

An aerial photograph of a suburban neighborhood with various houses, trees, and a road. The right half of the image is covered by a semi-transparent green overlay where the text is located.

Rising Risk in Public Entity

Helping you come
through for your clients



RISING RISK IN PUBLIC ENTITY

Public entities today face far greater risks than ever before. From internet hackers trying to steal sensitive government data to mass shootings and contaminated water supplies, the threats facing public entities are intensifying, driving the need for enhanced insurance protection.

Historically, municipalities enjoyed total immunity from civil liability, but that all changed in the mid-1990s with the enactment of the Federal Tort Claims Act. Since then, all 50 states have passed laws eroding governmental immunity, and today some of the nation's largest claims settlements and jury awards involve lawsuits asserted against public entities and their officials.

Historically, municipalities enjoyed total immunity from civil liability, but that all changed in the mid-1990s with the enactment of the Federal Tort Claims Act.

Litigation against municipalities is on the rise in many areas, ranging from highly publicized allegations of civil rights violations by police to property damage claims blamed on deteriorating infrastructures and the use of drones.

EFFECTS OF CORONAVIRUS

Although there is much that we do not know about the coronavirus (COVID-19), we do know that it continues to spread, and will certainly cause disruption to governmental operations, schools and communities across the U.S. The scenario will evolve; in the meantime, local governments, water districts and special municipalities will have questions as to what effects trigger an insurance cover.

INSURANCE POLICIES THAT MAY RESPOND

While specific policies for business loss due to a pandemic are uncommon, check with your local RPS broker immediately to confirm what key coverages will be provided in a specific event.

WORKERS' COMPENSATION POLICY

Compensability for workers' compensation will truly come down to whether or not the disease/illness is considered occupational.

In order for it to be compensable, the disease would have to be contracted during the course of employment and due to conditions specific to an employee's work.

Various statutory intricacies will also come into play depending on the particular state where the entity operates. For example, healthcare workers who find themselves interacting with ill people are more likely to have workers' compensation coverage.

GENERAL LIABILITY INSURANCE

General liability policies provide coverage for injury to persons (other than your employees) and damage to property of a third party for which the insured is legally liable.

Liability for such injury or damage involving COVID-19 or a similar health emergency will arise chiefly out of a failure to protect others and their property against exposure to infection.

Many general liability policies have exclusions that could preclude coverage for this kind of infection. Careful examination of the policy's coverage terms, conditions and exclusions will be necessary to determine if such a limitation applies to you. Additionally, umbrella and/or excess liability policies may contain a communicable disease exclusion.



PROPERTY/BUSINESS INTERRUPTION

Standard property policies require that physical loss or damage to covered property by an insured peril occur for coverage to trigger.

Contamination of property at an insured's location may constitute physical loss or damage, but policy exclusions for pathogenic organisms, viruses, and disease- or illness-causing agents may restrict or exclude coverage.

For business interruption coverage to trigger, the loss or damage must generally occur on the insured's premises. Business interruption extensions such as contingent business income, ingress/egress, loss of attraction and denial of access are subject to the same coverage parameters outlined above, although not necessarily occurring at an insured location.

For business interruption coverage to trigger, the loss or damage must generally occur on the insured's premises.

Limited available coverage for communicable or infectious disease is offered on some property forms. This coverage is likely sublimited and narrow in its coverage scope, especially outside of an insured location. Covered costs include cleanup, removal and disposal of contaminated property. Any business interruption extension will likely not apply to locations that are not owned or operated by the insured.

ENVIRONMENTAL INSURANCE

In addition to the property policy, consideration should be given to the environmental liability policy. Currently environmental liability policy forms do not identify COVID-19 as a pollutant and do not specifically exclude it by name.

Some policies, however, do contain communicable disease exclusions that preclude coverage when a disease is transmitted by personal contact. However, they do not exclude transmission of the disease caused by the environment within the insured site.

If a pollution event has taken place, or a pollution condition exists, coverage may apply in cases of negligence or strict liability.

In turn, negligence can be the failure to prevent the spread of the disease on an insured premises, or the coverage may be triggered by strict liability as the result of a pollution event that has taken place or a pollution condition under environmental laws.

