



Alerts

Insurers Face Large PFAS-Related Losses: A Primer on Forever Chemical Regulation, Liabilities, and Insurance Coverage Issues

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Insights for Insurers

Per and polyfluoroalkyl substances (PFAS) represent major exposures to insurers and their policyholders. Thousands of lawsuits are pending nationwide and several large settlements have already been reached. Insurers are facing claims, tenders, and coverage actions from policyholders seeking defense and indemnity for PFAS-related claims. The plaintiff's bar is focused on PFAS and views these so-called forever chemicals as a fertile source of lawsuits and large recoveries. Though late to the game, federal and state regulators are now locked and loaded on regulating these substances in significant ways. Whether or not PFAS-related liabilities present losses to the insurance industry that will rival asbestos-related liabilities remains to be seen. Nonetheless, insurers are preparing for numerous claims and large losses. In this article, we provide some background on PFAS exposures and identify some of the many coverage issues that may be presented in PFAS-related coverage litigation.

Part 1: PFAS and Their Wide-Spread Use

PFAS is an umbrella term encompassing human-made chemicals used to make products stain- and grease-resistant. There are some 12,000 substances identified as PFAS on the United States Environmental Protection Agency's PFAS Datasets. PFAS have been patented since the 1940s and have been used in a wide range of consumer and industrial products since at least the 1950s. Similar to asbestos, which garnered wide-spread use due to its incredible insulation and fire-resistant abilities, PFAS were hailed due to their ability to overcome the natural limitations of fire, oil, and water. PFAS have been used in so many products and in so many contexts that they are described by many as being ubiquitous – even more so than asbestos. They are commonly referred to as "forever chemicals" because they do not degrade over time.

Products containing PFAS include food contact surfaces such as cookware, pizza boxes, fast food wrappers, and popcorn bags; stain-resistant and waterproofing treatments on carpets, textiles, furniture, and other products; packaging; additives in polishes, waxes, paints, and cleaning products; protective coatings and sealants; additives to hydraulic fluids and lubricant; aqueous fire-fighting foams; pesticides; and more. Scientists from the Centers for Disease Control found four common PFAS in the blood serum of nearly everyone tested. Though more than 95 percent of Americans may have PFAS in

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their blood, finding a measurable amount of PFAS in the bloodstream does not establish that the level of PFAS will cause negative health effects.

PFAS pose environmental and health risks. However, the name "forever chemicals" may turn out to be a misnomer as researchers at Northwestern University recently published a study showing that PFAS can be destroyed using two relatively harmless chemicals: sodium hydroxide or lye, previously the only operational way to break down PFAS was to expose the particles to extremely high temperatures — sometimes above 1,800 degrees Fahrenheit — in an incinerator. That energy-intensive process can still release harmful chemicals into the environment. Forty-five percent of the nation's tap water contains one or more PFAS. PFAS disperse through indoor and outdoor air and often are consumed in food.

Studies have shown PFAS may contribute to several adverse health impacts, including higher cholesterol; thyroid disease; ulcerative colitis; breast, testicular, and kidney cancers; changes to the immune system; liver disease; low birth weight; decreased sperm quality; pregnancy-induced hypertension; and delayed mammary gland development.

Industry exposures have been difficult to quantify due to evolving science, the ever-present nature of PFAS compounds, and difficulties with identifying sources and timing of contamination. PFAS-related litigation plainly represents a significant exposure to insurers and reinsurers and their policyholders and ceding companies in view of the ubiquity of the substances and their use, rising claim frequency, large settlements, and additional defendants being brought into litigation.

Part 2: Background on PFAS Litigation

Despite their wide-spread use, forever chemicals only recently emerged as one of the most fervent areas for civil litigation. But the litigation floodgates have now opened, and there are thousands of cases pending across the United States. More than 6,400 PFAS-related lawsuits were filed in federal court between July 2005 and March 2022. These cases have resulted in some eye-opening settlements, such as a 3M settlement of \$850 million, a \$69.5 million settlement involving Wolverine Worldwide, a \$23.5 million settlement involving Taconic Plastics, and a \$17 million settlement involving Johnson Controls. In 2021, Dupont de Nemours Inc., its affiliate Corteva, Ins., and a spin-off entity, Chemours Co., agreed to set aside \$4 billion for future PFAS liabilities. Among other claims, these companies settled a multidistrict litigation in Ohio alleging personal injury for \$83 million in 2021. In June 2023, they agreed to pay \$1.18 billion to settle a class action involving public water systems serving large portions of the United States population.

