

Environmental Insurance Coverage And Related Matters

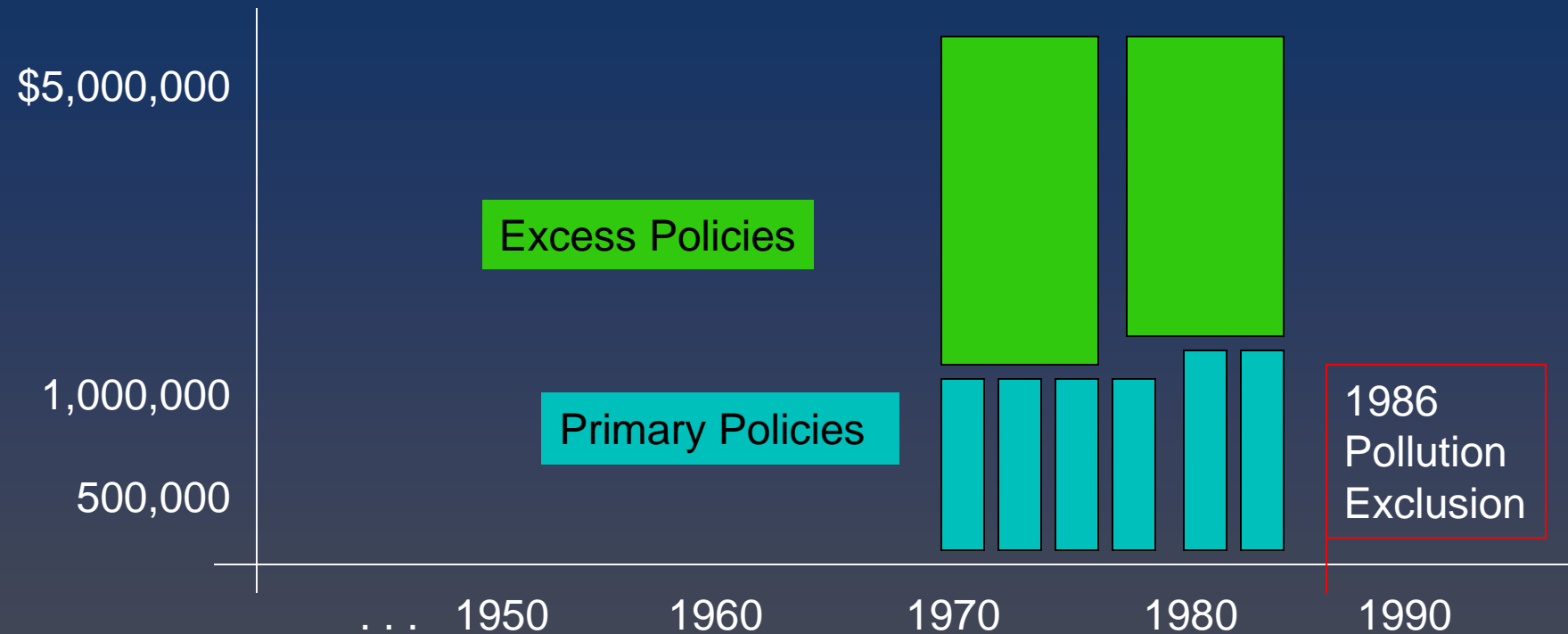
American Association of Port Authorities
Port Administration and Legal Issues Seminar
April 8, 2015

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Environmental Liability and CGL Insurance

