



# How To Insure Virus Driven Loss Exposures

**An Insurance Agents and Brokers Self Help Guide**

March 17, 2020

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This guide is written to assist insurance agents and brokers deal with the questions coming in from their clients on insuring virus losses. It is the first in a series. The good news is all of the insurance products needed to address these losses already exists. It's all there in the environmental insurance market place, third party liability and defense costs, clean-up costs, restoration costs, business interruption, extra expense and emergency loss control services. That coverage has been available for at least 10 years now. The only thing missing is contingent business interruption. The bad news is, 95% of the property owners that need environmental insurance coverage do not have it in place today.

**Following this process will lead to informed customers and avoid wasting time with insurance offers they will not take.**

1. Do not ignore the effects of Pollution/Fungus/Mold/Bacteria/Virus exclusions and sublimits in property and liability insurance policies.
2. Explain the environmental loss exposure, the effects of exclusions, and the sublimits in the current insurance program to the customer.
3. Always recommend the purchase of environmental insurance. Doing otherwise takes on undue errors and omission risks.
4. Offer to procure environmental insurance to fill the identified coverage gaps in the current insurance program, for an agreed upon target premium. Getting insurance quotes is not the solution and should never be the starting point.
5. Only go to market to obtain a quote for environmental insurance only after steps 2, 3 and 4 above have been completed.
6. Find qualified environmental risks and insurance to help in getting you through this process with clients.

## How To Insure Virus Driven Loss Exposures

Already the economic impact of the corona has been greater than all of the natural disasters in the last 50 years. There are going to be tens of thousands of "losses" incurred by businesses in the United States alone. Naturally insurance buyers will be looking for insurance to cover some of those losses. For most property owners although there was good coverage available a month ago, its to late now to buy it. Contractors have access to good coverage today. In the following pages I will make some suggestions as to where to find that coverage.

*With unprecedented economic disruption on the horizon, insurance buyers are asking their insurance advisors this question; "Am I covered by insurance"?*

**The ARMR Toolkit**

Your Environmental Insurance Resource

There is potentially some insurance coverage already in place in standard property and liability insurance policies for losses incurred from a virus. The closer a insurance placement is to the standard off the shelf ISO property and liability insurance policy, the better off the insurance buyer is going to be in this case. The problem is off the shelf ISO policies are hard to find. In my research on this topic, if a insurance company has deviated from ISO on a policy form in reference to a virus caused loss, it has only been to eliminate coverage. Specific exclusions for losses caused by a virus or communicable disease are very common.

### **There is no such thing as “virus insurance”.**

No one has invented “virus insurance” nor is any one likely to do so. Due to infection rates and adverse selection, the premiums for virus insurance in personal lines would need to be higher than term life policies.

There is also no need for virus insurance in the life insurance world. Life insurance does not have a virus exclusion nor is it likely that a new exclusion for death caused by a virus would ever get past the approval process of insurance commissioners.

Health insurance and workers compensation policies do not restrict coverage for loss arising from a virus. either.

In the business property and casualty standard lines insurance world, whatever coverage there is for a loss caused by a virus will rest within an insurance policy that was originally built to insure something else. That fact leads to looking between the lines in these policies for coverage for losses caused by a virus. The key to finding the potential coverage afforded is to read the policies carefully, checking out the definitions not just the exclusions.

Business property and liability insurance policies may have remnant coverage for losses caused by a virus. The pollution exclusion in a general liability policy and the pollution sublimit in the special property policy could be rendered ineffective by the drafting history of pollution exclusions. Without an effective pollution exclusion, if there is an otherwise covered loss under either policy form, the involvement of a virus in the sequence of events leading to the loss is irrelevant. Its that “otherwise covered loss” part that is troublesome in the absence of an affirmative coverage grant for losses arising from microbial substances including a virus.

Similar to spinning the insurance coverage wheel of fortune with the totally unreliable coverage givebacks in common pollution exclusions, trying to figure out a covered cause of loss arising from a virus will lead to a lot of gray coverage areas. Avoiding gray coverage areas is a very good idea, because litigation over pollution exclusions can take a decade or more to resolve in court.

Having an affirmative coverage grant for virus as a covered cause of loss in an insuring agreement would be much more reliable for everyone involved in a loss. Those affirmative coverage grants are only found in the world of environmental insurance. But environmental insurance coverage is not a panacea solution. That is because most of the insurance buyers that need it do not have it in place, and most of those that do were sold policies that were not originally designed for the purpose for which they are being used. Today, less than 5% of commercial properties are properly insured for indoor air loss exposures.

