



LUMBERMEMO

PENNSYLVANIA LUMBERMENS MUTUAL INSURANCE COMPANY + INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY

COMMENTARY: A GREAT FIRST QUARTER

JOHN K. SMITH, PRESIDENT & CEO



It has been a while since I have been able to write an upbeat article. I am a bit out of practice! I am happy to report that we are finishing the first quarter with perhaps the best quarterly results we have had in a number of years. It is also the best first quarter that we have had during my tenure at PLM! While production is somewhat lower than our expectation, profitability for the quarter has soared. After this announcement I am sure I will begin receiving calls from insureds telling me that this is because we are charging too much premium. So, before anyone starts dialing, understand that one quarter does not a trend make, nor does it indicate a trend for the remainder of the year.

Weather usually causes much of our historic first quarter problems. While there were some severe weather conditions throughout the country, our claims activity remained muted, as did our large loss activity. We did have another major fire (\$10.3 million) in the heavy manufacturing arena, however, most of this loss will be absorbed by the reinsurance community (who quite frankly are not very pleased).

We produced a small underwriting profit and our combined ratio was under 100 for the first time in a number of years. Expenses were subdued and after a dismal January and February in the equities market, March brought a significant upswing in our investments. This allowed us to grow our surplus during the first quarter of this year.

We are seeing a great response to the Employee Practices Liability coverage that we added to our package policy in the fourth quarter of 2015. We are pleased to hear the positive feedback received from both brokers and insureds alike with regards to the addition of this coverage. We are currently working on a cyber-risk and data breach program that we hope to roll out later this year.

We were also successful in transferring our equipment breakdown reinsurance program during the first quarter from one reinsurer to another, which we believe should be invisible to our policyholders. In addition, we are pleased that A.M. Best reaffirmed our rating during the first quarter of the year.

A number of our competitors have taken to spending quite a bit of time analyzing our coverage programs. I find it interesting that when they do, they attempt to demonstrate coverage differences that are rarely significant. They only seem to indicate the coverage differences that put their product in a better light. While I understand this is part of selling, I question the ethics of this one-sided coverage analysis just as I question one of our major competitor's recent allegations about our financial stability.

For example, a broker was looking for alternative quotes for one of our customers and the competing carrier listed 35 coverage "gaps" or extensions that they could provide. The fact of

the matter is that where they identified "gaps", in 32 of the cases, there were actually no exposures determined in the customer's business and the coverage provided by the remaining three "gaps" were insignificant! The point is, competitor comparisons need to be closely reviewed and discussed to understand their significance. An insured called me recently to discuss the fact that a competitor was offering \$25,000 of transit coverage more than we were (we did not have transit on the policy). I knew his business pretty well and did not recollect that he had any transit exposure. I asked him if there had been any changes in his business and he indicated that there hadn't been. He then admitted that he did not have a transit exposure. So this led me to ask -- why are you buying the coverage?

Unlike many other competitors, we tend to build our coverage on an insured's policy one coverage at a time. We don't slap a lot of unneeded coverage onto a policy (that you end up paying for), but rather analyze the risks that expose your business and provide the protection necessary for your organization. We think this is a more professional approach that allows for a more custom tailored product in which we charge you just for the coverage that you need.

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MANAGING THE RISKS ARISING FROM INSTALLED SALES

ANTHONY J. SCIARRINO, ESQ., CLAIMS MANAGER - LITIGATION

One of the trends we are seeing amongst our policyholders is expansion into the product installation market. While installed sales certainly offer growth potential, that growth comes with additional liabilities. In order to maximize returns, it is imperative that policyholders understand their potential exposure and how best to manage that risk.

Within the context of regular sales, the risk of injury to other workers exists, but it is far less common. If an employee is injured at your facility, a Worker's Compensation claim can be made but the employer is typically protected from a liability claim by the "exclusive remedy" provisions of the Worker's Compensation Act. Once your people go out on a worksite to perform installations, the risks multiply. If one of your employees causes an injury to another subcontractor's employee, the Worker's Compensation laws generally won't protect you, and you will be fully responsible for the acts of your employees.