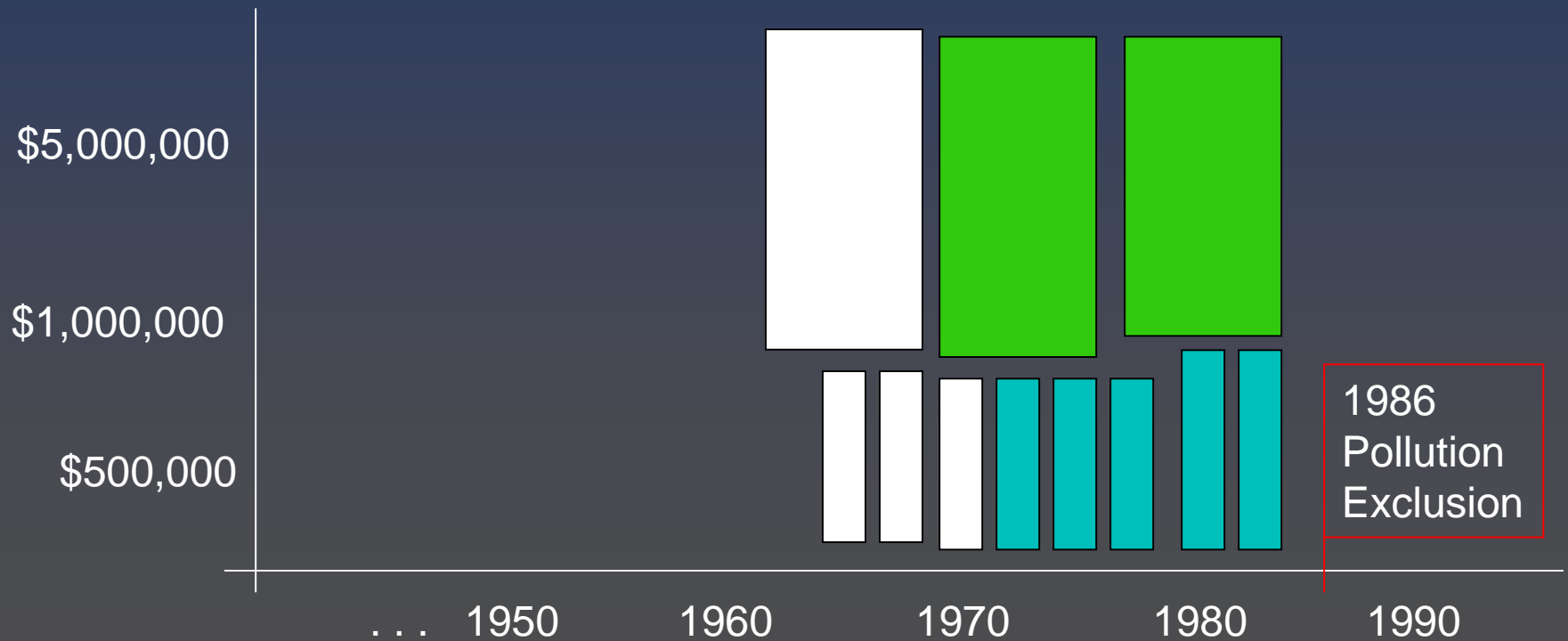
- “Owner or operator” status under CERCLA
- Joint and several, strict liability for historical pollution
- Phase 1 and Phase 2 Environmental Site Assessments
- Ports’ CGL policies are assets
- CGL insurance policies will pay for the insured’s legal liability arising from damage to the property of others
- Many port districts and local governments were historically insured under CGL liability insurance policies

Typical Insurance Coverage



- Comprehensive General Liability (CGL) policies
- Insureds paid premiums and relied on coverage
- Pollution Exclusion added in 1986

Release triggers policies until
contamination is remediated in
continuous trigger states



Insurance Claim Basics

- Identify an insurable interest
 - Third party property damage liability
 - Groundwater, sediments, neighboring property
- Locate your insurance policies
 - Lost policy regulations are valuable tool
 - Can use cancelled checks, correspondence, insurance reports, binders, declaration from broker
- Should consider tenants and co-PLPs insurance--can take an assignment

Port Group Insurance Programs

- Northwest Marine Terminal Association
 - Could not get limits in domestic market
 - Could not get individual coverage in London
 - Grouped together to place in London
 - One policy issued to group, certificates issued to each member port
- Other associations
 - California
 - Gulf states

What Ports Bought

J FORM

No.

The Institute of London Underwriters. Companies Combined Policy.

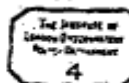
Whereas the Assured named in the Schedule herein has promised to pay forthwith a Premium at the Rate specified in the Schedule to Us, the Assurers,

Now we the Companies hereby agree to insure against loss, damage or Liability to the extent and in the manner hereinafter provided.

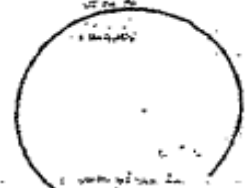
Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or damage directly or indirectly caused by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Now know ye that we the Assurers do hereby bind ourselves, each COMPANY for itself only and not one for another and in respect only of the due proportion of each Company, to pay to the Assured or the Assured's Executors or Administrators, all such loss, damage or Liability as herein provided that the Assured may sustain during the stated period, not exceeding in all the sum insured, as properly apportioned to the sums, or to the percentages or proportions of the sum insured, subscribed against our names respectively. If the Assured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise, this Policy shall become void and all claim thereunder shall be forfeited.

In witness whereof we the said Assurers have subscribed our names and sums assigned, in London, as hereinafter appears, and the Manager and Secretary of The Institute of London Underwriters have subscribed his name on behalf of each of us.



Signed [Signature]
Manager and Secretary,
The Institute of London Underwriters



NOTE. This Policy must bear the seal of The Institute of London Underwriters Policy Department.

POL 100360

AON 00108

What Ports Received

Certificate of Insurance		
EFFECTED WITH	JSL N ^o 1024	
Underwriters at Lloyds, London		
BY		
FRED. S. JAMES & CO., INC., OF WASHINGTON		
1800 PARK PLACE, SEATTLE, WA. 98101 - (206) 623-5900		

THIS IS TO CERTIFY that the undersigned have procured insurance as hereinafter specified from certain Underwriters at Lloyd's, London, (hereinafter called the "Underwriters"), through our Lloyd's Brokers in London, England.

Pursuant to such authorization the Underwriters do hereby bind themselves, each for his own part and not one for another, for the percentage shown hereunder.

