



# **Environmental Facilities Management Roundtable**

**Monthly Call  
June 22<sup>nd</sup>**

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# Today's Call



## EFMR call

June 22, 2023 @ 10:00 AM PDT

### Environmental Insurance:

Basics and Applications for  
Commercial Real Estate

Guest Speakers

Kate Dietrich | Lockton  
Eric Rosenblum | Beazley



EFMR

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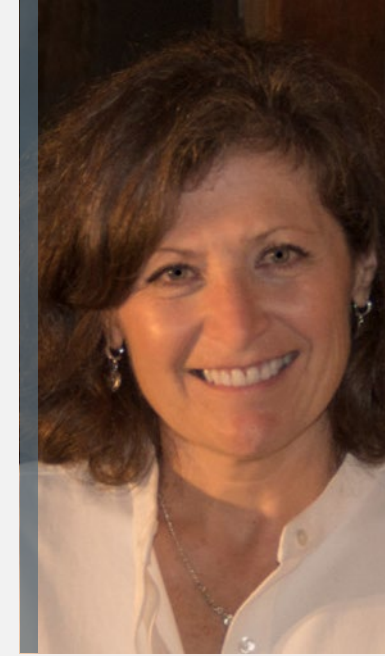
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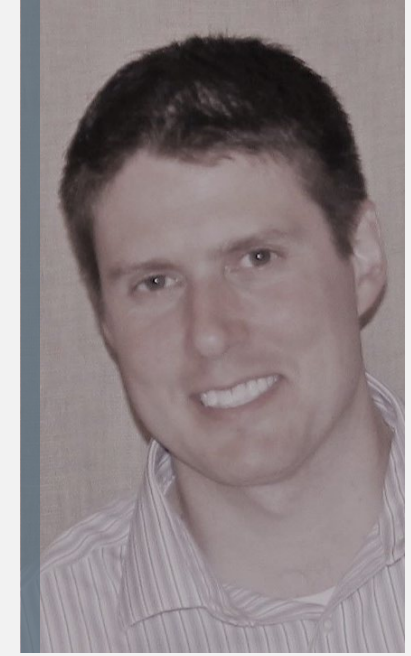
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# Upcoming EFMR Monthly Calls



**July 27<sup>th</sup>**  
Open Forum



**September 28<sup>th</sup>**  
ESG & SEC Regulations

# Regional In-Person Event



Save the Date:

**September 21<sup>st</sup>**

*New York City, NY*



**SAVE  
THE  
DATE**

# **2024 EFMR Annual Roundtable Conference**

**April 24-26, 2024 | Location TBD**

**EFMR**



# Environmental Insurance: Basics and Applications for Commercial Real Estate

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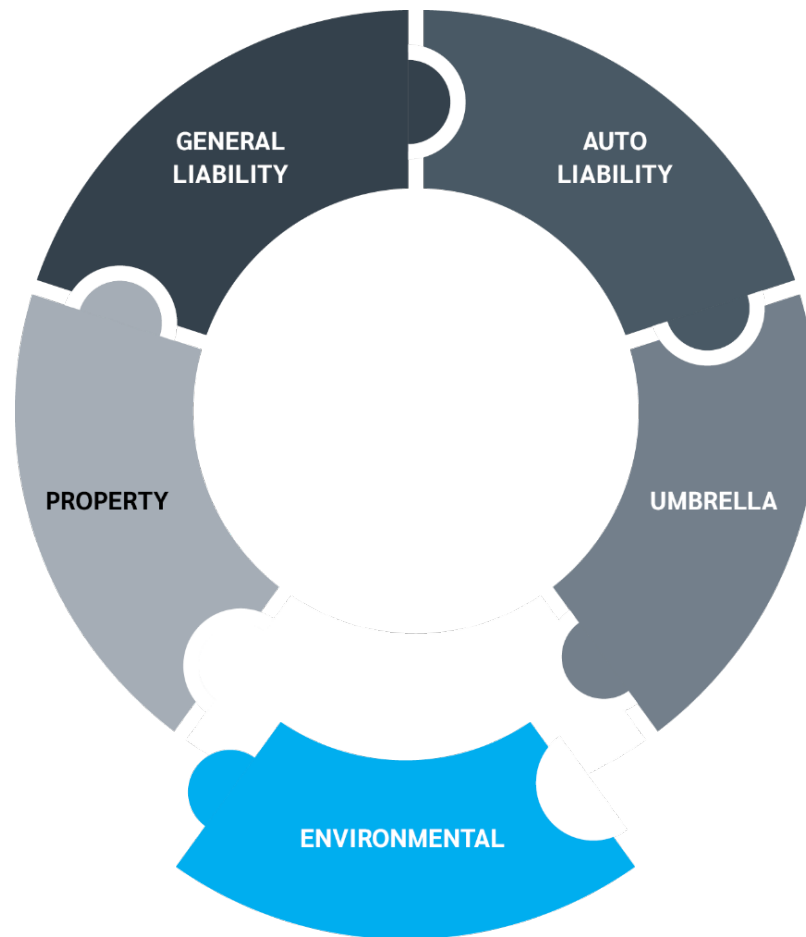
Kate Dietrich, Lockton Companies

