Managing Consultant and Contractor Risk & Environmental Insurance

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Managing Consultant and Contractor
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“Never lie in bed at night asking yourself questions you can’t answer”

Charles M. Schulz
AGENDA

Environmental insurance → Insurance market insights → Managing risks → Insurance procurement process

Environmental Insurance

Contractor and Consultant Environmental Insurance

Many names: CPL, PPP, CEL, COPE…

Many purposes

UNREGULATED
Environmental Insurance – Insuring Agreement

**Pay on behalf** of the INSURED for LOSS/CLEANUP, resulting from a POLLUTION CONDITION that arises out of COV. OPS. and:

1. **DISCOVERED during the POLICY PERIOD**; or
2. Results in a CLAIM made during the POLICY PERIOD.

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Environmental Insurance – Insuring Agreement

**Pay on behalf** of the INSURED for PROFESSIONAL COSTS, resulting from a WRONGFUL ACT provided that:

1. **INSURED provides notice and a RECTIFICATION PLAN**; or
2. WRONGFUL ACT results in a CLAIM.
Environmental Insurance – Insuring Agreement

Policy can also cover:
- Disposal of waste and construction materials;
- Transportation of waste and construction materials
- Owned/Leased Sites (yards, transfer stations, warehouses)

Insurance Market Insights

Professional / Errors and Omissions Cover:
- Canadian marketplace has experienced a ~10% deterioration (i.e., increase in claims) over the past decade
  - Alarming rise of “funded litigation” making its way into Canada
  - Social Inflation
- Majority of E&O cover is placed with Lloyds (London) as opposed to local (or even NA) insurance carriers
Insurance Market Insights – Grey Areas

Labs
- Env., L.Sc., Food
- Logistics
- Reporting
- Storage
- Online Payment

Excess Soil
- Waste?
- Yes = transport and disposal are covered
  - No = ?????

Managing Risk

Contract - limitation of liabilities

Contract – direct vs. indirect losses

Payment

Communication
Managing Risk

Contract - limitation of liabilities

Do not: restrict liability in ways deemed "offensive" or "unfair"

Do: provide a reasonable limit of liability (e.g., $1 million)

Do not: hide limitation language

Do: exclude indirect costs

Do: limit liability to your negligence

Managing Risk

Failure to identify a REC

Direct vs. In-direct

cleanup costs costs to re-design plans loss of tenant rents loss of opportunity financing/interest costs
Managing Risk

**Payment Terms = 2nd most common source of Claims**

- Be prepared / organized when issuing a demand for payment
- Do track your client’s payment history (tools: D&B report, financials)
- Be reasonable when enforcing late payment penalties
- Do issue interim or installment invoices

Managing Risk

**Communication Breakdown = root cause of ~70% of Claims**

- Failure to issue disengagement letter
- Failure to attend Site Meetings
- Promising or Guaranteeing Performance
- Failure to update timeline estimates
Managing Risk – Case Study

ABC Env. is hired to complete a Phase II ESA

123 Drilling is hired by ABC Env. re: BHs/MWs
123 Drilling labels soil samples incorrectly

REAL Co. buys property based on Phase II ESA.

*ABC Env. discovers labeling error and determines cleanup cost estimate provided in Phase II ESA increases 3X.*

Managing Risk – Case Study

Outcome:

ABC Env. informs carrier of issue.

Carrier reviews ABC Env.’s rectification plan
Carrier offers payment to Real Co.

*No Claim* brought by Real Co. against ABC Env.
Insurance Procurement Process

1. **Meet with your Underwriter**

2. Disclose Documents (financials, CVs, contracts)

3. Obtain Firm Indications/Quotes

4. Complete Application