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Presentation for:



September 15, 2009

CAPLA Open Forum

Clause 3.11 Insurance CAPL Operating Procedure (2007)

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Clause 3.11 Insurance, CAPL Operating Procedures (2007)

Agenda

- Introduction
- Safety Moment
- Case study
- Review of compulsory insurance in Canada
- Insurance required in Alternate (a) (Prescribed Policies to be maintained)
 - Automobile liability insurance
 - Commercial general liability insurance
 - Aircraft liability insurance
- Control of well
- Considerations of opting for Alternate (b)
- Conditions required in Clause 3.11
- Questions

Clause 3.11 Insurance, CAPL Operating Procedures (2007) Case Study – BP Canada

- Long term studies show that buying insurance is more expensive than absorbing the losses as they occur
- BP has a healthy balance sheet and can absorb uninsured losses
- BP purchases insurance where agreements (Common Ownership and Operating Agreement (CO&Os), Joint Operating Agreement (JOAs), etc.) call for the operator to purchase for the joint account
- BP preference for Clause 311 is Alternate (b)



Clause 3.11 Insurance, CAPL Operating Procedures (2007) Case Study – Unnamed Start Up

- Board of directors set a policy to insure operations – the company has a small reserve that cannot withstand a disaster
- The company has 5 JOAs, 1 CO&O representing 5 operated wells, 5 partner operated wells, one Gas Gathering System (GGS)
- Clause 311: All operated wells have Alternate (a), all partner operated wells have Alternate (b)
 - Insurance purchased from Canadian Petroleum Insurance Exchange (CPIX) that covers:
 - 100% of operated wells
 - Company Working Interest (WI) of partner operated wells
 - 100% of GGS
- New JOAs: Alternate (a) if operated, Alternate (b) if partner operated (operator preference)

Referenced: Country Intelligence (AXCO Insurance Information Services Ltd.)

Clause 3.11 Insurance, CAPL Operating Procedures (2007) Case Study – A or B?

- “A” No choice – you **MUST** buy insurance!
- “B” Choice
 - All parties responsible for their own insurance
 - Use your balance sheet, or buy insurance

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Compulsory Insurance in Canada

- Workers' compensation is mandatory. At present this class is handled by the provincial governments.
- There is compulsory legislation in all provinces for motor third party liability in respect of bodily injury and property damage.
- Aviation liability coverage is required for commercial and private aircraft.
- Obligatory passenger liability insurance for passenger-carrying marine craft, except small vessels, became mandatory from 2004.
- Professional indemnity insurance is obligatory by law for insurance brokers and architects in all provinces.
- There are no compulsory insurances in the life and benefits markets.

Clause 3.11 Insurance, CAPL Operating Procedures (2007)

A. Requirements Respecting Personnel

- “... the operator will comply with the requirements of all Employment Insurance, Canada Pension, Workers’ Compensation and Occupational Health and Safety legislation...”
- Employer’s Liability/Contingent Employer’s Liability
- Worker’s Compensation

Workers' Compensation

- Workers' compensation is a social obligation, expressed as legislation, imposed on and funded by employers in exchange for a non-confrontational employment climate
- Canada – A monopoly function of the provincial governments
However, where an organization is not a mandatory industry (i.e. not subject to the law), private insurance with the same benefits as workers' compensation can sometimes be purchased as part of a general liability insurance policy.
- United States – Either state-funded, private insurer or “qualified self-insurer”
 - Each state determines its own legal structure

Clause 3.11 Insurance, CAPL Operating Procedures (2007)

C. Required Insurance, Alternate (a) Prescribed Policies to be Maintained

- (i) Automobile Liability Insurance
 - All motor vehicles, snowcraft and all terrain vehicles, owned or non-owned, operated or licensed by the operator
 - Bodily injury, death, and property damage limit of \$5,000,000 per occurrence

Automobile Insurance Provincial vs. Private Insurance

- “Provincial” insurance means that the provincial government is the sole provider for primary coverage
 - Excess coverage can be bought from private insurers
- “Private” insurance means that the providers are “for-profit” insurance companies

Automobile Insurance Minimum Liability Limits



\$200,000 in all provinces except Quebec, which is \$50,000, property damage only

Automobile Insurance Other Legislative Influences

- Mandatory Coverages
 - Third party liability and accident benefits where applicable
- “No Fault” Legislation
 - i.e. claim for bodily injury and/or damage to vehicle can not be pursued (or is restricted) in court. Therefore, bodily injury claims are settled under mandatory Accident Benefits section of the policy.
 - True no-fault only in Manitoba and Quebec. Ontario has circumstances where suit is allowed and in Saskatchewan everyone makes his or her own choice

Automobile Insurance

Non-Owned Automobile Liability Insurance

Legal liability arising out of the operation of a vehicle ***not owned*** by the named Insured.