Eric Rosenblum, Beazley Environmental

June 22, 2023



# *Why does Environmental Insurance exist?*





# *Evolution of the product line*

Traditionally purchased for industrial operations, application has expanded over the years resulting in robust marketplace and support of scenarios such as redevelopment, commercial portfolios and transactions.

Over 40+ markets with some type of product. Must be carefully analyzed to ensure the product fits the need.

Most forms are menu driven, highly customizable. Pick and choose your coverages.

# Key Coverages

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- Cleanup or remediation costs
  - Satisfy “environmental law”, commonly including VCP
- Third party claims
  - Bodily Injury
  - Property Damage (including NRD)
- Business Interruption or loss of rents
- Disposal or transportation liabilities



***Defense can be the most important piece of coverage in protecting against frivolous and non-meritorious actions***



# *New Conditions vs. Pre-Existing*



## Pre-Existing Conditions

Release or pollution conditions occurred BEFORE retrodate

Requires diligence (Phase I) or other supporting data

## New Conditions

Release or pollution conditions occurred AFTER retrodate

Typically a concern for operational exposures

# Known vs. Unknown Pre-Existing Conditions

Are known conditions insurable?

- What is a known condition? Fully identified pollutant, contaminant, condition or issue. With potential to require action now or in the future.
- Not typically insurable for costs to remediation and resolve the matter.
- Other creative solutions available, depending on circumstances:
  - Application of certain coverage triggers (third party, government)
  - Coverage for bodily injury and property damage
  - Discernment of on site vs. off site exclusionary language
  - “Let sleeping dogs lie” approach

Are unknown conditions insurable?

- Yes

**“Don’t turn an unknown into a known and a potentially insurable matter into an uninsurable one”**



# Facilitating a Transaction: Concerns

## Sell Side

- What if historic site conditions are uncertain?
- What if you are required to indemnify buyer?
- What if you don't want buyer to perform invasive sampling and uncover a costly issue?

## Buy Side

- What was there before you (known or unknown)?
- What do you plan to use the site for?
- What if you're going to redevelop?
- What if you will have tenants?
- What if diligence is clean?
- What if you have no diligence?

## *Facilitating a Transaction: Common Roadblocks*

- Lack of, or limited, due diligence
  - Environmental is often one of the last items to address; leaving little time for robust diligence or to fill in gaps (Phase II, etc)
  - Seller may be unwilling to allow additional diligence (Phase II, etc.)
- Unwillingness of either party to indemnify
- Uncertainty of financial ability to support provided indemnities
- Lender or other stakeholder discomfort

# *Facilitating a Transaction: Buy Side*

## **What can potentially be insured?**

- With adequate diligence:
  - Pre-existing liabilities for unknowns
  - Consideration of knowns
  - New operations
- Without adequate diligence:
  - Pre-existing may be limited unless carrier can backfill historical info
  - May require creative solution, such as modification of trigger or higher deductible

## **Benefits to buyer**

- Elimination of cost uncertainty due to future pollutants
- Prevention of loss of asset value
- Can be reassigned in future sale
- Can be a tool to support seller indemnifications



# *Sample Solution:*

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Buyer acquired a single site that was formerly a gas station which was successfully remediated over ten years ago. Robust diligence was performed and did not reveal other issues however, buyer inherited all environmental liabilities in the sale agreement. Buyer does not plan to hold the location longer than five years.

