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Insurance Coverage Update

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Incorporating Asbestos Into Products Is Single Occurrence in Illinois

The continuous manufacture and sale of conveyor systems incorporating asbestos-containing products constituted one occurrence under the terms of primary CGL policies, according to a recent decision of the Illinois Court of Appeals. *United Conveyor Corp. v. Allstate Ins. Co.*, 2017 IL App (1st) 162314. The policies, therefore, were exhausted upon payment of their per-occurrence, rather than their aggregate, limits to cover the cost of defending and resolving thousands of claims made by plaintiffs alleging bodily injury due to exposure to asbestos-containing products.

United Conveyor Corporation ("United") designed, manufactured and sold ash-handling conveyor systems to coal power plants. United's customers installed, operated and maintained each system, with United's engineers available to help. From the 1930s to early 1984, United also supplied various component parts for the systems they sold, some of which included asbestos.

From 1952-1974, The Travelers Indemnity Company and Travelers Casualty and Surety Company ("Travelers") issued United primary CGL policies that had higher aggregate limits than per-occurrence limits. Travelers defended United from thousands of lawsuits in which plaintiffs alleged they had been injured by exposure to United's asbestos-containing products. In 2009, Travelers informed United that all of its policies had been exhausted, which United interpreted to mean that the policies' per-occurrence, rather than aggregate, limits applied. The record, however, contained no contemporaneous writings reflecting United's disagreement with this position or its belief that, until 2009, Travelers treated the design and installation of each conveyor system as a separate occurrence.

In 2012, United sued Travelers, seeking a declaration that the underlying asbestos claims arose out of multiple occurrences (the installation and maintenance of each conveyor system) and that Travelers breached the insurance policies by contending the underlying asbestos claims arose from a single occurrence (United's manufacture of asbestos-containing products). After filing cross-motions for summary judgment, the trial court ruled in favor of Travelers; United appealed.

United relied on *Nicor, Inc. v. Associated Electric & Gas Ins. Services Ltd.*, 223 Ill. 2d 407 (2006), which treated 195 instances of the release of mercury due to negligent installation of natural gas regulator replacements as separate occurrences. Travelers contended that *United States Gypsum Co. v. Admiral Insurance Co.*, 268 Ill. App. 3d 598 (1994) applied, wherein 200 claims for property damage resulting from

Gypsum's manufacture and sale of asbestos containing building materials were considered a single occurrence.

The court ruled that the facts were closer to *Gypsum*. The single, unitary cause of claims against United was the fact that it incorporated asbestos-containing components or products into each of its systems. The cause of its loss was not attributable to the installation and maintenance by United's customers of each conveyor system, so unlike *Nicor* and the negligent replacement of mercury-containing regulators, no separate human intervening event attributable to the system's installation and maintenance was involved. The installation and maintenance by United's customers did not give rise to United's liability; rather, its manufacturing activities did. Based on *Gypsum*, the claims against United related to a single occurrence and, as a consequence, the per-occurrence limit applied. *Id*. at ¶ 33.

Discussion

The court here reconciled two earlier decisions that found multiple occurrences in a mercury contamination setting (*Nicor*) and a single occurrence in an asbestos property damage scenario (*Gypsum*). This ruling provides some certainty on the number of occurrences issue in the asbestos bodily injury context under Illinois law. The difference between the per-occurrence limits and the aggregate limits ($9.5 million total in this case) by itself demonstrates the significance of the decision for insurers and insureds. Courts in other jurisdictions have reached different conclusions and so care must be taken that one is familiar with the applicable law of the jurisdiction in question before taking a number of occurrences position.

If you have any questions about this Update, please contact the author listed below or the Aronberg Goldgehn attorney with whom you normally consult:

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