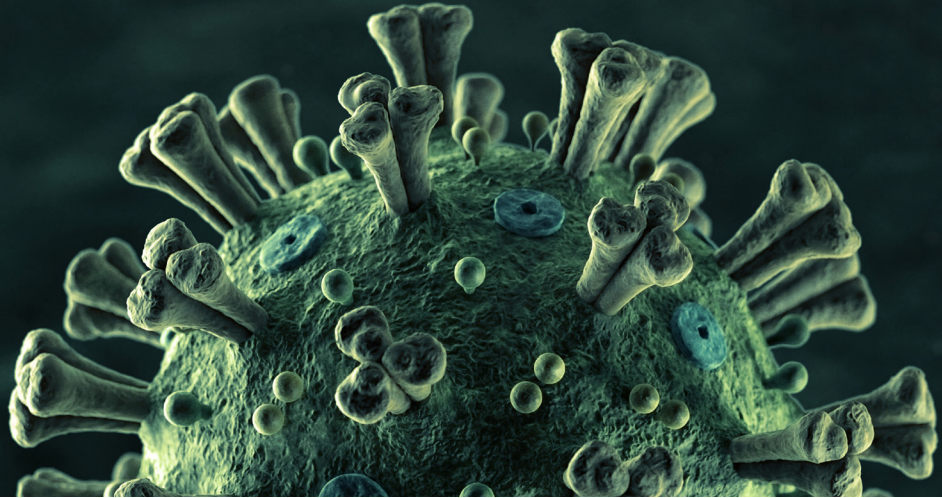


Environmental Insurance



The insurance market has historically been adaptable, providing new coverage options or stepping in when market changes encourage adjustment. The emergence and evolution of environmental liability coverage is a prime example.

Environmental insurance policies typically provide two key elements of coverage: “remediation expenses” (first and/or third-party) and “legal liability to others” arising from pollution conditions. Policy structure can vary. However, in most instances limits are eroded by costs, fees and expenses.

The COVID-19 crisis has placed environmental liability coverage under scrutiny. With respect to the coverage grant of remediation expenses policies, the most immediate need for coverage is for disinfection expenses.

It may be helpful that some insurers have expanded their offering to include communicable disease coverage, also known as airborne illnesses coverage, which includes disinfection costs and expenses. By broadening the definition of loss, insurers are compelled to indemnify for disinfectant expenses and provide an affirmative defense. It is very important to note that there are condition precedents to which the insureds are bound that could potentially provide insurers grounds for denial.

Furthermore, environmental insurers may offer supplemental business interruption and extra expense coverage subject to a waiting period, which is customarily much less than standard property policies (for instance, 7 days instead of 30 days).

For example, let’s assume a hospitality group has a hotel asset exposed to COVID-19 and this group has coverage for disinfection. Assume that this exposure would result in mass cancellations and lost revenue, which may be compensable by filing a claim under the business interruption coverage extension. Some of the things to consider when it comes to business interruption coverage are as follows:

- Insureds must prove (validate) all business interruption losses.
- Claims remain open until the insured has resumed normal operations, and revenue returns to the level before the loss occurred.
- Forensic accountants may be needed in order to maximize recovery.
- Payments made for business interruption and associated expenses will erode the policy aggregate.
- Insureds should consider their projected 12 month EBITDA when determining how much of their overall policy limit could be used to fund future business interruption losses.

Using the hotel example above, when seeking maximum recovery under an environmental insurance policy, insureds should consider the following:

- What jurisdiction do they operate in or in which jurisdiction(s) is the asset located? Do these jurisdictions align with the choice of law provisions in the policy? Some jurisdictions are more favorable to insureds as opposed to insurers.
- Does the insured self-perform all cleaning/operation and maintenance, or do they hire third-party contractors? Do the contracts include standard hold harmless and indemnification requirements? Are there any limitations in the contracts that could mitigate recovery, such as contractual limitations tied to the contract scope?
- Are you taking all prudent steps based upon knowledge of the topic at hand or getting qualified advice from a professional team?



COVID-19 is challenging for everyone and we expect that this pandemic will have major implications for the insurance industry. COVID-19 is part of a much larger picture — the world continues to change, and emerging challenges will likely become more frequent and more complicated.

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