For the very few properties that have EIL coverage in place today, even if a virus is a covered “pollutant”, there is a 80% chance that policy has a communicable disease exclusion, thereby rendering it useless for a loss caused by the a virus.

With such a pitiful market penetration of the EIL product line into the clean commercial properties market, even after 30+ years of continuous availability, most commercial insurance property owners will be completely dependent on their standard property and liability insurance policies to pay for the losses incurred because of a microbial substance. All of those GL and Property policies will have a pollution exclusion.

Here is my big picture view on how the standard ISO pollution exclusion applies to a loss caused by a virus. It doesn't. I am sure there are readers, especially in insurance companies, that would disagree with my view.

Here is why I think my view is right. ISO needed to add separate exclusions for fungi and bacteria to stop the explosion of “toxic mold” claims in the early 2000's. The insurance companies added the separate exclusions because the standard ISO definition of what a pollutant is was not tight enough to reliably deny losses arising from the biological contaminants fungi and bacteria. If the standard definition of what a pollutant is in property and liability insurance policies was not strong enough to eliminate fungus and bacteria driven losses, then it's not strong enough to exclude viruses either. Most fungus/bacteria exclusions do not mention virus.



Further evidence that a standard pollution exclusion is ineffective at excluding a virus driven loss, there are endorsements used in property and liability policies that exclude communicable disease and those diseases are often caused by a virus.

For reliable coverage for a virus caused loss in an environmental insurance policy, ideally the policy will list virus in the list of defined “pollutants”, although most definitions of “microbial matter or substance ” are adequate to pick up a virus within the definition. Also, the definition of the “clean up” standards needs to be modified in most EIL policies to cover more than environment laws. This is because environmental laws do not apply to viruses. Most environmental insurance policies fail this dual test of adequacy.

In researching the available Environmental Impairment Liability (EIL) insurance (site pollution coverage) for a loss caused by a virus, we found one beautifully crafted EIL policy that met all of the needed criteria for the coverage trigger. It also had



options for extra expense, business interruption, on site cleanup and restoration. As a bonus it also covers fungi and bacteria as “pollutants”. That EIL policy form works almost perfectly to fill the coverage gaps in property and liability policies, the question is will the underwriters sell it. The product line manager is telling us its “business as usual” send in the applications Dave.

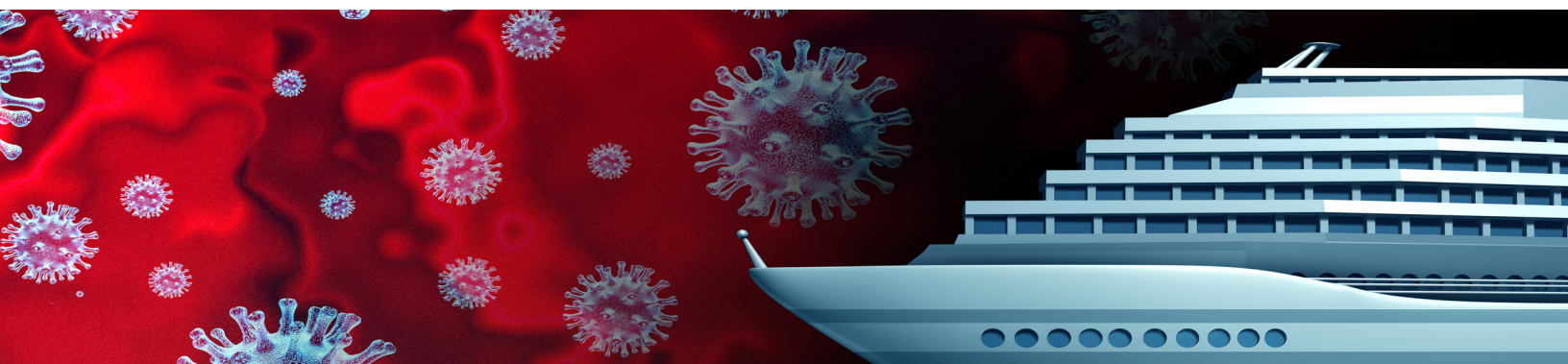
The market availability for Contractors Pollution Liability (CPL) coverage that provides an affirmative coverage grant for a virus driven loss exposures is much better than the EIL product line at this point in time. Our review of popular CPL policies revealed many policies listing viruses or microbial matter as a covered “pollutant”. Most but not all CPL policies are free of a communicable disease exclusion. Many CPL policies already have the clean-up cost coverage expanded beyond environmental laws, which is necessary to get the Clean Up coverage to function properly for biological hazards in CPL and EIL policies. Taking all of these needed coverage factors into account, about 1 out of 4 CPL policies work for a virus driven loss exposure. Only two reviewed CPL policies would not work at all. That basic functionality rate is much better than EIL policies on biological hazards.

