

A Little Perspective...A Brighter Tomorrow

Having a little perspective in life is a good thing, especially during these turbulent economic times. As we write this newsletter, insurance carriers are reporting their earnings. For the most part, the reports look positive and show marked improvement compared to the past two to three quarters. While not stellar, the news does indicate an optimistic direction for most companies. AIU Holdings (formerly AIG) has chartered a new course for their property and casualty operations with a new brand, Chartis. XL Capital is demonstrating evidence of stability and appears to be heading in the right direction. However, the overall insurance market does not yet show any signs of leveling off, even with some companies reporting year over year rate stability or slight increases. We still see evidence of exposures, revenues and sales declining year over year.

What does this mean for us at New Day? We remain more committed than ever to our business model and to finding the optimal solution for our customers. Our underwriters continue to work with you to determine what is driving the insured and their need for coverage. We maintain that price must not be the ultimate driver in the insurance purchase. The best solution must include an examination of many variables. These variables include: coverage, term, thorough understanding the insured's exposures, claims handling capabilities of the carrier, longevity in the marketplace, initial and ongoing responsiveness to change, projects AND premium. The weight for each of these variables changes with each risk and each passing day. Complicating the buying

process further are the ever-changing carrier appetites and the ongoing emergence of new players into the market. Virtually every carrier that we work with has recently updated their forms. This has added additional layers of complexity to muddy up the analysis of competing programs. The good news is that our underwriters continually meet with carriers to ensure a comprehensive understanding of the new forms so we can provide expert risk management recommendations to you and your Insureds.

What does this mean for you, our retail broker partner? It means you can expect us to continue to work with you and the various carriers to provide the optimal solutions for your clients. While today's buying motivators remain the same – regulatory, contractual, exposure to loss and prudent risk management - the buying process has changed dramatically. Some retailers are able to direct the process of coverage and carrier selection. In other situations often dictated by the economic climate, the Insured drives the process. This often increases the demands on the retail agency and everyone else in the purchasing chain. No matter who is driving the process and regardless of the many pressures that exist, you can rest assured that we will work with you to obtain the best possible solution for your client. The bottom line is that there is no better time than now to rely on New Day's expertise and experience in environmental and construction related professional liability. Leaning on us allows you to focus on the other insurance needs of your clients.

UPCOMING EVENTS: IRMI



The 29th IRMI Construction Risk Conference will be held November 1–5, 2009, at the Gaylord National Resort & Convention Center in the Washington, D.C. area. This year, New Day is once again proud to be a sponsor at this premier forum for networking and improving the management of construction risk.

New Day is a sponsor of the Monday morning (Nov 2) breakfast from 7:30 AM – 9:00 AM. That evening, we will also co-sponsor a brand new event, Building Blocks Networking Lounge, from 4:30 PM – 6:00 PM.

On Tuesday (November 3), Jefferey Lejfer, President and CEO, and Jeff Slivka, Executive Vice President, will be hosting tables at the Construction Café luncheon. Jeff Lejfer will address issues and concerns in today's environmental insurance market and Jeff Slivka will discuss current trends in construction professional liability.

On Wednesday morning (November 4), Jeff Slivka teams up with Karen A. Reutter, Senior Vice President of Aon Risk Services, to present the topic of "Filling the Holes in Contractors' Liability Coverages." The session focuses on identifying gaps in coverage and the strategies contractors can employ to maximize their insurance program.

We look forward to seeing you at these events. If you're not already registered for this exceptional educational and networking opportunity, click here to learn more: www.irmi.com/conferences/crc/.

Or if you would like to schedule an appointment to see someone from the New Day team, please contact info@newdayunderwriting.com.

MAJOR DEVELOPMENTS AT NEW DAY

We are pleased to inform you of several exciting developments at New Day. Driven by our growth in recent years, we have made significant investments in technology with implementation expected during the third and fourth quarters of 2009. The goal is to increase our efficiency and effectiveness in serving our broker partners. We are confident that these enhancements will help us do just that. Here's what we've been up to:

- Installing a VoIP telephone system with many new features that integrate with our contact management system and mobile telephone and email devices.
- Implementing a new imaging/document management system— Efile – which will allow our underwriters and account management teams to be more proficient in their day to day operations. It provides for a tighter integration

with Outlook and a more efficient method of uploading files and looking up and retrieving documents. It also has a valuable feature for efficiently moving large files from our retail broker partners to our carriers.

