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Environmental Insurance – What You Need to Know in 2010

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Agenda

- Brief History of Environmental Insurance
- Claim Scenarios and Description of Insurance Products
- Deal Scenarios and Description of Insurance Products
- Process for Obtaining Environmental Insurance
 - Key Provisions
 - Caveats
- Current State of Environmental Insurance Market
 - New Carriers
 - New Forms
 - New Issues



Environmental Insurance – What You Need to Know in 2010

Brief History

- Origins in mid-1980s
- Designed to fill coverage gaps in GL policies
- Has evolved to fill a variety of needs for business transactions



Do You Have Insurance Coverage?

PLL Claim Scenario 1

- School Construction Project
 - Soil contamination found during construction
 - Construction halted during remediation
 - Opening of school delayed; funding tied to opening
 - Had environmental insurance, but not policy type for this loss
- Losses Totaled \$750,000
 - Remediation costs
 - Construction delay costs
 - Permitting costs



Do You Have Insurance Coverage?

PLL Claim Scenario 1

- Solution
 - Pollution legal liability policy to protect for unknown conditions
 - Policy with endorsements would cover all losses:
 - Remediation costs
 - Construction delay costs
 - Permitting costs

PLL Claim Scenario 2

- Construction Project at Abutter's Property
 - Neighbor finds soil and groundwater contamination on its property during its construction project
 - Halts construction during remediation
 - Neighbor sends demand letter claiming contamination migrated from your property
- Neighbor Claims Losses of \$2.1 Million
 - Remediation costs
 - Construction delay costs
 - Lost revenue



Do You Have Insurance Coverage?

PLL Claim Scenario 2

- Solution
 - Pollution legal liability policy covers off-site migration
 - Policy would cover all losses claimed by neighbor
 - Remediation costs
 - Construction delay costs
 - Lost revenue
 - Policy also covers defense costs



Do You Have Insurance Coverage?

PLL Claim Scenario 3

- Explosion from Underground Pipe In Street
 - Underground steam pipe shoots steam, water, debris and asbestos through windows into your office building
 - Asbestos remediation required on multiple floors of building and in HVAC system
 - Building closes after initial explosion and during parts of remediation
- Losses Totaled Over \$4 Million
 - Remediation of asbestos
 - Lost revenue for closure immediately after explosion and during remediation



Do You Have Insurance Coverage?

PLL Claim Scenario 3

- Solution
 - Pollution legal liability policy will cover contamination that has migrated on to your site
 - Policy with endorsement would cover losses incurred
 - Remediation of asbestos which emanated from non-covered building
 - Lost revenue for closure immediately after explosion and during remediation



Do You Have Insurance Coverage?

PLL Claim Scenario 4

- Chemical Tank Used in Manufacturing Operations Collapses
 - Containment dike compromised
 - Plant closes or production slows during remediation and rebuild
- Losses Totaled \$1.2 Million
 - Remediation of release
 - Loss of revenue during closure/slowdown
- Solution
 - Pollution legal liability policy covers new conditions
 - Policy with endorsement covers remediation and business interruption

Summary: Pollution Legal Liability

- What is Covered
 - Fixed sites
 - First party cleanup and property damage
 - Third party liability for on-site or off-site bodily injury, property damage, and clean-up costs
 - Unknown and certain disclosed known, pre-existing conditions
 - New conditions
 - Enhancements:
 - non-owned disposal sites
 - business interruption
 - construction delays
 - illicit abandonment
 - bioterrorism
 - transportation (owned and hired vehicles)
 - mortgagee endorsement
 - mold
 - natural resource damages
 - emergency response costs

Summary: Pollution Legal Liability

- Market Capacity - \$50 million
- Policy Terms
 - 5 years – new conditions
 - 10 years – pre-existing conditions
- Surplus Lines Market
 - Manuscripting permitted
 - Tax paid at binding
 - No guarantee fund for insolvent carriers
- Underwriting Process
 - Environmental reports
 - Historical uses and operations
 - Abutters
 - Losses
 - Current uses and operations, including hazardous materials storage

Summary: Pollution Legal Liability

- Target Markets
 - Real estate transactions
 - Manufacturing operations
 - Mergers & acquisitions
 - New building construction
 - Hospitality: resorts and hotels
 - Healthcare: hospitals, nursing homes, assisted living
 - Rail yards
 - Marinas

CPL Claim Scenario 1

- Building Contractor Strikes Unknown Underground Pipeline During Construction and Causes Release
 - Notice and remediation required
 - Construction halted during remediation
- Losses Totaled \$ 850,000
 - Remediation costs
 - Additional construction costs
 - Construction delay costs



Do You Have Insurance Coverage?

CPL Claim Scenario 1

- Solution
 - CPL policy covers unexpected pollution conditions arising from contractor's operations
 - CPL policy would cover losses incurred
 - Remediation costs
 - Additional construction costs
 - Construction delay costs



Do You Have Insurance Coverage?

CPL Claim Scenario 2

- Environmental Consultant/Contractor Leaves Contaminated Soil Uncovered
 - Heavy rain spreads contaminants on to neighboring property and river
 - Neighbor's site shut down while remediation completed
- Losses Totaled Over \$5 Million
 - Remediation costs, both on-site and off-site
 - Neighbor's loss of use



Do You Have Insurance Coverage?