Suits have been brought by private citizens, state attorneys general, and municipalities as well as activist groups for the clean-up of soil and water contamination and natural resource damages. Traditional PFAS claims asserted property damage and bodily injury resulting from soil and water contamination in connection with PFAS manufacturing processes. AFFF (aqueous fire-fighting foam) claims represent the largest products exposure so far and have been consolidated in a multidistrict litigation in South Carolina. PFAS are active ingredients in these foams, which are used to extinguish flammable liquid fires such as fuel fires.

Primary manufacturers are frequently named in PFAS lawsuits. The second tier of manufacturers with exposure to PFAS liabilities include companies that used PFAS chemicals to treat the products they produce. The third tier encompasses companies that have supply chain exposures. These companies often assemble products out of components treated with PFAS, but do not use the chemical. The number and types of defendants may continue to expand potentially implicating sellers of the chemicals, businesses using PFAS, professionals calling for or recommending the use of PFAS or materials containing PFAS, and others. For example, in California, two putative class actions were filed in 2020 against both the manufacturer (Kroger) and retailer (Amazon) of compostable dinnerware. Rather than relying on representations about health risks, plaintiffs asserted greenmail claims alleging that they relied on the defendants' marketing statements, namely that their products were disposable and would degrade over time. Several manufacturers have stopped producing PFAS-containing products, and several large retailers have decided to stop selling PFAS-containing products to mitigate future liability.

In addition to class action suits, twenty-six states are suing manufacturers and others for contaminating drinking water and damaging natural resources.



Part 3: Government Regulation of PFAS

Governmental regulators appear to have arrived on the PFAS regulation scene late. In 2006, the EPA and several PFAS manufacturers entered into a voluntary agreement to study and phase out some PFAS, with subsequent findings that a common PFAS was carcinogenic. More recently, there has been a flurry of regulatory activity.

In June 2021, the U.S. Environmental Protection Agency issued the first-ever PFAS chemicals reporting proposal, which would require all manufacturers and importers to gather and report the categories and use of PFAS chemicals, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal for every year since 2011. In October 2021, the EPA released its "PFAS Strategic Roadmap," setting timelines by which it plans to take specific actions safeguarding public health, protecting the environment, and holding companies accountable. Regulations governing PFAS emissions in the air also appear to be forthcoming. The PFAS Strategic Roadmap suggests that the EPA plans to evaluate emissions and mitigation options, potentially classifying some PFAS compounds as hazardous pollutants under the Clean Air Act. In September 2022, the EPA issued a proposal designating two PFAS chemicals—perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA)—as hazardous substances under CERCLA. Also, In March 2023, the EPA announced a proposed rule that would establish legally enforceable levels for six PFAS in drinking water. Numerous bills are pending before Congress.

Several states also have laws or regulators requiring the investigation or remediation of PFAS, and are considering eliminating the use of PFAS. For example, effective July 1, 2023, Vermont banned the use of all PFAS in food packaging (18 V.S.A. § 1672). Also, effective July 1, 2023, California prohibited the distribution and sale of juvenile products containing regulated PFAS chemicals (Cal. Health & Saf. Code §108946).

The general expectation is that there will be an all-around increase in regulation of PFAS, and there is the possibility the EPA could reopen contaminated Superfund sites that were closed long ago. Litigation is also likely to increase due to the recent flurry of regulatory activity at the federal and state levels.

Part 4: PFAS-Related Coverage Actions and Potential Coverage Issues

At least fourteen PFAS-related coverage actions have already been instituted in ten states nationwide. Numerous additional demands for coverage and tenders have and will be made, and numerous additional coverage actions will be filed. Depending upon the facts, parties, and claims, coverage may be sought under general liability, property, environmental, professional liability, D and O, and other policies. Although insurance coverage may be widely sought, insurance recovery will often not be secured. Parties involved in PFAS-related coverage actions should consider several potential issues.

Forum Selection

With a fairly well-developed body of insurance coverage law in the context of toxic and mass tort claims generally and asbestos and environmental claims in particular, insurers and policyholder representatives (who generally institute most coverage actions) often will have preferences concerning the forum in which to litigate and notions about which state's substantive law is the most favorable to their positions.

