

COVID-19 Insurance Update: Companies Should Evaluate Risk Management Tools in Place, Including Pollution Legal Liability (PLL) Insurance Policies

Client Alert

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Among the many critical business issues to be addressed within the context of COVID-19 place, such as insurance policies, which may be of help to mitigate some of the costs incurred during the coronavirus emergency.

It is important at this time to review all property and liability insurance policies currently in force. This review should be extended to include any Pollution Legal Liability (PLL) insurance policies that may be maintained as well.

By way of example, a firm client has a pollution liability policy from Sompo/Endurance. This policy has specific insuring agreements that apply to Biological Agent Conditions, which include viruses. In fact, this policy may provide some coverage for required cleanup of an insured property that is contaminated by a COVID-19 infection, and may also possibly provide business interruption insurance if a building would need to be shut down in connection with such a cleanup (and some contingent business interruption coverage), as well as potential bodily injury or property damage coverage if an insured was sued by a third party (other than the insured's employees) in connection with COVID-19 infections at the insured property.

While most pollution liability policies do not have broad coverage for viruses, and a number of pollution liability policies contain a communicable disease exclusion, certain policies do provide some specific coverage in connection with the cleanup of an insured property contaminated by a virus. In addition, older pollution liability insurance policies may not contain the communicable disease exclusion and may have a broad definition of pollution conditions that an insured may be able to argue includes viruses.

We recommend that businesses not overlook the potential for coverage under certain pollution liability policies. It is critical to comply with the terms of the policy if there is a COVID-19 incident, including providing the appropriate notice required and obtaining any required insurance company approval of actions that the business, as an insured, may be intending to take.

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