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Goldberg Segalla's *Environmental Coverage Quarterly* provides timely summaries of and access to the latest environmental coverage developments nationwide, and is published quarterly. Cases are organized by court and date. In addition, we provide the latest information regarding news in the environmental coverage industries. Your interest in our publication is appreciated and we welcome your feedback. Please feel free to share this publication with your colleagues. If others in your organization are interested in receiving the publication, or if you do not wish to receive future issues, please contact Toni L. Frain or Paul C. Steck.

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UNITED STATES CIRCUIT COURT DECISIONS

[Continental Casualty Co. v. City of Jacksonville](#)

(11th Cir. (Fla.) June 24, 2010)

Pollution Exclusion Applies To Toxic Tort Suit

The plaintiff school board sued its insurer for failing to defend and indemnify the policyholder in a toxic tort suit. The policyholder purchased land once used as a landfill, built a school on the land, and allowed housing developments to be built near it. The policyholder was subsequently sued for allowing the school to be built on polluted land without warning the families of the dangers. The policyholder sought indemnity and a defense, but the insurer disclaimed based on a pollution exclusion.

The Eleventh Circuit affirmed noting the contract was unambiguous, and though the policyholder was not itself the polluter, the exclusion nevertheless applied because the claim arose out of the discharge of pollutants in or upon the land even if the policyholder did not place the pollutant in or upon the ground.

Penthouse Owners Association, Inc. v. Certain Underwriters At Lloyd's

(5th Cir. (Miss.) July 15, 2010)

Windstorm Deductible Endorsement Does Not Afford Coverage For Hurricane Katrina Damage

Plaintiff insured sued defendant underwriters to recover for damage caused by Hurricane Katrina. The Southern District of Mississippi interpreted a windstorm deductible endorsement in the policy to require coverage for damage caused by the storm surge.

The Circuit Court held, however, that the language of the windstorm deductible only described when the deductible applied, and did not detail the scope of the policy's coverage. When read in context with how deductibles operate, there was no ambiguity. It was determined that the clause operated only when deciding whether to apply the deductible to a loss, after first determining that coverage for the loss exists under the policy. A deductible endorsement does not create or extend coverage. The lack of limiting language did not operate to effectively expand coverage, especially when other policy terms expressly excluded coverage. Thus, the district court erred in holding that the windstorm deductible extended the policy's coverage to include water losses associated with windstorms.

Standard Waste Systems Ltd. v. Mid-Continent Cas. Co.

(5th Cir. (Tx.) July 16, 2010)

Pollution Exclusion Bars Coverage

The underlying plaintiffs sued over personal injuries sustained when plaintiff allowed toxic chemicals to be loaded with waste paper into a trailer. The court affirmed summary judgment to the insurer on the basis of a pollution exclusion, ruling that all the allegations against the policyholder are premised on the policyholder being the source of the chemical.

RSR Corp et. al. v. International Insurance Co.

(5th Cir. (Tx.) July 26, 2010)

Recovery Barred Under Environmental Policies Based On Prior Recovery

The insurer sued RSR Corp. and its subsidiaries seeking a declaration that International had no obligation to RSR Corp. under four Environmental Impairment Liability policies. RSR also purchased many (at least 53) Comprehensive General Liability policies from many other insurance companies covering multiple sites, including its lead smelter operation on Harbor Island. Some of those policies contained exclusions for environmental claims, with exceptions for "sudden and accidental" events. Other CGL policies excluded environmental claims, that had exceptions to those exclusions for hostile fires; and still others did not exclude environmental claims, but only covered accidents and occurrences. Over a ten-year period RSR entered into 36 separate settlement agreements with its CGL carriers from which it received an aggregate payment of \$76 million.

In the present action, International claimed the “other insurance” provision precluded coverage of RSR’s Harbor Island claims because RSR had already been fully compensated for this liability through its settlements with the CGL insurers and that no recovery was available on the Harbor Island claim due to the Texas common law “one satisfaction” rule. The district held that the terms of Condition 8 of the environmental policies prevented RSR from recovering because it had already recovered fully for the cleanup costs of the Harbor Island site from its settlements with its CGL insurers. The Court of Appeals affirmed the lower court decision finding that the Supreme Court of Texas would apply the presumption that settling plaintiffs were in a better position than nonsettling defendants to insure that the settlement award was allocated between actual and punitive damages and that the nonsettling parties should not have been penalized for events over which they had no control to the corporation’s settlements with its CGL insurers. The CGL settlements yielded over \$ 76 million in proceeds, all of which had to be allocated to the Harbor Island liabilities before the corporation could collect on its environmental policies. Because the Harbor Island alleged liabilities only totaled \$ 13.1 million, the corporation could take nothing under the environmental policies. The court found that Condition 8 barred all recovery on the environmental policies.

Bayle v. Allstate Insurance Co.

(5th Cir. (La.) August 11, 2010)

Firth Circuit Affirms Summary Judgment For Insurer In Hurricane Katrina Coverage Litigation

This litigation addressed a recurring question encountered in Hurricane-related property insurance disputes: i.e., where the parties agree that both covered risks and non-covered risks caused some of the damage, which party must bear the burden of identifying the discrete items of property that were damaged and proving what portion of the damage was caused by the excluded risk? The parties disagreed whether it is the insurer or the insured who must bear the burden of proving that the damage to the policyholder’s home from Hurricane Katrina was caused by an insured risk (wind) or by a non-insured risk (flood) when both wind and flood contributed to the overall damage to the property.

The policyholder sued Allstate alleging that the insurer failed to indemnify them adequately and that the insurer wrongly employed the “actual cash value” of the property rather than the “building structure reimbursement” standard to calculate the dollar amount of damage caused by wind. The district court granted summary judgment to the insurer and the Court of Appeals affirmed, noting that prior case precedent controlled the burden-shifting arguments.

Specifically, the court held that *Dickerson v. Lexington Insurance Company*, 556 F3d 290 (5th Cir. 2009) does not stand for the proposition advanced by the policyholder that the insurer alone must bear the burden of producing evidence to segregate covered losses from excluded losses, *at least not at the summary judgment stage*. The court also noted that both the policyholder and Allstate appeared to confuse the burden of persuasion with the burden of production, stating:

As the Louisiana Supreme Court made clear in *Jones*, 870 So.2d 1002 (La. 2004), and as our reasoning in *Dickerson* reflects, the insured must carry the burden of

persuasion to establish that any uncompensated (or under-compensated) damage was caused by a covered peril. Simply put, this is what is meant by the rule that the insured must prove *coverage* under the policy. Then, if the defendant-insurer wishes to avoid liability by relying on a policy exclusion from coverage, *it* has the burden of persuasion to establish that the uncompensated or under-compensated damage is subject to an exclusion.

