

Breaking News: Connecticut Supreme Court Decides Significant Coverage Issues in *R.T. Vanderbilt*

By: Patricia B. Santelle and Ciaran B. Way
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On October 4, 2019 (almost two years after granting certification), the Connecticut Supreme Court affirmed the Appellate Court's rulings on four key coverage issues in *R.T. Vanderbilt Company v. Hartford Accident & Indemnity Company, et al.* The coverage dispute in *Vanderbilt* concerns underlying actions alleging that talc and silica mined and sold by the insured contained asbestos and/or caused asbestos-related disease. The case has been proceeding in phases, two of which have been tried to date, resulting in the matter on appeal.

(1) "Continuous Trigger" Theory of Coverage Applies: The Court affirmed and adopted the Appellate Court's opinion applying a "continuous trigger" for the underlying claims at issue, and agreed that the trial court properly excluded testimony from medical experts the insurers had proffered to prove that the asbestos disease process did not support a continuous trigger.

(2) The "Unavailability of Insurance" Exception to Time-on-Risk Pro Rata Allocation Applies: The Court affirmed and adopted the Appellate Court's ruling that (a) damages and defense costs should not be allocated to any period in which insurance was "unavailable" in the market, (b) the insurers bear the burden of proving that coverage for asbestos liabilities was available to the policyholder after the date asbestos exclusions were added to the policies and (c) the insured bears the burden of proving that it was unable to obtain asbestos coverage prior to 1986 (when such insurance was generally available). The Appellate Court recognized that, in certain circumstances, there could be an "equitable exception" to the unavailability rule if the insured continued to manufacture products containing asbestos after 1986 with the knowledge that such products were hazardous and uninsurable (circumstances which the court found were not present in this case).

(3) The "Sudden and Accidental" and "Absolute" Pollution Exclusions Are Only Applicable to Claims Arising From "Traditional" Environmental Pollution and Not Occupational Disease Caused by Exposure to Asbestos: The Court affirmed and adopted the Appellate Court's conclusion that the pollution exclusions were intended to apply only to "traditional environmental pollution" and not to disease caused by exposure to asbestos.

(4) Occupational Disease Exclusions Precludes Coverage for Claims of Occupational Disease, Regardless of Whether the Claimant Was Employed by the Policyholder or a Third Party: Noting that this is an issue of first impression nationally, the Court affirmed the Appellate Court's ruling that the occupational disease exclusions contained in certain excess policies applied to the underlying asbestos-related claims, which the parties stipulated were brought by non-employees. The Court agreed with the insurers' argument that "occupational disease" has a plain meaning that is broader than the workers' compensation context.

This is the first occasion in which the Connecticut Supreme Court has ruled definitively on the application of a "continuous trigger," the "unavailability" rule and the application of pollution exclusions in the context of asbestos-related claims. As noted above, the occupational disease exclusion issue was one which the Court noted is of first impression nationally.

The 98-page Appellate Court decision in *Vanderbilt* can be found at *R.T. Vanderbilt Company, Inc. v. Hartford Accident and Indemnity Company*, 171 Conn. App. 61 (Conn. App. Ct. March 7, 2017). The Supreme Court decision will be officially released shortly.

If you have questions or would like additional information, please contact Patti Santelle (santellep@whiteandwilliams.com; 215.864.6205) or Ciaran Way (wayc@whiteandwilliams.com; 215.864.6815).

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