

# Commercial Insurance Update

## Topics Affecting Buyers of Commercial Insurance

MSP C 10/99 – “Environmental Coverage for Non-Environmental Business”

October,

# Environmental Coverage for Non-Environmental Business

One of the jobs of a good insurance broker is to evaluate his or her clients' exposures to loss and recommend appropriate coverage to handle those exposures. Even though the buyer of commercial insurance will not elect to purchase every conceivable coverage, it is important to know that there is an exposure to loss and the means of covering it. If the insured elects to retain the exposure, they have done so consciously as opposed to finding out at the time of loss that they have no coverage.

One of the most overlooked areas of coverage is environmental insurance. Most standard property and general liability policies provide extremely limited coverage, if any, for pollution incidents. Many insureds have significant exposures which go uninsured.

An entire industry within the insurance business has been developed to address this exposure. Environmental insurance is now big business, and anyone who has even a remote exposure should at least consider the coverage.

## Developers

Businesses seeking to develop “brown fields” or contaminated properties need environmental coverage. Federal, state and municipal governments, regulatory agencies, lenders, developers, and the insurance industry are working together to provide financing, risk transfer and other incentives for the redevelopment of these contaminated properties.

The insurance industry offers a variety of risk management and insurance products that address brown fields exposures, including properties with

pre-existing contamination. Specific policies are available to cover first and third party pollution liability as well as clean-up cost overruns. In addition, customized policies meeting the needs of a particular site and developer can be tailored to fit each project's unique circumstances.

## Consultants Professional Liability

Consultants professional liability insurance is appropriate for any firm involved in analyzing environmental risk or providing advice or consultation to clients facing an environmental exposure. The coverage afforded is an errors and omissions policy written on a claims-made basis.

## Contractors Pollution

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## Liability

Contractors pollution liability insurance is designed for remediation contractors involved in environmental clean-up activities. This insurance covers contractors for any act they perform on site that either creates a new pollution condition or exacerbates an existing one. Additionally, excavators, industrial painting companies, industrial cleaning companies, large plumbing firms, asphalt and road workers, and general and specialty trade contractors all have been sued for creating or exacerbating pollution conditions through their operations. A contractors pollution liability policy is the appropriate vehicle to insure this exposure.

## Pollution and Remediation Legal Liability

A pollution and remediation legal liability policy form provides coverage for loss, remediation expense, and legal defense expense under one policy for sudden and gradual pollution conditions on, at, under, or emanating from covered locations. This site-specific policy responds to the high cost of third-party bodily injury and property damage claims emanating from such releases.

Note that these policies are not specifically limited to environmental businesses, and are often purchased by property owners concerned about third-party environmental risk as well as manufacturers with incidental environmental exposures.

## Typical Exposures to Loss

Other businesses have exposures to environmental loss they have not even considered. For example, drycleaners have an exposure stemming from chemicals used in the cleaning process. Universities and high tech companies are concerned about their laboratory wastes. Business are increasingly anxious about hazardous by-products resulting from the manufacturing process. Banks are nervous about financing properties that may have hidden environmental risks as a result of past use.

## Specific Examples of

## Losses

In one case, a dairy farmer was using treated wastewater as fertilizer in a land application process. He did not comply with permitting regulations, nor did he have the wastewater tested prior to application. After several months of application, heavy metals and high counts of fecal coliform were found in the soils. For violation of state land disposal restrictions, the farmer was required to pay remediation costs in excess of \$265,000.

A repair garage sprayed its work area with water. Minor amounts of grease and car fluids were washed down the drain night after night. Over a period of many years, the cumulative result was soil and groundwater contamination, which affected many private wells. Claims were filed against the garage owner for groundwater contamination, property damage, trespass of pollutants and perceived bodily injury. Total costs for claims and clean-up exceeded \$1 million.

Daily maintenance was being performed on a warehouse's ammonia refrigeration system when a gas release occurred. Neighboring businesses were evacuated until the gas dissipated. A few of the neighboring employees complained of headaches and nausea, and the business filed claims against the warehouse for business interruption and bodily injury. The claims exceeded \$100,000.

A school district faced over \$450,000 in expenses to clean up the heating duct work in three schools. Bodily injury claims from "sick building syndrome" are on the rise in commercial buildings as well. In such cases, medical bills, lost work time and investigation/defense costs can be daunting, from several hundred thousand to well into the millions. (The quality of our air is one of today's primary environmental concerns.)

