



COUGHLIN DUFFY LLP

CASE ALERT, NO. 17

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Eastern District of Pennsylvania Rules Asbestosis Exclusion Bars all Asbestos Related Claims

On March 30, 2007, the U.S. District Court for the Eastern District of Pennsylvania, in *Asten Johnson v. Columbia Casualty Co., et al.* ruled in favor of the insurers on the interpretation of the Columbia Casualty policies' "Asbestosis Exclusion."

The insured, Asten Johnson, made asbestos-containing products used in paper manufacturing. Since the late 1970's, Asten has been named as a defendant in lawsuits brought by plaintiffs alleging injuries from exposure to asbestos products. In 2001, Asten tendered the lawsuits to Columbia Casualty and American Insurance Company, Asten's liability insurers for 1981 and 1982. Columbia's policies contained an Asbestosis Exclusion stating, in relevant part: "It is agreed that this policy does not apply to any claim alleging an exposure to or the contracting of asbestosis or any liability resulting therefrom." Asten sought a declaration that the Asbestosis Exclusion did not bar coverage for *all* asbestos-related bodily injury claims, but merely excludes claims in which the diagnosis alleged is asbestosis. Conversely, Columbia took the position that the Asbestosis Exclusion should be interpreted as barring all asbestos-related claims. The word "asbestosis" is not defined in any of Columbia's policies.

The Court found that the phrase "exposure to ... asbestosis" made little sense due to a person's inability to be injured from an exposure to asbestosis. Therefore, to give plausible meaning to the policy language, the phrase could only be interpreted as excluding claims alleging injury due to exposure to Asten's asbestos-containing products. Continuing its analysis under Pennsylvania law, the Court also considered trade custom and usage, and course of performance to ascertain the parties' intent in the policies' construction. In concluding that the parties intended the Asbestosis Exclusion to exclude all asbestos-related claims, the Court considered the following factors: "asbestosis" had been used in the industry as a catchall term for all asbestos-related diseases; the parties involved in the negotiation/placement of the policies understood the term "asbestosis" to mean all asbestos-related diseases; and, Asten was aware of the Columbia policies and the language of the Asbestosis Exclusion, yet it was only after the near exhaustion of its pre-1981 primary insurance policies that Asten took the position that Columbia's policies would apply to the underlying claims.

Please contact Suzanne C. Midlige or Karen H. Moriarty with any questions.

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