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# DESANCTIS INSURANCE AGENCY, INC.

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36 Cummings Park  
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To Our Valued Clients:

April 2008

## **Pollution & Professional Liability Coverage**

We have advised you in the past how important it is that you consider adding **Pollution Coverage** to your insurance program to protect your assets. Unfortunately, as the legal environment surrounding Pollution and Mold claims continues to worsen, it is our **absolute** belief that all companies, especially contractors, need to protect themselves against these exposures.

Please understand that almost all **General Liability policies exclude coverage for pollution exposures**, especially mold. Some of you may have Limited Pollution coverage attached to your General Liability policy, but as the name implies, coverage is limited and excludes mold, asbestos, etc. In addition, if pollution or the type of pollutant is excluded under the terms of the policy, the Insurance Companies have no duty to defend against any suit seeking such damages. Contractors Pollution Liability forms would provide coverage for pollution claims arising from the job site activities of the contractor or its subcontractors.

A Premises Pollution policy would extend coverage for a scheduled location, such as the one you operate from. If you own the property, such a policy would help protect the value of the asset. If leased, you will likely have responsibility under your lease agreement for any pollution conditions that may arise during your tenancy. If you purchase a Contractors Pollution Liability Policy, Premises Pollution coverage may also be available as an endorsement.

Insurance Industry Bulletins are continually citing examples of new types of claims relating to pollution incidents. For those of you who have not yet decided to purchase this coverage in spite of our recommendations, we strongly urge you to talk to your legal counsel to obtain their opinion on the potential impact an uncovered pollution claim could have on your business. We feel certain they will echo our concern.

Another coverage that you should consider is **Professional Liability**, which **is also excluded from your General Liability policy**. You may feel you do not have a professional exposure, but please be aware that a contractor's exposure from Professional Liability goes beyond design-build projects. Take a look at the attached Contractor's Check List to see if you need Professional Liability Insurance.

Please allow us to obtain a quotation to protect your business against these exposures. We strongly believe this is in your best interest. We feel the cost will be minor in relation to the expense of an uncovered claim where you would be obligated to pay not only the damages for which you are found responsible, but the defense costs as well.

Very truly yours,

DeSanctis Insurance Agency, Inc.

# Contractor's Check List

How do you know if you need professional liability insurance?

Answer the following questions:

**Do you provide in-house design, with or without construction responsibility?**

As a contractor, you are liable for the performance of the architect or engineers you employ. You can be held legally responsible for their negligence.

Yes  No

**Do you subcontract design services to other parties?**

You can also be held vicariously liable for the negligence of any architects or engineers they hire as subcontractors.

Yes  No

**Do you participate in joint-venture projects with an architect or engineer?**

When entering into a joint venture with a design firm, you can be held liable for the negligence of their architects and engineers.

Yes  No

**Do you provide agency or at-risk construction management services?**

When acting as a construction manager who facilitates projects or advises project owners, you can be held liable for your professional services.

Yes  No

**Do you provide value engineering services?**

When you make value engineering suggestions, you are offering your professional opinion and can be held legally liable for that advice.

Yes  No

**Are you ever responsible for revisions to architectural or engineering designs?**

If you revise design plans without having them approved and re-stamped by the architect or engineer, you may become liable for the design.

Yes  No

**Do you ever assume design delegation responsibility as defined by AIA A201 document, 1997 edition?**

By assuming design delegation responsibility under the provisions of AIA A201 General Conditions Document, you are responsible for performance of professional services rendered by outside design professionals.

Yes  No

**Do you ever assume indemnification responsibility for negligent design in contracts with your clients?**

If someone is injured in a building, the owner is liable simply because they own the building. When you contractually agree to indemnify the owner for negligent design, you assume the responsibility for the owner's liability.

Yes  No

This is not intended to be an exhaustive listing of all your potential professional liability exposures, but, as a contractor, if you answered "Yes" to any of the questions above, you need professional liability coverage to provide defense and design protection for your firm. Please call us to discuss your insurance needs at 781.935.8480.