

# Insurance & Contracts

## Client Centered

TLI Solutions, Inc. (a TechLaw Company) has a unique blend of legal, regulatory, technical, and scientific environmental consulting expertise, and over 20 years experience analyzing insurance and contract information.

TLI Solutions, Inc. (TLI) has provided services regarding environmental issues in the public and private sector for over 20 years. We have assisted parties involved in the allocation of response costs in hundreds of cases regarding the cleanup and development of remedial activities at hazardous waste sites. This work involved analysis of insurance and contract information.

TLI has completed the following tasks:

- Allocation consultant for claims dealing with insurance coverage
- Review insurance policies and contracts
- Analyze individual contract provisions
- Identification of potential defenses to be raised by carriers
- Management of the settlement process between policyholders and carriers
- Assessment of potential for recovery under state laws regarding insurance
- Extraction of insurance policy information into a database
- Recover missing policies archaeologically

TLI's insurance and contract analysis staff have research, legal, and policy analysis experience. If the policies or contracts are in-hand, we extract information from the relevant sections into a custom-built database to facilitate an understanding of coverage. If the relevant policies or documents are not directly available, we conduct research archeology, which primarily relies on secondary evidence to establish the existence of insurance coverage; secure copies of policies

from insurance providers or other third parties; or obtain copies of the historical standard ISO Specimen forms.

Based on the policy language, applicable law, and site history (i.e., timing and nature of release), TLI assesses the likelihood of recovering directly against the available policies. If we determine that direct recovery under the available policies is unlikely, we then assess whether there is a mechanism pursuant to which other parties could orchestrate a claim. Policy provisions are reviewed to determine the extent of coverage provided by the policies and whether the policies provide coverage for the cleanup costs that have been and will be incurred. A simultaneous analysis of the defenses that may be raised, and their likelihood of success, is also conducted. If gaps in coverage are identified, we evaluate whether filling in those gaps may have a significant impact on the outcome of the coverage pursuit.

Working closely with our clients during the project scoping phase—and during the entire project—ensures that the research, analysis, allocation, and settlement activities conducted meet client's needs. Our experienced staff of lawyers, researchers, and scientists add clarity to complex cost-recovery and allocation projects.

## Environmental Protection Agency, New England Superfund Sites

TLI provides insurance analysis support



to U.S. Environmental Protection Agency (EPA) Region 1 for Superfund sites located throughout New England. Project activities include the extraction of information from policies, analysis of coverage, insurance archaeology, and analysis of legal issues including state law, defenses, standing, and orchestration of claims. The sites include manufacturing operations such as tannery operations, wool or fabric mill operations, and mining extraction operations. Two themes appear to be common on these projects. First, each site has primarily consisted of a single Potentially Responsible Party (PRP) (the landowner) with few or no off-site waste generators. Second, EPA has determined that the site landowner has little or no ability to contribute significant funds to cover the costs of cleanup activities. Each site has a long site history, and the sites are located throughout Maine, New Hampshire, Vermont, and Massachusetts. Because these manufacturing operations historically have held commercial general liability (CGL) and excess umbrella insurance policies while they operated, and because courts have held that such insurance policies can be triggered to cover federally mandated Superfund cleanup activities, EPA has instructed TLI to analyze whether a viable claim exists against the insurance carriers. In addition to our insurance and legal experience that is applicable to these projects, TLI's environmental experience is available for the analysis of the release history as it relates to coverage.

## Manufactured Gas Plant Sites

TLI served as an allocation consultant for organizations involved in claims dealing with insurance coverage for cleanup costs of over \$250M at 70 Manufactured Gas Plant (MGP) sites. Activities in these cases included the review of insurance policies and assisting in the evaluation of coverage charts that

were used in allocating the environmental liability between successive insurers over 40 years. One case involved an allocation analysis among 22 separate insurance carriers. Work included the analysis of the individual contract provisions and identification of potential defenses to be raised by the carriers to define the likelihood of recovery for each particular site based upon its operational history and environmental harm. We also managed the settlement process between the policyholder and carriers.

## Army Industrial Operations Command

TLI provided an assessment for the Army's Industrial Operations Command (IOC) of the prospects of recovering costs associated with environmental restoration at 24 government-owned, contractor-operated (GOCO) facilities. The assessment included the government's potential for recovery under state laws regarding insurance, environmental and real property law, and federal contractual provisions related to indemnification of operating contractors. We reviewed all contract documentation for relevant clauses, particularly the indemnification provisions; reviewed and extracted insurance policy information into a database; and analyzed the significant legal issues. We analyzed the potential for the recovery of environmental restoration costs from the insurer of each GOCO in three steps:

- Available CGL insurance policies provisions for Choice of Law/Forum Clause, Pollution Exclusions, and Notification Provisions and Statute of Limitations were analyzed
- Available contract provisions for indemnification and other contract provisions were analyzed
- Other exclusions, conditions, and defenses, (including the duty to defend), owned-property exclusions, right of direct action, occurrence, coverage trigger, and cleanup costs as damages were analyzed