Potential exposures include:

- Named insured's vicarious liability arising out of the operation of vehicles not owned by the named insured, but which are operated on the latter's business (ie: employees, contractors, limousines, couriers, rentals)
- The obligation assumed under a contract to hold the other party harmless for bodily injury or property damage to a third party (i.e. rental agreement)
- The liability imposed by law or assumed under contract for damage to rented vehicles (i.e. rental agreement)

Clause 3.11 Insurance, CAPL Operating Procedures (2007)

C. Required Insurance, Alternate (a) Prescribed Policies to be Maintained

- (ii) Commercial General Liability Insurance
 - Inclusive bodily injury, death, and property damage limit of \$5,000,000 per occurrence
 - Including employer's liability, contingent employer's liability, contractual liability, contractor's protective liability, sudden and accidental pollution liability, and products and completed operations liability

General Liability Insurance

What is “Liability”?

“... the state of being bound or obliged in law or justice to do, not do, pay or make good something; the state of one who is bound in law or justice to do or not do something which may be enforced by action.”

A term often used in legal proceedings

General Liability Insurance Insuring Agreements

- “Pay on Behalf” (preferable) or “Indemnify”
- Insured’s legal obligation for damages because of liability imposed by law, or assumed under contract, due to bodily injury, personal injury or damage to tangible property that results from:
 - The existence of facilities;
 - Products;
 - Equipment, fixed or mobile (not licensed);
 - The actions of employees;
 - Work that is done for others; and
 - The actions of others on your behalf for whom you are responsible (“vicarious” liability).
- Legal expenses incurred by the Insurer in your defence

General Liability Insurance

Notable Exclusions

- Workers' Compensation Act (insured elsewhere)
- Intentional injury or damage (*there is usually a reasonable self-defence exception*)
- Damage to property in Insured's care, custody or control (insured elsewhere)
- Injury, damage arising out of licensed vehicles (insured elsewhere)
- Professional liability (insured elsewhere)
- Environmental injury or damage (sudden & accidental/time element pollution exceptions available - or insured elsewhere)
- Advertising activities, if in that business (insured elsewhere)
- Damage to insured's own work or product (business risk)
- Damage or injury caused by war or terrorism (can be purchased)

General Liability Insurance

Insurance Requirements in Contract

- General Liability
 - Per occurrence
 - No standard aggregate – something to be mindful of
 - Employer’s liability/contingent employer’s liability
 - Contractual liability
 - Products and completed operations liability
- Pollution
 - Sudden and accidental or better
 - Environmental impairment liability

Clause 3.11 Insurance, CAPL Operating Procedures (2007)

C. Required Insurance, Alternate (a) Prescribed Policies to be Maintained

- (iii) Aircraft Liability Insurance
 - All aircraft, owned or non-owned, operated, or licensed by the operator
 - Including passenger hazard
 - Bodily injury, death, and property damage limit of \$10,000,000 per occurrence

Clause 3.11 Insurance, CAPL Operating Procedures (2007)

