Simpson Thacher

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"Any 'bet the company' or 'bet the issue' litigation requires the best and [Simpson Thacher] is the best of the best."

– The Legal 500
(quoting a client)

Fifth Circuit Rules That General Liability Insurers Have No Duty To Defend Shareholder Suit Against Executives Arising Out Of Product Recall

The Fifth Circuit affirmed a Texas district court decision granting insurers' summary judgment motion, ruling that general liability policies did not cover a shareholder suit arising out of a recall of the policyholder's product. *Discover Prop. & Cas. Ins. Co. v. Blue Bell Creameries USA*, 2023 U.S. App. LEXIS 17518 (5th Cir. July 11, 2023). (Click here for full article)

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The Wisconsin Supreme Court ruled that courts should not employ an "integrated system analysis" in evaluating whether an underlying claim alleges property damage for purposes of determining coverage under a general liability policy. *5 Walworth, LLC v. Engerman Contracting, Inc.*, 408 Wis.2d 39 (Wis. June 20, 2023). (Click here for full article)

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A Missouri federal district court denied an insurer's summary judgment motion seeking to establish that it had no duty to indemnify the insured, finding that while the policyholder's late notice was unreasonable, the insurer did not establish prejudice as a matter of law. *New Prime, Inc. v. Federal Ins. Co.*, 2023 U.S. Dist. LEXIS 123307, (W.D. Mo. July 18, 2023). (Click here for full article)

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An Illinois appellate court ruled that underlying bodily injury and property damage claims arising out of contaminated water were not excluded from coverage as a matter of law. *LM Ins. Corp. v. City of Sycamore*, 2023 IL App(2d) 220234 (Ill. App. Ct. June 8, 2023). (Click here for full article)

Lack Of Adjudication Of Coverage Claim Does Not Render Third-Party Bad Faith Claim Against Insurer Premature, Says Kentucky Supreme Court

The Kentucky Supreme Court ruled that an intermediate appellate court erred in holding that the lack of final adjudication as to policy coverage rendered a third-party bad faith claim premature. *Estate of Lahoma Salyer Bramble v. Greenwich Ins. Co.*, 2023 Ky. LEXIS 159 (Ky. June 15, 2023). (Click here for full article)

California Appellate Court Rules That Compromised Frozen Embryos Do Not Satisfy "Direct Physical Loss" Requirement In Homeowners Policy

A California appellate court ruled that policyholders were not entitled to coverage under a homeowners policy for the loss of compromised embryos based on a mechanical failure of a cryogenic storage tank. *Wong v. Stillwater Ins. Co.*, 2023 Cal. App. LEXIS 496 (Cal. App. 1st Dist. July 5, 2023). (Click here for full article)

Simpson Thacher News

Click here to learn more about the Firm's insurance-related honors, publications and speaking engagements.

Eleventh Circuit Declines To Recognize Insurers' Right To Reimbursement Of Defense Costs Stemming From Reservation Of Rights

HOLDING

The Eleventh Circuit ruled that insurers were not entitled to recoup their defense costs when the insurers had no duty to defend an underlying lawsuit against the insureds, notwithstanding a reservation of rights letter that included a right to reimbursement acknowledged by the policyholders. *Continental Cas. Co. v. Winder Labs., LLC*, 73 F.4th 934 (11th Cir. 2023).

BACKGROUND

A lawsuit against the policyholder alleged false and misleading advertising of a pharmaceutical product. The insurance policies at issue did not contain language conferring a right to reimbursement of defense costs and did not specify whether the insurer could select defense counsel. The insurers agreed to defend the suit subject to a reservation of rights, which included a provision that stated: "VFI specifically reserves its right to seek reimbursement of defense costs incurred on [the insureds'] behalf for all claims which are not potentially covered by the VFI Policy." The policyholder signed and returned an "Acknowledgement of Defense under a Reservation of Rights."

While the underlying action was pending, the insurers sought a declaratory judgment that they had no duty to defend or indemnify, and that they were entitled to reimbursement of defense costs. A Georgia district court agreed only with respect to the absence of a duty to defend, concluding that the underlying lawsuit fell within a "failure to conform" exclusion. Thereafter, the insurers stopped paying defense costs and sought to recoup costs previously incurred on behalf of the insureds. The district court ruled in favor of the policyholder on this issue, finding that the reservation of rights letter did not entitle the insurers to recoup their defense costs. The Eleventh Circuit affirmed.

