

The Environmental Corner

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Opening up Google, a newspaper, turning on the radio or catching the evening news is sure to expose you to the national debate over health care and insurance. Through that exposure, most of us have gained at least a passing familiarity with the issue of “pre-existing conditions.” Insurers either refuse outright to cover a person with a pre-existing condition or exclude that condition from the coverage, leaving the insured to pay for it out of his pocket. Environmental liabilities and using historical insurance to offset those liabilities are not the focus of a lively national debate, yet the costs incurred by drycleaners each year due to a similar problem are staggering.

We receive calls on a regular basis from drycleaners or property owners already engaged in defining the size of a spill or actively remediating it at the “request” of regulatory agencies asking for our help locating historical insurance to pay for the investigation and cleanup. Often times, we are able to locate that insurance to fund the clean up...but just as often, the twenty, thirty or hundred and fifty thousand dollars already spent by

our client cannot be recovered from the insurer even though the spending was necessary to comply with the regulator’s orders.

The causes behind your receipt of a “request” letter from a regulator for further investigation and/or remediation can come from many directions, not all of which are under your control: your landlord’s refinancing of his mortgage, your neighbor’s sale of his property, your tenant’s spill can all trigger a regulator’s letter requiring you to investigate and cleanup old spills and releases. Those letters come with deadlines – deadlines that if not met can result in significant

monetary and even criminal penalties. Delaying a response action is not an option, regardless of how costly it is. Once contamination is identified, the clock starts ticking, the bills start pouring in and the need for assistance in funding the cleanup from insurance becomes real and immediate to the drycleaner or the property owner. Unfortunately, no matter how successful we have been at locating historical insurance policies to fund environmental investigations and remediations, it is not a process that can be completed overnight; during

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the time required to find it and tender a claim, your bills can pile up.

Insurance policies overwhelmingly contain language excepting indemnification and defense against claims where late notice was tendered -- timeliness of notice to an insurer is critical. In other words, in complying with the regulator's demands prior to notifying your insurer, often, the money spent is not recoverable.

Proactive individuals, on the other hand, are insulated from most, if not all, of this risk. If we have already identified historical insurance, tendering a claim as a result of identified contamination is a much simpler process. Approximately half of the states in which we have conducted insurance archaeology accept a

"request" letter from a regulator or participation in a voluntary cleanup program as equivalent to a traditional lawsuit. Washington, Oregon and Arizona do not require a formal suit, although California does -- in either circumstance, though, insurers end up footing the bill, while defending you, the policyholder.

Regardless of your status as a retiring-to-Arizona-owner/operator, tenant, landlord or brand-new franchise owner, having historical insurance identified before it's needed is critical in protecting your investment, your business and making sure that the rainy-day fund stays intact rather than disappearing as an unrecoverable expenditure.

As I've said on numerous occasions and will continue to pontificate,

old insurance can be worth hundreds of thousands of dollars. Take the time to find your old insurance and store it like you would your most valuable treasures. Old insurance is an asset and locating it may be one of your wisest and most profitable business decisions.

As we enter the new year, make a point of organizing your business and planning for the future. If you want to sell your dry cleaning business or pass it on to your kids, understand that old insurance can be used to pay for the investigation and cleanup of old dry cleaning solvents. Wouldn't it be nice to know that you have the resources in your back pocket to address those concerns? Rest easy, do yourself a favor and look for your old policies.