

2008 in Review

Wow – what a roller coaster 2008 has been for all of us. As we enter the last weeks of the year, I'm sure we all feel like the roller coaster hasn't stopped. The meltdown of the financial markets has had a significant impact on how we approach even the simplest of tasks in our personal and professional lives. Every morning, the headlines scream about new records for economic statistics.

Unfortunately, today's economy does not bode well for our industry. While we have staunchly maintained that our small piece of the insurance spectrum has been insulated from the severe whiplash of the soft and hard markets, it will be difficult to predict what will occur in the next few months or years. Underwriters and carriers are threatening to hold tight and even start raising rates. While it hasn't really manifested in the quotes we are seeing, we are hearing a lot of talk from the carriers. With our focus in the construction and real estate arena, we are also noticing many projects being delayed well into the future.

The emergence of several new environmental markets has been another significant issue in 2008. Aspen, Endurance (Freberg), Rock Hill (NECC), Navigators, Catlin, Great American and Philadelphia Insurance are all newcomers to the environmental realm. Both Everest and Hudson, who previously offered environmental products through Managing General Underwriters, have started their own underwriting units. In the construction professional products area, Catlin has come forth with a full complement of professional and protective products. On a combined pollution/professional basis, Great American is proving well equipped to provide coverage and capacity.

As for existing markets, AIG and XL have suffered challenges this year. The last chapter has not been written for either company and every day seems to bring another twist. Each continues to offer product and are writing business and addressing the challenges they face. In the meantime, Zurich, Chubb and ACE are benefiting from the issues with these two industry giants. We find that Markel Underwriting Managers has been consistent in their approach to environmental throughout 2008.

Despite all the setbacks in our industry, New Day has enjoyed another successful year. We have created new relationships and strengthened existing ones. Many of our clients have seen a drop off of business activity, especially with respect to real estate transactions, but we are determined to support those relationships with our customary professionalism, knowledge and responsiveness.

As 2008 concludes, we are thankful for the support that we receive from our clients. The retail brokers who trust us with the opportunity to work on behalf of Insureds to find the best solutions available for their risk management dilemmas are the backbone of our business. We are also grateful for our carriers, many of whom have been with New Day from the beginning. Without a product to sell, we are an empty shell. Last but not least, we are extremely proud and appreciative of the New Day team – all of whom share the passion to do and provide whatever necessary to find the optimal solution for our brokers and the Insureds.

We look forward to continuing to work on your behalf in 2009 and beyond. Have a great holiday season!

IRMI Summary

There's no doubt Las Vegas is a terrific venue for any convention. Shows, gambling, fine dining... I've never heard anyone claim boredom in this city! In the case of the IRMI Construction and Risk Management Conference, the location spoke volumes about what is actually going on with many of our Insureds. While it was easy to spot between 12 and 20 cranes at the massive City Place construction site in Las Vegas, activity was slow as the city is experiencing a construction hibernation with many projects stopped or delayed due to the stumbling economy. Unfortunately, this is an issue too many of Insureds are struggling with at the moment.

As it always does, the IRMI conference presented a valuable opportunity for New Day to meet with clients and Insureds, and afforded us the opportunity to address some of the issues and concerns at the forefront of the insurance marketplace. Our co-sponsorship of Monday's October 27 breakfast proved a hit, particularly the 'bentcils' given away to those with children back at home. Jeff Slivka's presentation on Wednesday October 29th – "Insuring Construction Pollution Liabilities: Navigating Construction Issues & Purchasing Pitfalls" was also well received. Jeff managed to keep everyone's attention...even on a late Wednesday afternoon!

New Day is already looking forward to seeing next year in Washington, D.C.



SUCCESS STORIES

General Contractor with Remote Locations

NEW DAY WAS APPROACHED TO secure a CPL program for a general contractor located in a remote area of Alaska. The company specializes in the transportation of fuel and freight, construction of ice roads, heavy civil projects and land clearing. They had never purchased a CPL policy so New Day educated them on the value and benefits of the coverage. New Day was also working with a new customer/broker so getting the broker comfortable with our company and capabilities was equally important. Based on a review of their operations and conversations with the broker, New Day obtained a formal quotation from an A rated carrier, including coverage enhancements such as emergency response coverage, non-owned disposal site coverage (NODS), Pollution Legal Liability (PLL) for their owned locations, an increased policy aggregate and an aggregated self insured retention. New Day also had the definition of job site amended to include coverage for remote locations the company uses as "camp sites" to store equipment and living quarters for the workers on various projects throughout the area. Due to New Day's

knowledge of construction exposures and policy forms, the optimal environmental insurance solution was secured for this insured.