DECISION

The question of whether an insurer may seek reimbursement of defense costs pursuant to statements in a reservation of rights, where the insurance contract is silent on the issue, is a matter of first impression under Georgia law. The Eleventh Circuit predicted that the Georgia Supreme Court would not recognize such a right.

The Eleventh Circuit rejected three arguments advanced by the insurers in support of their claim for reimbursement: (1) the reservation of rights letter created a new contract because the insureds were provided a defense and allowed to choose their own defense counsel, (2) the insureds were unjustly enriched because they retained the benefit of a defense to which they were not entitled, and (3) under Georgia law, an insurer can recoup defense costs when such a right is provided for in a reservation of rights letter, but not the parties' operative insurance contract.

First, the court held that the reservation of rights, which included a reimbursement provision, did not create a new binding contract between the parties, notwithstanding the policyholder's acknowledgment of its terms. The court explained that the contractual requirement of consideration was absent, since the reservation of rights did not provide any additional benefits, as the insurance policies, at least initially, required the insurers to defend the insureds in the underlying lawsuit.

Second, the court rejected the insurers' contention that the policyholders were unjustly enriched by receiving the benefit of a defense to which they were not entitled. The court

explained that the unjust enrichment argument failed both because there was a written contract (the policy) and because there was nothing "unjust" about requiring the insurers to fulfill their contractual defense obligations.

Finally, the court ruled that the overall "structure of Georgia's insurance law" mitigated against finding a right of reimbursement absent a contractual provision in the insurance policy. In particular, the court emphasized the broad duty to defend and the insurer's ongoing defense obligations until a court rules otherwise. The court stated: "we have concluded that the insurers *no longer* have a duty to defend . . . but that does not mean that the insurers *never had* a duty to defend at earlier stages of the case."

COMMENTS

There is no judicial consensus across jurisdictions as to whether an insurer is entitled to recoup defense costs pursuant to a provision in a reservation of rights where there has been a subsequent judicial ruling that the insurer has no duty to defend. As the Eleventh Circuit observed, pro-recoupment cases have previously been viewed as the majority position, but the more recent trend "appears to be in more-or-less equipose, with several current cases favoring a 'no recoupment' rule." Some pro-recoupment decisions have held that an express statement in a reservation of rights, if unopposed or acknowledged by the insured, constitutes a quasi-contract regarding reimbursement. In still other cases, courts have ruled that a reservation of rights is sufficient even without the insured's express consent.

Fifth Circuit Rules That General Liability Insurers Have No Duty To Defend Shareholder Suit Against Executives Arising Out Of Product Recall

HOLDING

The Fifth Circuit affirmed a Texas district court decision granting insurers' summary judgment motion, ruling that general liability policies did not cover a shareholder suit arising out of a recall of the policyholder's product. *Discover Prop. & Cas. Ins. Co. v. Blue Bell Creameries USA*, 2023 U.S. App. LEXIS 17518 (5th Cir. July 11, 2023).

BACKGROUND

Blue Bell shut down its factories and issued a nationwide recall of its products following a listeria outbreak. Thereafter, shareholders filed a lawsuit against the company's directors and officers, alleging breach of fiduciary duties arising from those events and the resulting financial losses. In particular, the complaint alleged that executives knew about the likely presence of listeria contamination at manufacturing plants, yet continued to manufacture and distribute products in disregard of known risks. Blue Bell's general liability insurers sought a declaration that they had no duty to defend or indemnify the underlying suit. A Texas district court granted the insurers' summary judgment motion and the Fifth Circuit affirmed.

DECISION

The Fifth Circuit rejected the district court's conclusion that the directors and officers were not additional insureds under the policies. The relevant provision stated that directors and officers were insureds "only with respect to their duties as officers or directors." The district court had reasoned that because the underlying suit alleged violation of fiduciary duties, it necessarily followed that the executives were not acting within the scope of their duties (and therefore not additional insureds under the policies). The Fifth Circuit disagreed, reasoning that even if executives had breached their fiduciary duties, they were still acting within their roles as directors or officers. In particular, the Fifth Circuit explained that the

complaint did not allege that the executives took action that was "outside the scope of 'managing and operating the ice cream company.'"

