HUSCH BLACKWELL

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: NOVEMBER 25, 2025

Legionnaires' Disease: Controlling Liability and Damage Exposure Before the Outbreak

Industries

Manufacturing

Technology

Transportation

Professional

RICHARD G. MORGAN
MINNEAPOLIS:
612.852.2681
RICHARD.MORGAN@
HUSCHBLACKWELL.COM

In a previous update, we explored the keys to defending civil lawsuits and other threats stemming from an outbreak of Legionnaires' disease. Those will typically arise only after an instance of Legionnaires' disease, or something mistaken for it, has been detected. But property owners and other parties with exposure to Legionnaires' outbreaks can also take action to insulate themselves from liability and financial loss before any illnesses ever occur.

In this update, we will review preventative steps that parties can take to keep Legionnaires' disease from developing in the first place, and to mitigate their losses if and when that does happen.

Water Management Plan

For property owners with cooling towers or other at-risk water sources, it is critical to have in place a comprehensive water management plan that includes specific guidance to minimize the risk of bacterial growth in the water system. The relevant standard is ANSI/ASHRAE Standard 188-2021. While adhering to the standard is voluntary, building owners and designers would be short-sighted to ignore the standard. The water management plan will usually cover these topics:

Monitoring water temperatures: Keep hot water at or above 140°F (60°C) and ensure it doesn't drop below 120°F (49°C) at the tap. Maintain cold water systems below 68°F (20°C). These temperatures are inhospitable to Legionella bacteria.

Preventing water stagnation: Flush both hot- and cold-water systems weekly, especially in unoccupied units or low-traffic areas. Regular water flow prevents sediment buildup and discourages biofilm formation where Legionella can thrive.

Cleaning and disinfecting systems: Establish a routine schedule for inspecting and cleaning water tanks, cooling towers, and so forth. Disinfect these components regularly according to industry standards to remove scale, sediment, and biofilm.

Testing water periodically: Engage a certified laboratory to test your water systems for Legionella. It's critical to engage in proper sampling practices and to maintain a chain of custody on the samples taken. Regular testing validates the effectiveness of your management program and provides early detection of potential issues, allowing for swift corrective action.

Contract Issues

Review your contracts, whether purchase orders for equipment (especially cooling towers) or service agreements for servicing water systems. The key contract issues are indemnification, including defense costs and hold harmless provisions against claims, losses, liabilities, obligations and expenses in any way arising out of the incident.

The indemnification should extend to acts or omissions of the company, any affiliates, employees, as well as the usual array of successors, assigns, officers, directors, licensors, and agents. In short, you will want a broad definition of the entities and persons covered.

If the indemnification will extend to negligence claims, that should be explicitly stated. Further, the agreement should note that the provision is applicable whether the claims arose in whole or in part by the negligence of any of the indemnified parties, including an alleged failure to train or supervise employees or agents. This language should also cover any alleged failure to use, operate, maintain or control the equipment involved with water treatment (cooling towers, water tanks), hot and cold water systems, or water features (pools, hot tubs, or decorative fountains, for example). Ideally, the coverage would extend to the death or injury of any person, business interruption losses, and damage to property or any alleged violation of applicable law. Claims finally adjudged to have been caused by gross negligence, recklessness, or willful or intentional misconduct are unlikely to be within the allowable scope of an indemnification agreement. You will want to exclude incidental, indirect, special, consequential, exemplary, or punitive damages of any kind.

You will also want to limit warranties and guarantees, as appropriate. For service providers, an example of an appropriate disclaimer provision might be:

> *Service Provider makes no promises, warranties or guarantees with respect to water system biohazards from waterborne pathogens including but not limited to Legionella bacteria or health risks related thereto. Service Provider does not and cannot make any promise, guarantee or warranty that the risk of the presence of Legionella or waterborne pathogens, or that the risk of legionellosis or disease has been reduced or eliminated by reason of the program or any related services provided.*

To the extent that a service provider provides training, it should be done at the request of the property owner.