Threshold issues concerning jurisdiction and venue may arise. Recently, in an unpublished decision, the U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal of an insurer's coverage action involving firefighters' personal injury claims in *Admiral Insurance Co. v. Fire-Dex, LLC*, No. 22-3992, 2023 U.S. App. LEXIS 14822 (6th Cir. June 13, 2023). Fire-Dex, a manufacturer of clothing worn by firefighters, was sued by the firefighters and their spouses, alleging they had incurred injury from the PFAS in clothing worn while fighting fires. Admiral denied coverage based on the occupational disease exclusion in its policy and sought a declaratory judgment that it had no duty to defend Fire-Dex against the suits. The district declined jurisdiction over the declaratory judgment action, concluding its acceptance of the case would encroach on state jurisdiction because Ohio state courts had yet to address the question of insurance liability for PFAS manufacturing. The Sixth Circuit affirmed the district court's abstention, noting that novel issues of state law are best decided by state courts. This decision is contrary to lessons learned from COVID-19 business interruption insurance



coverage litigation, where federal courts regularly and properly decided state law coverage issues in the context of a unique pandemic. See, e.g., *Dianoia's Eatery, LLC v. Motorists Mut. Ins. Co.*, 10 F.4th 192, 208-211 (3d Cir. 2021).

Long Tail Claims Potentially Implicating Multiple Insurance Policies

As PFAS have been produced and used dating back to the 1930s and 1940s, many claims could potentially implicate legacy and current insurance policies. Accordingly, many policyholders are looking for legacy insurance policies and engaging insurance archeologists.

Prior Settlements, Releases, And Dismissals

Insurers are well-served by identifying settlement agreements and dismissal orders involving companies presenting forever chemical claims (as well as their predecessors and related companies) to see whether such claims have been released or are barred in whole or in part. It is not uncommon for releases resulting from settlements in prior environmental or long-tail matters to include full policy, full environmental, full products, or full site releases. Also, prior payments may have exhausted or impaired applicable limits of liability.

Trigger Of Coverage

Trigger of coverage may present issues in some PFAS-related coverage cases. For example, in *Crum & Forster Specialty Insurance Co. v. Chemicals, Inc.*, Civil Action No. H-20-3493, 2021 U.S. Dist. LEXIS 146702 (S.D. Tex., Aug. 5, 2021), the insurer sought a declaration with respect to the duty to defend in connection with several hundred personal injury lawsuits consolidated in the multidistrict litigation case, *In re Aqueous Fire-fighting Foams Prods. Liability Litigation*. The complaints in the underlying cases did not allege either dates when the firefighters were first exposed to the products or when they first manifested symptoms of injury from the products. The subject policies require bodily injury "first occurs during the 'policy period.'" The policies contain another provision stating that if the date of the injury could not be determined, then it would be deemed to have occurred before the policy period.

The district court denied the insurer's motion for summary judgment, noting the insurer had the burden to demonstrate that the dates of injury could not be determined or that the claims were outside the scope of coverage provided by the policies. So long as the date of injury "could" potentially be determined in future proceedings and "could" fall within the terms of the policies' coverage, the insurer was obligated to defend. As plaintiffs in the underlying cases alleged dates of employment during the periods of the insurance policies at issue, the district court ruled that a defense was owed.

Allocation and Coordination of Coverage Issues

Depending on the types of policies involved in a coverage action and the claim facts, several allocation-related issues may be presented. There may be issues concerning which, if any, lines of coverage respond to a claim and coordination or priority of coverage issues may be presented. Allocation of loss issues may also be significant in many cases. In addition to allocation methodology, other issues may be presented and limit (or increase) the insurance contracts impacted and the extent of potential coverage, including treatment of multi-year policies, stub policies, policy extensions, exhaustion, impact of insurance unavailability, and number of occurrence(s) issues.

Non-Covered Items

PFAS-related claims may also seek damages or other relief not covered under the particular policy at issue. For example, claims involving matters such as regulatory compliance costs, punitive damages, costs of doing business, or medical monitoring may not be covered under liability policies.



