Reduce Airport Liability by Rediscovering a Forgotten Asset

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Insurance recovery introduction

- Historical liability insurance policies, particularly before the mid-1980's, represent a deteriorating asset
- If you have these policies, or if evidence of them can be found, they are potentially very valuable
- These policies can be monetized and married to your environmental liabilities, taking into account past and future projected costs, resulting in substantial financial gain with little or no "down-side" risk
- Most insurance coverage programs have already eroded 10% - 15% due to carrier insolvency and runoff. Deterioration of up to 30% has been observed
- You have every reason to evaluate whether insurance recovery is beneficial to you at this time

Background

- Environmental liabilities at airports are relatively common — jet fuel, de-icing fluids, etc.
- You may have inherited some from legacy airport operations
- You may also have emerging issues (such as PFAs) that may be new to you but which had their genesis many years ago
- Today's insurance generally has broad pollution exclusions, and time limitations on making claims – pre-1986 coverage usually does not have these restrictions

Background

- How is it possible to make a claim? The policies are forty or fifty years old
- Your old policies are accident- or occurrence-based
- Because of the way they were originally written you can still claim and the insurers will still pay without litigation
- Many airports have taken advantage of this and we are engaged in several more cases now dealing with PFAs and other contaminants

Defense vs. Indemnity

- Keep in mind that these old policies will cover not only remediation costs, but also attorneys fees and investigatory costs, often in addition to policy limits
- This can be extremely valuable coverage, saving substantial money even if ultimate liability is minimal or non-existent
- Airports are accessing this coverage to deal with issues of PFAs
  - Note that fire-fighting foams, based on their initial use, may be classified as a "product" not a "waste material" – this can mean that pollution exclusions would not be applicable

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Do Not Try This at Home!

- These are not simple claims to resolve
  - Claims are being made for future environmental damage on comprehensive general liability policies that are more than 25 years old
  - Old insurance policies need to be located, based on knowledge of where coverage evidence may be located
- There are numerous legal and technical pitfalls
  - Only people with deep knowledge of the insurance carriers, not just their law firm, know how to value your claim and resolve it without litigation
- Litigation is avoided by knowing the likely outcomes of the key coverage issues and by taking appropriate discounts
  - The process requires legal, technical and financial expertise to maximize the value of the insurance asset

Finding Your Insurance

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Basic Elements: Is there a case? (1 month)

- Airport History
  - Military beginnings
    - City or County
      - Airport Authority
  - Flow of liabilities
  - Policy rights
- Liabilities
  - Past costs
  - Future costs
  - Exclusions
  - Solvent carriers
- Determine whether sufficient coverage exists to support a claim

Build the claim (6 months)

- Provide details of transactions to demonstrate coverage is proper
- Prepare an analysis of each site in the claim describing the site, the nature of the problem, the proposed solution for risk transfer purposes, the costs to-date and the future cost for the proposed solution
- Perform allocations according to various theories to determine how much each policy/carrier should pay of the total damages
- Complete the detailed insurance coverage chart and policy language analysis
- Implement standstill and confidentiality agreements with each carrier

Basic Elements: Negotiate the claim (18 – 24 months)

- Develop settlement strategy
- Prepare targets and demands for each carrier
- Hold principal-to-principal meetings with each carrier to settle the claims

Why the process works

- Confidential (to the extent possible)
- You purchased insurance and paid premiums
- You should be entitled to reimbursement according to the governing laws
- Insurance carriers have set aside reserves to cover your policies
- Settling these claims allows carriers to release these reserves
- Carriers have reinsurance that helps offset their payments to you
- Creating a win-win circumstance benefits all parties

Disadvantages?

- If you have not evaluated the benefits of insurance recovery, you should do so at this time
- There is very little down side
- No new data are collected
- No new reporting requirements are triggered
- The entire process can be protected by attorney- client privilege
- Your time investment is minimal

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