There will be a lot of work for cleaning contractors who decontaminate buildings. A hidden potentially uninsured loss exposure arises when cleaning contractor materially changes their risk profile and does not inform their insurance company about it.

Today about 85% of cleaning and restoration contractors are insured under general liability insurance policies where the rating code is primarily “Janitor”. Most of the building decontamination work for viruses will be conducted by cleaning and restoration companies. There are not enough HazMat contractors to come any where near handling the demand for these services. A proven effective way to eliminate viruses from the indoor environment is to fog the premises with a oxidizing material (not bleach) combined with surfactant. These crews also scrub down areas and the items people touch like door knobs. The workers that perform these operations should be wearing personal protective gear with a respirator for the fogging operations at least. Most general liability underwriters would think that conducting operations similar to a HazMat crew represents a significant and material deviation from the operations of a “janitor”. Therefore, losses arising from decon operations could face the ultimate insurance exclusion, claims being denied over a undisclosed material change in the risk of the insured firm. The solution for this potentially uninsured loss exposure is full disclosure to the GL underwriter on the proposed scope of operations before the work begins. There is a healthy GL/CPL/Professional insurance market to pick up the firms that are abandoned by their GL carrier when the cleaning firm goes into the virus decon business.

### How do you insure for virus driven loss exposures?

1. **Check what the property and liability policies say about virus or communicable disease as an excluded cause of loss. What are the covered causes of loss?**
2. **For planning purposes, even if these policies do not exclude viruses or communicable disease specifically, you should plan on having one or both exclusions upon renewal of those policies.**
3. **After the gaps in coverage in the GL and property policies are understood, it is a good idea to look into filling the pollution/fungi/mold/ bacteria/virus coverage gap with specially crafted EIL or CPL coverage. Off the shelf, most of environmental insurance policies do not work for the biological part of the loss exposure. All environment insurance policies were built with outdoor loss exposures in mind. Today these policies are being used for things they were never originally designed to cover and, as a result material coverage gaps are common.**
4. **The bottom line is getting coverage for the microbial substance loss exposures is going to take coverage analytical work. Coverage solutions in standard P&C and environmental policies are available, but are not simple to coordinate. Simply buying a unamended environmental insurance policy is certain to leave material coverage gaps in an insurance program. But ignoring the need for pollution/fungus/mold/bacteria/virus coverage in commercial insurance programs will be worse.**





## What we have done at ARMR to make the coverage interface between the traditional P&C insurance program and the gap filling environmental coverage easier for our retail producers:

1. We had to engage the services of a 40 year veteran senior property and liability insurance coverage analyst to supplement our in-house knowledge of the coverage provided for virus driven loss exposures in traditional P&C policy forms. The entire environmental insurance business sector is devoid of this skill set to the best of my knowledge. The ARMR staff is heavily laced with CPCU's, CIC's, JD's, expert witnesses and staff members that are authorized continuing education providers in all 50 states, and we still had to go outside of ARMR for the needed degree of expertise to get a handle on the interface of traditional P&C coverage forms and environmental insurance.
2. We have an inventory of analyzed EIL, CPL and combined GL/EIL or combined GL/ CPL/Professional environmental insurance policy forms that can be used for biological loss exposures. We already know the policy forms that we have modified to get them to function properly, and we know the policies that need changes in order to cover indoor loss exposures involving virus and other biological materials as a "pollutant". Off the shelf, virtually none of the environmental insurance policies work for indoor use.
3. We keep a pulse with leading environmental insurance product line managers underwriters on planned changes to policy forms and the underwriting appetite by class of business.
4. To assist our retail producers in figuring out how to fill the gaps in coverage for environmental risks in the insurance programs of their clients, we have conducted hundreds of hours of staff training on the pollution exclusions in traditional P&C policies and the coverage provided in environmental insurance policies

### **In Conclusion**

There is insurance coverage in various places for loss exposures created by a virus. Even in the default mode there may be some coverage, but unanticipated uninsured losses will strain broker client relationships. It's a much better idea to be proactive. The ARMR staff can help.



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*David Dybdahl is the founder and President of American Risk Management Resources Network LLC. (ARMR.Net) a wholesale insurance brokerage firm specializing in the design and sale of environmental insurance products. He is an insurance broker, educator, author and expert witness. His class Unbelievable Fun With Pollution Exclusions is available for CIC Rubles and ACES classes.*



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