

GRAHAM ADVISOR

NOTES FROM THE PLAYBOOK

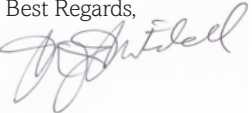
This summer marks the one-year anniversary of the tragic building collapse at 2140 Market Street in Philadelphia that was caused by the unsafe demolition of an adjacent privately owned building. While none of our clients were involved, the anniversary underscores the seriousness of safety on every job site.

The collapse, which took six lives and injured fourteen, serves as a reminder of the repercussions of not adhering to stringent safety protocols: criminal indictment, death of employees and innocent bystanders, increased insurance rates and OSHA fines. The reality of such tragedies is that everyone may be held accountable, from the contractor to the owner.

In 2003, we created an effective safety handbook for Philadelphia's Neighborhood Transformation Initiative that stipulated safety protocols to which every city-owned demolition site must adhere. This handbook significantly decreased insurance claims against the City of Philadelphia. We believe that if our rigorous standards were adopted for all demolition projects, city-owned and privately-owned, that tragedies like the building collapse in 2013 could be averted.

As you read this issue, remember that while not all topics discussed may apply to your business, safety is important to all. I encourage you to contact the authors or to contact me at feedback@grahamco.com.

Best Regards,



MICHAEL J. MITCHELL
CPA, CPCU
Vice Chairman



Navigating the Regulation and Risks of Brownfield Redevelopment

The trend toward gentrification and redevelopment of once-gritty urban neighborhoods and disused plots of decayed industry shows no sign of slowing. In order to redevelop brownfields in our cities, towns and inner-ring suburbs, we must deal with the unique challenges associated with past use and pollution. Along with diligent site investigation and remediation, securing the right Pollution Liability insurance is essential to any brownfield project.

ENVIRONMENTAL REGULATION AND LIABILITY

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) in response to the public's growing concern about abandoned hazardous waste sites. CERCLA includes a broad liability scheme that imposes strict liability on several categories of "potentially responsible parties." Under CERCLA, those potentially responsible parties are jointly and severally liable for the entirety of the cleanup cost, unless they can prove divisibility of the harm done.

Owners of contaminated land are responsible for the property's cleanup under CERCLA "based solely on [their] ownership status, even if the owner did not contribute to the contamination."¹

CERCLA bore two related but unintended consequences. It: (1) discouraged redevelopment of brownfields; and (2) sped the proliferation of suburban sprawl to virgin land without potentially problematic past usages. The 2002 Small Business Liability Relief and Brownfields Revitalization Act (the "Brownfields Act") was intended to rectify those issues. It eased the financial, regulatory and liability burdens associated with brownfield development by protecting an owner/developer whose CERCLA liability would otherwise be based solely upon ownership or operation of a facility. Developers, however, still face the risk of unexpected environmental contamination and resulting remediation and liability. Those risks impact both developers' willingness to take on a brownfield project and their ability to obtain funding from investors or banks.

THE RISKS THAT ARISE FROM BROWNFIELD TRANSACTIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

- Over-reliance on "clean" Phase I/II property assessments that are not guarantees against contamination
- Investigation and defense due to local and regional soil and groundwater contamination
- Construction debris containing hazardous materials
- Lead, asbestos, PCBs, radioactive material and hazardous chemical storage
- "Midnight dumping" on vacant land parcels
- Past landfills, lagoons and other solid waste disposal areas
- Spillage, stained soils, discolored surface water or oily sheens
- Unknown leaking of underground or above-ground storage tanks, piping or septic systems
- Devaluation of real estate assets due to buyers' uncertainty concerning possible contaminants
- Easements (rail/roadways, pipelines) on the property, with potential environmental implications
- Damage to natural resources

IF THE BROWNFIELD TRANSACTION INCLUDES REMEDIATION ACTIVITIES, ADDITIONAL INSURABLE RISKS INCLUDE:

- The release of contaminants from the site during the remediation process by construction activities
- The risk that the remediation plan that was approved by regulators and/or selected by the owner (in a voluntary cleanup) will not be effective
- The risk that additional remediation activities will be required by the identification of previously undiscovered contamination or by newly established cleanup standards
- The risk that hazardous materials being removed from the site for treatment or disposal will be released while being transported to or after deposit at the treatment or disposal facility

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ASK THE EXPERT



Kevin Smith on the risks associated with data breaches in the apartment industry and how multifamily operators can protect their businesses

Q. What risks do multifamily operators face should a data breach occur?

A. The personally identifying information that multifamily operators collect on residents in the form of applications, credit reports and lease agreements make them a target for data breaches. While the amount of information may pale in comparison to the millions of records that large retailers or health care systems collect on their customers and patients, multifamily operators are targets because they traditionally have less stringent controls over this data.