The court held that contrary to Allstate's contention, there is nothing in Louisiana law to suggest that these respective burdens of *persuasion* shift between the parties. What *does* shift--but only during the summary judgment stage--is the burden of *production*. Because *at trial* the defendant-insurer has the ultimate burden of persuasion that the exclusion is applicable, a defendant-insurer that moves *for summary judgment* must bear the burden of producing evidence to make out a "prima facie" case that the cause of the uncompensated or under-compensated damage was excluded from coverage. If the defendant-insurer does so, "the burden shift[s] to the [insured] to present evidence demonstrating there remain[s] a material issue of fact."

The court again reiterated that "as *Jones* makes clear, this simple, burden-shifting minuet arises from the effect of summary judgment on the burdens of production and not any shift between the parties' respective burdens of persuasion." Because *Dickerson* addressed the sufficiency of the evidence adduced at *trial*, it was not concerned with the shifting of the burdens of production that characterizes summary judgment.

The court noted that because the insurer moved for summary judgment, and because Allstate would have had the burden of proving at trial that flood, not wind, caused the uncompensated or under-compensated damage claimed by the policyholder, Allstate had the burden of producing evidence in support of its motion to establish that there existed no issue of material fact regarding the cause of the uncompensated or under-compensated damage for which the policyholder sought indemnification. Unlike the insurer-defendant in *Jones*, however, Allstate did not contest that a covered peril (wind) caused *some* of the damage to some of the policyholder's property; the question was which *particular items of property* were damaged by wind. The court further noted that complicating Allstate's task, however, was the fact that at no point did the policyholder identify *which particular damaged items* had gone uncompensated or under-compensated under their homeowners policy's coverage for structural damage. They simply presented the court with a line-item cost estimate to repair *all* the damage to their property, without even attempting to explain which portion or portions of those costs are attributable to wind-caused damage.

The court held that as the movant for summary judgment, Allstate had the burden of proving the applicability of any *exclusion* from coverage and that Allstate properly supported its motion for summary judgment with specific evidence (its adjusters' and expert's reports, and the policyholder's deposition testimony) that addressed the various items of damage incurred by the policyholder's property and the cause of each item's damage, as well as the particular amounts it paid to the policyholder for wind-damage to those items. At that juncture, the burden of production shifted to the policyholder to put forward evidence of specific facts sufficient to demonstrate the existence of uncompensated items of damage that were caused by wind, or of any deficiency in its quantum of the damages paid by Allstate to indemnify the policyholder for

wind-caused damage. They failed to do so, and therefore, the district court's grant of Allstate's motion for summary judgment was affirmed.

Great Rivers Habitat Alliance v. FEMA

(8th Cir. (Mo.) August 12, 2010)

Court Vindicates FEMA In Insurance-Related Floodplain Dispute

In December 2006, the City of St. Peters, Missouri asked FEMA to remove a tract of land from the Mississippi River floodplain following the construction of a four mile urban levee built to protect from a 500-year flood. The agency expressed concerns over the levee's closure structures, as well as its ability to provide protection against even a 100-year flood. Notwithstanding, FEMA approved the modifications.

Great Rivers Habitat Alliance is a nonprofit organization dedicated to protecting a floodplain in St. Charles County, Missouri. Adolphus A. Busch Revocable Living Trust owns property within the floodplain. The two entities filed suit in December 2008 challenging an agency decision to revise a flood insurance study and rate map within the city of St. Peters, Missouri along the Mississippi River. They claimed that the rate map revision was based on flawed information and that the decision violated FEMA's responsibilities under the National Flood Insurance Act and the Administrative Procedure Act. The parties previously wrote a letter to the city, questioning the effectiveness of the levee's closure structures and its height above water levels.

The Eighth Circuit held that a party must undertake an administrative appeal that includes evidence highlighting the scientific and technical inaccuracy of FEMA's findings before it can sue over a flood elevation determination. Plaintiffs did not point to any mathematical or measurement error, changed physical conditions, or lack of sufficient quality data to support the allegations in their letter to the city. Essentially, the groups merely asked FEMA to certify the accuracy of information the agency already had on file. Plaintiffs argued that this information was technical and satisfied the requirements of the National Flood Insurance Act. However, the court found that plaintiffs had not submitted new information the agency could use to reevaluate its conclusions. The court stated that the "regulations require appellants to certify new information so FEMA can conduct another analysis." "This is precisely what appellants failed to do in this case. Instead, appellants attempt to force FEMA to reanalyze the existing data, hoping for a different result." The court held that "FEMA is not required to rehash data it already reviewed upon the chance FEMA would change its decision."

Accordingly, the court upheld the lower court's decision that plaintiffs did not exhaust their administrative remedies in challenging the floodplain revision because they did not provide new scientific and technical evidence demonstrating that FEMA made a mistake.

Consolidated Companies Inc. v. Lexington Ins. Co.

(5th Cir. (La.) August 17, 2010)

Appellate Court Rejects Hurricane Katrina Insurance Award

In August 2005, Lexington Insurance Company issued a commercial property insurance policy to Consolidated Companies Inc. (“Conco”) insuring up to \$25 million in losses from interruption of business, extra expenses and damage to Conco’s property. Hurricane Katrina subsequently damaged Conco’s warehouse and equipment.

The insurer determined Conco’s damages to be just above \$3 million. Conco argued that its damages were in excess of \$24 million and filed suit against the insurer alleging it breached the insurance contract in failing to cover those damages.

The Eastern District of Louisiana entered final judgment for Conco in excess of \$21 million in compensatory damages, in excess of \$5 million in statutory penalties, and \$2.5 million in statutory damages.

The Fifth Circuit addressed whether certain charges and expenses should be paid in full or reduced to the extent that they were offset by income during a 15-month period before Conco’s complete restoration of operations. Under the policy, when a partial resumption in operations reduces the “actual loss,” such as anticipatory profits and unavoidable costs, so substantially as to create some profit, all charges and expenses by definition have been covered by income. The only recovery in such an event is for the diminished profit. The court held that all expenses were recouped from the income of the business and are not a “loss” to be compensated under the policy.