Pollution Exclusions

Various forms of pollution exclusions have been included in insurance policies going back to the 1970s and before. Many PFAS-related claims – depending upon the facts and controlling law – may be barred in whole or in part by the "sudden and accidental" pollution exclusion, the "absolute" pollution exclusion, the "total" pollution exclusion, or other forms of pollution exclusions. Issues concerning application of pollution exclusions will be familiar to veterans of the environmental coverage wars. These may include: whether PFAS are pollutants, whether there was a discharge or release, whether the discharge was "sudden and accidental," whether the matter involves "traditional" environmental pollution, and whether a hostile fire exception applies.

Some early decisions have held that pollution exclusions bar coverage for PFAS claims. Courts have differed in their application of such exclusions in the context of PFAS-related claims as they have in the broader context of environmental coverage claims.

In *Tonoga, Inc. v. New Hampshire Insurance Co.*, 201 A.D.3d 1091 (N.Y. App 3rd Dept. 2022), the intermediate New York appellate court addressed the application of both the sudden and accidental and the total pollution exclusions. Tonoga settled an action with the New York Department of Environmental Conservation, which accused Tonoga of polluting soil, air, and water supplies in Petersburg, New York. Multiple lawsuits were filed against Tonga subsequently, for which it also sought defense and indemnity. The policyholder's manufacturing process from 1961 to 2013 generated PFOA and PFOS by products and waste materials that were, in turn, discharged into the environment as part of plaintiff's routine processes.

The appellate court affirmed the trial court's ruling that the insurers had no duty to defend or indemnify, concluding coverage was barred by sudden and accidental and total pollution exclusions. The court found allegations in the complaint that PFAS were improperly dumped and spilled over a period of many years prohibited the conclusion that the pollution was abrupt or unintentional. The court rejected Tonoga's argument that the suggestion there may be other ways the PFAS were discharged into the environment was sufficient to raise the possibility the sudden and accidental exception applied "given that the gravamen of each suit [was] decidedly plaintiff's knowing discharge of PFOA and/or PFOS as part of its routine manufacturing processes."

By contrast, in *Wolverine World Wide, Inc. v. The American Insurance Co.*, No. 1:19-cv-10, 2021 U.S. Dist. LEXIS 199675 (W.D. Mich. Oct. 18, 2021) the court found the sudden and accidental pollution exclusion did not preclude the insurer from being required to provide a defense. Wolverine, a footwear manufacturer, was the subject of hundreds of individual tort actions, three consolidated class actions, an individual landowner suit, and two governmental enforcement actions alleging it was responsible for PFAS in the groundwater as a result of its use of the product Scotchgard in its manufacture of footwear from 1958 through 2002. The court ruled the insurers were required to defend Wolverine in these matters "until it is determined that every claim in the lawsuit involving pollution is conclusively determined to be intentionally discharged by Wolverine."

In *Colony Insurance Co. v. Buckeye Fire Equipment Co.*, No. 3:19-cv-00534, 2020 U.S. Dist. Lexis 194709 (W.D.N.C. Oct. 20, 2020), the court held the insurer did not have a duty to defend the majority of toxic tort claims relating to fire equipment containing fire suppressing foam that included PFAS. The court concluded that the total pollution exclusion barred the majority of cases that alleged injury or damage solely from environmental exposure to PFAS. However, some cases (approximately one-third) also alleged harm from direct exposure to the products. The court ruled the insurer had a duty to defend the direct exposure cases because those cases did not involve "traditional environmental pollution" and were not within the gambit of the total pollution exclusion under North Carolina law.

Finally, in *Grange Ins. Co. v. Cycle-Tex Inc.*, Civil Action No. 4:21-cv-147, 2022 WL 18781187 (N.D. Ga. Dec. 5, 2022), the court issued a declaratory judgment in favor of the insurer concluding the underlying lawsuit fell squarely within the policy's total pollution exclusion. The total pollution exclusion excluded coverage for (1) "[b]odily injury' or 'property damage' which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants' at any time" and (2) any loss arising out of a "[r]equest, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain treat, detoxify or neutralize or in any way respond to, or assess the effects of 'pollutants.'"



Cycle-Tex operated a thermoplastics recycling facility and was sued for allegedly discharging harmful PFAS into the North Georgia waterways. Plaintiffs alleged they suffered damages to their health by ingesting contaminated water, property damage resulting from contamination of the water supply, and the payment of surcharges and heightened water rates as a result of the contamination. Grange agreed to defend Cycle-Tex in the litigation under a full reservation of rights and sought a declaratory judgment that it had no duty to indemnify or defend based on the policy's total pollution exclusion.