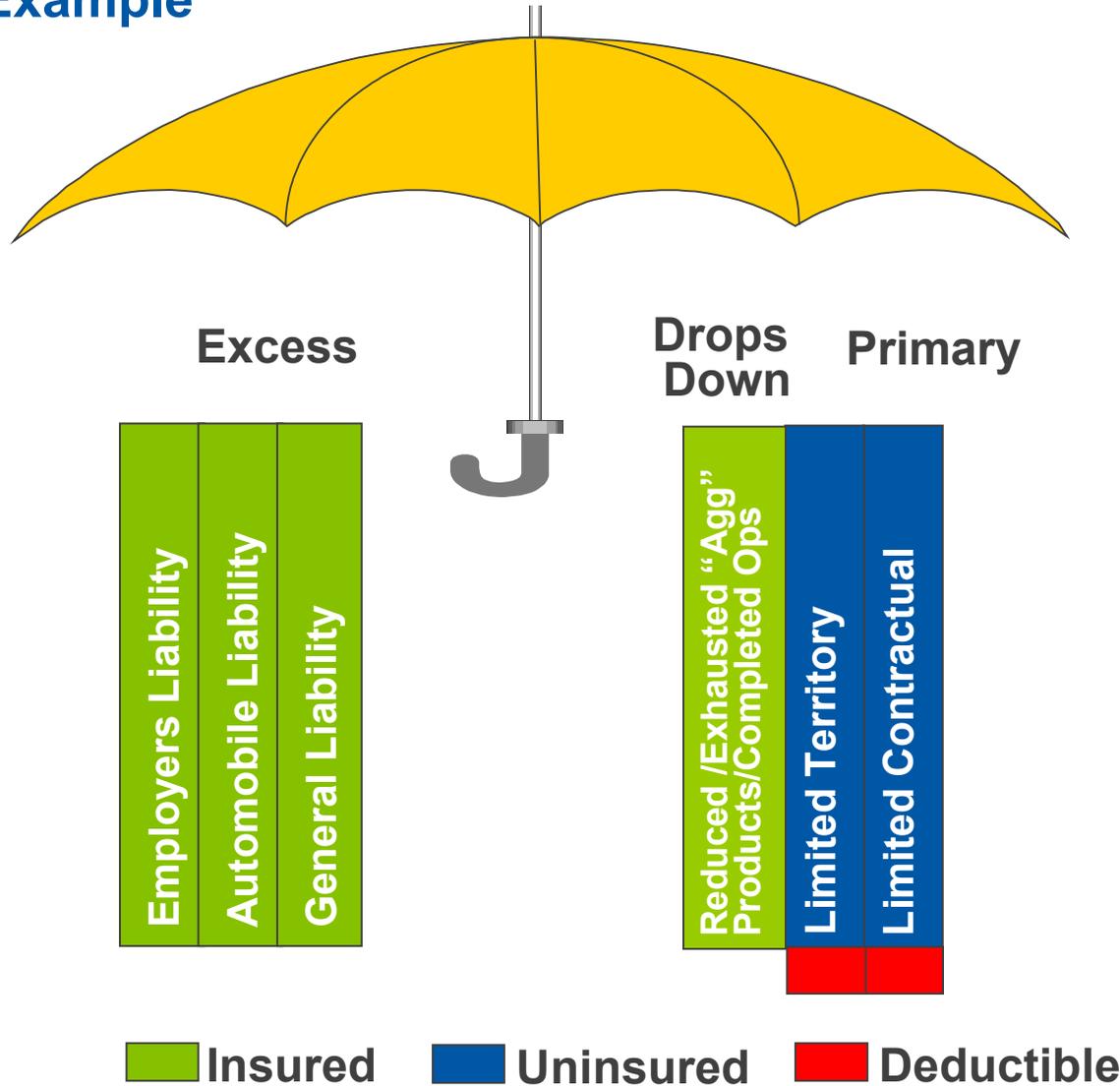
C. Required Insurance, Alternate (a) Prescribed Policies to be Maintained

- Aviation Liability insurance required *if applicable* when you a) own or operate aircraft and b) charter aircraft
- Owned Aviation Liability
 - Owner of aircraft has to buy limits for passenger hazard and third party liability (TPL)
 - \$300,000 minimum limit for passenger hazard set by Transport Canada in Section 6.02 of the Canadian Aviation Regulations
 - TPL minimum limits also set by Transport Canada and determined by aircraft weight
- Non-Owned Aviation Liability
 - Charterer (not owned or operated) buys due vicarious liability which could apply in event of a loss
 - We recommend having the charterer added as an additional insured to the owners aviation liability policy

Umbrella Liability Insurance Scope of Coverage

- Provides excess insurance over specified underlying policies
- “Drops Down” to meet a reduced or exhausted aggregate limit in underlying policies
 - i.e. “Products and completed operations” under a general liability policy
- Grants primary protection (subject to a deductible and applicable exclusions) where there is no underlying insurance
 - i.e. Non-owned aircraft chartered with crew

Umbrella Liability Insurance Coverage Example



Clause 3.11 Insurance, CAPL Operating Procedures (2007)