While most businesses understand the risks inherent with installed sales, many do not appreciate the prevalence of risk-shifting language in subcontractor agreements. Many general contractors and developers include language in their contracts that require the subcontractor (you) to indemnify them not only for your negligence, but for their own negligence as well. In many states these insidious indemnification clauses can completely defeat the protections provided by the state's Worker's Compensation Act. As a result, an otherwise innocent employer can end up paying both a Worker's Compensation claim and a bodily injury liability claim to their own injured employee, who was injured as the result of the negligence of the general contractor's employees.

Any business wishing to offer installed sales must be mindful of the language in your subcontractor agreements, particularly the language regarding indemnification and liability insurance. Even if you are unable to negotiate better language, you must be aware of the risk so that you can price accordingly and advise your management and staff of the risks they have undertaken. If that language exists in your subcontractor agreement you have truly become "your brother's keeper."

Construction defect claims, arising from an installed sale, are almost always limited to property damage. On average, these claims are smaller than workplace injury claims. The litigation costs, however, can be astronomical. In construction defect claims one of the biggest risks we see is what we call "litigation splatter." This occurs when an aggrieved owner files suit, for example, over water infiltration as a result of a roofing defect. Typically the owner files suit against the general contractor and the roofer (if he knows the roofer's identity). The general contractor then joins, as additional defendants, all the subcontractors who performed any task that could have conceivably lead to the water infiltration, like window and door installers, siding contractors, etc. Once this happens you may find yourself involved in protracted litigation created by a party (the roofer) you did not select or even know which will

take up valuable time and energy to address.

There is no magic bullet to prevent this splatter effect of litigation. The best defense is to remember the old adage "if you sleep with dogs, you'll wake up with fleas." Knowing the caliber of the other subcontractors on the job along with the quality of the general contractor is your best protection against litigation splatter. Working with the best possible GCs and other subcontractors will not only improve your customer satisfaction, but it will help avoid litigation. Further, you should always make an effort to negotiate a contractual agreement in which you are responsible for and indemnify for your own negligence only, not theirs. Proper indemnification language in your subcontractor agreement may allow you to tender the cost of your legal defense onto the party that actually caused the loss. Again, reading and understanding the impact of the terms of your subcontractor agreement cannot be overstated.

If you have questions about managing the risks attendant to installed sales, please contact us. Our team of trained underwriters, claims examiners and loss control representatives will help you understand and manage those risks.

EBMDA EARNS A DIVIDEND

We are pleased to announce that the PLM/ILM Board of Directors approved a 2.5% dividend for the participating members of the Eastern Building Material Dealers Association (EBMDA) Safety Group Dividend Plan.



The EBMDA Safety Group Dividend Plan ended their plan year of October 1, 2014 to September 30, 2015 with a loss ratio of 46.29% earning the group their 2.5% dividend. Dividend checks were mailed to members at the end of March.

The EBMDA Safety Group Dividend Plan is open to dealer members of EBMDA who are insured by PLM/ILM. For more information on this dividend plan or on any of our other twelve dividend plans, you can visit our website at www.plmilm.com/dividend-programs/.

Please feel free to contact Susan Cho at 267-825-9350 or at scho@plmilm.com if you have any questions on the dividend programs at PLM/ILM.

VEHICLE LOADING & UNLOADING SAFETY GUIDELINES

With the number of claims we have seen recently related to truck drivers being injured at our customers' operations, we have put together a Vehicle Loading & Unloading Safety Guide. Below are some key points from the Safety Guide.

Truck loading and unloading is a daily activity in many businesses. It is also a regular source of injuries to the driver, workers and visitors. Employers have a responsibility to ensure they maintain a safe working environment. Forklift operators are also responsible for the safety of others in the loading/unloading area.



ESTABLISH A LOADING/UNLOADING AREA:

- Area should be level to help maintain stability of the truck and trailer. The ground should be free of potholes and debris.
- Area should be free of overhead electric lines.
- Area should be clear of other traffic -- vehicles or foot. Pedestrians, the truck driver, or other employees not involved in the loading/unloading process should be clear of the area.
- Area should have sufficient lighting for early morning or evening loading or unloading.
- If possible, the designated area should be a one-way route to prevent the need for vehicles to back up. If a driver is required to back the vehicle, a spotter should be used to protect pedestrians and property.