The court also held that the two statutory awards based on arbitrariness or bad faith must be reversed and reconsidered on remand in light of the remaining sums that the insurer failed properly to pay.

Hussey Copper, Ltd. v. Arrowood Indemnity Co.

(3rd Cir. (Pa.) August 23, 2010)

Summary Judgment Affirmed For Insurer Based On Unambiguous Pollution Exclusion

This environmental coverage matter involved the broad exclusion in the policyholder’s policy that limited coverage for pollution-related damage under section f(2). The policyholder commenced a declaratory judgment action against the insurer for a lawsuit brought against the Kane County Public Building Commission which was alleged to have installed lead-coated copper roofing panels. The Building Commission remediated the lead and copper pollution in and around a pond and thereafter sued the policyholder manufacturer.

The Third Circuit agreed with the insurer that the Building Commission’s suit against the policyholder fell squarely within the unambiguous language of the policy’s pollution exclusion provision. Specifically, the court concluded that the pollution exclusion clause was sweeping,

excluding from coverage “any loss, cost or expense arising out of any request, demand or order that any insured or others ... in any way respond to or assess the effects of pollutants.” The court held that the policyholder’s liability to the Commission was without question a cost of the policyholder arose out the EPA Order compelling the Commission to test for and clean up the pollution. Thus, the exclusion applied.

DPC Industries, Inc. v. American Int’l Ins. Co.

(5th Cir. (Tx.) August 24, 2010)

Summary Judgment Affirmed For Insurer Based On “Other Coverage” Exclusion

This environmental insurance coverage matter involved a dispute regarding a release of a toxic chemical from a plant operated by an affiliate of the policyholder. The insurer issued a combined Primary and Umbrella comprehensive general liability policy for bodily injury and property damage under Coverage A and for pollution coverage under Coverage D. Because the limit under Coverage was \$10 million and the limit for pollution under Coverage D was \$4 million the policyholder sought to get as much coverage as possible under coverage A. The policy also included an exclusion relating to other coverages (i.e., “exclusion”).

The issue was whether the policyholder was entitled to the benefit of the additional limit of liability under Coverage A of the policy. In affirming the district court decision, the court first concluded that the pollution coverage provided in Coverage D applied to the chlorine release and the resulting damages. The court further held that based on the interpretation of the policy terms in exclusion “u” regarding other coverage, once the insurer accepts coverage under any other coverage available under the policy, no coverage is available under Coverage A, noting, that the provision plainly give the insurer the right to accept coverage under Coverage D to the exclusion of Coverage A

Scottsdale Ins. Co. v. Universal Crop Protection Alliance LLC

(8th Cir. (Ark.) September 8, 2010)

Pollution Exclusion Precludes Claims Resulting from Migration of Pollutants

This environmental insurance coverage matter involved the interpretation of a pollution exclusion wherein scores of Arkansas farmers sued Universal Crop Protection Alliance alleging one of their herbicides destroyed their cotton crop. Its insurer brought a declaratory judgment action against its insured, Universal, seeking a ruling that the pollution exclusion relieved the insurer of any obligation to defend or indemnify the insured for the occurrence.

The Eighth Circuit affirmed the grant of summary judgment to the insurer concluding that the policy’s pollution exclusion was broad and thus unambiguously relieved the insurer of any obligation to defend or indemnify the insurer from the cotton farmers’ claims under either the “off target drift” or “relofting” theories of contaminant migration. Specifically, the court held that neither theory “arguably” fell outside the scope of the exclusion, as the policy plainly excluded coverage for property damage which would not have occurred but for the migration of pollutants, wherein pollutants was defined as including “any solid, liquid, gaseous or thermal...

contaminant, including ... chemicals.” The court noted that the farmers’ claim was only concerned with the migration of a “chemical” (i.e. 2,4-D), and therefore, it was covered by the exclusion.

UNITED STATES DISTRICT COURT DECISIONS

[Pennsylvania Mutual Casualty Ins. Co. v. City Homes, Inc. et. al.](#)

(D. Md. June 25, 2010)

Court Found Coverage For Policyholder’s Lead Poisoning Claims

The insurer sought a determination that it did not owe a duty to defend or indemnify the defendant policyholder from claims arising from an underlying toxic tort lead poisoning suit. The court granted the policyholder’s motion for summary judgment concluding that, based on Maryland precedent involving lead poisoning cases, the bodily injuries were accidental and caused by an occurrence. Specifically, the policyholder’s participation in a formal EPA lead abatement study indicated an effort to ensure that the homes it rented were safe from lead risks. Thus, it was not reasonable to infer that the policyholder foresaw or expected the children’s injuries simply because lead abatement repairs were required early in the tenancy.

[Grizzly Processing LLC v. Wausau Underwriters Ins. Co.](#)

(E.D. Ky. June 30, 2010)

Coal Plant Operator and Insurer Settle Dispute Over Coverage for Coal Dust Pollution

In March 2010, we reported on *Grizzly Processing LLC v. Wausau Underwriters Ins. Co.* In that case, Grizzly Processing LLC (“Grizzly”) was sued in state court by ninety plaintiffs alleging the company contaminated their homes with coal dust and other pollutants in Floyd County, Kentucky. Plaintiffs also alleged damages from plant noise, including blast operations, violations of certain environmental regulations, and violations of the Kentucky Surface Mining Act. Plaintiffs sought compensatory damages including diminution in the value of their residences, costs of repair, medical expenses, and damages for pain and suffering.

Wausau Underwriters Insurance Company (“Wausau”) issued four policies between 2006 and 2008, two commercial general liability and two umbrella excess liability policies, to Grizzly. All four of the policies contain an exclusion barring coverage for the “contamination” of “pollutants” and any injury or property damage that arose out of that contamination. On the basis of these exclusions, Wausau refused to pay Grizzly’s defense costs in the underlying litigation.

Grizzly commenced a declaratory judgment action in state court, and Wausau removed the suit to federal court. Wausau moved for summary judgment on the basis of the exclusions. The court addressed only Wausau’s liability for coal dust because in its motion, Wausau did not address whether it is liable for plaintiffs’ other claims in the underlying litigation, noting that some of those claims may not have been asserted until after Wausau filed its motion.