- Upgrading the software and hardware of our small business server in order to power the imaging system and prepare for growth over the next few years.
- Acquiring additional space in our existing facility to accommodate new staff and equipping a new conference room to allow for larger meetings for staff and visitors.
- Major upgrade to our Agency Management System, Velocity, which allows for more efficient processing of our business.

NEW EMPLOYEE WELCOME

New Day proudly welcomes two new employees: Mitch Cohen and Joseph Buono. Mitch will be working with our retail broker partners and will assume an underwriting role as Assistant Vice President, with special emphasis on growing business in the southeast region. Initially trained as an engineer, Mitch's diverse experience includes structural engineering, environmental consulting, project management, remediation oversight and field investigation. Joe comes aboard in an Account Manager capacity. Joe has numerous years of experience managing accounts in support of the production team, for agencies in New Jersey. Please join us in welcoming Mitch and Joe to our team. We know you will enjoy working with them as much as we do!



top: Mitch Cohen
bottom: Joseph Buono

Meeting with Carriers

New Day's management values the importance of maintaining open communication channels with the senior managers of the insurance companies with which we trade. Recently, we were delighted to host **Russell Johnston**, CEO of the Environmental Division of Chartis (formerly AIU Holdings), and **Lana Keppel**, Senior Vice President of Chartis, at our offices in Bordentown, New Jersey. Russell and Lana met with Jeff Lejfer and Jeff Slivka for a mutual business update.



Russell Johnston, Jeff Lejfer, Jeff Slivka and Lana Keppel

Success Stories

At New Day, we pride ourselves on our knowledge, professionalism and service. Here are just a couple of examples of those qualities at work resulting in optimal outcomes for our brokers and their clients.

Quick Turnaround

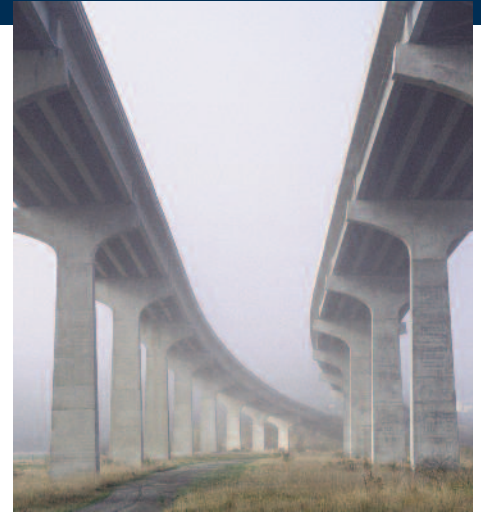
A broker partner of New Day's called one morning with an urgent request. A contractor client was unable to access a jobsite because they did not have the required pollution coverage. Using information provided by the broker, New Day quickly assessed the situation and provided the broker with a list of potential carriers, an estimated premium and additional information requirements.

After the broker selected a carrier, New Day immediately contacted the underwriter to ensure the appropriate coverage, price and turn-around could be accomplished. Within an hour, New Day submitted the necessary submission requirements, and a quote was promptly issued. Coverage and pricing terms were exactly where New Day and the under-

writer had agreed they needed to be. New Day forwarded the quote and a proposal outlining its details to the broker. The bind order was sent to the underwriter that afternoon. With New Day's expertise and efficiency at work, this broker was able to get their client out of a potentially disastrous jam and onto the jobsite.

Finding the Optimal Solution

New Day was asked to secure a project Contractor's Pollution Liability quotation within an extremely short time frame for a street and road project in California. After review of the project information and discussions with the agent, New Day worked closely with one carrier to quickly implement an appropriate project policy for the contractor so they could begin the project. However, upon further conversation with the agent and additional review of the client's upcoming bids, a blanket policy for Contractor's Pollution Liability seemed to be a better option for the insured. When the agent mentioned that they had recently been bidding on projects with a professional



insurance requirement and also looked to become more involved in design-build work, a combined Pollution and Professional policy emerged as an even more optimal solution.

Working with the agent and carrier, New Day was able to secure a competitive program and pricing for the annual combined form. In the long run, this will save the insured the cost of purchasing separate project policies throughout the year. The combined form will also more thoroughly and appropriately protect the insured against exposures presented during design-build projects, as well as help meet contract requirements. This is just another example of New Day's unique knowledge of the markets, available coverages and carrier appetites ensuring that our partner brokers obtain the most efficient and effective solutions for their clients.



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

Q&A with Michele Lejfer



Spend a moment getting to know New Day's Michele Lejfer. She's been a member of the team since the very beginning, and exemplifies the professionalism and responsive services that set New Day apart.

Q How long have you been with New Day?

