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THE INSURANCE NEWSLETTER

Spring 2007

Katrina Flood Litigation — Possible Effects

As you may have read in your local paper or in business magazines, the supposedly clear cut flood exclusion found in property insurance policies — whether in Homeowners policies or in various commercial policies — is being challenged in various Louisiana and Mississippi courts.

We won't bother you with all the fine legal points, but the legal tide is shifting away from the insurers and finding for coverage under various circumstances. One likely outcome may well serve to increase rates for property insurance — particularly Homeowners — wherever there is a perceived flood exposure. This is very much up in the air at this time, but it is a possibility.

Perhaps more importantly, whatever the outcome of all this litigation, it definitely will not affect the need to buy flood insurance in the NFIP — the National Flood Insurance Program — essentially a government agency serviced by insurance carriers. While the NFIP primarily serves residential and small commercial properties, it also serves larger commercial properties in a limited fashion. In this latter aspect, some larger buyers of insurance may be able to get flood insur-

ance directly from the insurance companies, but with rather sizable deductibles. The NFIP can then be used as primary insurance under the deductible.

Two very important things to remember:

1. SPRINGTIME IS FLOOD TIME;

And 2. There is a waiting time before flood insurance can be made effective.

So, let's talk about it now. If your property is at an elevation which makes you think you're immune from flood damage, remember that flood insurance also covers damage from mudflow.

P.S. Coverage in NFIP is available only in communities that have applied for and received eligibility.

Call us Before you do it.

At some point you may expand your business by buying another business or another commercial property or even buying vacant land for future use. Typically you buy the financial assets, the physical assets and other assets, such as goodwill. But you might also be acquiring certain liabilities, such as undiscovered product or other liability claims. Or there may be hidden pollution hazards existent in vacant land or otherwise.

Different terms in mergers or acquisitions may produce different exposures. You wouldn't think of entering a buyout situation of any kind without the advice of your attorney as well as of your accountant. By the same token, you should have us on your team to help you set up a wall of protection against the possible existence of hazards incurred by the party you are acquiring.

It's a Changing World

In the days when families were intact — the so-called "nuclear family" — with the husband as the sole breadwinner who provided for himself, his wife, two kids, one cocker spaniel and the bank holding their mortgage, life insurance was uppermost in the financial planning of most families. The threat of possible premature death of the sole provider was the big bugaboo.

That's not to say that life insurance today is not needed, just because the wife also works. There's an economic value on her life too that needs the financial protection that life insurance affords. And today, slightly more than half the households do not have a married couple in them. There may be a cozy living

arrangement of unmarrieds or, more likely, an unmarried head of household — who has to provide financial protection for the children.

The need for life insurance to provide financial protection for a business — so called “key man” insurance — better call it “key person” insurance — is well known and very valid.

Back in those days, health insurance was virtually unknown. Today, with 47 million uninsured, group health insurance develops almost triple the amount of premiums that group life does. Of course total life insurance premiums still exceeds total health insurance premiums by about one-third more. But that’s due to the 47 million uninsured for health insurance.

Now here is the shocker! The premium outlay for annuities is just about double the premium outlays for life insurance! Why? Simply because longevity is a greater financial risk than premature death for many people. They are more concerned with outliving their assets than with dying too soon; and annuities, properly arranged, are designed to do just that. Group annuities outsells group life by four to one!

Of course, our office handles all forms of insurance, aside from the more familiar property and casualty coverage for businesses. We arrange annuities — group as well as individual — as well as life and health insurance.

Want to live long but keep your assets from dying before you do? Stay healthy and speak to us about annuities.

Easily Overlooked

The amount of insurance that should be purchased on buildings should reflect the current cost of replacement, not the market

value which includes the land it’s on. The land is still there after a building is leveled by fire, tornado or whatever.

