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CLAIM DIGGER

Insurance 'archeologist' uncovers old policies in unusual places

By Scott Olson • solson@ibj.com

David O'Neill has rummaged through waterlogged basements, rodent-infested attics and even the bowels of the Queen Mary, searching for abandoned insurance records.

Like an archeologist combing through artifacts of the ancient past, O'Neill labors to construct liability insurance policies once considered expired. They often are as valuable as lost treasures—funding expensive environmental investigations or paying product liability defense costs, and ultimately saving corporate and small-business policyholders from economic ruin.

"These [types of] insurance policies are like gold, they really are," said Brent Huber, a partner at Indianapolis-based law firm Ice Miller LLP and member of the insurance recovery and environmental practice groups.

Within the obscure niche known as insurance archeology, O'Neill directs investigations for PolicyFind, an extension of Enviroforensics. Both companies are in the Stutz business Center and owned by Stephen Henshaw, who founded Enviroforensics in San Francisco in 1996 and moved headquarters to Indianapolis six years later.

Enviroforensics specializes in site remediation; PolicyFind followed in November 2006 and locates insurance policies to fund the cleanups



O'Neill, 60, has spent the past 15 years retrieving policies, the last five with Henshaw, and boasts an 85-percent success rate that might make the best gumshoes blush. He finds the tedious work both frustrating and rewarding.

We may not find the policy, he said, "but we may find enough evidence so the insurance company will have to produce the policy."

PolicyFind typically charges clients \$5,000 to \$25,000, depending upon the complexity of the case.

Henshaw hopes to grow the company's annual revenue to \$250,000 by opening offices on both coasts. He is targeting states where laws are friendlier to policyholders and often speaks at conferences across the country to drum up interests. The more-established EnviroForensics should bring in \$4.2 million in revenue this year.

About 60 percent of PolicyFind's work is related to environmental contamination. For Steve Waugh, who owns the building at 1234 N. Capitol Ave., cleanup costs might have driven him into bankruptcy, if not for PolicyFind.

After selling his Greater Diversified Supply Company in 2005, he tried to sell the building on North Capitol as well. He ran into a roadblock when a potential buyer's environmental study found contaminants on the property. Waugh called Henshaw after another firm spent a year fruitlessly searching through records. It took PolicyFind two months to get it done.

"So far, [insurance companies] have paid out \$200,000 worth of work that I haven't paid one penny of," Waugh said.

Henshaw, 47, is a hydro geologist who has worked in the fields of environmental remediation and groundwater contamination for 25 years. An Indianapolis native, he returned from San Francisco in 2002 to raise a family.

O'Neil holds a law degree and worked several years for an Environmental Protection Agency contractor in Cleveland charged with locating contaminators of a superfund site undergoing cleanup.

He later went to work for a risk-management company where he got his first taste of insurance investigation. One project that took five years involved locating the insurance policies of 2,000 companies acquired by a waste hauler that could be sold back to the carriers.

No expiration date

Henshaw founded PolicyFind and shifted all insurance investigations to it after fielding several requests to locate old records unrelated to environmental issues. Other work involves product liability and asbestos cases, and even sexual abuse claims against churches and schools. Lawyers, manufacturers and insurance providers often seek its services.

Insurers might consider PolicyFind a threat. But they also realize they have an obligation to their policyholders. And they're discovering they can limit the payout if investigations can extricate cleanup funds from previous property owners, or additional insurance carriers.

Standard commercial general liability policies are "occurrence-based"—meaning they never expire if the damage happened within the policy period. Policies dating to the early 1970s are particularly valuable because they typically don't contain pollution exclusions.

Finding old policies ends litigation or stops the need for it," Henshaw said. "It tends to shorten the process."

Pews Shadley Racher & Braun LLP is a local environmental law boutique that represents policyholders seeking to recover costs for environmental claims.

Firm partner Jeff Featherstun credits federal environmental laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), enacted in 1980, for helping to create the need for insurance archeologists.

At the same time, insurance law in many states began to favor providers. From 1972 until 1986, coverage for "accidental" spills and contaminations became more prevalent. Thereafter, general liability policies began excluding environmental releases, requiring companies to purchase special policies.

Bt, in Indianan, state law didn't address pollution exclusion until the late 1990s. For that reason, PolicyFind doesn't have as much work here because policies covering pollution are not as old and easier for companies to locate on their own.

"Indiana is very friendly to policyholders," Featherstrun said.

On board the Queen Mary

Henshaw counts four companies nationally as competitors but said several smaller players exist that simply sort through files. What Henshaw thinks gives PolicyFind an edge is a library it has compiled that contains thousands of insurance policies it can use as references. In addition, O'Neil's searches ranging from "Dumpster diving to data mining" have led him to discover archives he considers "proprietary information."

Many of the documents are used to assist dry cleaners that have become a large chunk of the company's clientele. Older properties typically are tainted by the dry-cleaning solvent perchloroethylene, classified as a hazardous air pollutant.

Bloomington Cleaners owner Steve Arthur took the proactive approach of probing his property for contamination, in the event his son who is taking over the business might sell it in the future.

The business had two previous owners, and PolicyFind located another insurance company to take partial responsibility for the \$500,000 remediation.

How can I complain?" Arthur said. "It took 2-1/2 years to excavate the property, and it hasn't cost Steve Arthur any money."

Perhaps O'Neil's most unusual expedition occurred this year, when he found himself sifting through dilapidated boxes in the hold of the Queen Mary. The British ocean liner, docked in Long Beach, Calif., was retired in 1967 and converted into a museum and hotel in 1971.

Workers who removed asbestos panels during the conversion cited recent health problems in their quest for damages. Working on behalf of the contractor's



Stephen Henshaw, CEO

insurance company, O' Neill found part of a policy from 1969 lacking any asbestos exclusion, making it highly valuable to the contractor and the insurer who could share responsibility with other providers. The discovery led to a settlement and helped avoid a lengthy and expensive trial.

These things take on a life of their own that may take years to resolve," O'Neil said.

To that end, Henshaw is confident PolicyFind's services will remain in demand.

"As long as there are lawsuits on products," he said, "we'll be needed."

Enviroforensics and PolicyFind

Services:

environmental site remediation and location of insurance policies to fund cleanups or product-liability defense costs

Clients:

insurance companies, manufacturers, attorneys, dry cleaners

Address:

Stutz Business Center, 1060 H. Capitol Ave., Suite E230

Founded:

Enviroforensics, 1996; PolicyFind, 2004

Founder/owner: Stephen Henshaw

Employees: 22

2007 revenue:

Enviroforensics, \$4 million
PolicyFind, \$250,000

Web sites:

www.EnviroForensics.com
www.PolicyFind.com