

The Greening Of The Insurance Industry

Law360, New York (July 01, 2010) -- Much has been written about the so-called "greening" of the construction industry and its potential reverberations across a broad swath of fields, from supply-chain management and contract interpretation to rental markets and risk assessment. Given the relative infancy of sustainable building standards and initiatives, most of the writing on this topic has, necessarily, been speculative.

Pinning down the issues and implications associated with green building and development is further complicated by the dynamic nature of the industry; as new methods and technologies evolve, so do the standards for obtaining coveted green-building certification from internationally-recognized programs like the Leadership in Energy & Environmental Design (LEED) and Green Globes.

Legislative efforts to implement green-building standards are also on the rise, with California's "Cal Green" building-code upgrades taking effect on Jan. 1, 2011; in Washington, D.C. — where LEED is, perhaps not coincidentally, headquartered — a similar initiative will take effect one year later, in January 2012.

The green building movement, like a storm, is constantly evolving even as it gathers momentum. In this ever-shifting environment, the property insurance industry is charged with assessing risks that have yet to materially manifest at this nascent stage of the green game. Nevertheless, property insurers have responded by creating new forms of coverage for green-related losses.

"Green Upgrade" Property Coverage

At present, approximately 40 insurance companies offer some form of green-building-related coverage. Most of these unique endorsements cover costs associated with upgrading a building to green standards, usually within the LEED certification system. In addition, the Insurance Services Office (ISO) now offers a standardized "green" form.

The ISO form is noteworthy for, among other things, providing a definition for the somewhat nebulous term, "green." To wit: "Green" means enhanced energy efficiency or use of environmentally preferable, sustainable materials, products or methods in design, construction, manufacture or operation, as recognized by a Green Standards-setter.

And what is a "Green Standards-setter?" The ISO form obligingly defines that term, too, describing a Green Standards-setter as "an organization or governmental agency which produces and maintains guidelines related to Green products and practices" — including (but not limited to) LEED, Energy Star (a joint initiative between the U.S. Environmental Protection Agency and the Department of Energy) and Green Globes. This definition is significant because, as discussed earlier, certification standards under these programs are essentially a moving target — and the proliferation of new technologies does not appear to be anywhere near abating.

As compared with other green endorsements, which tend to provide coverage for achieving or maintaining a level of green certification under one of the nationally recognized certification programs, the ISO form provides coverage for the “greening” of specific items.

For example, the "Related Expenses" provision of the ISO form affords coverage for items like waste reduction and recycling, design and engineering professional fees and certification fees and related equipment testing.

Significantly, the “certification fees” provision expressly covers only those certification fees that are imposed by the Green Standards-setter “in order to determine if certification or recertification is appropriate.” The ISO form does not cover additional modifications beyond the restoration and related expense costs covered under the policy insofar as they are solely for the purpose of obtaining certification, recertification or a specific level of certification.

Again, this distinguishes the ISO form from many of the endorsements written by individual insurance carriers. Also noteworthy is the interplay between Green Upgrade coverage and a much more established form of property coverage: "Code Upgrade" coverage.

Code Upgrade Coverage, as the name would suggest, provides that, if the insured property requires restoration after a covered loss, the insurer will pay for the insured property to be restored or rebuilt in compliance with new building code requirements. With respect to individually drafted green coverage provisions, there may be some potential overlap between these two forms of coverage, requiring an analysis of the requirements for building code compliance as compared with green upgrade requirements.

The ISO form, by contrast, draws a clear distinction between Green Upgrade and Code Upgrade coverage, stating that the Green Upgrade endorsement does not cover additional costs that are “solely” for the purpose of bringing a building into code compliance. Given the varying building code standards throughout the United States, this provision will likely complicate the adjustment process with respect to determining replacement costs under green standards and under building codes that may also include green provisions.

What Does This Mean for the Property Insurance Industry?

In whatever form, coverage for green-building-related costs will no doubt continue to evolve along with the industry it is tracking. During this evolution process, we can expect to see increased complexity in the adjustment process, and increased significance placed on what is already covered under code upgrade coverage in any given locale. While it remains to be seen how this complicated additional coverage will affect the property insurance industry, one thing is almost certain: Everyone is going green, and green isn’t going anywhere.

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