MANAGEMENT LIABILITY

Management liability insurance is being evaluated on a case-by-case basis as the COVID-19 threat is monitored. Many companies have made disclosures that COVID-19 has caused disruptions in production, staffing and sales. Accordingly, we may begin seeing COVID-19-related D&O claims.

It remains to be seen whether employment practices liability policies are impacted. Employees impacted by quarantine and unable to work may be seeking accommodations or leaves of absence. It is unclear whether quarantine gives rise to obligations under the FMLA or ADA.

TRAVEL ACCIDENT POLICY

The U.S. Department of State has increased the level of risk for travel to certain countries and continues to update its advisories as they monitor the threat.

Some countries have instituted preventive measures for travelers who want to visit, requiring medical clearance before the traveler is permitted to enter the country, or are instituting other measures, including a health quarantine.

As of early February, carriers and underwriters are no longer including the threat of COVID-19 as a covered trigger for evacuation, cancellation and interruption benefits.

Even the cancel-for-any-reason policies available in the market have excluded the COVID-19 from their covered triggers.

These policies will only cover a traveler who actually contracts the virus. Therefore, it is critical that you discuss this with your client to determine the potential threat before you or your clients decide to travel.

Travel assistance services are still available 24/7 for travelers around globe to assist in booking passage home at the traveler's expense.

WHAT THIS MEANS FOR PUBLIC ENTITIES

In an extreme scenario, public facilities may be commandeered as emergency medical facilities. That would require a statewide emergency declaration from the governor, and could engage assistance from federal agencies as well as local hospitals and medical staff.

Again, be sure that your clients have emergency plans at the ready for this scenario, as well as for potential service disruptions so they understand how their organization would respond.

For local governments and special districts, exposure to the virus may be difficult to avoid when the public services these organizations deliver are essential, such as law enforcement, safety and security, healthcare, childcare care, social services, and transportation.

There are a multitude of ways public entities can and are mitigating their exposures. A continuity of operations plan (COOP) or business continuity plan is critical, as is developing backup and alternate plans for service delivery.

Training for employees is paramount, are regular communication and updates. Other aspects of operations that may be affected include implications for reduced tax revenue, and maintaining an appropriate inventory of essential products and supplies.

PUBLIC ENTITY CYBER LIABILITY EXPOSURES

From meeting minutes and homeowner information to tax and utility bills, public municipalities have transformed the way employees and taxpayers can communicate with local officials. Citizen interaction is enhanced, but the risks are significant. Specialized cyber insurance solutions are now available for public entities.

Ask your client, "If your public agency experienced a sizable data breach..."

- Who would you call?
- How would you organize an immediate response?
- How would you pay for it?
- Who will do your job while you respond to the crisis?





CYBER ATTACKS: AN EVOLVING CRISIS

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In recent years, hackers have adopted ransomware attacks as a preferred extortion method, especially among municipal entities, according to *Newsweek* magazine. By planting malicious code inside agencies' information systems, digital intruders are able to exploit relatively unsophisticated or out-of-date cyber defenses and inhibit computer access, the magazine said.

Targeted ransomware attacks have been on the rise, taking ransom demands much, much higher than in the past.

Oftentimes, the perpetrators are inside the networks (as opposed to random malware attacks from outside, hoping someone will click on a link to download malware), and they are often encrypting not only the servers, but the backups as well.

In November 2019, a school district in New Jersey had its servers hacked by an outside entity and infected with ransomware, with the superintendent noting the issue could take weeks to resolve.

Just a few months earlier, a staggering 22 local governments in Texas fell victim to a "coordinated ransomware attack of unprecedented size," according to *Insurance Journal*. Authorities believe a single source is behind all of the attacks.

ATTACKS KNOW NO BOUNDS

It's not just small municipalities either. Large entities, even with more resources and presumably more layers of security available, aren't immune.

One major U.S. city suffered a ransomware attack last May, estimated to cost more than \$18 million. Four months later, only 65% of city employees had regained the

ability to use their computer and send and receive emails with 95% of employees expected to be operational shortly thereafter. Ongoing issues remain.