Help with New Coverage

OUR ALASKA-BASED BROKER'S client had never before purchased pollution/professional coverage. The broker had already started the submission process with two carriers, but – with little knowledge of the coverage, forms, or underwriters – the broker sought New Day's help and gave New Day the authority to negotiate coverage with both carriers on their behalf. New Day qualified the opportunity with the broker by identifying the buying drivers, expectations, timeframe (7 days to bind), etc. A marketing plan was developed and New Day obtained indications within 5 days. After consulting with the broker, one carrier was chosen. New Day negotiated with the underwriter to ensure coverage details and pricing that met or exceeded the goals of the broker and their client. Coverage was successfully bound. Once again, New Day's expertise and experience paved the way to a satisfied broker and happy client.

New Day to the Rescue

New Day's success with agencies can be measured in various ways. Our New Day team does not sell itself on the ability to obtain accounts on a premium-only basis. There is a different dynamic in procuring insurance for environmental and construction-related professional liability, and while price is an issue, it usually does not become the major factor in our work. Our objective is to find the optimal solution, coverage, and overall terms and conditions for each client. Interestingly, the positive feedback from our broker partners most often concerns the efficiency and effectiveness that we provide in the process. While these brokers certainly have the ability to go direct to many of the same markets that we do, we are often told, "You (New Day) handle it. We don't understand the exposure and the products. Your involvement allows us to work on the other portions of the account where we (Retail Broker) can add value. It makes us more efficient and allows us to provide the right product for our client."

So it was no surprise when New Day recently received a call from a well-respected retail agent who had heard about our capabilities and required assistance on two upcoming renewals. New Day quickly got involved, assessed the policies and provided enhanced coverage – all while allowing the retail broker to work on the other portions of the account. Just another example of the New Day business model at its best!



A TALE OF THE DREADED POLLUTION EXCLUSION

IN AUGUST, A CIRCUIT COURT OF Appeals decided that an insurance carrier providing a Professional Liability policy does not have to provide defense for a Florida-based engineering insured in a pollution claim. Simply, the Court held that the pollution exclusion applied. As with many professional liability-only policies, the exclusion states that 'Pollution/environmental impairment/contamination is not covered under this policy.'

Background: After purchasing a site and upon development, Priority Development L.P. found drums and an underground storage tank that previously contained petroleum and construction debris that elevated the level of methane gas under the property. Remediation was necessary. Priority sued the engineering firm (Ground Down Engineering, Inc.) and its engineer for breach of contract, negligent misrepresentation and negligence for failing to properly complete its site assessment. Priority Development was seeking damages for lost profits, lost property



value and costs for environmental remediation. The case involved the argument between the insured, Ground Down, and their insurance carrier, James River Insurance Co. For the complete finding, [Click to download the PDF.](#)

There are two significant lessons to this case:

1. Policy language rules in a dispute... coverage is not something that can be interpreted by courts or inferred in a policy. Specific language needs to be negotiated prior to binding as it relates to the exposures of the insured. Without a good working knowledge of the risk, their exposures and how a policy should respond, coverage gaps – like the one described here – can occur.

2. Overall, it's helpful to have a general understanding of the risks' exposures and the capabilities of the market in terms of addressing the exposures. There are various details involved in the negotiations for a contractor's professional liability policy that must be considered. The insuring agreement for the professional liability should be scrutinized to see if it carries a negligence-based trigger, otherwise, strict liability associated with environmental services may not be covered. Additionally, and especially in today's market, no professional liability should contain a pollution exclusion no matter how minimal the exclusion may appear!

As with all specialty lines of coverage, there are many details involved in assessing risk and procuring appropriate coverage with the best carrier possible. When you're addressing professional liability and/or environmental risk with your clients, New Day will partner with you to find the optimal solution for your client's unique needs.

NEW DAY STAFF ARTICLES

Protecting Against Environmental Liabilities

By John Heft; chainstoreage.com

With just about everybody going "green" these days, the movement to protect and preserve our environment is ever-expanding. That means the activities of real estate owners and developers acquiring, transferring and developing property are under intense scrutiny. These businesses are increasingly turning to environmental insurance to facilitate transactions and mitigate risk. Are your commercial real estate clients adequately managing their environmental liabilities?



In "Protecting Against Environmental Liabilities" on chainstoreage.com,

New Day's John Heft focuses on the environmental risks facing commercial real estate owners and developers and how environmental insurance is being used to protect against them. Contact John at john.heft@newdayunderwriting.com or call (609) 298-3516 to discuss the specific needs of your commercial real estate clients.