A large-scale data breach within the apartment industry would not only have the risk of costs associated with resident notification and credit monitoring expenses, but it could also lead to lawsuits, loss of business and reputational damages to the multifamily operator. All of these things lead to a major uninsured loss, since most traditional insurance policies do not cover such liabilities. Traditional insurance policies, such as General Liability, Property or Crime policies, do not cover the expense associated with notifying affected individuals when their information has been breached.

Q. How can operators protect their business from data breaches and the liabilities associated with them?

A. The first step is understanding the type of information that is collected from residents so that policies can be put in place to protect the data. The protection can be as simple as controlling employee behavior, such as policies on downloading unauthorized software and properly disposing records, as well as rules related to personal device usage, to technology solutions, such as anti-virus software updates and password protection measures.

Much of this identification process can be performed in the underwriting process to obtain Cyber Liability Insurance. Insurance companies have resources to evaluate a company's exposure to cyber liability and would not only offer an insurance policy to cover many of the costs from a data breach, but also ensure best practices are in place to mitigate loss. All companies should have a data security plan in place that covers policies, and the plan should be assessed regularly.

To learn more about Cyber Liability Insurance, please contact Kevin Smith, Vice President & Real Estate Division Leader at The Graham Company, at ksmith@grahamco.com or 215.701.5323.

GRAHAM SIGHTINGS

Experts in the News



Matt Kelly on how to avoid FMLA and AMA disputes
Restaurant Hospitality, Summer 2014 Issue



Micah J. M. Knapp on navigating the regulation and risks of brownfield redevelopment
Environmental Design + Construction, July Issue



Steve Phillabaum and Luke Atkinson Foley on the often-overlooked workers comp saving related to manufacturing automation
Control Engineering, August 2014 Issue



Carl Bloomfield on Owner Controlled Insurance Programs
University Business, August Issue

Awards & Recognitions



Ranked Top Insurance Brokerage in Philadelphia Region
The Philadelphia Business Journal ranked The Graham Company as the sixth insurance broker in the Philadelphia region. The firm ranked number six based on the number of local employees and number five based on the number of local licensed insurance brokers.

Giving Back

The Graham Company employees are making donations to charity and slipping on their jeans for Denim Days again this year. In the past six months, the company has raised \$5,291 for nonprofits that benefit the Greater Philadelphia region.

CLAIMS CORNER

5 Steps to Prepare Businesses for Hurricane Season

With Hurricane Season upon us, businesses in hurricane-prone areas should make sure they are ready for potential losses from a storm. Insureds should consider these five steps:

- 1. Prepare buildings.** Have your buildings inspected and complete maintenance necessary to ensure they can withstand severe weather. Sand, plywood and generators should be purchased well in advance of storms.
- 2. Review your current insurance program.** Review your policies to ensure appropriate limits and deductibles are in place and evaluate coverage gaps. Your current program may not cover mold damage from flooding. Most property policies have exclusions or extreme sublimits with respect to mold remediation, and you may want to consider a pollution policy.
- 3. Review reporting requirements.** While every policy is different, most require you to notify the carrier immediately, take reasonable steps to protect your property from further loss and submit a "proof of loss" within a certain time period.
- 4. Create a list of emergency vendors.** Ideally, vendors responsible for handling the aftermath of flooding, fire, power interruption, etc. should be recognized as preferred vendors by your carrier. Pre-negotiated rates and availability guarantees should be built into contracts.
- 5. Review business continuity plans.** Make sure appropriate employees have an up-to-date plan with how internal communication and business operations should continue in the event of a disaster. Verify that your plan includes accurate contact information for your broker, carrier and emergency vendors.

The Graham Company can help protect your business from losses caused by hurricanes; contact Lisa Talley, Senior Claims Consultant, at ltalley@grahamco.com or 215.705.5417, or Nick Cushmore, Senior Technical Specialist, at ncushmore@grahamco.com or 215.705.5422.

Brownfield projects present developers and contractors with both significant potential reward and liability. Those risks affect both companies' decisions to redevelop brownfields, as well as banks' willingness to finance such projects.

