

Climate Change for (Re)insurers

Introduction to Zelle and its Climate Change Experience

Climate change has emerged as one of the most significant issues facing the planet. The business community largely recognizes that it will be impacted by the politics, economics and physical effects of climate change, sooner rather than later. For the insurance industry, whose business is all about risk management, the risk is simply too great to ignore. In fact, some view the insurance industry as the “canary in the coal mine” because it is one of the principal areas where the financial impact of climate change will first manifest.

Zelle attorneys have more than 30 years of extensive experience in both cutting-edge and more traditional areas of liability coverage law, both domestically and internationally. Our attorneys have counseled and represented insurance companies, corporations and governments in disputes, negotiations, trials, and arbitrations. This past experience navigating large-scale liability coverage issues, including our work on environmental, asbestos and related matters, provides an institutional knowledge that extends directly to climate change coverage disputes.

Main Issues

Drawing upon our vast experience, Zelle lawyers can efficiently and cost effectively provide perspective and creative approaches to address the unique fact patterns, unresolved questions of law, and new, complex coverage issues. Some of the issues we have confronted over the years include: trigger of coverage and timing of injury (including recent medical developments for identifying when asbestos-related injuries occurs); causation, scope of coverage (including the scope of alleged bodily injury or property damage); allocation of coverage; number and applicability of deductibles and self-insured retentions; appropriate exhaustion of policy limits; “other insurance” issues; specific product exclusions; whether damage is expected or intended; number of occurrences; pre-packaged bankruptcy of insureds; premises liability; non-products/operations claims; intra-insurer issues, including contribution claims and other insurance provisions. In the process of litigating these issues, Zelle lawyers have also developed subject-matter

expertise in technical, industrial, environmental and scientific issues and have worked closely with experts in cutting-edge fields to develop the expert testimony needed to support coverage defenses.

Environmental, Asbestos, and Other Liability Coverage

For nearly three decades, Zelle lawyers have been at the forefront of insurance coverage counseling and litigation involving environmental and asbestos liability claims. Through all of the various iterations of environmental and asbestos litigation, the firm has dealt with the vast spectrum of coverage and technical issues implicated by environmental and asbestos-related bodily injury and property damage claims, including the most novel issues imagined over the years by the more creative attorneys in the policyholder bar. Zelle has litigated environmental and asbestos coverage claims in state and federal courts (including bankruptcy courts) across the country and has also arbitrated numerous asbestos coverage claims under both the Wellington Agreement and non-Wellington arbitration agreements. The firm has counseled and defended clients in a variety of circumstances involving anywhere from 1,000 to 70,000 separate asbestos-related bodily injury claims, anywhere from 10 to several hundred environmental sites, spanning many decades of coverage. Zelle lawyers have negotiated complex settlements, coverage-in-place agreements, and policy buybacks and resolved some of the most troublesome claims confronted by the insurance industry.

In addition, Zelle lawyers have applied the background and experience in environmental and asbestos coverage in successfully litigating coverage concerns regarding MTBE gasoline, Chinese drywall, food contamination, and weather-related losses.

The large scale environmental and asbestos coverage concerns were largely responded to with specific exclusions inserted after substantial exposures were recognized. Based on the history of tobacco, asbestos, environmental pollution, weather-related and MTBE litigation, a review of potential policy changes today to specifically deal with climate change appears to be warranted.

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"Climate Change Forecasts Trouble for the Insurance Industry," *Insurance Law360*, November 30, 2018