The United States District Court for the Eastern District of Kentucky granted Wausau's motion. With respect to coal dust, the court held that the policies explicitly excluded coverage. The court noted that "[a]s to whether coal dust is included in the definition of pollutant, each of the insurance policies defines a 'pollutant' as an 'irritant' or 'contaminant'". The court held that "[t]here can be no doubt that 'coal dust' is an irritant or contaminant." The court also noted that federal regulations identify coal dust as a "contaminant", stating, "Congress has recognized that coal dust inhalation causes permanent damage." Additionally, the court noted that the Sixth Circuit "has determined that coal dust is clearly a pollutant for purposes of an insurance exclusion."

Accordingly, the court granted summary judgment to Wausau, finding that plaintiffs' claims in the state court action that they were damaged by "coal dust" were not reasonably susceptible of an interpretation that they were covered by the terms of the insurance policies at issue.

On June 30, 2010, the court signed an order dismissing the case as the parties resolved the remaining claims. Settlement details were not included in the court filings.

Chubb Custom Ins. Co. v. Space Systems/Loral, Inc. et. al.

(N.D. Cal. July 13, 2010)

Court Dismisses Insurer's CERCLA's Cost Recovery Subrogation Claims

This CERCLA cost recovery action was initiated by the insurer seeking recovery of costs incurred on behalf of one of its insured. Chubb paid \$2,400,000 for its insured's response costs. Thereafter, Chubb filed the instant action alleging defendants bear the responsibility for the cleanup and sought recovery of the cost on behalf of its insured. Defendant's filed motions to dismiss the complaint on numerous procedural and substantive grounds, including challenges to Chubb's subrogation claims under CERCLA §112(c).

The court found that Chubb failed to properly plead its standing under Section 112(c). Specifically, the court noted that while a plaintiff is not required to show that the compensation it paid relates to a CERCLA claim that already has been resolved through settlement or litigation, a plain reading of Section 112(a) requires plaintiffs to plead that the compensation was paid for damages or costs *resulting from a CERCLA violation*. The court further held that while the complaint comes close to doing so, "Chubb never explicitly sufficiently 'connects the dots' between its payments to its insured under the insurance policy, the costs its insured incurred, and the alleged CERCLA violations." As such, the court ruled that, Chubb had not pled standing to bring its CERCLA subrogation claim under Section 112(c).

The court further held that Chubb failed to meet the ripeness and statute of limitations requirements to support its CERCLA subrogation claims. Likewise, Chubb failed in asserting its Section 107(a) claims against Ford and the remaining defendants. As such, the court granted defendants' motions to dismiss with leave to amend the complaint within thirty days of the Order.

Baughman v. United States Liability Ins. Co.

(D.N.J. July 13, 2010)

Summary Judgment Granted On Costs And Attorney Fees In Defense Of Environmental Claims

This action arose from a dispute regarding insurance coverage for several underlying state court actions arising out of alleged mercury contamination of policyholder's daycare center. The insurer declined to defend or indemnify the policyholders in under their comprehensive general liability ("CGL") policy and thereafter policyholders brought suit seeking a declaration that the insurer was obligated to defend and indemnify them in the underlying actions, as well as reformation of the insurance policy, and damages for breach of contract, breach of implied duty of good faith and fair dealing, common law fraud, and fraud under the New Jersey Consumer Fraud Act. §112(c).

After successfully litigating their breach of contract claim, the policyholders sought summary judgment for assessment of attorneys fees and costs totaling \$82,695 in defending the underlying class action suits pursuant to *New Jersey Court Rule 4:42-9(a)(6)*. The insurer did not oppose summary judgment on damages, but objected to Plaintiffs' request for attorneys fees, arguing that they should not be imposed in this case and that even if imposed, Plaintiffs request an unreasonable amount. The court determined the fees were reasonable for a complex environmental insurance coverage matter and granted the policyholders' motion for summary judgment as to damages in the amount of \$82,695 and assessed attorneys fees and costs in the amount of \$208,748.

Grenoble House Hotel v. Hanover Ins. Co.

(E.D. La. July 23, 2010)

Insurer Denied Summary Judgment On Material Misrepresentation

Insured plaintiff brought suit against its insurer for failing to honor its insurance obligations under the policy after Hurricane Katrina destroyed the 17-suite hotel. The insured sought \$1.2 million under the policy as well as loss of business income and statutory penalties against the insurer.

The insurer contended that the policyholder made material misrepresentations involving the policy when it claimed it owned the property, which was in fact leased, thereby voiding the policy as a matter of law.

The court determined that while the application identified the applicant as the owner of the property, the application may have been completed by the property owner and not Grenoble. The court held the insurer failed to submit competent evidence under Rule 56 that had the insurer known Grenoble House was the lessor, as opposed to the owner of the building, it would have either declined to write the policy or would have issued the policy with a higher premium. As such, the court denied the insurer summary judgment.

Builders Mut. Ins. Co. v. Half Court Press, LLC

(W.D. Va. August 3, 2010)

Insurer Is Not Entitled to Declaratory Judgment

The underlying plaintiff claimed that defendant damaged his private pond by failing to maintain sediment control measures during its property development projects and sought remediation. The court found that while the allegations regarding sediment pollution were arguably excluded by the policy's Total Pollution Exclusion, the allegations in the complaint were not restricted to pollution damage.

Teck Metals, Ltd. v. Certain Underwriters at Lloyd's, London et. al.

(E.D. Wash. August 10, 2010)

Qualified Pollution Exclusion Does Not Include Temporal Component To The Term "Sudden"

The court was asked to rule on summary judgment motions by each party regarding the Qualified Pollution Exclusion clause involving claims of contamination resulting from the discharge of contaminants into the Columbia River from the Trail smelter in British Columbia, Canada.

The court held that as a matter of law there was no actual conflict of law between British Columbia and Washington regarding interpretation of the term "sudden" in the qualified pollution exclusion at issue, and therefore, Washington law applied. Under Washington law, the term "sudden" is considered ambiguous, and thus does not include a temporal element. The insurer, however, was not precluded from subsequently presenting the court with newly discovered extrinsic evidence which demonstrates that the parties understood the term "sudden" to have a temporal component.

In addition, the court concluded that, as a matter of law, the relevant "happening" for the purpose of determining whether or not the exclusion applied was the release of contaminants from slag that eventually came to rest in the Columbia River Site in the United States (as opposed to the original discharge in Canada) as the subsequent release of contaminants was the liability-creating event under CERCLA for which the policyholder sought coverage. The court further held that as the term "sudden" does not include a temporal element, the remaining issue was whether the insured intended or expected that contaminants would be released from the slag once it came to rest in the United States.

