

# MEMORANDUM

**TO:** Storm Wilkins  
Director of Risk Management, GIS Developers

**FROM:** Christina Barcello  
Senior Account Executive, Marsh

**RE:** Brownfield Redevelopment Project

**DATE:** April 10, 2015

## Topic:

As requested, Marsh has evaluated the adequacy of GIS Developer's current insurance program to handle unique exposures arising out of a proposed brownfield redevelopment project. Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) buyers, lessors or lenders are held responsible for remediation of hazardous substance residues, even if a prior owner caused the contamination. (Risk & Insurance, 2015) Therefore, it is crucial for GIS to fully understand the risks and implications of taking on a project of this nature. This memorandum will conduct an analysis of current policies, identify potential exposures and coverage gaps and provide recommendations on how to better protect the company against losses.

## Executive Summary:

Marsh has determined GIS Developers to be underinsured to enter into a brownfield redevelopment project given the company's current insurance program. If GIS wishes to proceed with this project, the company will need to make changes to its current insurance program. Pollution is excluded in many of GIS's current policies, but optional

endorsements and specialty coverages are available. Based on Marsh's analysis, changes to GIS's business personal property, business income and commercial general liability policies are necessary before beginning a project of this nature.

**Analysis:**

*Building and Personal Property Policy*

GIS's current commercial business property policy provides a maximum of \$10,000 in coverage for the cleanup and removal of pollutants from land at the premises described in the declarations page if resulting from a covered loss that occurs during the policy period. The BPP extends temporary coverage for newly acquired or constructed property until the earliest of the following:

- 1) The expiration date of the policy
- 2) Thirty days following acquisition of new land or at the start of construction
- 3) The date the insured notifies the insurer of the new land

GIS's policy follows the special cause of loss form, which only provides coverage for the release, discharge or dispersal of pollutants caused by builders' machinery and equipment owned or held by the insured, unless on or within 100 feet of the described premises (Survey of Commercial Insurance, 2014). The policy also excludes losses caused by faulty or inadequate surveying, construction and renovation. Given the expensive and unpredictable nature of environmental claims, GIS should consider purchasing another policy to supplement their BPP should the company incur higher cleanup costs than initially anticipated.

### *Business Income Policy*

GIS's business income policy provides coverage for loss of income caused by a delay in starting operations if the delay results from damage at the described premises due to new buildings or structures that are completed or under construction. The BIC extends temporary coverage for newly acquired property under the same conditions as the BPP. The policy will protect GIS in the event that operations are suspended due to discovery of underground storage tanks or pipes during the course of work. The policy's extra expense provision will reimburse GIS if a hazmat crew is to required to control the spreading of contamination as quickly as possible. Pollution is not a specifically excluded cause of of loss under the special form, so the burden of proof will be on the insurer in the event of a coverage dispute. GIS has the option to receive coverage for the maximum period of indemnity (120 days) or the extended period of indemnity (730 days).

### *Inland Marine Policy*

GIS Developer's equipment is covered on an open perils basis under the contractors equipment floater. Therefore, any damages resulting from the spreading of contamination from one site to another via equipment would be covered. GIS's builders risk policy covers losses on an open perils basis as well, so damage or decay to building materials resulting from exposure to the brownfield would be covered. Business income insurance can be added to this policy, which could then serve as a substitute for GIS's commercial business property policy.

### *Commercial General Liability Policy*

Coverage A of GIS's CGL policy contains a broadly worded exclusion pollution related losses. The policy does not intend to cover any bodily injury, property damage or cleanup costs resulting from pollution. However, due to the no-fault nature of Coverage C, medical payments to a third party who was exposed to hazardous chemicals while trespassing on GIS's worksite would be payable under the CGL policy. Coverage C alone is not the most robust third party liability coverage GIS could have.

### *Worker's Compensation Insurance*

Workers' compensation insurance indemnifies GIS employees for occupational injuries and diseases resulting in a loss of earning power. Working in a polluted environment significantly increases the likelihood of employees developing occupational diseases. While GIS does not necessarily have to increase existing policy limits, the company should emphasize the importance of practicing safe work habits and following OSHA standards to its employees.

### **Conclusion & Recommendations:**

The primary risks associated with a brownfield redevelopment project include underestimating the cost of cleanup, third party liability claims, and workers' compensation claims. Marsh's top recommendation is for GIS Developers to purchase supplemental pollution clean up coverage such as pollution liability insurance with a cost cap. Pollution liability coverage protects an insured against on-site cleanup costs of unknown, pre-existing pollution and current pollution from ongoing operations, and third-party claims arising from pollution conditions including bodily injury and property

damage. (U.S. Environmental Protection Agency, 2015) A cost cap would protect GIS against cleanup costs exceeding the anticipated cost.

Additionally, GIS should consider the possibility of suspended operations due to unforeseen hazards arising. Despite thorough due diligence inspections, there is still a significant factor of uncertainty associated with brownfield redevelopment. GIS's business income coverage will only respond up to the policy's maximum period of indemnity. Per CERCLA, if the brownfield is deemed unsuitable for construction after it has been purchased, GIS will not be able to recover costs associated with cleanup of hazardous materials from the prior owner. Well defined roles of responsibility for claim handling is crucial to the successful risk management of a brownfield project.

Finally, Marsh recommends an internal review of safety and loss control practices for working at hazardous environmental sites in order to minimize workers' compensation claims. As GIS's broker, we will inform the insurer of your company's acquisition of this brownfield upon of receiving confirmation of purchase.

**Sources:**

Brownfields - U.S. EPA. (2015, March 24). Retrieved April 12, 2015, from <http://www.epa.gov/brownfields/>

Flitner, A. (2014). *Survey of commercial risk management and insurance*. Malvern, Pa.: American Institute for Chartered Property Casualty Underwriters.

Levine, S. (2015, April 8). Transferring Polluted Properties - Risk & Insurance. Retrieved April 10, 2015, from <http://www.riskandinsurance.com/transferring-polluted-properties/>

OSHA Law & Regulations. (n.d.). Retrieved April 12, 2015, from <https://www.osha.gov/law-regs.html>