Property Casualty 360

Using Environmental Insurance to Overcome Cre

American Agent & Broker December 2008

By STAFF WRITER

Today's uncertain economy presents a host of challenges to businesses nationwide. M commercial credit market see both direct and indirect effects of the economic situatio the lack of available capacity or an increased cost of borrowing, while indirectly many provide broad-based indemnity agreements that include environmental indemnity wl potential to exist.

Depending on the credit risk of the indemnitor, indemnitees might require an evergre as an additional backstop. However, an LOC may not be as cost effective as it once wa not recommended as the best use of funds. Additionally, many indemnities survive th termination of the agreement, and these obligations could exceed the amortized balar of the property. Accordingly, environmental obligations under an indemnity agreeme much like environmental liabilities recognized under the Federal Comprehensive Env Act (also known as the Federal Superfund Act) and other state laws.

In contaminated or potentially contaminated property transactions where it's unclear environmental conditions is a significant risk factor, environmental insurance is a cos value to both borrowers and lenders-a tool that agents and brokers should have at the

Ensuring Financial Recovery

Lenders benefit by transferring any credit risk to the insurance carrier, which typicall environmental insurance policy also can be written in lieu of an environmental indem financial recovery from a well-rated insurance carrier is more efficient and assured th strapped borrower. Viewed from the other side, borrowers also benefit by alleviating t corporate indemnities. Borrowers can use the insurance to obtain interest rate relief c Borrowers can work with their lenders and other strategic vendors to develop lending insurance for a single property or an entire portfolio of properties. Lenders, now one s should be willing to provide limited interest rate relief. Of course, it's vital to use a top exhibits financial stability, underwriting expertise and the ability to create customizec problem.

Implementing the Strategy

There are certain key points to consider in using environmental insurance as a backst indemnity. For example, the legal scope and duration of an indemnity may not be tota insurance policy's terms. Also, is the borrower implementing this strategy for a portfo site? When considering these and other issues, legal counsel skilled in environmental policies and an experienced environmental insurance broker should evaluate and disc policy with borrowers and lenders to identify potential coverage gaps. Subsequent neg

broker between the transaction parties and the insurance underwriter can better aligr parameters of the indemnity.
First, it's important to determine the length of time required to amortize the loan and the indemnification and term of the insurance. The term of the indemnity may be ind be set further out than the term of the insurance. Most commercial loans are amortize placing an environmental insurance program. Today carriers can issue policies of up t However, the question arises as to what to do thereafter. One solution is to negotiate r environmental policies, although carriers are reluctant to provide this due to reinsura can insert a covenant in the loan documents obligating the indemnitor to renew the ir there is no guarantee that insurance in the same form and scope as the original policy the future. If the sunset provision of the indemnity or the loan amortization period ex renewals cannot be obtained, the transaction parties and the lenders must agree in ad expires, the indemnitor reverts to the primary source of financial recovery.
There may be gaps between the scope of the indemnity and extent of coverage. Typica for all insured, but not for fines for knowing non-compliance. Such gaps can be bridge endorsements. For example, fine payment by the policy can be added if the penalties c knowing act or omission.
The typical pollution legal liability (PLL) or environmental impairment liability (EIL) indemnity provides for both governmental and third party claims for cleanup, bodily from pre-existing pollution conditions. However, if the loan requires the indemnity tc arising from pollution conditions, such as business interruption or development delay added. A "soft costsobCrLf endorsement will cover additional fees for architects and p of leases, and additional real estate taxes and assessments due to project delays. A bus also can be added to cover lost rents due to pollution conditions. However, there may such as breach of representations and warranties by the indemnitor or acts of war or t If there's a claim, environmental insurance policies require that all insured locations r policy. It also is important to negotiate in advance that properties can be added and d properties are "flippedobCrLf to new buyers or new sites acquired.
PLL and EIL policies provide coverage only for unknown pollution conditions. Knowr typically covered.
Brokers should distinguish to their clients whether the policy provides only for pre-ex conditions (existing prior to policy inception but discovered during the policy term), c unanticipated new pollution conditions (such as releases or new contamination from policy inception).
Also, because PLL and EIL are claims-made and not occurrence-based policies, claim discovered and noticed to the insurer during the policy term. Even if the pollution eve during the policy term, there is no coverage if the claim is not made to the carrier unti expiration.

Required Underwriting Information

To properly underwrite environmental risk, brokers must present the following docur
o The most recent environmental reports, including Phase I and II environmental site monitoring reports or any subsurface investigations, lead and/or asbestos surveys, etc
o A draft and final copy of the loan documents, including all exhibits. Brokers must w ensure the direct and indirect provisions of the loan are satisfied. The direct provisior requirements; the indirect provisions include the indemnity obligations of the borrow
o Any transaction documents, such as purchase and sale agreements, indemnity agree

and any contracts affecting environmental liability issues of the property.
o Full disclosure by the borrower on the historical environmental issues of the covere
details on any fines or penalties received, as well as consent decrees or deed restrictio
o The most recent audited financial statements (actual or pro forma-whichever is app
o Application. All carriers require an application sometime during the application pro
work with appropriate legal counsel in completing the application.

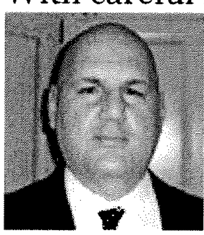
Excellent Primary Collateral Value

Environmental insurance has excellent primary collateral value to ameliorate credit r
indemnitee seek coverage for claims first from the insurance policy, then pursue the i
gap, policy termination or expiration. Word documents to establish a clear procedure
incorporated in the policy wording.

PLL/EIL policies typically require prior written consent of the company before assign
mortgage insured assignment endorsement to ensure the insurer will waive this requi
proceed to the mortgagee/insured if the mortgagee forecloses on the property.

The mortgagee/indemnitee must be a named insured on the policy, with direct access
ability to make a claim. If the indemnitee is an additional insured only, he must first g
indemnitor) to tender a claim. The indemnitee/mortgagee should also be careful that
not shared with multiple parties-or, if so, that limits be set among the parties or the p
indemnitee against the liability limits being eroded by others' claims.

With careful legal and business planning, environmental insurance is a valuable tool t
financial market. *Christopher Alviggi is a client executive with Marsh U
another international broker. Throughout his career he has been instru
structuring and placement of complicated insurance programs which i
environmental placements.*



Christopher Alviggi

*Suzanne Avena is chair of the Environmental Practice Group at Garfun
P.C., Great Neck, N.Y. She also lectures and writes on such topics as gre
air and environmental quality issues, environmental due diligence and
insurance.*

« Previous
Change We Can Hope For

Story 3 of 20

Add New Comment

Showing 0 comments

Sort by Popular now Subscribe by email Subscribe by RSS

Trackback URL http://disqus.com/forums/p