In favor of PORT OF LONGVIEW

P. O. BOX 1258
address: LONGVIEW, WASHINGTON 98632

Kind of coverage: UMBRELLA LIABILITY

Amount of FOURTEEN MILLION FIVE HUNDRED THOUSAND
DOLLARS (\$14,500,000.00)

Hereon * % of the amount and premium stated herein.

*SEE ATTACHED
Beginning at 12:01 A.M. on the 31st day of DECEMBER 1977

and ending at 12:01 A.M. on the 31st day of DECEMBER 1978

standard time at the place of location of risks insured and in accordance with the terms and conditions of the form(s) attached.

AMOUNT	RATE	PREMIUM
Assured.		
\$		\$
\$		\$
\$		\$
	% Federal Tax*	\$
	2 % State Tax	\$
	1/2 % Stamping Fee	\$
		\$
	Certificate Fee	\$
	TOTAL	\$

*Payable on Portion Applicable

1. It is specifically understood that the names of the Underwriters hereunder are on file in the office of our Lloyd's Brokers in London, England and will be on file in the office of the undersigned, upon being forwarded to them by our Lloyd's Brokers.
2. It is expressly understood and agreed by the Assured by accepting this instrument that the undersigned is not one of the Underwriters hereunder and neither is not shall be in any way or to any extent liable for any loss or claim whatsoever, as an Underwriter, but the Underwriters hereunder are only those whose names are on file as hereinafter set forth.
3. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims thereunder shall be forfeited.
4. This Certificate may be cancelled on the customary short rate basis by the Assured at any time by written notice or by surrender of this Certificate to the undersigned. This Certificate may also be cancelled, with or without the return of the unearned premium, by Underwriters, or by the undersigned in their behalf by delivering to the Assured or by sending to the Assured by Mail, registered or unregistered, at the Assured's address as shown herein, not less than 10 days written notice stating when the cancellation shall be effective and in such case Underwriters shall refund the paid portion less the earned portion thereof on demand, subject always to the provisions by Underwriters herein of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by Underwriters or the Assured.
5. This Certificate of Insurance shall not be assigned either in whole or part, without the written consent of the undersigned endorsed hereon.
6. Loss or damage to the property insured occasioned by war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power or martial law or confiscation by order of any Government or public authority not covered.
7. The certificate terms and conditions contained herein or endorsed hereon and such other provisions, agreements or conditions as may be endorsed hereon or added hereto are hereby incorporated in this agreement. No representative of the Underwriters shall have power to waive or be deemed to have waived any provision or condition of this certificate unless such waiver, if any, shall be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this certificate exist or be claimed by the insured unless so written or attached.
8. This document is intended for use as evidence that insurance described herein has been effected, against which a Policy(ies) will be issued and that, in the event of any inconsistency therewith, the terms, conditions and provisions of the Policy(ies) shall prevail. Immediate advice must be given of any discrepancies or necessary changes.

This Certificate shall not be valid unless signed by Fred S. James & Co., Inc., of Washington
Dated at Seattle, Washington, this 10th day of Jan 1978
By *[Signature]* FRED S. JAMES & CO., INC. of Washington
ORIGINAL

POL 011008

Making an Insurance Claim

- This is as much about making a record as it is about giving notice
- Give notice to all carriers as early as possible
 - Duty to defend is not triggered until notice is given
 - Late notice can bar coverage and/or recovery of attorney fees under certain circumstances
 - Urge co-PLPs to also give notice as early as possible
- Provide the insurer with requested information
 - Obligation to cooperate with insurer's investigation
 - Making the record

Making an Insurance Claim Cont'd.

- Don't take no for an answer
 - Most insurance carriers will resist environmental claims
 - Many claims adjusters are located in northeastern states that are not plaintiff friendly
 - Consult your coverage counsel
- If you must litigate to establish coverage,
 - You can seek attorney fees and costs in many states
 - Consider making a presentation with your consultants and lawyer

Making an Insurance Claim Cont'd.

- The time is now for historical policy claims
- Law is becoming tougher on insureds in some states
- Evidence and witnesses are getting harder to find
- Some domestic insurers going out of business
- London Companies using English solvent and insolvent schemes of arrangement
- Lloyd's/Equitas/NICO Reinsurance and Resolute
 - Resolute strategy: Delay claims as long as possible without triggering a coverage suit until claims no longer viable
 - Possible Scheme for Equitas?

Useful strategies

- Notice early – Defense benefits, eliminates a significant defense
- These claims have a shelf life (changing law, aging evidence and English Schemes and US Bankruptcy)
- OIC cutoff dates looming ahead
- Can lose these opportunities if not use them

Important Points to Remember

- Historical CGL insurance policies are assets today
- Don't take no for an answer when seeking coverage for environmental claims
- Coverage may be available even if the insured's nexus to the property does not arise until after the insured's policy expires
- Many of the insurers who wrote the historical insurance policies are still around and paying claims. It is worth it to pursue legitimate claims
- Don't forget about your tenants' or other co-PLPs' insurance coverage

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