One of our clients called to reduce the insurance on his Homeowners policy because the housing market softened and he didn’t think his house was as valuable as before. We had to patiently explain that it was the cost of reconstruction that counted, not the location value as determined by market conditions as well as by the school district, neighborhood shopping, commuter facilities, etc.

Further conversation revealed that a couple of years ago the house went through a major improvement — over \$30,000 worth . We had to do more patient explaining. He finally saw the light and increased his policy by \$90,000 — \$30,000 for the improvement and \$60,000 for the effect of inflation of building costs since he originally bought the building.

Please keep these factors in mind regarding insurance on all types of buildings.

A Bit of an Anomaly

It’s a well known fact that, in general, business interests lean toward the Republican party. That includes the insurance industry as well as banking, construction, etc. As we’ve noted on these pages, the above named industries in particular are very much concerned with the continued existence of TRIA — the Terrorism Risk Insurance Act. Without TRIA, large construction would virtually come to a halt as banks won’t lend and insurers won’t insure. The whole economy would suffer.

As we previously noted, last year a somewhat watered down version of TRIA was extended

to expire 12/31/07. With the changed make up in Congress, Sen. Chris Dodd, (D. Conn.), an avid proponent of TRIA , now heads the Senate Banking committee formerly headed by Sen. Richard Shelby (R. Ala), an avid opponent of TRIA. Presumably, the continued existence of TRIA stands a better chance than heretofore, with a possible shift in political leanings by important elements in the affected industries.

Insurers and Reinsurers

Read the Papers too

We all read the well-publicized report of the Intergovernmental Panel on Climate Change (IPCC). Just to refresh your memory, leading scientists from 150 countries are more sure than ever before that a significant factor in global warming is human activity in adding to the CO2 in the atmosphere. It’s not all due to emissions from vehicles, utility plants, etc., but also due to forest destruction.

In any event, top management of insurers, and especially of reinsurers, are very much concerned. While most of the concern is of a long term basis, e.g., the flooding of shorelines that have grown in population and property values, but also the possibility that, despite the 2006 letup, hurricanes and other weather related catastrophies will increase in frequency and intensity, as 2004 and 2005 indicated. Warmer waters increase hurricanes strength and activity.

As far as catastrophies are a source of concern, reinsurers are directly affected far more than are primary insurers. They, the reinsurers, respond by raising catastrophe rates to the primary carriers, who then have to raise

their rates to you and us. A part of that scenario is that primary insurers may also have to retain more liability themselves and then would be weakened financially as a result of catastrophic events.

Now all this is not going to change rates by next Tuesday morning, but it's bound to have an effect. Owners of shore-based property from Texas to Maine have already been affected by rate jumps ranging from modest to gigantic.

This is despite the still soft market for non-catastrophe prone coverages, e.g., general liability, auto liability, crime coverages, etc. Our feeling is that this softer segment of the market will be bottoming out this year. But don't ask us to predict the date of the turnaround!

Leave it to the Lawyers

We have clients that utilize contractors. We have clients that serve as contractors to others. And we have clients that act as contractors and also utilize sub-contractors. That puts us on the spot. We can't favor either class in our duties as advisors to all our clients in their relationship with others regarding who is responsible for what, who holds whom harmless, etc.

We don't practice law. Leave all that to the lawyers, but clue us in. We should have a copy of any such contract, regardless of your position, so that we can take whatever steps are necessary to tailor your liability policy. Frequently, no changes are necessary, but sometimes these contracts involve transfers of risks or something called "reverse risk transfer."

While attorneys should generally avoid these situations for

their clients, sometimes they may be unavoidable because of the difference in bargaining power between the respective parties. If you're dealing with Exxon Mobil are you going to push them around?

Just another Aspect of Risk Management

We've been harping on the need for loss prevention as a means of reducing insurance premium costs. That's really just the beginning of it. As we've often noted, just about every compensable loss develops collateral uninsurable loss costs.

In the area of Workers' Compensation insurance, at least 50% of loss costs are wage replacement payments. To better control these there has to be a post-injury response procedure in place to get the injured employees back to work faster and to use effective job shifting among others while the injured party is absent.