The court easily found PFAS were "pollutants" under the policy both because the definition of "pollutant" included chemicals and because Georgia courts have emphasized the "broad" reach of the term "pollutant." The court concluded claims that the plaintiffs suffered bodily injury and property damage "plainly" fell within the first clause of the exclusions. Although plaintiffs' claim for increase in water costs did not fit within the first clause of the pollution exclusion, the court concluded it was reasonable to infer the increased water costs resulted from the city's compliance with environmental laws and its response to a demand or request that the city protect its citizens from a dangerous nuisance. Accordingly, the court held the claims for water costs were barred by the second clause in the pollution exclusion.

PFAS Exclusions

There are various forms of specific PFAS or forever chemical exclusions that may be included in policies of more recent vintage. These exclusions are likely to become more common going forward. Lloyd's Market Associate unrolled a couple of model exclusions last year, and an ISO exclusion is in the works.

Other Exclusions

Other exclusions such as owned property, intentional act, and occupational disease exclusions may bar or limit coverage for particular claims.

Knowledge-Based Defenses

Some coverage actions may implicate knowledge-based defenses such as the absence of an accident or occurrence, expected or intended damages, known loss, loss in progress, lack of fortuity, or improper disclosure (misrepresentations or failure to disclose material facts) in connection with obtaining or renewing coverage.

Non-Compliance With Policy Terms And Conditions

Non-compliance with notice, cooperation, and other policy terms, definitions, and conditions may bar or limit coverage in some instances. Past voluntary payments or defense fees incurred prior to proper notice or tender may not be covered.

Environmental impairment or pollution policies often have additional requirements that must be satisfied as well. Many such policies (and some general liability policies) are written on a claims-made basis. The policyholder must satisfy any claims-made and reported requirements. In a case involving EtO emissions from Medline's medical instruments sterilization facility in Waukegan, Illinois, for example, the Illinois appellate court ruled there was no coverage under a pollution liability policy because the discharges had been occurring since 1994, long before the policy's September 2018 retroactive date. *Ill. Union Ins. v. Medline Indus.*, 2022 IL App (2d) 210175, ¶¶ 37-40. These types of issues may be presented with PFAS claims as well.

Issues Arising From Policyholder Bankruptcies

In view of PFAS-related and other liabilities (or for other reasons), some policyholders with PFAS-related liabilities may be embroiled in bankruptcy proceedings or attempt to use bankruptcy law to limit or shed their liabilities. In such cases, some of the bankruptcy issues insurers have addressed in asbestos, talc, and sexual molestation claims may be presented in connection with PFAS-related claims.



Part 5: Will PFAS Prove to Be the Next Asbestos?

Commentators have offered predictions about the extent of losses insurers may sustain from PFAS-related claims. Some predict that PFAS-related losses could rival or exceed insurer asbestos-related losses. Praedicat estimates that the United States' cleanup costs for PFAS-contaminated water alone could exceed \$400 billion for insurers. Such amount does not include potential losses in product liability, personal injury, and director and officer lawsuits. If this prediction turns out to be close to accurate, losses may be beyond the financial resources of the property and casualty insurance industry. Forecasts of PFAS-related exposures, however, vary considerably and will evolve. The exposures will play out over an extended time-period. The ultimate cost to the insurance industry will depend upon a variety of factors, many of which remain unknown or incapable of accurate assessment.

In reality, PFAS litigation and exposures will follow their own course. On one hand, factors such as social inflation, the "all of government" approach to ESG, the devotion of substantial resources by the plaintiff's bar, and the use of reptilian tactics – which were not present at the beginning of the asbestos litigation explosion at least to the same extent as they are now – will fuel PFAS litigation. On the other hand, the science and proof of PFAS-related bodily injuries and damages are still developing, substantial causation issues continue to exist, and no specific disease tied exclusively to PFAS has yet emerged that is similar to mesothelioma from exposure to asbestos.

The insurance dynamics are different as well. Many legacy policies are lost, settled, released, exhausted, or impaired. Coverage under more recent policies is likely to be more restrictive, contain applicable exclusions, be written on a claims-made basis, and present coverage defenses not available to the same extent with respect to asbestos-related liabilities. Many insurers are employing sound underwriting practices, loss control services, education of staff and policyholders, and outstanding claims professionals and attorneys to contain PFAS-related exposures.