Obviously, these contractual provisions are applicable between the parties and can shift the liability and damage impact of legionella claims but will not limit the indemnitees' risk of being sued by plaintiffs. Thus, all parties are encouraged to be proactive in managing water in accord with best practices, which can include the ANSI/ASHRAE standards. (See ANSI/ASRAE 188 2021, Legionellosis: Risk Management for Building Water Systems; ASHRAE Guideline 12-2023, Managing the Risk of Legionellosis Associated with Building Water Systems.)

Insurance Issues

Rarely do property owners' insurance policies cover the costs associated with maintaining or cleaning water systems, including decontamination for issues such as Legionella bacteria. These tasks are considered "routine maintenance," which is the responsibility of the property owner or manager. Any Legionella detected in your water system needs to be cleaned or replaced and will likely not be covered.

Property and liability insurance likewise does not cover claims related to a Legionella outbreak. Often, a Legionella liability extension or endorsement will be needed, depending on the risk assessment. Liability insurance is designed to cover sudden, unexpected events, but Legionella issues are usually the result of a gradual process, thus the need for a Legionella extension or endorsement. You will also want to make sure that business interruption coverage will apply in the event of a Legionella outbreak.

Many pollution legal liability policies contain express coverage for Legionella bacteria within the scope of their triggering "pollution conditions" definition. Such coverage may extend not only to defense and indemnification for bodily injury claims but may provide coverage for disinfection costs where the insured is required by a governmental authority to undertake a cleanup. First-party business interruption losses may also be covered. In addition, many of these policies offer protection against reputational damages—and may include access to resources to help manage the public's perception of the building or brand.

Coverage for Legionella-related losses under Commercial General Liability policies is more uncertain. The standard pollution exclusion in such policies precludes coverage for "bodily injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants." Further, many CGL policies contain exclusions for mold, fungus and bacteria that preclude coverage for the actual, alleged, or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any fungi or bacteria on or within a building or structure. And commercial policies may always contain additional exclusions for bacteria or communicable diseases that might independently exclude coverage. (See e.g., Paternostro v. Choice Hotel Int'l Servs. Corp., 2014 U.S. Dist. LEXIS 161157 (E.D. La. Nov. 14, 2014).)

In some jurisdictions, however, bacteria such as legionella may not be considered a "pollutant" for purposes of a pollution exclusion in a CGL policy. (See e.g., Westport Ins. Corp. v. VN Hotel Group, LLC, 513 Fed. Appx. 927 (11th Cir. Fla. 2013) (applying Florida law, court found insurer had a duty to defend).) Also, even if it generally falls within a pollution exclusion, legionella exposure occurring in a pool or hot tub may not be determined to be "on or within the building structure."

There is another exception to this exclusion for cases where the fungi or bacteria are contained in a good or product intended for "bodily consumption." This has led to court decisions applying the exclusion to cooling towers and decorative fountains but allowing coverage in cases involving potable water and hot tubs.

The CGL policy's definition of "bodily injury" may not include medical monitoring by potentially affected individuals who seek testing for exposure in response to a public health notice. Coverage for third-party claims under a CGL policy therefore remains uncertain. With respect to a party's own loss related to testing and remediation of legionella contamination and related business interruption, a traditional commercial property policy would not likely respond.

The pollution legal liability market has developed coverage that is specifically intended to provide coverage for claims for remediation of a legionella condition on the insured's property, claims for bodily injury to exposed or potentially exposed individuals, and business interruption that may arise from either event. The severity of third-party claims ranges from claims for medical monitoring or fear of exposure to those for severe injury and wrongful death. Insurers will consider the likelihood of those claims when selecting and pricing its risks.

Insurers may also consider whether the prospective policyholder has adopted the relevant practices set forth in ASHRAE 188. (See ANSI/ASRAE 188 2015, Legionellosis: Risk Management for Building Water Systems.) Mitigating factors include the existence of a water management plan to determine the insured's risk of developing legionella contamination, as well as a contingency response plan to evaluate the applicant's ability to respond in the event of a legionella incident or outbreak. Overall loss history is relevant to potential exposure, as is the overall quality of the applicant's risk management program. This is yet another reason for policyholders to implement a maintenance program that quantitatively monitors the building's water systems.