We can't do this for you. We can only point out the importance of it to make you think about it and plan accordingly.

* * * * *

While on the subject of Workers' Comp, surely you are aware that for all but the very smallest businesses, your W.C. premiums are experience rated. Take that a step further. If your experience is good it would often be appropriate — in your favor — to go for "Retro", meaning Retrospective rating, which has an even more direct relationship to your loss experience. In effect, you'll be paying for your actual losses, subject to a minimum and a maximum.

The other side of the coin is that if your experience is just plain lousy, it may be likely that no insurer will want your busi-

ness unless you agree to a retro plan.

As the Economy gets more Diversified, so does Insurance

We have clients in a wide range of businesses, so that every article herein doesn't necessarily apply to every client. However, we aim to cover a wide range of exposures for a wide range of businesses.

One growth business can best be described as "consulting." Many highly qualified professionals and technicians are engaged in this in one or more ways. Some have regular jobs and do consulting as a sideline. Many simply chuck their jobs in mid-career and start up a new career on their own, with or without a few employees. And many retire at 50 or 60 or whatever and go out for themselves after a few years of being bored with golf, fishing or what have you.

Our economy is more complex than it used to be. There's a growing demand for technicians of all kinds, be they software engineers, financial specialists, real estate managers or what have you. These people usually have good specialized knowledge of their field, but frequently are naïve about the business or legal end of their work.

For example, most consultants of one kind or another do not have to be licensed. Thus, many practitioners don't know that the absence of a licensing requirement doesn't mean that courts would not hold them financially responsible for errors in their practice. And some believe that the worst that could happen to them for an error harmful to a client is that they'd be stuck only

ing for the fee charged the client — usually a small fraction of the client's loss. (These examples and those of a similar nature were not dreamed up by us, but actually occurred in many cases).

The long and short of it is that these people, who frequently hold themselves out as experts, are subject to the same standards of liability for harm caused by their errors as are professionals, e.g., doctors, lawyers, engineers, etc. And as such they need insurance. Even if they are not held liable because the allegedly harmed client couldn't prove his case, the insurance company provides the legal defense, which can often run into six figures, depending on the complexity of the case. In addition to the cost of legal defense, the insurance company attorneys

are generally far more qualified to defend these cases than are lawyers with a general practice.

What is the Insurance Market like?

In the past several issues we reported the average industry decline in rates from the previous year, as compiled by MarketScout. We noted differences by class of business and particularly by size of account. And of course we noted that the experience of individual accounts will always bring results that are either better or worse than the averages.

Nevertheless, we got a call from one of our clients that went something like this: "Hey, where's my 8% discount from last year?" Of course, he was

referring to the fact that we noted an average 8% discount throughout the country, covering all classes of business, all sizes of accounts and all individual experiences.

We thought we made it plain that the circumstances varied by many factors. Indeed, some policies in our office were renewed with far larger discounts than 8%, and at the other end, many policies were renewed with a sizable jump in premiums, with each disparate case reasonably justified by appropriate underwriting standards.

So when we state that "the market as a whole is soft" it's like saying that "we're in a bull market for stocks", but many investors are loaded with dogs that are down substantially.

CAN WE GET PERSONAL FOR A MINUTE ? ? ?

Exciting things are happening in our Personal Insurance Department! Now, more than ever, we have the markets and experienced staff who can analyze your situation and design insurance solutions to meet your personal insurance needs. Some of the products we have to offer are:

HOMEOWNERS • AUTOMOBILE • MOTORCYCLE • PERSONAL UMBRELLA • LIFE

With the combination of our highly-competitive insurance companies and our experienced Personal Risk Managers, you can be assured you are getting the right coverage for the right price.

***CALL OUR PERSONAL INSURANCE CENTER TODAY
AND ACCESS UP TO 12 LEADING INSURANCE CARRIERS !!!
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