Nonetheless, the Fifth Circuit held that coverage was unavailable for two independent reasons. First, the court held that the underlying suit did not allege an "occurrence," defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The court explained that all underlying claims alleged a knowing disregard of a contamination risk and a willful failure to exercise care, both of which constitute intentional or knowing conduct. Additionally, the court emphasized that the complaint alleged harm that was foreseeable or reasonably anticipated, given the "increasingly frequent and continuing positive presumptive test results for Listeria."

Second, the Fifth Circuit ruled that the shareholder suit did not seek "damages because of bodily injury" and instead sought to recover only "financial harm." Blue Bell argued that the complaint alleged damages "because of bodily injury" because the damages contemplated by the shareholder suit were "factually attributable to bodily injuries suffered by Blue Bell customers." The Fifth Circuit rejected this assertion. Addressing this matter of first impression under Texas law, the Fifth Circuit concluded that the shareholder suit sought damages to compensate for Blue Bell's economic loss arising from the executives' alleged breach of fiduciary duties – not for damages on behalf of customers who may have suffered physical harm due to the listeria outbreak.

COMMENTS

The Fifth Circuit's ruling suggests directors and officers cannot rely on general liability insurance to provide coverage in suits alleging intentional or knowing breaches of fiduciary duties. Moreover, the decision supports the principle that "damages because of bodily injury" requires more than a mere "tenuous connection" between alleged bodily injury actually sustained by an individual and the damages sought in the underlying complaint.

The court expressly distinguished *Cincinnati Ins. Co. v. H.D. Smith L.L.C.*, 829 F.3d 771 (7th Cir. 2016), in which the Seventh Circuit ruled that a general liability insurer had a duty to defend opioid-related claims brought by state entities against a pharmaceutical distributor. There, the Seventh Circuit concluded that a complaint seeking damages arising from the opioid epidemic alleged damages "because of bodily injury." However, as Fifth Circuit noted, the policy in *Cincinnati* included a provision stating that "[d]amages because of bodily injury include damages claimed by any person or organization for care, loss of services or death resulting at any time from the bodily injury." The Fifth Circuit explained that the costs of combating the opioid epidemic included increased medical "care," whereas here, there was no "colorable argument" that the shareholder suits sought damages for any kind of medical or related "care."

Overruling Precedent, Wisconsin Supreme Court Rejects Use Of "Integrated Systems Analysis" To Determine Whether Property Damage Is Alleged For Purposes of General Liability Coverage

HOLDING

The Wisconsin Supreme Court ruled that courts should not employ an "integrated system analysis" in evaluating whether an underlying claim alleges property damage for purposes of determining an initial grant of coverage under a general liability policy, overruling prior Wisconsin precedent. *5 Walworth, LLC v. Engerman Contracting, Inc.*, 408 Wis.2d 39 (Wis. June 20, 2023).

BACKGROUND

A property owner sought damages allegedly caused by the deficient construction of a swimming pool complex. The pool cracked, causing water to leak and requiring the pool complex to be demolished and replaced. The property owner sued its general contractor, a concrete subcontractor and those entities' general liability insurers.

The insurers argued that there was no "property damage" caused by an "occurrence" under the policies. The general contractor's insurers argued that faulty workmanship does not constitute an "occurrence." The concrete supplier's insurer took its defense a step further and claimed the allegedly defective concrete was part of an integrated system, and therefore that there was no damage to "other property"—a prerequisite to coverage under *Wisconsin Pharmacal Co. v. Nebraska Cultures of California, Inc.*, 367 Wis.2d 221 (2016).

In *Pharamacal*, the Wisconsin Supreme Court enlisted the integrated systems rule, derived from tort law, to determine whether there was "property damage" for insurance coverage purposes. The integrated systems rule asks whether the product is part of an integrated whole such that any damage can be ascribed only to the product itself, rather than to other property. The concrete supplier's insurer alleged that the integrated systems theory precluded insurance coverage not only to the product (here, the pool) but to the integrated system (the entire pool complex).

The lower court granted the insurers' motions for summary judgment and an intermediate appellate court reversed. The Wisconsin Supreme Court affirmed the appellate court decision.

DECISION

The Wisconsin Supreme Court rejected the insurers' arguments. Preliminarily, the court reaffirmed the basic principle that "faulty workmanship is not an occurrence, but faulty workmanship can lead to an occurrence." Here, because the faulty workmanship caused the pool to crack and leak, which in turn damaged the surrounding soil, the court concluded that "property damage" to the soil amounted to an "occurrence."