Contractors, too, face liability arising from their work at a brownfield site. Some of the issues contractors face include the inadvertent disturbance of preexisting contamination/product in the form of asbestos-containing materials; naturally occurring asbestos in subsurface soils/geology; and lead paint and contaminated soils, surface or groundwater. Contractors can also be sued or fined for accepting supposedly "clean" fill from unknown origins, only to learn later that it was contaminated with petroleum or other hazardous substances.

Traditional liability and property insurance policies simply do not cover the potential liability and property damage associated with brownfield pollution. A CGL policy is likely to include the standard "Absolute" Pollution Exclusion, the more restrictive "Total Pollution Exclusion," a Mold/Silica Exclusion, a Lead Exclusion and an Asbestos Exclusion. Commercial Property policies incorporate the same exclusions and offer only small limits for the cost of cleanup of polluted land or water.

POLLUTION LEGAL LIABILITY INSURANCE AND CONTRACTORS POLLUTION LIABILITY

In response to the need for protection against pollution risks, insurers developed two types of policies:

1. Pollution Legal Liability (PLL) policies to protect property owners and developers from liability associated with pollution-related property damage, cleanup and bodily injury; and
2. Contractors Pollution Liability (CPL) policies to cover builders and contractors liability arising from pollution-related property damage and injury.

In today's environmental insurance market, PLL policies can be tailored to address the diverse needs of each property, as well as structured to meet a variety of requirements and objectives, including, but not limited to, regulatory obligations, contract requirements, lender requirements, landlord obligations and business objectives. Modern PLL policies are flexible enough to provide coverage for existing contamination. PLL insurers will write policies to cover cost overruns on

remediation activities and the risks associated with releases caused by cleanup activities at the site. Savvy companies and their attorneys utilize PLL insurance to either replace the indemnification/hold harmless agreement or "wrap-around" the indemnification. Owners and developers can find PLL coverage with a single insurer written for up to a 10-year term and with up to \$50M in limits to address site legacy liability associated with a brownfield site.

CPL policies cover third-party liability for bodily injury and property damage due to pollution (sudden/accidental and gradual) caused by the contractor's operations. Increased competition has caused insurers to broaden their coverage considerably over the last few years to include emergency response costs, transportation, mold, site pollution for contractor yards and professional liability. Minimum premiums for new policies fall well below \$50,000, and coverage is easily obtained under \$20,000. Moreover, CPL claims-made policies have rapidly been replaced by occurrence forms, meaning that the liability coverage purchased for a given year will be available to the contractor for its activities during that period of time, even if the property damage or bodily injury does not become known until years later.

Brownfield projects present developers and contractors with both significant potential reward and liability. Those risks affect both companies' decisions to redevelop brownfields, as well as banks' willingness to finance such projects. By involving an insurance professional early in the planning process, however, developers and contractors can secure protection from those risks at a defined cost.

To learn more, please contact Micah J. M. Knapp, Esquire, Producer at The Graham Company, at mknapp@grahamco.com or 215.701.5317. You may also consider contacting John J. Heft, MS, CRIS, Senior Vice President, at New Day Underwriting Managers at john.heft@newdayunderwriting.com or 609.298.3516, Ext. 105.

¹U.S. Environmental Protection Agency, Office of Site Remediation Enforcement/Office of Enforcement and Compliance Assurance. "Revitalizing Contaminated Sites: Addressing Liability Concerns." EPA Pub. No. 330-F-11-002. (March 2011), 2.



EXECUTIVE ANNOUNCEMENTS



The Graham Company Technical Development Department

The Graham Company Honored with 20th PAR Excellence Award for Commitment to Quality Assurance, Client Service

The Graham Company has been awarded the E&O Plus PAR Excellence Award and is one of the only firms that has won this prestigious award 20 times. The annual quality award is presented by E&O Plus, a risk retention group sponsored by Assurex Global, a worldwide network of insurance brokers.

On an annual basis, external reviewers evaluate firms' adherence to quality management principles, including appropriate training; compliance with standards, policies and procedures; effectiveness of internal auditing systems; and firm-wide commitment to

quality service. As a result of its audit, The Graham Company was awarded the highest award for quality management in recognition of the brokerage's total commitment to excellence in client service. The Graham Company's Technical Development Department's service, expertise and routine internal quality audits played a key role in earning this prestigious award.

"This is a significant honor for our firm to have our peers recognize that our leadership is committed to fostering a culture of excellence," said Marty Irons, CPCU, CIC, ARM, CEBS, Vice President – Technical Development Department at The Graham Company. "Being recognized for 20 years is a clear indication of our company's unwavering commitment to quality, professionalism and superior client service."

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