are at risk!*

MANAGANISM IS REAL!

Insurance Journal – June 26, 2006

We wrote articles of an inhalation hazard causing concern in the manufacturing and use of welding rods a few years ago. The first lawsuit blaming welding rod makers for brain damage in workers recently began in Cleveland. Plaintiff attorneys argue that their clients suffer from a persistent illness, with Parkinson's-like symptoms, brought on by manganese poisoning from welding rod fumes, also known as Manganism. The plaintiff is Ernesto G. Solis, 57, who was a civilian maintenance worker at a navy base in Corpus Christi, TX. The defendants are:

Lincoln Electric Holdings, Inc., Hobart Bros. Co., TDY Industries, Inc., and ESAB Group – all makers of welding rods.

** Note from New Day. The future of insurance coverage for managanese exposure may well be determined by this case and others like it. This may explain why ISO has introduced a manganese exclusion.*

PROBLEMS AT ANOTHER DAY-CARE CENTER –

Philadelphia Inquirer – August 25, 2006

Ultimate Scholar Inc., is a day-care center in Toms River, NJ . The day-care center operated two years out of the Bellcrest Plaza, a strip mall. The Day-Care Center has been ordered to pay \$500,000 to the state Dept. of Environmental Protection (NJ DEP) to clean up the site. The NJ DEP ordered it closed after high levels of Perchloroethylene (PCE), a known carcinogen, was discovered inside the center. The mall has housed a dry cleaner since 1976. In 2004, the dry cleaning business was added to the state's list of Known Contaminated sites. PCE is used in dry cleaning fabric and in degreasing metals. In addition to cancer, PCE can cause dizziness, headaches, sleepiness, nausea, difficulty in speaking and walking, unconsciousness and death.

** Note from New Day: For those of you who have real estate clients with strip shopping centers, the exposure to past and present dry cleaning operations is very real and becomes problematic when placing coverage. Coverage however is available and may have been available to address the clean up ordered by the state in this situation.*

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In the News, continued

MOLD RANKINGS

Insurance Journal July 10, 2006

A recent survey by Greenguard Environmental Institute, a non-profit organization working with lenders and developers on mold risk mitigation techniques listed states by their 'Relative Mold Hazard Ranking.'

The top 10 states and their Relative Hazard Mold Ranking are"

1. Texas
2. Florida
3. Oklahoma
4. South Carolina
5. Nevada
6. Arizona
7. California
8. South Dakota
9. Tennessee
10. Kansas

** Note from New Day: We encounter many inquiries about the need for mold coverage even in drier climates. The fact that construction techniques and managing the interior of structures from the hot and dry climate may often create an environment where condensation and resulting mold may develop. Mold coverage is the driver behind the need for both Contractors Pollution Liability and Pollution Legal Liability insurance. When discussing the exposure to mold your client should be aware of the carrier requirements for placement of coverage that would include mold. Carriers are often seeking mold management programs or water intrusion management protocols and five (5) years of general liability and property loss runs. The environmental underwriter is attempting to determine if there have been any mold or water claims presented under these policies. If a claim has occurred, attention is paid to how the insured addressed the claim.*

Regardless of where you are, ask New Day how we can help address your clients' mold exposures through education, management and insurance coverage.



Congratulations, Jeff Slivka!

Recently Jeff completed the Construction Risk and Insurance Specialist—CRIS designation administered by the International Risk Management Institute, Inc. (IRMI). The program is designed to provide insurance professionals and risk managers with broader all-around perspective of the various risk and insurance alternatives to the construction industry.

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