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These incidents show how operational failures can quickly create large environmental, regulatory, legal, and reputational losses

Casualty | Asia

Environmental Impairment Liability insurance

Claim examples: SME business in Asia

1. Factory fire results in US$2m+ claim

In the early hours of a February morning, an electrical fire started in a server room of the Insured's factory and due to the presence of combustible material, quickly spread throughout the building.

Fire crews attended the blaze, dousing the fire with large quantities of water. Excess 'firewater' flowed into neighbouring properties and soaked into the soil on site.

The Insured claimed under their Industrial All Risks (IAR) policy and Liberty's Environmental Impairment Liability (EIL) policy, seeking indemnity for the on-site clean-up costs of hydrocarbons and the firewater.

Liberty appointed a qualified local adjuster to ensure that the clean-up was conducted as smoothly and efficiently as possible in compliance with environmental regulations. Liberty also liaised with the IAR insurer where appropriate and worked with the broker to ensure a smooth claims service.

In accordance with statutory obligations, a contractor was appointed to conduct the clean-up at a cost of approximately US$3.5m.

A fire investigator determined that the cause of the electrical fire was due to server componentry overheating, most likely due to the presence of dust.

Neighbours claimed compensation for damages to buildings and loss of profits caused by smoke, soot, and odours from the fire.

The claims were defended, and the manufacturer and the supplier of the server were ultimately joined to the proceedings.

"On behalf of the Insured, Liberty also sought subrogated recovery of the clean-up costs against the manufacturer and the supplier."

Competing experts argued alternative reasons for the presence of dust. The manufacturer and the supplier argued it was due to the Insured's failure to conduct an appropriate cleaning regime, while on behalf of the Insured, it was argued that the server lacked appropriate design and was not fit for purpose.

The claims were denied, but the Insured incurred defence costs (US$200,000) and ultimately made commercial offers (US$500,000) to resolve the litigation on multiple fronts. Liberty accepted an offer of US$1.75m to resolve the subrogated recovery. Less the excess, Liberty's total amount incurred was US$2.45m.

Top tips to consider

1. First Party (the Insured's own expense) clean-up costs are not covered under an IAR
2. Investigation and defence costs for pollution claims can be significant



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2. Acetone spill into waterway

The Insured's employee was using a forklift to transport barrels containing acetone to the on-site storage location when the fastening on the forklift snapped and four containers fell, causing a significant spill.

The chemicals flowed into nearby drainage, ultimately entering the waterway, and clean-up crews were called to neutralise the acetone and otherwise make safe the premises.

While on-site, it was established that a separate container – which had been utilised by the Insured for a number of years – had suffered impact damage, causing an ongoing persistent leak into the soil at the back of the premises.

Investigations established that the fastening was not properly connected by the Insured's employee and that the forklift was operated at speed – therefore, there was no basis for recovery.

Liberty's risk engineer met with the Insured and conducted an overall site inspection and review and subsequently, the Insured's processes and employee supervision were upgraded to improve the risk culture and overall safety.

The Insured was also required to notify the regulator of both causes of contamination. Following alleged breaches, the regulator pursued the Insured for civil fines and penalties, and the Insured was found guilty, fined US$60,000, and incurred US$40,000 in defence costs.

The separate occurrence related to the chemical leak was resolved for US$20,000 under the Insured's excess. The Insured was unable to establish the reason for the impact damage, so there was no basis for recovery.

Top tips to consider

1. Emergency response/containment costs form part of the EIL offering
2. Public Relations coverage in Liberty's standard policy is designed to mitigate the impacts from reputational damage

"The clean-up costs associated with the site and the waterways were US$50,000 net of the US$50,000 deductible."

* Based on Liberty's experience and understanding of the market, we have made up these claims scenarios to highlight potential situations that could unfold.

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