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## Insurance cleaning up environmental hurdles

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STAR-LEDGER STAFF

When Gene Heller was negotiating to buy a 63-acre Revlon complex last year, the issue of Revlon's liability for environmental cleanup costs came up as a potential deal breaker.

The veteran developer's plans called for tearing down most of the vacant 750,000-square foot former cosmetics manufacturing plant on Route 27 in Edison and replacing it with new retail and warehouse development.

But the people at Revlon, after occupying the site for 40 years, wanted to be sure the sale didn't come back to haunt them. They didn't want the liability for pollution that might be found when Heller began digging foundations.

The key turned out to be an insurance policy, one covering environmental cleanup.

The use of such insurance policies is exploding in New Jersey as the demand for contaminated sites heats up and insurance companies compete with innovative policies designed to protect risk-adverse sellers, developers and lenders.

To make the \$49 million Revlon purchase and redevelopment deal go, Starwood Heller LLC, Heller's Edgewater-based joint venture with the Starwood Capital Group of Greenwich, Conn., agreed to buy an \$8 million policy to cover any unexpected cleanup costs.

"They wanted to be out of it. They wanted use to indemnify them from any potential contamination, and they weren't willing to accept just our deep pocket

developers," said Heller, the former president of Hartz Mountain Industries who has headed his own firm, G. Heller Enterprises, for almost a decade.

"We began to see more of this starting three years ago, but it's really begun to take off in the last year or so," said Ann Waeger, a partner with a Westfield law firm, Farer Fersko.

Waeger, a specialist in commercial real estate liability issues, said more companies are writing environmental risk policies, and premium prices have come down, especially since August 1997, when Kemper Environmental, a Princeton-based division of the giant Kemper Insurance Companies, began heavily marketing its "brownfields restoration and recovery" policies.

The policies are still far from cheap.

Waeger recalled a client who paid a \$250,000 premium last year to buy a 10-year policy covering cost overruns and legal liability involving a \$1.8 million cleanup. The policy covers up to \$5 million for cost overruns and \$15 million for liability for any unknown contamination.

Robin G. Kelliher of Willis Corroon, an international insurance brokerage, said premium costs usually range from 4 to 10 percent of estimated cleanup costs. Typical policies kick in to protect the insured if the overrun exceeds a deductible of 10 to 20 percent of the initial estimate, she said.

"It's a business decision," she said. "People are willing to pay a little more because it's making deals happen that wouldn't get done otherwise."

Policies can be negotiated to protect buyers, sellers or third parties such as lenders or tenants and can be tailored to cover a variety of risks, from cost overruns to liability for unanticipated contamination, she said.

## Intense competition

There are at least four large players now in the market, which gives purchasers room to negotiate for the coverage they need, said Kelliher, who works out of Willis Corroon's Morris Plains office.

Besides Kemper Environmental of Princeton, she said the major companies offering coverage include American International Group (AIG) of New York City, the Reliance National Insurance Co. of Exton, Pa., and the Zurich Insurance Co. of New York.

"It's an emerging product, so they're very competitive. They're all trying to respond to what's happening in the real world," said Kelliher, noting that New Jersey has made changes in the state's pollution liability laws and eased cleanup standards in recent years to encourage the redevelopment of contaminated sites in urban areas.

Both Kelliher and Waeger said the new policies are so new and innovation so rapid that many otherwise sophisticated real estate developers, even in New Jersey, are still unaware of the possibilities. "They make their living by developing property, not by knowing about insurance," Kelliher said. "A lot of what we do is education."

While the options are impressive, so are the potential pitfalls. "These policies are not always a panacea," Waeger said. "There are no standard policies or premiums, and you need to read them very carefully to be sure you're really getting the coverage you think you're getting."

Richard S. Greenberg, who has a Ph.D. in organic chemistry, 15 pharmaceutical patents, a NJ real estate brokers license and his own environmental cleanup com-

pany offers his own variation on the theme of environmental insurance.

"I'm willing to bet on myself," said the 40-year old founder of Parsippany-based Environmental Waste Management Associates. What we'll do is sign a fixed-price contract to do the cleanup. If I go over that, it's my money."

That's only happened once, he said. A cleanup he figured would cost no more than \$300,000 ended up costing him \$340,000 to complete. "It's probably the only one where I didn't make money," he said.

Greenberg, who invests in real estate on the side, said it's not contamination that makes developing on former industrial sites risky, it's the inability of most consultants, lenders and developers to confidently estimate the likely cost of the required cleanup and gaining approval from state environmental officials.

"It becomes a big unknown, and that scares people away," he said. "What I do is get the hysteria out of it and put a dollar figure on it."

## Driven by deals

That lets developers and lenders estimate cleanup costs with the same certainty as, for instance, construction costs, and then determine whether it all makes economic sense, said Greenberg, who served as Heller's consultant on the Revlon deal and is doing the cleanup.

In that case, he said, "I guaranteed it, but Revlon wanted even more assurances, so we went to AIG and got an insurance policy."

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— ROBIN G. KELLIHER, Willis Corroon Insurance