



Environmental Liability's Role

in the COVID-19 Outbreak

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As the Coronavirus (COVID-19) outbreak continues to spread globally, insureds are actively seeking risk transfer solutions for potential third party bodily injury and property damage claims, cleanup costs, and business income loss. The following will examine Environmental Impairment Liability's (EIL) potential role in offering solutions for current and future virus and bacterial outbreaks.

What is COVID-19?

The Centers for Disease Control and Prevention (CDC) is currently categorizing COVID-19 as a virus. It is thought to spread mainly from person to person when in close contact or through respiratory droplets. In addition, it may be possible that a person can contract COVID-19 by encountering a surface or object contaminated by the virus.

Will your existing EIL policy provide coverage for COVID-19?

First and foremost, the complete details of a client's claim will be extremely important in reviewing any opportunity for coverage. The filing of reported incurred losses will be encouraged by Lockton.

EIL policies are generally triggered by a pollution incident on, at, under, or migrating from an insured location. Specifically, the location must be directly impacted by COVID-19. The policy will then be evaluated to determine if COVID-19 meets the definition of a "pollutant." Certain carrier policy forms will include definitions which may meet the characteristics of the virus. Some forms include "viruses" in their definition, or it is added via endorsement. Definitions for "microbial matter" or "biological agents" may contain "viruses" as well.

Exclusionary language in the policy and all endorsements need to be examined to determine if there are limitations for viruses or human contact spread exposures, often referred as communicable disease. If a policy is silent (does not specifically include or exclude viruses), do not assume coverage is absent. The broad nature of the definition of "pollutant" may create arguments for coverage consideration.

If the policy responds, it is expected the typical loss will center around pollution cleanup. This entails the disinfection of a covered location and ensuing business income loss. Third party bodily and property damage may be considered if further exposure occurred. Crisis management expenses may also be incurred to preserve public relations.

Further policy language may limit these expenses by requiring the cleanup be completed by order of a local, state or federal agency. Expenses may also be sub-limited depending on form. In addition, certain forms attempt to distinguish a difference between "disinfection expenses" and "pollution expenses." This will need to be considered when forming an argument for business interruption.

It is critical that reporting and notice requirements be considered in the event of a suspected loss. All EIL policies are unique and many have different reporting periods specific to certain insuring agreements. Understanding and complying with these requirements will be of the utmost importance to preserving policyholder rights.

Is there any meaningful coverage in the EIL market for COVID-19 events?

At this point, the only possible coverage available is for future pandemic events. However, appetite is extremely limited and changing rapidly. Effective immediately, we are seeing some carriers include restrictive virus/bacteria exclusion language on renewals, midterm acquisitions of locations on existing policies, and new placements to definitively exclude.

As previously mentioned, several insurers will consider broadening the definition of “pollutant” via endorsement or separate insuring agreement to include viral and bacterial releases. This is in addition to affirmative coverage grants for Legionella and pollution conditions associated with medical waste.

Note: Closing a location due to civil authority or for voluntary business decisions due to loss of revenue is typically not covered in a standard EIL policy. In addition, claims related to supply chain interruption and other market conditions are expected to be outside of the coverage intent.

In general, coverage granted by the broadening endorsements may be restricted to cleanup costs as required by a regulatory agency (i.e., CDC), typically referred to as disinfection expenses. The intent being to only cover facility-borne outbreaks, for example MRSA. This is often seen in the healthcare and hospitality space. However, some policies may not have this restriction depending on the risk class.

Compared to the disinfection expenses described above, there are a limited number of carriers who will broaden coverage beyond disinfection. However, the appetite for coverage has become extremely narrow since COVID-19 outbreak began.

What does this all mean?

Without broadened pollution language in existing EIL policies, coverage for COVID-19 events will depend on the specific circumstances of the claim. If the policy is triggered by a COVID-19 event, claims could be limited to regulatory required disinfection costs. If business interruption was purchased, clients should track lost earnings to include in the claim. Furthermore, attention will need to be paid to any potential third party exposures.

Clients should follow the reporting requirements in their EIL policies to preserve their policyholder rights. The insurance industry is evolving with this current situation and policy language is going to be tested on an ongoing basis day by day.

Disclaimer: With the exposure of COVID-19 increasing, our clients are evaluating the potential coverage which may be triggered from their insurance policies. Actual loss situations and a review of individual policy forms will be a crucial step to properly evaluate potential available coverage application. Insurance carriers have the ultimate authority and decision in determining coverage for presented claims. Clients should not be discouraged from reporting losses and any requests to Lockton to report a claim will follow our claim reporting guidelines.

This is not meant to be a coverage opinion of any particular environmental impairment liability (EIL) insurance policy. This is solely intended to outline several key considerations of coverage as the matter develops. If you have any questions regarding the coverage in your environmental impairment liability (EIL) policy, please contact your Lockton service team immediately.

Current information from Lockton’s Coronavirus Advisory Practice can be found at: www.lockton.com/coronavirus