The court then turned to the insurers' integrated systems analysis defense and concluded that it does not apply to insurance coverage disputes. In overruling the relevant portion of *Pharmacal,* the court explained that utilizing a tort law analysis to determine coverage obligations "runs headlong into the fundamental principle . . . that policy interpretation should focus on the language of the insurance policy." The definition of "property damage" in the operative policies made no mention of an "other property" requirement as described in the integrated systems analysis. Thus, the court reasoned, damage to "other property" is not relevant to the initial determination of whether there is "property damage" caused by faulty workmanship.

With those clarifications, the court concluded that a jury could find that the underlying claims alleged "property damage" caused by an "occurrence." The court explained that the record suggested that faulty workmanship resulted in cracks in the pool wall, which worsened over time, and in turn caused damage to surrounding property – facts that could constitute unexpected and unforeseen events, as well as physical injury to tangible property.

COMMENTS

The court's ruling clarified that faulty workmanship may result in an "occurrence" if it causes consequent, accidental property damage. This is so despite the principle that faulty workmanship itself is not an "occurrence" under Wisconsin law.

The court's decision is also significant in its holding that tort principles should not displace policy language in determining an insurer's defense and indemnity obligations. Aside from rejecting the "integrated systems analysis," in the context of an insurance coverage determination, the court also expressly noted that the economic loss doctrine, which "confines contracting parties to contract rather than tort remedies for recovery of purely economic losses associated with the contract relationship," should not be used to determine whether a general liability insurer owes coverage.

Missouri Court Rules That Policyholder's Failure To Provide Notice Until After Underlying Verdict Did Not Establish Prejudice As A Matter of Law

HOLDING

A Missouri federal district court denied an insurer's summary judgment motion seeking to establish that it had no duty to indemnify, finding that while the policyholder's late notice was unreasonable, the insurer did not establish prejudice as a matter of law. *New Prime, Inc. v. Federal Ins. Co.*, 2023 U.S. Dist. LEXIS 123307, (W.D. Mo. July 18, 2023).

BACKGROUND

Chubb Insurance Company provided coverage to New Prime, excess to a self-insured retention of $3 million. The policy required notice "as soon as practicable of any occurrence or offense that may result in a claim" and specified that if a claim does not reasonably appear to involve the policy, but "later develops into a claim or loss to which this insurance applies, the failure to report it . . . will not violate this condition, provided the insured gives us immediate notice as soon as the insured is aware that that this insurance may apply."

During the policy period, a New Prime employee allegedly drove into another vehicle, resulting in injuries to the car occupants. In ensuing litigation, the injured claimants sought "monetary relief over $200,000 but not more than $1,000,000" and made numerous settlement demands, some of which were less than the self-insured retention but one of which was $6 million. The case proceeded to trial and a jury awarded the claimants $12.45 million in damages. Following the verdict, New Prime notified Chubb of the suit.

DECISION

The court ruled that New Prime's notice to Chubb was unreasonable as a matter of law because the $6 million settlement demand "clearly implicated the notice provision." Notwithstanding this ruling, the court held that Chubb did not establish prejudice as a matter of law. In particular, the court explained that while Chubb presented deposition testimony that it was denied the opportunity to investigate claims, participate in the defense of the underlying action and settlement negotiations, or retain counsel in the underlying suit, such statements amounted to "bare conclusions" of prejudice, insufficient to establish prejudice as a matter of law.

COMMENTS

While the court's decision leaves open the possibility of a finding of prejudice by the finder of fact, it appears to set a bar for establishing prejudice under Missouri law that requires particularized factual evidence of precisely how an insurer was harmed by the delay in notice, above and beyond an insurer's inability to participate in the underlying defense or settlement negotiations. Courts in other jurisdictions have found prejudice as a matter of law where an insurer is not notified of an underlying claim until after judgment has been issued against the policyholder.

Illinois Appellate Court Says That Trial Court Erred In Dismissing Water Contamination Coverage Suit, Notwithstanding Pollution And Lead Policy Exclusions

HOLDING

Reversing a trial court decision, an Illinois appellate court ruled that underlying bodily injury and property damage claims arising out of contaminated water were not excluded from coverage as a matter of law. *LM Ins. Corp. v. City of Sycamore*, 2023 IL App(2d) 220234 (Ill. App. Ct. June 8, 2023).