CPL Claim Scenario 2

- Solution
 - CPL covers unexpected pollution conditions arising from contractor's actions
 - All losses covered; no policy enhancements needed in this scenario
 - Remediation costs, both on-site and off-site
 - Neighbor's loss of use

CPL Claim Scenario 3

- Plumbing Contractor for New Hotel
 - Completed substandard installation
 - Water intrusion into walls
 - Mold develops
- Losses Totaled Over \$6.5 Million
 - Remediation of mold
 - Loss of revenue from unoccupied rooms during remediation
 - Restoration costs, including costs of tearing down and re-building walls

CPL Claim Scenario 3

- Solution
 - CPL policy covers unexpected pollution condition arising from contractor's operations
 - Mold endorsement needed
 - Enhanced policy covered all costs
 - Mold remediation
 - Restoration costs
 - Loss of revenue from unoccupied rooms during remediation

Summary: Contractors Pollution Liability

- What is Covered
 - Contractor's operations at a number of properties, not site-specific
 - For claims arising out of a pollution incident:
 - Cleanup costs
 - Third party bodily injury and property damage
 - Defense costs
 - Enhancements
 - Mold
 - Med. monitoring
 - Loss of use
 - Blanket waiver of subrogation
- Key Markets
 - Construction contractors and subcontractors
 - Environmental contractors and subcontractors

Summary: Contractors Pollution Liability

- Differences from Pollution Liability Policies
 - Covers operations and activities at several construction or remediation sites
 - Covers completed operations
 - Usually occurrence-based policies
 - Retroactive date
- Market Capacity - \$ 50 Million
- Terms of Policies – one or two years; project-specific policies up to 15 years
- Underwriting Requirements
 - Application – detailed listing of operations and services
 - Loss/claim history
 - Training, experience, operations and procedures
 - Financial information

Deal Scenarios

- Real Estate Transaction
 - Contaminated property part of proposed multi-property sale
 - Seller and Buyer cannot agree on cleanup costs – deal stuck
 - Solution: Agreed to lower cleanup cost but with cost cap policy with both entities as named insured to cover cost overruns
- Corporate IPO
 - Company going public
 - Company wants to cap environmental liabilities for IPO
 - Solution: Cost-cap policy for contaminated site
 - Ability to release public statements and financial documents that company has capped potential environmental liability at site

Summary: Remediation Stop Loss/Cost Cap

- Function/Objective
 - Caps costs for remediation projects; covers cost overruns
 - Can cover regulatory change orders
 - Transfers liability of remediation cost overrun to insurance company
- Underwriting Process
 - Lengthy process; detailed engineering studies
 - Agreement between owner, environmental consultant and insurer on cleanup cost
- Markets
 - Brownfield developers – Real estate developers
 - Property managers – REITS
 - Mergers & Acquisitions – Investors/venture capitalists

Summary: Remediation Stop Loss/Cost Cap

- Product Design
 - Agreed-upon cleanup cost
 - Buffer/contingency – set at 10 -100% of cleanup cost
 - Calculated based on:
 - Cost of cleanup
 - Amount of insurance purchased
 - Detailed site information
 - Policy coverage is for costs above clean-up costs and buffer
 - Can get wrap-around coverage: PLL coverage for unknown conditions
- Negotiation Key in Determining Coverage – detailed remediation plans
- Usually Only Available for Cleanups Over \$2 million
- Limited Carrier Markets: XL with approved contractors; Chartis with escrow and its contractors; Zurich may write policies for under \$2 million

Key Provisions and Considerations for Pollution Liability Policies

- Ability to Manuscript
 - Coverage triggers: discovery, governmental authority, voluntary clean-up
- Exclusions
 - Undisclosed known conditions – draft known condition exclusions narrowly
 - Contracts (including indemnities) unless scheduled
 - Underground storage tanks unless scheduled
 - Mold – available if mold O&M plan in place
 - Asbestos – certain coverage available – soil, groundwater, 3rd party BI
- Both Buyer and Seller on Policy?
 - Continuing operations? Coverage for new conditions?
 - Obligations of Named Insured and Additional Named Insured
 - Insured v. Insured exclusion

Caveats

- Complete full application
 - Part of policy
 - Get broker's assistance
 - Full disclosure of environmental conditions - reference documents
- Time-intensive underwriting process
- Duration of quote
 - Usually 30 days; may get up to 90 days
 - Extend in advance

State of Current Market

- Effect of Downturn on Environmental Insurance Market
 - Insureds looking at new carriers for renewals
 - Slower market may mean better pricing
- New Insurers
 - Ironshore, Berkley, Philadelphia, Great American, Beazley
 - Pros: more competition in underwriting and pricing
 - Cons: lower ratings, less claims history
- New Forms
 - More comprehensive, less manuscripting
 - Green restoration materials
 - Illicit abandonment

State of Current Market

- Global Policies
 - Indemnity agreements
 - Admitted policies
- New Issues
 - Greenhouse gases
 - Vapor intrusion
 - PCBs in building materials



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Thank you for your time and interest.

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