Another major U.S. city saw its computer systems crippled by a cyber attack at the tail end of 2019, disastrous timing with property tax deadlines looming at the end of January.

The good news here is that three weeks later, with the efforts of the city and 75 state and federal partners, the systems are close to back up and running. The bad news? The effort has cost \$1.5 million thus far, a number expected to rise. The city is now planning to increase their insurance coverage in 2020.

In early 2020, we received a notice of claim on a ransomware event experienced by a small school district in a midwestern state. The initial demand was the equivalent to \$2 million in bitcoin, and legal and forensics costs are expected to climb north of \$150,000.

The district carries a cyber insurance policy with a limit of \$1 million, having made the decision to forego the offer for higher limits at policy inception. The forensic team provided by the school district's cyber insurance policy was able to negotiate the ransom down to \$550,000, so hopes are that this event will fall within the limits carried by the insured.

CONNECTED RISK

We have also seen a rise in vendor events that have the potential to affect more than one member of a public entity insurance pool simultaneously.

For instance, there was a recent data breach of a software platform used by multiple school districts within a certain geographic footprint. The schools are all a part of the same cyber insurance policy.

Because the source of the breach is the same provider, most insurance policies would consider this a single event, therefore subject to one shared sublimit of insurance among all affected. But with a specialized program specifically for the public entity, each affected member of the pool will enjoy their own limit of insurance, subject to the overall policy aggregate—not one smaller sublimit shared by all.

WHAT TO LOOK FOR IN CYBER LIABILITY FOR PUBLIC ENTITIES

As is common with all insurance, higher claims frequency and severity among a common sector can have an effect on underwriting, capacity and pricing. We have seen this with some of our recent renewals, and expect the trend to continue as these events become more frequent and highly publicized.

Cyber liability coverages for public entities today should include privacy liability, privacy notification expense, regulatory liability, media content liability and network security liability. In addition, stronger policies afford public entities coverage for crisis management, credit monitoring expense, extortion threat and ransomware, and cyber deception/social engineering.

SPECIALIZED PUBLIC ENTITY INSURANCE PROGRAM

A comprehensive insurance program for public entities, including municipalities, water districts and special governmental authorities, should be designed with four key objectives: savings, security, stability and control.

To address emerging risks and a public entity's diverse insurance needs, RPS has partnered with Munich Re Specialty Insurance to create a comprehensive solution providing traditional all-risks property/casualty coverage augmented with additional protection for:

- Commercial auto liability and property damage
- Law enforcement liability
- Public officials' liability
- Employment practices and management liability
- Professional healthcare liability
- Crime
- Inland marine
- Equipment breakdown

The program also can be supplemented with additional coverage for cyber liability, crisis management, active shooter liability, special events and workers' compensation.

Written on an occurrence basis, except for public officials' liability, which is on a claims-made form, the program provides custom claims management within a framework designed to effectively manage total cost of risk.

The program has been specifically designed and underwritten for two types of public entities:

- Municipalities with populations under 75,000 including cities, towns, townships, boroughs and villages
- Other miscellaneous public entities serving similar-size populations including water, sewer, irrigation and conservation districts, and non-elected special service districts including redevelopment entities, parking districts, parks and recreation commissions, and library boards

With 39,044 general-purpose local governments in the U.S. according to the last U.S. Census, 90% of which have populations under 25,000, this program presents a potentially lucrative opportunity for agents and brokers serving the public sector market.

ABOUT RISK PLACEMENT SERVICES

Risk Placement Services (RPS) is one of the nation's largest specialty insurance products distributors, offering valuable solutions in wholesale brokerage, binding authority, programs, and standard lines, plus specialized auto through its Pronto Insurance brand. RPS Signature Programs offers exclusive coverage in niche markets from top-tier carriers to agents and brokers looking to cover specialized risk. Headquartered in Rolling Meadows, Illinois, RPS has more than 80 offices nationwide.

To learn more about the new RPS Public Entity Program, contact Bob Lombard, program manager, at 775.360.6626 for more information.

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