CFMA Summer Update

By Jeff Slivka

A contractor's role has changed dramatically in the last decade as they take on more professional responsibilities in the construction process. Today's contractors are treated more as

New Day Staff Articles, continued

construction “professionals” with the diverse services they provide bringing about new and complex liabilities. Many construction firms are purchasing Contractors Professional Liability Insurance (CPrL) to address these risks. Other contractors are taking a more proactive approach in their use of a professional liability risk profile (PRLP) to identify their exposures and the methods available to manage and reduce risks. New Day specializes in helping brokers assess and manage the professional liability exposures of their contractor clients. Whether your contractor faces direct liability from in house design expertise; vicarious liability under design/build contracts; or exposures from evaluating, reviewing, and assessing project documentation, New Day will help you determine the most appropriate risk management solution for their unique circumstances. Read more about the risk management options available to contractors in an article by New Day’s Jeff Slivka in [CFMAs Insurance Summer Update](#): Contact Jeff at (609) 298-3516 or jeff.slivka@newdayunderwriting.com.

Environmental Liability Insurance: Securing the Optimal Solution for Your Construction Project

By Jeff Slivka



We’ve all heard the horror stories. A subcontractor unearths metal drums oozing with hazardous waste during the preparation of a site for the development of a suburban building. The drums were never identified during the initial environmental assessment – and to make things worse – the site is thoroughly contaminated and the project is delayed indefinitely. Fortunately, with a little work and knowledge on the front end, this scenario does not have to result in a total loss for the developer and contractors involved. Insurance carriers today offer a myriad of products to help mitigate the environmental risk associated with construction projects. Both Contractors’ Pollution Liability and Pollution Legal Liability, or even both, are effective options available to our subcontractor friend mentioned above. But the broker and client must understand how the policies work and what they cover in order for them to be put to the best use on a construction project. [Click here](#) to read more as our own construction expert, Jeff Slivka, weighs in on the issues involved.

A WINDOW OF OPPORTUNITY IN THE SALE OF ENVIRONMENTALLY-IMPAIRED PROPERTY

By Michael Newsom,
American Bankruptcy Institute Journal, Nov 1

Liquidating the assets of manufacturing companies, especially those of aged facilities, offers many challenges as well as significant opportunities. Many older facilities are considered risky operations today because of the high level of pollutants left behind by their manufacturing facilities. However, since these behemoths were built, the nature of cities has changed. Many of these manufacturing sites – now considered “blighted” – are surrounded by vibrant commercial and upscale residential districts. The high inherent value of such sites is not debated, but the prospect of mining these “polluted diamonds in the rough” can be quite daunting. However, there is a window of opportunity that exists for the sale of such environmentally impaired property at a price commensurate with its true value.

At the very beginning of the process of deciding whether to sell or develop potentially environmentally impaired property, it is important to begin with three key steps to your action plan. First, it is critical to obtain early environmental information and not be misled by unconfirmed environmental horror stories or intimidated by outsiders attempting to push a sale. Second, the debtor should recognize that environmental laws have changed for the better and that programs now actually exist to facilitate a good outcome from a sale. Third, the debtor should have a solid backup plan, since it’s always best to prepare for the unexpected. [Click here](#) to read more.

REAL LIFE CLAIMS IN THE NEWS

The holidays might not be so happy if you have any clients like these...

ENVIRONMENTAL CREWS TO FINISH CREOSOTE CLEANUP – Gulf States Creosote Plant in Hattiesburg, MS shut its doors nearly 50 years ago, but the clean-up of creosote continues. Environmental activists and property owners are far from satisfied with the project. They’re asking someone on the federal level to come in and examine the cleanup work. Last week, the Mississippi Department of Environmental Quality began what it hopes will be the last major cleanup of creosote contamination

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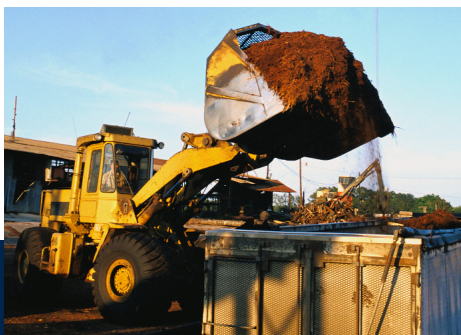
Real Life Claims, continued

at the former plant site. Residents have health issues related to the creosote are to notify the Department of Health.

RHODE ISLAND MALL FINED FOR PCB VIOLATIONS – The Environmental Protection Agency has issued \$36,100 in fines against The Rhode Island Mall for violating federal regulations covering the storage and handling of polychlorinated biphenyls (PCBs). An EPA complaint alleged that the Mall engaged in unauthorized use and discharge of PCBs in several freight elevators, in violation of the federal Toxic Substances Control Act. PCB contamination was identified in the pits underneath the four freight elevators at the Mall, and PCB oil was found at levels exceeding 50 parts per million in the hydraulic fluids at each elevator location.

Under the settlement, Rhode Island Mall will also remediate the PCB contamination in the elevator bays and will come into compliance with federal PCB regulations.

