

Connecticut Supreme Court to Review Several Issues in Asbestos Coverage Case

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On October 18, 2017, in *R.T. Vanderbilt Company v. Hartford Accident & Indemnity Company*, the Connecticut Supreme Court certified four issues for appeal, which relate to trigger, allocation, pollution exclusions, and the occupational disease exclusion in the context of asbestos bodily injury claims. This post identifies the issues the Connecticut Supreme Court will decide on appeal and sets forth the Appellate Court's ruling on each issue.

Issue 1: Whether a "continuous trigger" theory of coverage applies to asbestos-related disease claims and whether expert medical testimony on the timing of injury should be precluded

The Appellate Court applied a continuous trigger, and found 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.

Issue 2: Whether the "unavailability of insurance" is an exception to the time-on-risk pro rata allocation method

Recognizing that the Connecticut Supreme Court had already adopted a time-on-risk pro rata allocation method, the Appellate Court agreed with the policyholder that damages and defense costs should not be allocated to any period in which insurance was "unavailable" in the market. In asbestos cases, policyholders generally argue that coverage for asbestos liabilities became unavailable at the time asbestos exclusions were commonly added to policies, which was generally in the mid-1980s. The court found that 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.

The Appellate Court recognized that, in certain circumstances, there can 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. However, the court held that the circumstances in which such an equitable exception might apply were limited and were not present in the *R.T. Vanderbilt* case.

Issue 3: Whether the sudden and accidental and absolute pollution exclusions are applicable only to claims arising from "traditional" environmental pollution and not those arising from asbestos exposure in indoor working environments

The Appellate Court concluded that the pollution exclusions were intended to apply only to "traditional environmental pollution" and not to disease caused by exposure to asbestos. Therefore, the court did not apply the pollution exclusions.

Issue 4: Whether the occupational disease exclusion precludes coverage for claims of occupational disease, regardless of whether the claimant was employed by the policyholder or by a third party user of the claimant's allegedly harmful product

On this issue, the Appellate Court sided with the insurers and found that the occupational disease exclusion contained in certain excess policies applied to the asbestos claims.

This is a significant case to watch, because the court will address various issues specific to long-tail claims, which are not yet settled in Connecticut. It will be interesting to see how the Connecticut Supreme Court rules on these issues. We will be closely monitoring this case and providing updates.

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