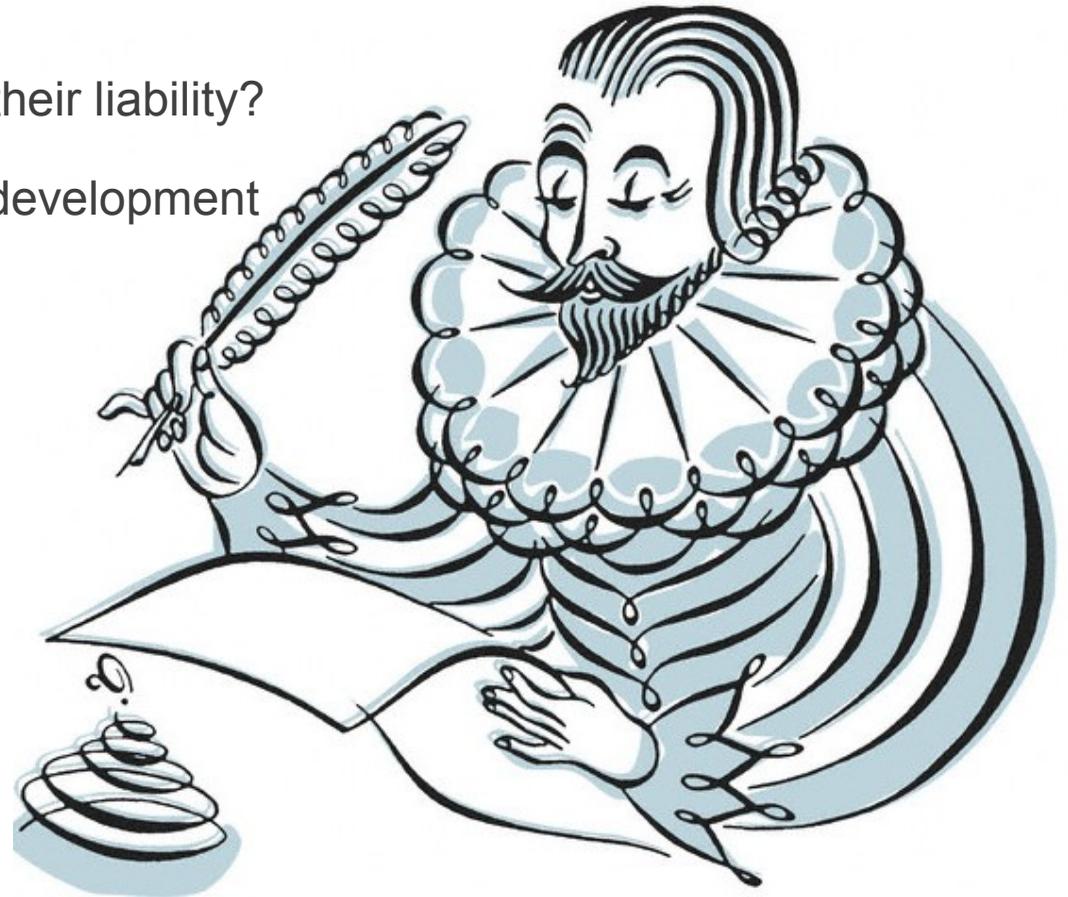
B. Required Financial Responsibility

- Control of Well Insurance
 - Requirement to purchase can come from 3 sources:
 - Canadian Association of Oilwell Drilling Contractors (CAODC) Daywork contract
 - Energy Resources Conservation Board (ERCB) (or equivalent in other provinces)
 - Other contract (i.e. turnkey)
 - 3 Principle coverages:
 - Control of Well
 - Cost of Redrilling
 - Seepage & Pollution, Clean-Up and Containment
 - Rule-of-thumb
 - Purchase limits 3-6 times the Approved for Expenditures (AFE), depending on the type of well being drilled

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To “(b)” or not to “(b)”

- Considerations of opting for Alternate (b) (no prescribed policies to be maintained)
 - Who are your partners?
 - Are you concerned about their liability?
 - Stage of company’s growth / development
 - Balance sheet
 - Corporate risk philosophy
 - Choice