Teck Metals, Ltd. v. Certain Underwriters at Lloyd's, London et. al.

(E.D. Wash. August 9, 2010)

Environmental Response Costs Are "Damages" Under The Subject Policy

The parties in this environmental coverage action moved the district court to rule on respective motions for summary judgment regarding whether environmental response costs are "damages" under the policies of insurance.

The court held as a matter of law that the response costs the policyholder incurred pursuant to its Settlement Agreement with the EPA fell within the meaning of “damages” contained in the policies. The court also held that investigation RI/FS costs represent damages as opposed to expenses because the costs represent settlement of a claim in itself (i.e., CERCLA liability) and thus, are not expenses for settlement of a claim.

[Teck Metals, Ltd. v. Certain Underwriters at Lloyd’s, London et. al.](#)

(E.D. Wash. August 9, 2010)

District Court Denies Summary Judgment To Insurer On Scope Of Coverage “All Sums” Approach Governs The Subject Policy

Policyholder moved the court to rule as a matter of law that once the London Market Insurance (“LMI”) policies are proven to be triggered, the insurers are liable under each of the policies for all of the policyholder’s losses, up to their full policy limits, without any allocation between the parties. The issue arose because the insurers issued serial, successive liability policies (umbrella and excess umbrella) to Teck for the period from August 29, 1972 to June 30, 1985, while Teck’s operations in Trail, B.C., date from 1908 to 1995, and its claimed losses have continued through the present day.

The insurer contended that British Columbia (B.C.) law applied and it required an allocation of damages on a pro rata basis determined by the periods covered by each insurance policy. This approach would require that Teck’s losses be spread evenly among all years in which its operations were taking place. The insurer did not deny that the result of such an approach was that because the lowest-layer policies provide coverage only once Teck’s damages exceed \$6 million, Teck would be required to incur losses of \$522 million before LMI would have to pay anything (\$6 million x 87 years of overall operations (1908-1995)).

LMI further asserted the “all sums,” joint and several liability approach, requires “an insurer providing excess liability coverage during only a single year of the many decades when Teck’s actions polluted the Columbia River basin would be liable up to the limit of its coverage for all damages that any insurer, or Teck itself, would otherwise bear.”

After concluding that Washington law applied, the district court relied on Washington’s Supreme Court ruling in *American National Fire Insurance Company v. B & L Trucking And Construction Company, Inc.*, 134 Wn.2d 413, 429, 951 P.2d 250 (1998), to conclude that once the policy was triggered, the language required the insurer to pay all sums for which the insured became legally obligated, up to the policy limits. “Once coverage is triggered in one or more policy periods, those policies provide full coverage for all continuing damage, without any allocation between insurer and insured.” Id.

In *B & L Trucking*, the Washington Supreme Court rejected the insurer’s argument that the “all sums” approach was unfair because it provides a policyholder who purchases just one year of insurance the same protection as those who purchase insurance annually. The court found that because the insurer had drafted the policy language, it could not now argue its drafting was

unfair, and had agreed to pay "all sums" arising out of an "occurrence" which, by its own policy definition, could take place over a period of time.

Northwest Pipe Co. v. RLI Ins. Co. et. al.

(D. Oregon. August 11, 2010)

District Court Denies Summary Judgment To Insurer On Duty To Defend

The policyholder filed action after the insurer claimed there was no coverage for the environmental claims involving the Portland Harbor Superfund Site. The court found that Employers Insurance did not have a duty to defend or indemnify the policyholder due to the "absolute pollution exclusion" in the policy. However, the policyholder contested that summary judgment in favor of RLI on the issue of its duty to defend was improper. The policyholder argued that the magistrate's conclusion that horizontal exhaustion applied to RLI's duty to defend was improper further arguing that any other underlying insurance requires that RLI has a duty under its umbrella policy when the underlying coverage is exhausted.

The court rejected the policyholder's argument incorporating the exhaustion requirement into the duty to defend provision concluding that the provision does not require exhaustion and there is no provision requiring exhaustion before the duty is triggered. However, the court held that because Employers Insurance did not have any duty to defend or indemnify and because RLI failed to show any other insurer has a duty to indemnify the plaintiff of that the property damage did not occur during policy period, the RLI's duty to defend had been triggered.

Penford Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pa.

(N.D. Iowa August 24, 2010)

Judgment Entered for Insurer in Flood Insurance Suit

In January 2009, Penford Corp. sued National Union Fire Insurance Co. of Pittsburgh, Pa. and Ace American Insurance Co. for alleging failing to pay flood damage claims related to a 2007 flood that severely damaged a Penford Corp. plant in Cedar Rapids, Iowa. The plant includes approximately 70 buildings next to the Cedar River in Iowa. The plant produces ethanol and dextrose products, products derived from corn, and industrial and specialty starches. According to Penford Corp.'s complaint, the Cedar Rapids facility accounted for approximate half of the company's revenue in 2008.

The insurers paid \$20.5 million, but denied paying further claims, arguing that the policies contained sub limits that capped recovery for flood damages. Plaintiff argued that the sub limits only applied to property damage, not economic losses. Plaintiff sought to compel the insurers to pay the additional \$26.5 million they allegedly owed for these losses and punitive damages for their bad-faith claims handling. Plaintiff argued that at worst, the policy language was ambiguous and should be construed in its favor.

The United States District Court for the Northern District of Iowa, in the midst of trial, awarded judgment as a matter of law to the insurers. The court did not issue an opinion explaining its decision.

U.S. v. Clark

(N.D. Ill. August 19, 2010)

Insurers Owed a Duty to Defend CERCLA Action

The court held that the insurers owed a duty to defend property owners in a CERCLA action where the allegations in the government's complaint alleged that the EPA found "leaking drums and containers" and that analysis revealed they were hazardous substances. The court held that these allegations indicate the potential of environmental contamination through "releases" of "hazardous substances."

LaFalier v. Cinnabar Service Co. Inc.

(N.D. Okla. August 19, 2010)

Appellate Court Affirms Superfund Fraud Case Remand

Fifty-two homeowners filed suit in April 2009 alleging the Lead-Impacted Communities Relocation Assistance Trust colluded with insurers to defraud Oklahoma residents participating in the buyout of homes in or near the Tar Creek Superfund site in Ottawa County, Oklahoma. Plaintiffs claims that a May 2008 tornado damaged many homes in Picher, Oklahoma and that the trust improperly reduced payments under the buyout by the amount paid by homeowners' insurers for property damage claims. Plaintiffs claimed that the insurers conspired with Cinnabar Service Co. and Van Tuyl Associates Inc., which appraised properties for payouts from the trust, to reduce claims for property damage following the storm.