A I have been with New Day since we opened our doors for business in February 2005.

Q What are your primary job responsibilities at New Day?

A My primary responsibilities are the accounting functions at New Day. This includes all of the accounts receivable and accounts payable, as well as working with our outside accountants on an annual basis to provide the financial reports.

Q What part of your job do you enjoy the most? What part do you find most challenging?

A Working at New Day has been a learning experience for me. Although I did have some previous experience as a bookkeeper, it was not in the insurance industry. So everyday is an opportunity to learn and sharpen my skills. The most challenging part of my job is the collection of premium. We are very disciplined about wanting to provide prompt payment to our carriers. This is an ongoing challenge for us, as well as our customers and insureds. Every day is a race to make sure that the premium gets in on a timely basis to avoid any cancellations.

Q Why do you think brokers like best about working with New Day?

A Brokers enjoy working with New Day because we simplify buying environmental insurance and professional liability for the construction industry. It can be a complicated process, but our underwriters are experienced in their fields and everyone here strives to provide the best service possible.

Q Any special memories from 2009, or any interesting plans for the remainder of the year?

A I enjoy traveling with my family. We are planning a cruise with my extended family. I am also looking forward to celebrating New Day's fifth anniversary.

THE CHANGING FACE OF CERCLA

At New Day, it is imperative that we stay informed about any developments in environmental insurance, litigation and regulation. Two recent and intertwined cases of particular interest are *Burlington Northern & Santa Fe Railway Co. v. United States* and *Shell Oil Co. v. United States*. This typical Superfund story involves a California distributor of agricultural chemicals storing herbicides and pesticides on property they rented from Burlington Northern and Union Pacific

railroads over 40 years ago. Shell Oil manufactured and supplied the chemicals, and also controlled the method of storage. Spills, leaks and releases over the years around the property led to federal and state investigations. The site was added to the federal National Priorities List in 1983. According to federal law, the EPA pursues the organizations that owned the property and arranged for the disposal of the chemicals, leaving Burlington Northern, Santa Fe Railroad Company and Shell Oil all on the hook. The cost to remediate the site was over \$10,000,000.

In the lawsuit, the Supreme Court addressed two critical issues under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) – arranger liability and joint/several liability. Their resolution of the first issue is likely to dramatically change the legal landscape in favor of parties who sent hazardous materials to a facility for a purpose other than waste disposal. How the Court's ruling on the second issue will play out is unclear, but the days of a near-guarantee of joint and several liability seem to be coming to an end. Only time will tell. Read on –

[Read More Here](#)



REAL-LIFE CLAIMS

RIPPED FROM THE HEADLINES, these are real stories of how businesses are impacted when they fail to appropriately manage their environmental or construction risk. Whether your client is a contractor, manufacturer, or property owner...effective risk management solutions are out there, and they are simpler to implement than you think. We attempt to highlight incidents where coverage may have been available for purchase. Contact us at info@newdayunderwriting.com and we'll help you discuss your clients individual needs.

Initial Testing Confirms Suspect Material In Chinese-Made Drywall

The Environmental Protection Agency has found that Chinese-made drywall, suspected of causing serious problems in homes in Florida, Louisiana and several other states, contains three materials not found in US-manufactured wallboard. The testing was done at the request of Senators from Florida and Louisiana,



where investigations have been launched into complaints from homeowners whose drywall smells like rotten eggs, is causing corrosion of household appliances and wiring, and is believed to be creating health problems like asthma, headaches and insomnia. The EPA insists that further tests are needed to confirm whether the Chinese-manufactured drywall is indeed the cause of these issues. The potential scope of the problem is significant. An estimated 36,000 homes in Florida are believed to contain the problematic material, with as many as an additional 100,000 homes nationwide impacted. In addition, much of the drywall used in post-Katrina construction in Louisiana was Chinese-made.

Insurance Agency Owners on Hook for Old Oil Spill

ODGENSBURG, NY – The owners of a small insurance agency are being sued for the \$374,000 cleanup of their office property, a former gas station. After routine construction excavation revealed oil contamination on the property, several 55-gallon drums were found on the site. The property was remediated in 2006, and per New York state law, the current owners are being held liable for the cleanup of past pollution on their property. An investigation attempting to link the contamination to the oil company who ran the gas station years ago has failed, leaving the retired insurance salesmen to foot the bill. The case will likely go to trial next year.