- Check the load -- Make sure that the load has not shifted, banding is still in place, and the overall load is in good condition and not likely to move or fall during the unloading process.
- No one, including other workers, should be on the opposite side of the truck from a forklift while it is moving material.
- EMPOWER your forklift driver to stop the loading/unloading process if the location of the truck driver cannot be confirmed or someone else enters the loading/unloading zone.

GUIDELINES FOR TRUCK DRIVERS:

- When unloading, the driver should proceed to the designated area and remove tarps, straps or other load securement devices. Secure this material so it is not an obstruction to the forklift operator during the unloading process.
- The driver should secure vehicle, apply brakes and turn off engine to prevent unsafe movement during the loading/unloading operation.
- The driver should proceed to a designated safe zone located away from the truck and outside of the loading/unloading area.
- NO material should be loaded/unloaded, nor should any forklifts be operating in the area around the truck until the driver has completed all of the tasks above and moved to the designated safe zone.

You can download the full Vehicle Loading & Unloading Safety Guide which includes a sample checklist to help you address loading/unloading exposures at www.plmilm.com/loss-control-guides/.

BRAVE THE SHAVE FOLLOW UP

We are happy to announce that through the generous donations of our friends and associates, we were able to raise over \$92,000 for the St. Baldrick's Foundation (and this number is still climbing!).



Thank you to everyone for taking part in this campaign and supporting John & Julie Smith as they braved the shave on April 5, 2016 to show solidarity for the children battling this terrible disease.

GUIDELINES FOR FORKLIFT OPERATORS

- Operating a forklift should be limited to individuals who are trained and qualified to do so, including general forklift safety topics and equipment specific training. Initial training should be completed prior to authorization of the driver to operate the forklift. Refresher training should be completed every three years and following any forklift-related accident, property damage, or near-miss incident.
- Have a clear understanding of the material being loaded/unloaded. Unloading a bunk of 2x4 is different from unloading laminated beams or a pallet of roof shingles.

The St. Baldrick's Foundation is a volunteer-driven charity committed to funding the most promising research to find cures for childhood cancers and giving survivors long, healthy lives. The St. Baldrick's Foundation has become the largest private funder of childhood cancer research, dedicating over \$178 million to the cause since the year 2000. Through the



PENNSYLVANIA LUMBERMENS MUTUAL INSURANCE COMPANY

INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY

ONE COMMERCE SQUARE
2005 MARKET STREET, SUITE 1200
PHILADELPHIA, PA 19103-7008

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We are aware that a number of new competitors have wandered once again into the niche and are competing for our business. We have seen this so many times in our 121 year history. Once they gain an understanding of what is involved and the losses that you experience in wood-related businesses, they will be doing what every other competitor that has wandered in over the years has done -- head for the exits.

So, we are off to a strong start and are hopeful for a good year. I wish you and your organizations much success and hope that your first quarter has put you on the right path for a successful result for 2016. If you need to chat, I am only a phone call or email away (215-825-9246 or jsmith@plmilm.com). ■



BRAVE THE SHAVE FOLLOW UP

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many generous contributions received, we can all help make a difference in the lives of the children and families who face childhood cancers.

Donations can still be made to our team online at <https://www.stbaldricks.org/participants/johnsmith> or can be mailed to us. Please make checks payable to the St. Baldrick's Foundation.

Together, we're better. Together, we're Conquering Childhood Cancers. ■

THE 2015 PLM/ILM ANNUAL REPORT IS NOW AVAILABLE AT WWW.PLMILM.COM.

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PRESIDENT & CEO	JOHN K. SMITH JSMITH@PLMILM.COM
VP - MARKETING	CHRIS CRUCITT CCRUCITT@PLMILM.COM
SR. MARKETING SPECIALIST	SUSAN CHO SCHO@PLMILM.COM

CORPORATE ADDRESS:
ONE COMMERCE SQUARE
2005 MARKET STREET, SUITE 1200
PHILADELPHIA, PA 19103-7008
MAIN: 800.752.1895

WWW.PLMILM.COM