The Class Action Fairness Act of 2005 provides for the removal to federal court of certain mass actions that involve the claims of at least 100 people and are worth at least \$5 million so long as there is minimal diversity between the parties. However, the Act also includes several exclusions that require a federal district court to remand cases that are otherwise removable.

The United States Circuit Court for the Tenth Circuit ruled that the United States District Court for the Northern District of Oklahoma properly applied the local controversy exception in determining that the district court lacked jurisdiction to hear the case. The district court found that 2/3 of the plaintiffs were citizens of Oklahoma and that the defendants whose conduct formed a significant basis for the plaintiff's claims, the appraisers and state officials, were also citizens of Oklahoma.

The district court rejected plaintiffs' argument that the case should not be considered a mass action because the claims arise from a single event or occurrence in Oklahoma and the alleged injury occurred solely in that state. The court held that plaintiffs' claims are actually based on a series of events to the extent they allege that various insurance companies denied or reduced payments on insurance claims and that the trust subsequently devalued each plaintiff's home.

Because the plaintiffs satisfied each of the prongs of the local controversy exception under the Class Action Fairness Act, however, the failure of plaintiff's contention regarding whether the case is a mass action does not doom their opposition to removal.

Agreeing that the district court properly applied the local controversy exception, the appellate court remanded the case to state court.

Colony Ins. Co. v. Nicholson

(S. D. Florida, September 8, 2010)

District Court Denies Insurer's Motion For Reconsideration Regarding Applicability Of Communicable Disease Exclusion

This environmental coverage matter involved the interpretation of two broad environmental exclusions that limited coverage for bacterial and communicable diseases. The insurer commenced a declaratory judgment action against the nominal defendant who alleged contracting a bacterial infection and suffering serious and permanent disfigurement as a result of manicuring and acrylic nail services provided to defendant. The insurer filed the lawsuit seeking a determination that it need not defend nor indemnify the defendants in the underlying person injury action. The district court entered summary judgment in favor of the policyholders holding the insurer had a duty to defend the underlying suit and a motion for reconsideration was filed by the insurer.

The district court noted that its original decision was based on the "temporal and geographical uncertainty surrounding plaintiff's injury." Specifically, the court noted that under the "Fungi or Bacteria Exclusion" attached as a rider to the policy, coverage was excluded for injuries arising from bacteria contained within the salon. However, without knowing whether plaintiff contracted the infection within the salon, or contracted it outside the facility after being predisposed to such risk by virtue of the salon's allegedly negligent cutting of her finger, the insurer was required to defend the action.

During reargument, the insurer asserted the relevance of a separate rider, known as the "Communicable Disease Exclusion," which excluded from coverage injury or damage arising from "the transmission of a communicable disease" or failure to perform services which were either intended to, or assumed to prevent communicable diseases or their transmission to others." Specifically, the insurer argued that the court erred in its interpretation of the Communicable Disease Exclusion, noting it must apply to bacterial infections because "infectious ... agent" is broad enough to include bacteria, and a number of the diseases listed within the exclusion are bacterial. Moreover, it noted that unlike the Bacteria exclusion, the Communicable Disease Exclusion is not geographically or temporally limited, thus excluding coverage in this case regardless where or when it occurred.

The district court rejected the insurer's arguments for reconsideration concluding that the insurer's "expansive interpretation of the Communicable Disease Exclusion would completely subsume the bacteria portion of the Fungi or Bacteria Exclusion." The court further noted that the resulting overlap would confuse an insured and run afoul of the rule that all portions of a

policy are to be given meaning so as to avoid “surplusage or superfluity.” “If a provision specifically referencing “Bacteria” only excludes coverage for injury arising from bacteria contained within the salon, a reasonable layperson is likely to conclude that the policy does indeed provide coverage to injury arising from bacteria contained without.”

United States Fidelity and Guaranty Co. v. Continental Ins. Co.

(D. Mont. September 10, 2010)

Insurer’s Motion For Reconsideration Denied Regarding The Duty To Defend Under Umbrella Policies

Continental argued that it had no duty to defend the underlying action because it had exhausted the “per occurrence” policy limits of its primary policies with its contribution to the settlement in another matter. The insured previously argued that the umbrella policies issued by Continental concurrently with the primary policies imposed a duty to defend once the primary policy limits were exhausted.

The district court ruled in favor of the insured, holding that the umbrella policies are designed to fill both vertical and horizontal gaps in coverage; the vertical coverage provides additional coverage above the limits of the primary coverage and the horizontal coverage provides primary coverage for losses outside the scope of the primary coverage. Continental’s umbrella policy was determined to contain two separate provisions within the “Conditions” section of the policy which imposed a duty to defend once the underlying primary policies were exhausted. Accordingly, Continental’s Motion for Reconsideration was denied.

New England Environmental Technologies v. American Safety Risk Retention Grp., Inc.

(D. Mass, September 15, 2010)

Insurer Must Defend For Timely Reporting Under The Claims-Made AERP Requirements

This matter involved the interpretation of successive claims-made policies providing various insurance coverages including CGL and Environmental Consultant’s Professional Liability Coverage wherein each policy contained an Automatic Extended Reporting Period (“AERP”). At issue was whether the timing of the reporting negated coverage under the policy. The insurer claimed that the AERP did not cover the underlying claim because 1) the claim was not made during the AERP’s 30-day period, and 2) the insured had “other similar insurance” at the time, precluding the operation of the clause.

It was undisputed that the claim was first asserted on February 14, 2008. Because the date fell squarely within the policy period (ending on March 2, 2008), the claim requirement was easily satisfied. The critical inquiry was whether the reporting requirement was satisfied. The insured did not report the claim until March 6, 2008 four days after the policy expired. Coverage under the policy was predicated on the operation of its 30-day AERP, which if applicable, would extend coverage for claims made within 30 days of the end of the policy period. Also, pursuant to the policy, the AERP only applied if no other similar insurance is in force.

