

Ames & Gough
8300 Greensboro Drive, Suite #980
McLean, VA 22102

News Release

ENGINEERS EYEING MARCELLUS SHALE OPPORTUNITIES NEED TO WEIGH RISKS

Ames & Gough Advises Firms to Proceed With Caution

*For further information, contact:
Dan Knise, 703-827-2277, or
Al Modugno, 917-414-4569*

PITTSBURGH, May 25, 2011 – As engineering firms from all parts of the country seek to capitalize on opportunities presented by the growing number of exploration and development projects in Marcellus Shale, they need to assess carefully the unique and potentially significant exposures associated with them. Robert Hughes, a client executive with insurance broker Ames & Gough, outlined many of the most significant risks for engineers in a presentation today at a meeting of the Engineers’ Society of Western Pennsylvania in Pittsburgh.

“As the efforts to tap the substantial natural gas resources available in Marcellus Shale continue to expand, concerns also are widening among area residents and municipalities with respect to the related environmental issues,” said Mr. Hughes. “Engineers involved in exploration and development projects need to be able to assess their risks with some degree of precision and take steps to mitigate them.”

According to Mr. Hughes, an effective risk assessment must contemplate not only the indemnification clauses and other potential contractual exposures associated with their Marcellus Shale agreements, but federal and evolving state environmental regulations, current litigation and pending court decisions on Marcellus Shale issues, and the language and exclusions in their professional liability insurance policies.

Specifically, Mr. Hughes made the following points in his presentation:

- **Duty to Defend and Indemnification Clauses** – Some contracts currently being offered to engineers impose broad duty to defend and indemnify obligations owing to multiple entities. The terms often stipulate that the engineer must fulfill these obligations even if it can demonstrate its innocence of any wrongdoing or negligence. Additionally, these duties typically extend beyond the scope of an engineer’s professional liability insurance policy; consequently, the engineers are unlikely to have insurance coverage for related liabilities.

- **Safety** – Under Pennsylvania law, engineers are generally not liable for site safety, unless they specifically agree to such responsibility in their contracts or assume the risk by their actions. In many instances, engineers sign contracts that leave them with potentially significant safety obligations, and they may not be aware of the full scope of these requirements.
- **Joint liability** – Pennsylvania is one of 10 states that still impose joint liability for negligence resulting in death, personal injury and property damage. In a case where an engineer may have minimal liability, plaintiffs can still recover 100 percent of their damages against that engineer. While the engineer’s insurance may cover such a loss, the engineer’s exposure often far exceeds its role and compensation on the project. Further, the loss may have a significant impact on the engineer’s ability to remain insured or to obtain coverage in the future.
- **Mobile waste-water treatment units** – One solution to the environmental exposures related to Marcellus Shale drilling is the use of mobile treatment facilities. Depending on an engineer’s professional liability insurance policy, the design of such facilities may or may not be covered under their policies. As a result, they need to check the policy wording carefully with their insurance advisors or legal counsel to make sure their insurance will respond to a related claim.

Mr. Hughes also discussed a current suit involving environmental contamination of groundwater and lands related to a Marcellus Shale project. The decision is likely to have broad implications for engineers and contractors involved in current and future Marcellus Shale projects.

“Engineers and construction professionals need to recognize that processes for exploring and developing natural gas resources in Marcellus Shale are often new and cutting edge,” said Mr. Hughes. “Thus, they bring new exposures, which engineers should try to address in their contracts. At the same time, they need to work with their legal counsel to understand their potential exposures under federal and evolving state environmental regulations, and work with their insurance advisors to make sure they have adequate financial protection and that their policies will respond to the risks associated with their work.”

With more than 900 architects, engineering firms, and other construction professionals of all sizes as clients, Ames & Gough is the leading insurance brokerage and risk consulting firm serving the needs of these professionals. Ames & Gough also has established itself as a committed, superior resource for law firms and other consulting firms and professional organizations in need of professional liability and property/casualty insurance and risk management assistance. Established in 1991, the firm has offices in Boston, MA; Philadelphia, PA, and Washington, DC. Clients throughout the U.S. are served by a team of 26 professionals and staff located in the three offices. Visit the Ames & Gough Website at www.amesgough.com.