When a real estate developer acquired property on which construction of a mall was planned, the firm hired a consultant to conduct a Phase I environmental assessment. The property was determined to be "clean." However, when excavation for the mall began, 100 drums of buried pesticides and herbicides were unearthed. The chemicals contaminated the soil, and had to be removed at the firm's

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expense. Remediation and drum disposal costs exceeded \$750,000.

## Conclusion

While the exposures faced by non-environmental businesses vary significantly, they do have one factor in common: the potential to cause catastrophic loss. A pro-active business can, however, manage this risk and protect both its fi-

nancial stability and future profitability.

Today, there are numerous pollution policies to protect businesses and industry from potential environmental risks and liabilities. We can help you take a pro-active approach to managing your environmental risk by identifying your exposures and providing you with the environmental coverage that meets your specific needs.

If you have any questions or would like additional information, don't hesitate to contact us. ✦

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*Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

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# California's Workers Compensation Insurance Industry in Turmoil

Industry experts predict workers compensation premium increase for the coming year

While California's economy is robust today, the workers compensation business is in a state of disrepair. The industry faces a number of problems and the outlook is grim. Some of the more pressing problems include:

- Severe Underwriting Losses  
It is estimated that in 1998, for every \$1.00 workers compensation insurance companies took in premium, they will pay out \$1.33 in losses and expenses. It is anticipated that this could increase to \$1.40 in 1999.
- Inadequate Premiums  
Current premiums are inadequate to fund present and future losses.
- Extensive Loss Reserve Deficiencies  
Estimated by the Workers Compensation Insurance Rating Bureau to be as high as \$3 billion for accident years 1996 through 1998.
- Adverse Trends in Claim Severity

- High Operating Expenses
- Controversial Reinsurance Practices
- Proposed Legislation for Major Increases in Benefits

The workers compensation market cannot remain in this position very long. The only alternative is a return to disciplined pricing and claims reserving. This will result in increased pricing, and we are starting to see the effects of this.

## Bottom Line to the Business Owner

The only true way to control your workers compensation costs in the long run is to control your claims. This involves working actively to preclude claims from happening to begin with, and controlling those that do as efficiently as possible.

Ultimately, employers will pay for the cost of their workers compensation in the form of premiums. ✦

# President Clinton Signs Y2K Liability Limits into Law

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WASHINGTON, DC — After receiving the Y2K act by e-mail after it was electronically signed by congressional leaders, President Clinton used a real pen to sign the bill into law last week, ending the debate on how to limit liability for problems caused by the Y2K glitch.

“This legislation strikes a fair balance in protecting the economy and protecting the rights of consumers,” said the bill’s sponsor Sen. John McCain (R-AZ). “Most important, it addresses the needs of businesses that may find themselves as both plaintiff and defendant, by providing incentives to fix Y2K problems, not rush to the courthouse.” Both the House and the Senate approved the bill by a wide margin.

The bill requires plaintiffs to submit a 30-day notice of the intention to sue with a description of the Y2K problem. If the defendant responds with a plan for remediation, 60 additional days are provided to solve the problem. Punitive damages are capped at \$250,000, or three times compensatory

damages, whichever is less, for businesses with less than 50 employees.

In addition, the bill contains a sunset provision and applies only to failures occurring before January 1, 2003 and exempts municipalities and governments from punitive damages. It doesn’t interfere with parties who have already agreed on Y2K terms and conditions.

While many Democrats argued the bill was too lenient on businesses, political pressure to gain the support of the high-tech industry, which observers see as crucial to keeping control of the White House, gave way to clamor from trial lawyers and consumer protection groups opposed to the bill.

“Frivolous litigation could burden our courts and delay relief for legitimate claims,” President Clinton said in a statement. “Firms whose productivity is central to our economy could be distracted by defense of unwarranted lawsuits.”

Silicon Valley groups and the insurance industry praised the president and Congress for bipartisan support for the bill. “When the ink dries from the president’s pen, we will have a new law in the United States that will focus on fixing the Y2K problem, not profiting from it,” said George Scalise, president of the Semiconductor Industry Association. “This bill represents a bipartisan solution to a very challenging issue.”

Jacobsen agreed. “It provides some ground rules on ways to address the problems.” ✦

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