The court held that AERP's coverage clause was susceptible to more than one meaning and that the insured's construction was preferable, especially given that the clause was entitled "Extended Reporting Period Option." Also, the court noted that where the insured reported the claim five days after the policy expired and within its AERP, the insurer cannot reasonably suggest that the delay had a meaningful impact on its ability to set future premiums. As to the other insurance provision, the court likewise held for the insured, noting the term "other similar insurance" was not defined in the policy and the cases cited by the insurer were inapposite. The court agreed with the insured that subsequent policy does not constitute "other similar insurance" as it was purchased as a renewal policy that was intended to provide seamless, identical coverage for one year to the next. It further held, "the renewal of a claims-made policy should not precipitate a trap where claims spanning the renewal are denied."

Consequently, the court held that the AERP was applicable because the insured did not have other similar insurance at the time and the insured complied with the requirements of the AERP by reporting the claim within the 30 day extension period.

Peace College of Raleigh Inc. v. Amer. Int'l Spec. Lines Ins. Co.

(E.D.N.C. September 16, 2010)

Insurers Owe a Duty to Defend CERCLA Suit

Plaintiff's contribution to cleanup costs associated with PCB contamination resulting from transformer repair. The court held that exclusions barring coverage for loss arising from the insured's products after the insured relinquished possession and for loss arising out of waste disposal activities that took place prior to July 1, 1998 did not apply. There was no indication in the complaint when the disposal occurred, and plaintiff did not sell transformers as a regular part of its business.

Chaucer Corporate Capital No. 2 Ltd. v. Azad

(S.D. Tx September 20, 2010)

Coverage Suit Relating to Hurricane Ike Survives Motion to Dismiss

Plaintiff sued six businesses seeking a declaration on the disputed scope of coverage for Hurricane Ike damages. The court denied defendants' motion to dismiss, rejecting their argument that the case should be dismissed for lack of subject matter jurisdiction because plaintiff failed to join all of the underwriters as plaintiffs. The court held that only plaintiff's citizenship is relevant to diversity even though a nondiverse party is contractually bound to indemnify the diverse parties.

Essex Ins. Co. v. Dixon

(S.D. Fla. September 21, 2010)

Pollution Exclusion Bars Coverage for Settlement

A developer settled with homeowners who alleged that their property was damaged by pollutants released during construction on the site of a former chemical and medical waste dump. The court held that the complaint does not allege a single claim unrelated to pollution that would preclude the application of the policy's pollution exclusion clause.

Evanston Ins. Co. v. G&T Fabricators Inc.

(E.D.N.C. September 23, 2010)

Insurer Owes No Duty to Defend or Indemnify

Allied Terminals Inc. ("Allied") hired G&T Fabricators Inc. ("G&T") to repair an above-ground storage tank at its facility in Chesapeake, Virginia. G&T was required to have general liability insurance coverage of at least \$1 million. G&T purchased this coverage from Evanston Insurance Company. In November 2008, an accident caused the tank that was being repaired to spill 2 million gallons of liquid fertilizer. G&T filed a claim and the insurer rescinded the policies, refunding the premiums paid.

The insurer filed a declaratory judgment action seeking an order directing that it had no duty to defend or indemnify the company because its executive made misrepresentations in its policy applications.

The United States District Court for the Eastern District of North Carolina granted the insurer's motion for summary judgment that it owed no duty to defend or indemnify and that the policies were properly rescinded. The court noted that the company's executive admitted to the court that he misrepresented the nature of his business in the application for the insurance policy. Despite providing answers to the contrary on the policy applications, the executive was exposed to chemicals during his work at the Allied facility, G&T was operating under a guarantee or hold-harmless agreement with Allied and the executive was performing alterations on the tank. According to the underwriters' undisputed testimony, neither of the policies would have been issued had any one of these questions been answered truthfully. The court rejected Allied's argument that the insurer was estopped from rescinding the policies because the insurer had no duty to investigate G&T's business or the truth of the applicant's statements.

The court held that the insurer owed no duty to pay or indemnity costs to G&T for claims stemming from the fertilizer spill at the Allied facility.

UNITED STATES STATE COURT DECISIONS

[Johnson Controls, Inc. v. London Market](#)

(Wis. June 24, 2010)

Policyholder Wins Suit Over CERCLA Coverage

In the mid-1980s, plaintiff was identified as a potentially responsible party for various toxic sites where it delivered lead acid batteries for recycling under CERCLA. The insurer argued that its policy with the insured does not cover CERCLA damages. The court disagreed, holding that the excess insurer had a duty to defend because the policy contained a follow-form provision that incorporated the duty to defend found in the underlying policy.

[Kumar v. Lords Ins. Agency, Inc.](#)

(Cal. App. July 19, 2010)

Court Affirms Default Judgment Against Insurer

Plaintiff owned and operated a gas station and mini-market. Defendant cashed plaintiff's premium check, but failed to purchase a policy for him. A kerosene spill occurred at the gas station and plaintiff learned he had no coverage and sued. Defendant failed to respond to the complaint and a default judgment was entered. The court rejected defendant's appeal from the judgment, finding that the court did not abuse its discretion.

[NorthWestern Energy v. Certain Underwriters Of Lloyd's London](#)

(S.Dakota, July 29, 2010)

Court Denies Summary Judgment To Insurer In Dam Contamination Case

The circuit court of South Dakota granted the policyholder's motion for partial summary judgment regarding the trigger of coverage for environmental clean up costs associated with the Milltown Dam site in Montana, which was designated as a Superfund site in 1983.

The policyholder filed suit seeking coverage for costs incurred at the Milltown Dam pursuant to several policies relating to large volumes of metal-enriched mine and mill wastes that settled behind the dam. Lloyd's sold multiple policies to the insured between 1929 and 1977. The policyholder claimed that the event triggering coverage was the continuing capture and impoundment of contaminated sediment behind the dam, that lead to contamination of adjacent groundwater, all of which occurred during the policy period.

Lloyd's claimed that if coverage was triggered, damages should be apportioned pro-rata, while the insured claims the insurer was responsible for the entire amount. The court held that an "event" under the policy could encompass the continuous accumulation of contaminated sediment into the reservoir behind the dam, and that the policy language was ambiguous.

Further, the court held that there was no policy language expressly providing for prorated allocation, concluding rather that the policy imposed liability for any and all sums that the insureds were obligated to pay.

OTHER NEWS AND NOTES

Continental Carbon Co. v. National Union Fire Ins. Co.