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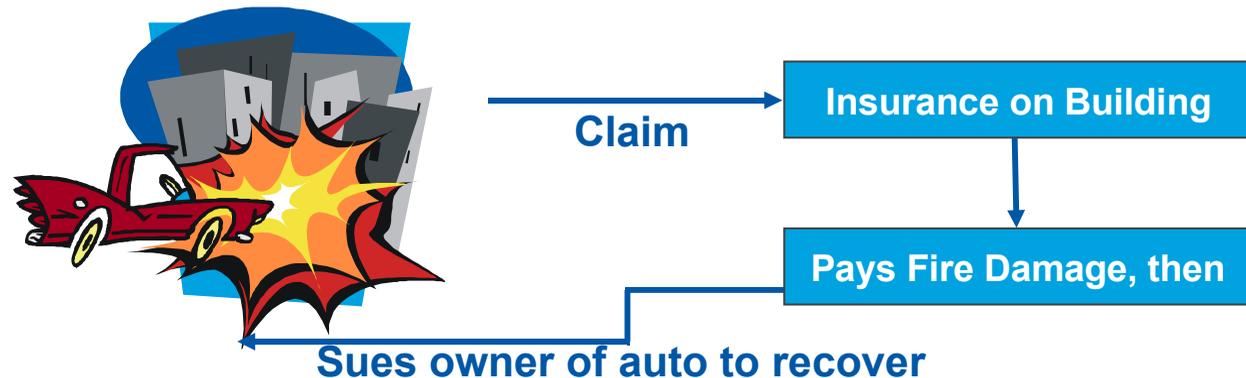
D. Conditions, Additional Insured

- Additional insured status has limitations – not a panacea
- Named insured status should not be granted
- Additional *named* insured status does not exist
- Defence and claim payment afforded by the other party's policy
 - Arising out of other party's operations
 - Contributory negligence may void additional insured status

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D. Conditions, Subrogation

- When one party suffers a loss that is due to the fault of another, the former has the right to pursue a legal action against the responsible party to recover loss. After an insurer pays a loss, it is entitled to take legal action, in the name of its insured, to recover that loss against the responsible third party. This is known as “subrogation”.



Insurer is exercising its Subrogation Rights

Benefits

- Owner of building gets paid promptly for damage
- Insurer recovers its loss from responsible party
- Loss does not contribute to building owner’s loss ratio on property policy

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D. Conditions, Subrogation

- Waiver of Subrogation – insulates other party from a “subrogated” claim
 - If the insured waives subrogation via contract prior to loss, Insurer is usually bound by that
- Insurer has no rights of subrogation of its own, but steps into the shoes of the Insured in order to subrogate
- If the insured has signed away rights of subrogation via contract, then insurer must accept that

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D. Conditions, Additional Insured Status, and Waiver of Subrogation

- Is Waiver of Subrogation and additional insured status a “belt and braces” approach? Do you need both?
- **Additional insured status does not make you a party to the insurance contract between the contractor and his insurer. You are still a third party.**
- If subrogation is available to the contractor for any reason, then the hold harmless intent of the contract is breached and opens the way for contract litigation.

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D. Conditions, Waiver of Subrogation/Additional Insured Status on:

- General Liability
 - Both available
- Employer's Liability
 - Waiver only / contractual liability
- Workers' Compensation
 - Waiver only
- Auto
 - Neither is really required in Canada

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D. Conditions, Other Insurance Clause

- Every policy contains a form of this clause
- It may say “if there is more specific insurance **available to the insured**, then this policy is excess and non-contributory”
- It may say “if there is more specific insurance **available to the insured**, then this policy will contribute”
- It may say “this policy is primary”
- If your policy pays part of a loss, you are a contributing third party and can be subrogated against



Certificates of Insurance

Certificates of Insurance

- To provide evidence of insurance coverage. It is **NOT** an insurance policy and does not alter or amend the policy in any regard.
- A document issued and signed by an insurance company at the request of its insured. Right to issue and sign certificates can potentially be assigned to the broker via contractual agreement (policy condition) between Insured and insurer.
- Negates the need to provide copies of policies – should never provide copy of policy
- Who requires them:
 - Financial institutions;
 - Landlords;
 - Lessors of property/equipment;
 - Auto leasing companies;
 - Owners of sites you access; and
 - Parties you contract with.

Notice of Cancellation/Material Change

- Usually the insurance provisions will contain a requirement for a notice of cancellation
 - “Endeavour” verbiage
- Also perhaps notice of:
 - Non-renewal
 - Do not agree this in a contract
 - Material change
 - Usually not available
 - Who would determine materiality?

The information contained in this presentation provides only a general overview of subjects covered, is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. Insureds should consult their insurance and legal advisors regarding specific coverage issues.

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