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Should you get environ. insurance for contaminated prop. deals?

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Many real estate deals disassemble when the specter of property contamination arises as a potential issue. One or more of the deal parties – or their attorneys – either run from the deal or run to their respective corners to dig in their heels until the other party gives sufficient concessions. Neither strategy productively resolves the matter.

Environmental insurance, offered by such major underwriters as AIG, XL, Zurich and ACE, can be used as a tool to forge the deal by offering an independent source of cost recovery to multiple insureds. However, these policies can be complicated, with different forms issued by different companies. With the recent rise in the number of Brownfield (contaminated property) transactions, developers have come to rely more and more on their attorneys to evaluate whether the policy truly covers the risks seeking to be insured.

Firstly, since the insurance policy is only as good as the company that issues it and that company's assets, it is important to qualify that the companies you are considering are financially rated "A" or better by AM Best, have a solid history of "writing" environmental insurance and have a good claims paying history. The deal should be "marketed" to more than one underwriter to initiate a competitive process for premium indications by a knowledgeable environmental insurance broker. At a minimum, the application package needs to be accompanied by a Phase I

Environmental Site Assessment (ESA); depending on the results of the Phase I, a Phase II ESA may be required. Quotes are typically issued for a range of limits of liability, self-insured retentions and policy periods, so that insureds can have alternatives from which to evaluate price versus coverage.

Let's say you are a developer with plans for a condominium complex in an up-and-coming area and the price is right for the site, but a number of above and underground storage tanks were previously on site from its former use. In addition, the use of one adjacent property as a vehicle maintenance facility raises some issues. The seller won't give an indemnity and wants a release from all environmental claims. Furthermore, your lender is looking for some assurance that the deal won't collapse if unexpected pollution conditions are discovered.

This is the perfect application for a "Pollution Legal Liability" policy. This type of policy is site-specific and covers claims arising from pollution conditions at, on or migrating from the insured property. It offers insurance for (1) required cleanup by government agencies, (2) legal defense expenses and (3) third party bodily injury and property damage claims that might arise from either pre-existing or new pollution conditions that are discovered and reported during the policy period. Other coverage grants are available for an additional premium, such as contractual liability, non-owned disposal site coverage and business interruption (including development delay damages). Contractual liability coverage can be used to backstop specified indemnities. Non-Owned Disposal site coverage can cover the "cradle-to-grave" liability created by hazardous waste laws. Business Interruption Loss arising from a pollution condition provides coverage for business income, extra expense

and development delay.

With a PLL policy, the scope of coverage can be expanded or restricted either through endorsement or by definition. For example, attorneys should check the definitions of "cleanup" or "remediation" to see if it includes transportation and disposal of the contamination and restoration in the event remediation requires the demolition of certain improvements. The definition of "property damage" may or may not include natural resource damages and/or property diminution claims, which are other common and potentially costly environmental claims.

Beware of policy exclusions, such as "Material Change in Use," which means if your property is originally insured for use as light industrial and it later changes to heavy industrial use, this will vitiate the policy. Additionally, the policy excludes pre-existing pollution conditions already known to the insured. Unknown "phantom" underground storage tanks are covered, only if - after appropriate due diligence - they were not initially discovered. More current exclusions relate to claims resulting from mold or other indoor air conditions.

Other environmental policies are available that perform other uses in contaminated property transactions, such as Cost Cap or Remediation Stop Loss insurance, which insures against cost overruns in the cleanup of known contamination. In each case of the placement of environmental insurance, the enlistment of a team of legal and technical professionals with knowledge and experience in this area can mean the difference between claims paid or not.

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Improving your corporate image and position through influence and philanthropy

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In the minds of your customers, your business and corporate image is already positioned. But what about those potential customers that might not know about your business and what you have to offer? One way to develop or enhance your corporate image is by designing a successful public relations program that incorporates several communications components. This article, which is a follow-up to my last three columns addressing this topic, will describe some additional components that businesses and corporations might consider in selecting a public relations and communications program that's right for you. In this article, I'm specifically focusing on a plan to identify key decision makers or influencers, and the potential benefits of developing a philanthropic image for your corporation.

Get to know the decision makers and influencers among your potential markets. Because of the importance of "influencers" to the success of an organization, another element of an effective public relations program is to identify and nurture a meaningful dialogue with those individuals at major corporations that are responsible for recommending referrals and hiring for your type of products or services. In this context, I'm defining the "influencer" as any person who is in charge of managing change. One characteristic that all "influencers" share is their connection and access to the top decision-making level, for their particular organization and clients. An effective public relations program will include some amount of research in order to identify the key "influencers" within your targeted industry or potential client base. As a fundamental part of this research you will need to determine the interests and needs in order to define how your company or product can help the influencer and their clients. As part of this element of the program, you should also consider joining specific business and trade organizations, such as your local Chamber of Commerce that, will provide you with networking opportunities and increase your visibility in the marketplace.

You've heard the saying that, "It's better to give than to receive." This is quite true in business, because it has the potential benefit of increasing your visibility and branding your corporation with charitable causes.

Developing a charity campaign within your business/corporation is a good opportunity to do something special on a local ongoing basis or during a specific holiday season. Charity campaigns can often result in gaining media exposure, heightening public awareness, and building a philanthropic image for your business. These types of campaigns might include matching an employee's contribution to a United Way appeal, donating household supplies or clothing to economically disadvantaged families, providing volunteers to construct affordable housing or organizing a team to take part in a charity walk.

A meaningful public relations campaign is cost effective and can prove to be very successful in building your business and its reputation. A public and media relations campaign should be seen as a vital management function to improve your business and position.

If conducted properly, you could expect to receive exposure at the start when you announce your corporation's charity campaign. If you're going to conduct an event associated with the campaign, you can gain valuable exposure by submitting calendar alerts to the local media highlighting the date of your event and enlisting volunteers and participants. In addition, you can invite the press to the event for photo opportunities. When the charity campaign is completed, there may also be newspaper photo and television opportunities for additional exposure. The important task with charity campaigns is to be able to provide a meaningful program that benefits a specific charity or cause, while at the same time promotes your corporation's philanthropic policies that result in a win-win situation for both parties.

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Wilson of CBRE speaks at annual Long Island market forecast about global warming

WOODBURY, NY Though many new LEED-certified office developments have received attention in the media, most of the country's commercial building stock is comprised of older, less-environmentally friendly properties. These buildings constitute nearly 40% of greenhouse gas emissions in the U.S.—more than the 33% emitted by automobiles—making them the number one cause of global warming. How the commercial real estate industry tackles this issue and the steps it must take to combat global warming, were some of the subjects discussed by Sally Wilson, global director

of environmental strategy for CB Richard Ellis, at the firm's annual Long Island market forecast.

Wilson, the first LEED-certified commercial real estate broker in the country, focused on several actions the real estate industry can take to combat the affects of global warming over the next 20 years. These included taking a stronger leadership role in the way buildings are developed and managed and the need for brokers and owners to rethink how to best retrofit existing structures to meet sustainable guidelines.

Wilson emphasized that by build-

ing "green" the industry can reduce carbon dioxide emissions by 30%.

Furthermore, she talked about the U.S. Green Building Council's LEED committee, which has been responsible for setting the sustainable guidelines for commercial, residential, and interior, and is now looking to set new standards for industrial properties.

In closing, Wilson re-emphasized how the commercial industry is now in the ideal position to show social responsibility and bring lasting changes that translate to sustainable buildings and a better environment for generations to come.