



Finding the Money for Environmental Clean-Ups In Yesterday's Business Records

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Successful dry cleaners keep a clean shop. Yet in recent years, the tidiest of dry cleaners are discovering that their inclination toward order and cleanliness is having a negative impact on their ability to stay in business.

Shredding and discarding old business records has long been the way to keep storage areas manageable and office areas functional. However, dry cleaners are finding that certain of the old business records they destroyed are the very documents they now need to keep their doors open.

More and more dry cleaners are being served with law suits by their landlords because the groundwater beneath their dry cleaning plant is contaminated with chlorinated solvents. These dry cleaners are incurring legal fees to defend themselves. Federal and state environmental agencies are sending notice letters demanding that dry cleaners hire environmental engineers to test the soil and groundwater and access the extent of the contamination. These dry cleaners are spending their savings to fund the several phases of environmental investigation that the environmental agencies require.

Both their attorneys and the agencies advise dry cleaners that they need to file insurance claims under those business liability policies issued to them during

the time of the contamination, however these dry cleaners find that they did not retain insurance policies prior to the current policy, believing them to have expired. They contact their insurance broker, who tells them that only the older policies will cover pollution and regretfully advises that their agency has a seven-year record retention plan that called for the purging and destruction of these older policies years ago. Without these policies, these dry cleaners are told, their only alternative is to pay the attorneys and the environmental experts until the clean up is completed.

What was it about these historical insurance policies that now makes them so valuable?

General liability insurance policies issued before 1986 typically featured insuring agreements that provided coverage for property damage on an occurrence basis. Unlike the policies issued thereafter, these general liability policies were comprehensive and did include coverage for pollution. General liability policies issued in 1986 and later typically featured what has come to be known as the absolute pollution exclusion—a provision that specifically denied coverage for pollution. Policies featuring the absolute pollution exclusion have been upheld by courts in most states as denying coverage to dry cleaners seeking defense or indemnity under their provisions.

However, the comprehensive general liability policies issued before 1986 have been judged in many state courts to provide coverage for unintentional polluting events such as spills, leaks, overfills, boilovers and underground storage tank malfunctions.

If these policies were so valuable, why were so many of them trashed and shredded by policyholders and insurance agencies alike? The simple answer to this question is that the policyholders didn't realize how valuable they were until the U.S. Congress passed legislation requiring anyone responsible for polluting land or water within the United States to pay to remove the pollutants and rehabilitate the property. Eventually, as federal and state environmental agencies enforced these new environmental laws, insurance companies were stepping up to defend policyholders against environmental claims and it became clear just how valuable these old policies were. About the same time, many insurance agencies determined that this would be an excellent time to purge these policies. Most state insurance departments did not require that insurance *agencies* retain older policies, although they required insurance *companies* to retain them. That is why it can be expected that the insurance company has each dry cleaner's original historic business

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insurance policy, even if the dry cleaner's insurance agent did not retain his/her copy of it.

The problem is that while the insurance company has the dry cleaner's policy, it stores these policies by policy number. The insurers routinely refuse requests from policyholders for copies of their policies unless those requests include the policy number and descriptions of the terms of conditions of the policy. The insurance company knows that the courts will not require that it search without this information and so its standard business practice is not to do so. Very often requests for copies of policies issued to dry cleaners are rejected by insurance companies for lack of this specific information. When this occurs, the dry cleaner gives up hope and begins to fund the defense and the environmental assessment out of his/her savings.

There is an alternative however. It is called *insurance archeology* and compared to

the cost of legal and environmental experts, the cost of employing an *insurance archeologist* to document your historical business insurance over time is quite affordable.

The *insurance archeologist* is part sleuth and part auditor. He or she is a forensic specialist trained to identify and assemble business records that prove the existence and terms of those liability insurance policies issued to policyholders but long since lost or destroyed. Sifting through miscellaneous records in the dry cleaner's possession, as well as those preserved in public and private archives, the insurance archeologist assembles proof of the policies required to defend the dry cleaners' businesses. These documents are then provided to the insurance carriers as evidence of coverage. Once in possession of evidence of the existence, terms and conditions of these policies, the insurance companies are then required by law to search their archives for the actual policies. Once found, these policies have the capacity to pay

attorneys' fees and fund the various environmental tests required to return the land and water beneath the dry cleaning plant to a condition acceptable by the regulatory agencies.

EnviroForensics™ is the parent company of PolicyFind™ an insurance archeology firm that specializes in the location and retrieval of insurance evidence for dry cleaner policyholders and has successfully conducted over one hundred policy searches for dry cleaning establishments. Policy Find™ operates in all fifty states and in the provinces of Canada, Puerto Rico to prove the existence, terms and conditions of policies needed by dry cleaners to keep their businesses. ☒

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create mandatory paid sick leave for the first time in California. Very similar to an ordinance currently in effect in San Francisco, AB 2716 would require all employers of every size to provide one paid hour of sick leave for every 30 hours worked. Employees would begin accruing the benefit after seven days of employment, but could not use the paid time off before 90 days on the job. The bill is quite prescriptive and would affect even employers who already provide paid sick leave. Assembly Member Ma argues that paid sick leave is a public health issue, necessary to protect workers from infecting others because they cannot afford to miss work. Dozens of business organizations, including CCA, are in opposition to this new mandate. Having already passed the Assembly, the future of AB 2716 rests with the state Senate, and ultimately with Governor

Schwarzenegger if the bill makes it to his desk.

Workers Compensation: The last weeks of the session are certain to contain wrangling over benefits for permanent disability in the workers compensation system. The Schwarzenegger administration has indicated an intent to adopt regulations providing for an increase in "PD" benefits of approximately 12 percent, although some argue that the increase would be slightly higher. A separate bill, SB 1717 (Perata) could also address this issue, which has been identified as perhaps the highest legislative priority this year by organized labor.

Finally, CCA continues to monitor the possibility of extending the sales tax to services in order to help balance the

state budget. As this column is written, on July 9, resolution of the budget stalemate is no closer than it was weeks ago. It remains a possibility that some expansion of the sales tax base will gain traction, and dry cleaning is commonly mentioned as one target. Obviously CCA will be vigilant on this subject. ☒