Part 6: Conclusion

Policyholders and insurers undoubtedly will draw upon their experiences with asbestos and other environmental coverage litigation. Often the lessons learned will prove to be instructive. Indeed, some of the case law will be instructive or even controlling. Nonetheless, the parties and their counsel should keep in mind that the science associated with PFAS chemicals is developing and different arguments may be presented in the context of particular PFAS-related coverage claims. An insurer's approach must be flexible to account for the policies at issue, the particular policyholder and its coverage program, claim-specific facts, application of controlling law, and other factors related to the insurer's portfolio interests.

This article is based upon an article that appeared in *Law360*, S. Seaman & J. Arnold, "Insurers, Prepare For Large Exposures From PFAS Claims" *Law360* (Aug. 23, 2023), available at <https://www.law360.com/insurance/articles/1706934/insurers-prepare-for-large-exposures-from-pfas-claims> and includes additional information on PFAS and regulation.

See Craig Liljestrand, Defense Counsel Journal, "PFAS Exposure: A Comprehensive Look at Emerging Facts and Studies, Risk and Liability Assessment, Litigation History, Evolving Regulations and Future Predictions," (July 11, 2022).

EPA, PFAS/EPA: Cross-Agency Research List, <https://comptox.epa.gov/dashboard/chemical-lists/EPAPFASRL> (last visited Aug. 1, 2023).

[iv] See e.g., Yale School of Med., PFAS and Health: Troublesome, Ubiquitous Chemicals to be Examined at YSPH Symposium, <https://medicine.yale.edu/news-article/pfas-and-health-troublesome-ubiquitous-chemicals-to-be-examined-at-ysph-symposium/> (last visited Aug. 1, 2023)).

CDC, Per- and Polyfluorinated Substances (PFAS) Factsheet, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Aug. 23, 2023) (finding PFOS (perfluorooctane sulfonic acid), PFOA (perfluorooctonic acid), PFHxS (perfluorohexane sulfonic acid) and FFNA (perfluorononanoic acid) were present in the serum of nearly everyone tested); see Nat'l Inst. Of Env'tl Health Sciences, Perfluoroalkyl and Polyfluoroalkyl Substances, [Perfluoroalkyl and Polyfluoroalkyl Substances \(PFAS\) \(nih.gov\)](https://www.niehs.nih.gov/health/topics/agents/perfluoroalkyl-and-polyfluoroalkyl-substances/) (last visited Aug. 23, 2023) (noting PFAS have been found in the blood of 97% of



Americans).

[vi] See Amanda Morris, Northwestern Now, 'Forever chemicals' destroyed by simple new method, <https://news.northwestern.edu/stories/2022/08/forever-chemicals-destroyed-by-simple-new-method/> (Aug. 18, 2022).

[vii] See U.S. Geological Survey, Tap water study detects PFAS 'forever chemical' across the US <https://www.usgs.gov/news/national-news-release/tap-water-study-detects-pfas-forever-chemicals-across-us> (July 5, 2023).

[viii] See CDC, Per- and Polyfluorinated Substances (PFAS) Factsheet, *supra* n. vi.

[ix] *Id.*

[x] *State of Minn. v. 3M Co.*, No. 27-CV-10-28862 (4th Judicial Dist., Hennepin County, Minn.) (settled February 20, 2018). See generally, *Minn. Pollution Control Agency, Minnesota 3M PFAS Settlement*, <https://3msettlement.state.mn.us> (last visited 8/1/2023).

[xi] *Wolverine World Wide v. Am. Ins. Co.*, No. 1:19-cv-10 (W.D. Mich.) (settled 2020). See generally, *Plainfield Charter Township, Wolverine Worldwide PFAS Settlement*, https://www.plainfieldmi.org/information_about/pfas_settlement/ (last visited 8/1/2023).

[xii] *Burdick v. Tonoga, Inc.*, (NY) (settled October 2021). See generally, *The Hill, Plastics Company Agrees to \$23M Settlement in Drinking Water Pollution Case (2021)*, <https://thehill.com/policy/energy-environment/575035-plastics-company-agrees-to-23m-settlement-in-drinking-water/>.