(W.D. Okla. July 2, 2010)

Policyholder Seeks Coverage for Carbon Black Liability

Continental Carbon Co. (“ConCarb”) manufactures carbon black, a soot like fossil fuel combustion byproduct used in the production of rubber at manufacturing plants located in Phoenix City and Ponca City, Oklahoma. The product emerges from reactors as a fine black powder and is usually separated from waste gases through bag filters and processed. However, it can escape from broken filters. As a result of this risk, ConCarb sought coverage for potential off-site pollution.

In 2004, Action Marine Inc. won a \$20.7 million jury verdict after claiming that carbon black escaped from a plant and was carried by wind to nearby properties, covering them in black soot. ConCarb has faced other litigation since the incident, including a claim from the Ponca Tribe of Indians claiming its members’ health problems were caused by the release of the material. The company settled other suits for substantial sums, and incurred \$28 million in litigation fees

National Union Fire Insurance Company failed to cover these claim on the basis that they are excluded from coverage.

On July 2, 2010, ConCarb filed a lawsuit against the insurer, alleging breach of contract and bad faith breach of the covenant of good faith and fair dealing, seeking a declaratory judgment of duty to defend, compensatory damages, settlement of underlying suits, punitive damages, attorneys’ fees and costs. ConCarb alleges that it specifically sought coverage in order to provide broad protection for potential pollution liability and to exempt from the exclusion the very wind-related pollution at issue in the underlying litigation because that is what motivated the company to seek coverage in the first place.

National Wildlife Federation v. Administrator Federal Emergency Management Agency

(S.D. Fla. July 13, 2010)

Lawsuit Claims FEMA Insurance Program Harms Sea Turtles

Approximately 90% of all sea turtle nesting in the United States purportedly takes place on Florida beaches. Many of these beaches are seriously eroding, and increased artificial light from

property development may discourage females from nesting and disorient hatchlings. Additionally, human removal of beach vegetation can reduce shade and affect nest temperatures.

Private insurers generally refuse to insure homes in flood-prone areas, including Florida beaches. However, development continues to occur because of the Federal Emergency Management Agency's National Flood Insurance Program.

On July 13, 2010, the National Wildlife Federation and its Florida affiliate filed a lawsuit alleging that this insurance program imperils sea turtles by promoting coastal development. According to the lawsuit, FEMA has never consulted with the United States Fish and Wildlife Service or the National Marine Fisheries Service to ensure that its program does not jeopardize the continued existence of sea turtles that are protected by the Endangered Species Act. Additionally, the lawsuit claims FEMA sets eligibility rules for the insurance program that fail to limit development in high-risk floodplains and fails to consider the impact of development on environmentally sensitive lands.

Grigsby v. Fidelity National Property and Cas. Ins. Co.

(E.D. Tx. September 13, 2010)

Insurer Sued Over Hurricane Ike Coverage

Jackie and Goldie Grigsby commenced a putative class action lawsuit claiming that Fidelity National Property and Casualty Insurance Co. ("Fidelity") owed them flood insurance coverage for damages sustained below the first elevated floor of their homes during Hurricane Ike. With the policies the insurer sells, the insurer issues a declaration sheet showing the amount and extent of flood insurance coverage being afforded under the policy and describing the location of the "contents" which are to be afforded flood insurance coverage. Plaintiffs claim the insurer pledged in the policy declarations to provide coverage for damages to the content of their homes located "at the basement enclosure and above".

Following Hurricane Ike, however, the insurer informed plaintiffs that their home was not eligible for coverage of ground floor contents. Plaintiffs allege that the insurer also violated two provisions of the Texas Insurance Code by making, issuing and circulating statements and representations about the terms of the policy and the benefits or advantages promised by the policy "in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact".

Plaintiffs allege that the insurer issued numerous declaration sheets in connection with flood insurance policies on homes throughout those areas of Texas impacted by Hurricane Ike which contained identical or substantially similar misstatements as to the insurance coverage afforded the insured's contents located below the first elevated floor of the insured structure. Accordingly, plaintiffs seek certification of a class of "hundreds, if not thousands, of homeowners throughout the eastern and coastal areas of Texas" who purchased a policy of flood insurance sold by Fidelity under the national flood insurance program who were issued a written declaration of coverage that did not limit coverage for contents to those located on the first

elevated floor and above but who failed to receive that coverage for their losses caused by Hurricane Ike.

The complaint also requests an award of damages and reasonable attorney's fees.

Opry Mills Mall Limited Partnership v. Arch Ins. Co.

(Chancery Court for Davidson County, Tennessee, September 14, 2010)

Flooded Mall Sues Insurers for Coverage

Nashville's Opry Mills mall sustained damage as a result of the Cumberland River flood in May of 2010. Opry Mills Mall Limited Partnership owns and operates the mall. Simon Property Group LP is the first named insured under the policies at issue, and Landesbank Hessen-Thuringen Girozentrale is a commercial lender that loaned Opry Mills \$280 million in 2007. These entities filed a lawsuit alleging that their insurers breached their obligation to provide coverage for flood damage estimated to exceed \$200 million. The complaint includes claims for breach of contract, estoppel, declaratory judgment and a claim under the Tennessee Consumer Protection Act.

The insurers that issued policies covering the first \$50 million of losses have paid or agreed to pay their maximum participation percentages for losses stemming from the flood. However, defendant insurers denied coverage contending that Opry Mills is entitled to \$50 million in coverage under other policies, but none of the disputed \$150 million in upper layer property insurance on the grounds that a \$50 million coverage sublimit for high-hazard flood zones was applicable to the Opry Mills mall. Plaintiffs allege that the insurers' position that the mall damage is subject to the \$50 million high-hazard flood zone limit is contrary to the language of the policies, applicable law and representations made by the insurers.

The mall remains closed to this day, and plaintiffs allege that the disputed insurance proceeds are needed to restore the mall so it can be reopened.

[Goldberg Segalla LLP](#) is a Best Practices law firm with offices in Philadelphia, New York, Princeton, Hartford, Buffalo, Rochester, Syracuse, Albany, White Plains and on Long Island and with affiliated offices in Europe. The [Global Insurance Services](#) Practice Group routinely handles matters of national and international importance for both domestic and foreign insurers, cedents and reinsurers. This includes: comprehensive audits, policy reviews, regulatory advice, positioning dispute for resolution at the business level (either through interim funding or non-waiver agreements), negotiations among counsel, mediation or fully-involved arbitration or litigation. For more information on Goldberg Segalla's [Global Insurance Services](#) Group, please contact either [Daniel W. Gerber](#) or [Richard J. Cohen](#). Our [Global Insurance Services](#) team consists of the following attorneys:

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