
USING ENVIRONMENTAL INSURANCE IN REAL ESTATE TRANSACTIONS

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This Outline and the corresponding presentation are intended as information for interested parties. Neither are intended to substitute for legal advice. Readers and/or attendees should not act upon the information contained herein without consulting legal counsel.

Types of Environmental Policies

- **Pollution Legal Liability (PLL)** – Provides coverage for first- and third-party cleanup and tort claims arising out of environmental conditions at or affecting a property.
- **Cost Cap (CCC)** – Also known as a “Stop-Loss” policy, pays qualified environmental remediation expenses incurred by the insured above a predetermined “attachment point.”
- **Pre-Funded Combined PLL/CCC** – Combines aspects of PLL and CCC; pays environmental remediation expenses through a “pre-funded” account established at policy inception; requires initial payment by insured equivalent to present value of remedial expenses. “Blended” finite risk policies also cover losses for unknown conditions or increased quantities of known contaminants

Key Aspects of PLL Policies

- **Surplus Lines Product** – Limited market with “Chinese Menu” approach to coverages provided, size of policy, deductibles, and term.
- **General Coverage Provided** – Cleanup and third-party BI/PD coverage for known and unknown, new and pre-existing, on-site and off-site environmental contamination. Additional coverages offered including Business Interruption, NODs, Mold, etc.

Key Aspects of PLL Policies

- **One-Time Premium** – Premium paid and earned at policy inception – “100% minimum earned.”
- **Identity of Insureds** – Named Insured, Additional Named Insured, Contingent Named Insured and the differences therein.
- **Coverage Limits** – Per Occurrence and Aggregate coverage limits available incrementally from \$1 million to \$50 million and more.
- **Term** –PLL policies are generally available for 5 and 10 year terms. Often include a renewal clause that gives the insurer flexibility on premium, policy term and other terms of renewal.

Primary Uses of PLL Insurance in Real Estate Acquisitions

- Mitigate Buyer's environmental liability in connection with known and unknown environmental contamination in connection with the property.
- Can be used for benefit of Buyer, Seller, tenants, lenders, subsequent owners, etc.
- Often used as a substitute for an environmental indemnity between Buyer and Seller.
- Can be used as substitute for recourse guarantees to lenders.

Costs of Environmental Insurance

- PLL premiums are tied to several factors:
 - Size and complexity of the insured property
 - Type of coverage provided
 - Amount of coverage provided
 - Length of Term
 - Deductibles/Self-Insured Retention
 - Future land use and development plans
 - Quality of due diligence submitted

PLL Conditions and Exclusions

- **“You can’t insure a burning building.”**
- What’s covered by a policy generally depends on:
 - Quality of due diligence conducted, and insurer’s review of same
 - Known environmental conditions affecting the property
 - Use of the property and owner’s future plans
- Coverage can be denied or restricted; certain conditions or coverages may be excluded.
 - Known Contaminant Exclusions
 - Capital Improvements Exclusions

Managing Exclusions; Making Claims

- Ensuring that necessary coverage is provided; canvassing the markets for best, most cost-effective coverage.
- Limiting the scope of exclusions.
- Notice of claims and potential claims, and handling of same.