## **Concerns:**

- Reopening of a past issue
- Discovery of a new issue
- Problems divesting the site in the future

## **Solution:**

✓ **10-year policy for both pre-existing and new conditions. \$10M limit for premium of \$183,281**

- Policy will cover reopener scenario
- Policy will cover newly discovered conditions, or new releases
- Policy is assignable to a new buyer, removing environmental issues from creating roadblocks in future sale



# *Sample Solution:*

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Buyer acquired a portfolio of eight retail locations with no diligence performed. No specific assumption of past liabilities but seller entity dissolved post close. Buyer plans to operate locations "as is" into the foreseeable future.

## **Concerns:**

- Completely unknown past use

## **Solution:**

✓ **5-year policy for both pre-existing and new conditions. \$10M limit for premium of \$152,311**

- Carrier consulted public databases and other resources to backfill historical data.
- Carrier gained comfort with historic risk by imposing a higher deductible and a "no dig" clause; coverage remains in tact as long as no major redevelopment occurs.

# *Put into practice: Sell Side*

## **What can potentially be insured?**

- With adequate diligence:
  - Pre-existing liabilities for unknowns
  - Consideration of knowns
- Without adequate diligence:
  - Per-existing may be limited unless carrier can backfill historical info
  - May require creative solution, such as modification of trigger or higher deductible

## **Benefits to seller**

- Get the deal done
- Complete walk away, removes the need for indemnity (or can support it), escrow
- Avoid price negotiations over perceived environmental risk



## *Sample Solution:*

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Seller is looking to divest a portfolio of 17 locations; many with potential environmental issues. They do not wish to make a corporate indemnity, seller wants to “walk away” and remove liabilities from the balance sheet.

### **Concerns:**

- Buyer wants to perform phase I/II testing; may uncover an issue; leading to price negotiations or indemnity requests.

### **Solution:**

- ✓ **10-year policy for pre-existing conditions for \$20M limit for \$252,528. Seller paid premium for policy to be placed in name of buyer.**

- No exclusions for locations without known issues.
- Locations with potential environmental issues carry a higher deductible and government order to trigger coverage. “Let sleeping dogs lie” approach.

## *Other applications: Operational exposures, owned or leased assets*

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### As owner or landlord

- What if historic site conditions are discovered during redevelopment?
- What about indoor air quality concerns for my tenants?
- What if we or a tenant causes an issue such as a spill or release at our site?
- What if a vendor causes an issue such as a spill or release at our site?



# *Put into practice: Owned or leased assets*

## What can potentially be insured?

- New pollution conditions or incidents
- Bodily injury to tenants or community
- Business interruption expense including loss of rents
- With adequate diligence:
  - Redevelopment projects

Toxic mold growth  
resulting from  
accidental water  
intrusion

Airborne legionella  
bacteria from saunas,  
showers, air handling  
systems, decorative  
or drinking fountains,  
cooling towers, etc.

Unintentional or  
accidental disturbance  
of materials containing  
asbestos

Business interruption  
or tenant evacuation  
caused by  
pollution release or  
contamination



# *Take aways*

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- Environmental claims can be complex — carrier defense may help minimize claims and total loss
- Other policies typically have pollution exclusions which may leave a business bare in the event of an environmental incident
- Environmental insurance can support indemnities or purchase/sale contracts on buy side or sell side.
- Highly customizable
- Proactive risk management
  - Balance sheet protection
  - Public image and reputation management

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Environmental Specialist

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*Just because you can't see it, doesn't mean it isn't there...*

