

## BUSINESS INSURANCE.

# Insurers exclude risks associated with electromagnetic radiation

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It may take two more decades to know if electromagnetic radiofrequency energy is a significant liability issue for telecommunications companies, so, in the interim, insurers are treating the risk as cautiously as a downed power line after a storm.

Insurers often exclude the risk from commercial general liability policies, strictly limit the coverage or avoid policyholders in the wireless industry, brokers say.

According to information from the U.S. Food and Drug Administration Web site, radio frequency energy, also known as radio waves, is one form of electromagnetic energy. Waves of electric and magnetic energy radiate together through space creating an electromagnetic field. Radio waves are created by the movement of electrical charges in antennas.

Large amounts of radio frequency energy can heat tissue, causing damage and increased body temperatures, according to the FDA. Unlike the high levels of electromagnetic energy found in X-rays, for example, the amount of radiation generally encountered by the public through cell phones and other communications devices are too low to produce significant heating or increased body temperature, according to the FDA. It is generally agreed in the scientific community, however, that further research is needed.

The international scientific community has not yet reached a consensus on whether either electromagnetic radiation or electromagnetic fields pose a health risk to humans, though some observers fear that exposure to the radiation could increase the risk of cancer. Perhaps for that reason, even litigation on the issue has fallen off in the past three or four years.

But with cell phone use exploding worldwide, insurers still fear the potentially long tail of claims against occurrence-based liability policies.

The EMR/EMF question "has been bantered back and forth for years," said Vincent J. Curatolo, senior vp with consultant Herbert L. Jamison & Co. L.L.C. in West Orange, N.J.

The issue emerged in the telecommunications industry about 1984, as wireless communication proliferated, said Mr. Curatolo.

Scientific research is ongoing. The FDA and the Washington-based CTIA-The Wireless Assn. agreed in 1999 to coordinate their research efforts under the Cooperative Research and Development Agreement. Under the agreement, the FDA is responsible for oversight and direction of research on the effects of EMR/EMF in to the effects of EMR/EMF, while the CTIA has provided funding for the research, according to an association spokesman.

The FDA recently selected the National Academy of Sciences, a society of scientific scholars that is part of the National Academies, to complete the last phase of the agreement. The National Academies will conduct a Washington workshop in August to assess the gaps in knowledge about the health effects of radiofrequency energy and identify additional research needs.

While wireless companies are concerned about the potential liability, Mr. Curatolo said, "I think they believe the threat is sensationalized."

The issue litigated in about 10 cases earlier this decade is whether liability insurers have a duty to defend a party alleged to cause electromagnetic radiofrequency exposure through a cellular telephone handset, said William G. Passannante, a partner and co chair of the insurance recovery group at policyholder law firm Anderson Kill & Olick P.C. in New York. The alleged injury would trigger the bodily injury liability cover and the duty to defend, he said.

Insurers have argued that an alleged exposure to a handset is not an injury, Mr. Passannante said. "But policyholders believe that (that sort of claim) is exactly what they're supposed to be protected from. In my mind, that is the better view in any event."

Regardless of the legitimacy of the alleged harmful affects of EMR/EMF, it still is costly for an insurer to defend cases that may last years, he said.

The EMR/EMF issue has waxed and waned over the years because of the difference in scientific opinion. If there were a scientific consensus, "you'd have a different insurance picture," Mr. Passannante said.

That uncertainty is anathema to insurers, generating an unpredictable marketplace.

"In short, I would call it inconsistent," said John Abbott, errors and omissions/casualty specialist in the technology practice of broker Arthur J. Gallagher & Co. in San Francisco. Some insurers have taken a firm "hands-off approach," while others don't see EMR/EMF as a big exposure, Mr. Abbott said.

For underwriters, a wireless device's proximity to a person--a handset held next to the ear, for example--is "the number one factor" in assessing an EMR/EMF risk, Mr. Abbott said.

Next on the list is power. "There are tradeoffs," he said. A base station sends out powerful electromagnetic radiofrequency energy, but generally would be far from populated areas.

Insurers "just don't want to have an aggregation of an exposure when they don't know how it's going to shake out," said Valynda Murphy, managing director of Marsh's technology, media and telecommunications practice in New York.

Ms. Murphy said insurers over the past 10 years increasingly have been excluding coverage under both general liability and umbrella policies. Others are neither excluding nor making affirmative statements about the risk.

"Typically, if an insurer has been on the risk for a while, it remains silent, but may keep limits small," Ms. Murphy said. Others are "using strategies to exit gracefully," including offering limits that are too low to be meaningful or not taking a policyholder back if it left the insurer previously, she said.

Joe Inge, managing director of the national technical practice for Gallagher in San Francisco, agrees that insurers are "underwriting more stringently." However, he said companies now are more often "differentiating risks by what the policyholder does."

The wireless industry can be broken down by components and services, brokers say.

There are handsets and designers of the phones, signal providers, equipment in the cellular phone that amplifies the signal, software and hardware, manufacturers of the various components, and the base stations themselves.

"We've done a good job of drilling down to component parts" to provide underwriters a more accurate picture of the exposure, said Marsh's Ms. Murphy. "We really work to not have all of our clients put in one basket" and instead evaluating them on their individual exposures and whether there has been an incident report filed against it.

While Gallagher works with clients to identify and mitigate the risk, it's the quantifying step that is premature with this emerging risk, said Mr. Inge. "Really it's about doing risk gapping," he said.

Joseph A. Zamarelli, vp, general insurance division at Jamison, said there are "very few players who would not put an exclusion on a policy." A basic question that still must be sorted out in the wireless world's chain from design and manufacturing to the end user is "Whose liability is it?" Mr. Zamarelli said.

The EMR/EMF issue is likely to continue to be raised periodically. "Any electric device produces a magnetic field," said Gallagher's Mr. Abbott. "Even the earth. We're exposed to this on a daily basis."

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