[xiii] *Campbell v. Tyco Fire Products*, Case No. 2:19-cv-00422, part of *In Re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873 (D.S.C.) (settled January 2021). See generally, *Environment and Energy Leader, Johnson Controls Settles Lawsuit for PFAS Contamination, Agrees to \$17.5M Compensation (2021)*, <http://www.environmentalleader.com/2021/01/johnson-controls-settles-lawsuit-for-pfas-contamination-agrees-to-17-5m-compensation/#:~:text=Johnson%20Controls%20has%20agreed%20to%20pay%20%2417.5%20million,Fire%20Products%20is%20a%20subsidiary%20of%20Johnson%20Controls.>

[xiv] See generally, *Dupont, DuPont, Corteva, and Chemours announce resolution of legacy PFAS claims (2021)*, www.dupont.com/news/dupont-corteva-chemours-announce-resolution-legacy-pfas-claims.html#:~:text=In%20addition%2C%20DuPont%2C%20Corteva%20and%20Chemours%20have%20agreed,Chemours%20will%20contribute%20%2429%20million%20to%20the%20settlement

[xv] *In Re: E.I. Du Pont de Nemours and C-8 Personal Injury Litig.*, Civil Action 2:13-md-2433 (D. Ohio) (settled 2021); see generally, *Dupont, DuPont, Corteva, and Chemours announce resolution of legacy PFAS claims (supra n. xv)*.

[xvi] *City of Camden. v. DuPont*, Case No. 2:23-cv03230, part of *In Re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873 (D.S.C.) (settlement reached June 2023, pending court approval); see generally, *Dupont, Chemours, Dupont, and Corteva Reach Comprehensive PFAS Settlement with U.S. Water Systems (2023)*, www.investors.dupont.com/news-and-media/press-release-details/2023/Chemours-DuPont-and-Corteva-Reach-Comprehensive-PFAS-Settlement-with-U.S.-Water-Systems/default.aspx.

[xvii] *In re Aqueous Fire-fighting Foams Prods. Liability Litigation* pending in the United States District Court for the District of South Carolina (No. 2:18-mn-02873).

Ambrose v. Kroger Co., 3:20-cv-04009 (N.D. Cal.), filed Jun. 16, 2020, and *Nguyen v. Amazon.com, Inc.*, 4:20-cv-04042 (N.D. Cal.), filed June 17, 2020.

[xix] <https://www.saferstates.com/toxic-chemicals/pfas/> (last visited Aug. 23, 2023).

[xx] All public documents from the PFOA Stewardship Program are available in EPA Docket [EPA-HQ-OPPT-2006-0621](https://www.epa.gov/foia/epa-hq-oppt-2006-0621).

[xxi] For further information see EPA, TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-8a7-reporting-and-recordkeeping> (last visited Aug. 23, 2023).



[xxii] See EPA, PFAS Strategic Roadmap:EPA's Commitments to Action 2021-2024, https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf (last visited Aug. 23, 2023).

[xxiii] *Id.* at 18.

[xxiv] See EPA, Proposed Designation of Perfluorooctanoic Acid (AFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, <https://www.epa.gov/superfund/proposed-designation-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos> (last visited Aug, 23, 2023).

[xxv] See EPA, Per- and Polyfluoroalkyl Substances (PFAS), <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas> (last visited on Aug. 23, 2023).

[xxvi] In *Colony*, the court determined it was bound by *Wester American Insurance Co. v. Tufco*, 409 S.E.2d 692 (N.C. Ct. App. 1991), which found a pollution exclusion was ambiguous and therefore required that “any ‘discharge, dispersal, release, or escape’ of a pollutant must be into the environment to trigger the pollution exclusion clause and deny coverage to the insured.” 2020 U.S. Dist. LEXIS 194709 at *8.

Cycle-Tex did not appear in the declaratory judgment action so the case was decided on a motion to default. 2022 WL 18781187 at *3-4.

The model exclusions drafted by the Lloyd's Market Association may be found at https://www.lmalloyds.com/LMA/News/LMA_bulletins/LMA_Bulletins/LMA22-024-CM.aspx (last visited 8/2/2023).

See Gary Booth, PFAS – the mother of all toxic torts? (2021), <https://www.insiderengage.com/article/28tq7id3b65wxgwiao4qo/legal-and-regulatory/pfas-the-mother-of-all-toxic-torts#:~:text=Put%20together%20with%20the%20more,to%20be%20the%20next%20asbestos.>

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