CT CLEANUP ADDS \$10M TO TRANSITWAY COST – The clean up of contaminated soil and groundwater during construction of the Stamford, CT. Urban Transitway has added \$10 million to the price of the mile-long road and future transportation hub. Last week, the Board of Finance and Planning Board voted to spend \$7.2 million of \$30 million in federal money designated for the second part of the project to remove the contaminated material. "It is not unusual



to find environmental problems in any large-scale project like this one, and the additional cost of \$10 million is not a game changer in the scale of the entire project," a representative said.

DE RECYCLING FACILITY FACES 'SERIOUS CONCERNS' – Wilmington is getting ready for a showdown over a proposal to build a recycling facility on a contaminated North Wilmington property. Trichloroethylene, a chemical believed to be a carcinogen, was found in the groundwater on the property in the mid-1990s. Consecutive owners have been working on cleaning up the site ever since, even after it was determined that the contamination had originated elsewhere. Twenty monitoring wells on the property now have minuscule concentrations of trichloroethylene that are consistent with "the most stringent" state standards. It is anticipated that the property could be fully cleaned up in about a year.

BUSINESS OWNER STORED HAZARDOUS WASTE – The owner of a Missouri company plead guilty to federal charges for illegally storing hazardous waste. Officials claim that a powder coating plant owned by the individual had ceased operations and the drums of hazardous waste were illegally directed to another plant he owned. About 100 drums of hazardous waste were illegally stored there for about a year.

FARMER FINED FOR WASTE LAGOON POLLUTION – The South Carolina Department of Health and Environmental Control (DHEC) has issued a \$4,000 fine against a Norway dairy farmer over pollution from a waste lagoon. The farmer claims he has been cooperating with



DHEC to bring the lagoon into compliance with the South Carolina Pollution Control Act and the federal Clean Water Act (CWA) before an attorney representing his neighbor filed a notice with the agency. The notice said a federal lawsuit would be filed against the farmer if pollution violations on the farm are not corrected. According to the enforcement consent order, the farmer must "complete construction of the upgraded waste storage lagoon and provide the engineer's certification that construction has been completed in accordance with the (DHEC) approved plans" by Dec. 31. Failure to comply with the order will result in the reinstatement of the suspended \$12,000 portion of the fine.

UTAH REFINERY SENTENCED FOR CLEAN WATER ACT VIOLATION – The Environmental Protection Agency sentenced a Pennsylvania corporation to a \$3 million criminal fine for a felony violation of the Clean Water Act. The company has admitted to violating the Clean Water Act at its Salt Lake City precious metals refining facility. The case arose out of an Environmental Protection Agency (EPA) investigation into discharge monitoring reports required under the Clean Water Act. From approximately 1996 through 2002, the company faced difficulty consistently limiting pollutant discharges from its refining process to its permit limit. The former plant manager and former general manager of the facility each pleaded guilty and were sentenced for a felony violation of making false statements to government officials to conceal the excess pollution.

Q&A with Nicole Jeffers

Spend a moment getting to know New Day's Nicole Jeffers, assistant Account Executive and new Mom (for the third time!) whose behind-the-scenes support is crucial to the New Day team.

Q. How long have you been with New Day?

A. I have been with New Day about 2 1/2 years, starting part time at first, then moving on to a full time position. I was working on various projects when I first started with New Day, then when I moved from being a temporary employee to a part time employee they gave me additional responsibilities. When I became a full time employee I became an Assistant Account Executive, with expectations that my role would support the New Day underwriting function.

Q. What are your primary responsibilities?

A. I am an Assistant Account Executive, with my primary job responsibilities to manage our weekly diary report (follow-ups), maintaining all active licenses for both our staff and the business, and policy review and processing. As New Day is paperless I am responsible to make sure that all paper we receive gets scanned in and then properly filed. Being paperless from the beginning has made our work smoother and easier as we did not have to deal with any transition from working with paper. I am also slowly learning how to address the various types of problems that we see on a daily basis from the IT end, which is very exciting. Overall, I help with the daily workflow on most aspects of the business.

Q. What part of your job do you most enjoy?

A. I would have to say the part I enjoy most right now is learning the IT side of it all, something new. Sometimes it may be our processing system, other times, the network and other times we can't figure out why something won't print. While computers are unable to 'take two aspirin and call me in the morning' I am amazed at how many problems are solved by just rebooting the computer.

Q. What do you think brokers most appreciate about working with New Day?

A. I think our motto answers that question – Knowledgeable, Professional and Responsive – with the last word being particularly important. Our management stresses keeping in touch with our clients and responding even when we don't always have the answers. They feel communication of any type with no news is better than not keeping your clients updated even if there is very little if anything to report.

Q. Any special memories as we say goodbye to 2008?

A. Easy... the birth of my 3rd child, Colin Michael, on March 7, 2008! And of course the success that we have had at New Day.



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