Oil Company Pays \$150 million to Families Affected By Gas Leak

JACKSONVILLE, MD – An underground storage tank dripped about 26,000 gallons of gasoline over 37 days in this small community twenty miles north of Baltimore before the leak was discovered in February 2006. The oil company responsible for the leak is issuing each family affected a disbursement of \$1 million plus the value of their home, as well as payment for lifetime medical monitoring. Total payout to the 91 families affected is \$150 million. In addition, the company paid the state \$4 million and has spent \$38 million on the cleanup.

Coal Ash Cleanup Angers Tennessee Residents Upset

Kingston, TN – A December breach in a huge coal ash storage facility that released 54 million cubic yards of toxic-laden ash into the Emory River and a nearby neighborhood has residents worried about their health, lost property values and the slow cleanup by the Tennessee Valley Authority (TVA). The Environmental Protection Agency recently assumed oversight of the cleanup. Once estimated to be a five year cleanup, the EPA now plans to remove the majority of ash from the river by mid-2010. TVA has settled 50 personal claims with residents and businesses, but seven lawsuits are pending in federal court,

Real Life Claims continued

including some that seek class-action status. To date, the Authority has spent \$108 million on the cleanup and estimates the final tab could reach nearly \$1 billion.

Poultry Company Settlement Ruffles Feathers

OKLAHOMA – One of thirteen companies named in a 2005 lawsuit claiming the over-application of poultry litter is responsible for contamination in the one-million-acre Illinois River watershed has proposed to pay \$120,000 to settle. The settlement has been challenged by the remaining twelve companies, who are demanding clarification on how that figure was determined and how the money will be spent. Confidential discussions between the state and the twelve other companies continue.



Texas Sues BP for Refinery Pollution

TEXAS CITY, TX – Texas' Attorney General has filed a lawsuit against BP for violating the state's pollution laws. The civil lawsuit cites 46 releases of pollution at the refinery, including those associated

with a 2005 explosion that killed 15 employees and injured 180 others. Unspecified monetary damages are sought for each day each violation occurred, in addition to legal fees for the cost of the lawsuit and civil penalties. BP has already invested over \$1 billion in people and processes to decrease pollution at the facility.



Hazardous Waste Lawsuit Nears Settlement

NORTH KOMELIK, AZ – A copper mining company has agreed to pay \$825,000 to settle a federal lawsuit citing them for release of hazardous substances at one of their mining sites. The Environmental Protection Agency reached an agreement with the company requiring the clean up a portion of the mine site after reporting high levels of sulfate and uranium in the area resulting from evaporation ponds and mill tailings. The contaminated aquifer was previously the sole source of drinking water for the community. The settlement includes funds for restoration projects.

EPA Plans to Sell Property to Fund Cleanup

GREENWICH, NY – A lawsuit was filed on behalf of the EPA against the current and former owners of a 25-acre site. The EPA is trying to recover \$500,000 in cleanup costs and has proposed selling the site as a way to reimburse the govern-

ment. The property has had several different owners since the 1980's. An EPA inspection of the site in 2005 revealed numerous leaking 300 gallon containers of chemicals, over one hundred drums of hazardous materials, and hundreds more containers of laboratory chemicals and asbestos. The EPA cleaned the site several years ago and typically refers such cases to the Department of Justice to seek compensation from the owners.

Landfill Deaths in Wisconsin Lead to Lawsuit

Superior, WI – A widow has filed a wrongful death lawsuit against the construction company that employed her husband, claiming their negligence led to his death and the death of three other men. The four men were killed when they were overcome by hydrogen sulfide gas, lost consciousness and fell into a water pit. The lawsuit contends that the construction firm was negligent in failing to provide a safe workplace at the construction materials landfill.

Real Life Claims continued

California Sues Target for Illegal Disposal of Hazardous Waste

LOS ANGELES, CA— Legal action has been filed against Target Corp. to block the retail giant from illegally dumping hazardous waste in local landfills. Target's 200 retail stores and seven distribution centers in California carry and handle hundreds of items containing hazardous substances, including bleach, paints, pesticides, oven cleaners and automotive products. Under California law, Target is responsible for properly disposing of products damaged during shipping or stocking, returned to the store by customers or removed because they are past their expiration date. They are also required to have a licensed hazardous waste hauler pick up the waste and transport it to a hazardous waste disposal facility to ensure that hazardous waste does



not end up at local landfills where toxic chemicals can seep into California's water supplies or emit dangerous gases. However, since 2001, local environmental health inspectors have served Target with more than 300 Notices of Violation (NOVs) of California's hazardous waste

control laws. If successfully, the lawsuit would require Target to immediately comply with California law. It also seeks \$25,000 maximum penalties for each violation.



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