BACKGROUND

Residents filed a putative class action against the City of Sycamore, alleging that its failure to properly maintain water mains resulted in unsafe drinking water and damage to equipment in homes. According to the complaint, water was contaminated with iron, lead and bacteria as a result of decaying pipes. Liberty, Sycamore's general liability insurer, sought a declaration of no coverage. Liberty argued that Sycamore's ongoing failure to maintain the pipes was not a covered "occurrence" and that in any event, coverage was barred by pollution and lead exclusions. A trial court agreed and ruled in favor of Liberty as a matter of law. The appellate court reversed and remanded the matter for further proceedings.

DECISION

First, the court rejected Liberty's assertion that the policies' pollution exclusion precluded coverage. The court framed the dispositive question as whether the iron, lead and bacteria allegedly distributed to residents constituted "traditional environmental pollution" or "pollution harms as traditionally understood." Under Illinois precedent, the determination of whether an event falls within "traditional environmental pollution" turns primarily on whether the hazardous material is confined to the insured's premises (such as the release of carbon monoxide contained inside a building), or conversely, dispersed into the land, atmosphere or water (such as the contamination of ground water by toxic chemicals that escaped from a manufacturing plant). Applying this framework, the appellate court concluded that the underlying claims did not allege a "textbook" or "unquestionable" example of traditional environmental pollution. The court reasoned that there was no alleged release, discharge or escape of a pollutant into the ground that caused the water to become contaminated; rather the water did not become contaminated until it was already in Sycamore's water pipes. Additionally, the court noted a lack of case law holding that degrading water mains that result in contaminated water constitute traditional environmental pollution.

Second, the court held that the policies' lead exclusion, which applied to any claims "arising from" lead, did not relieve the insurer of its duty to defend or indemnify as a matter of law because the underlying allegations attributed injury and damage to iron and bacteria, in addition to lead.

Finally, the appellate court declined to affirm the trial court's holding that there was no alleged "occurrence," defined by the policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The appellate court explained that the occurrence question focuses on whether the insured expected or intended the injury, not whether the initial injury-causing actions were performed intentionally. The court rejected Liberty's contention that Sycamore's conduct constituted a "nonoccurrence" because the natural and expected consequences of Sycamore's decision to neglect maintenance on its water mains for decades were deterioration and resulting harm to residents.

COMMENTS

This decision applies a narrow reading of pollution exclusions under Illinois law. The alleged contamination of Sycamore's water supply with known pollutants appears to fall within the scope of the plain terms of the pollution exclusion ("discharge, dispersal, seepage, migration, release or escape of 'pollutants'") notwithstanding the origin of the harm from pipe deterioration as opposed to leakage into soil.

Lack Of Adjudication Of Coverage Claim Does Not Render Third-Party Bad Faith Claim Against Insurer Premature, Says Kentucky Supreme Court

HOLDING

The Kentucky Supreme Court ruled that an intermediate appellate court erred in holding that the lack of final adjudication as to policy coverage rendered a third-party bad faith claim premature. *Estate of Lahoma Salyer Bramble v. Greenwich Ins. Co.*, 2023 Ky. LEXIS 159 (Ky. June 15, 2023).

BACKGROUND

Claimants sued Carty, a drilling company, alleging trespass, conversion of natural gas and property damage caused by drilling activities. Greenwich Insurance defended Carty under a reservation of rights and ultimately offered to contribute $20,000 to an agreed judgment of $628,000, which Carty was to pay in monthly installments. In negotiating this payment, Carty's appointed counsel advised the claimants that Carty would be released in favor of Greenwich Insurance. When Carty defaulted on payment, the claimants sought payment from Greenwich Insurance, and brought suit alleging common law bad faith and statutory violations. In that matter, the parties cross-moved for summary judgment to whether the policy covered the underlying claims. A trial court ruled in the claimants' favor on the coverage issue. Greenwich Insurance appealed, but the intermediate appellate court dismissed the appeal as interlocutory. As such, no final determination was made as to coverage under Greenwich Insurance's policies.

On remand, litigation as to the bad faith claims continued. A jury found in favor of the claimants, awarding both compensatory and punitive damages. Greenwich Insurance appealed, and the intermediate appellate court ruled that the trial court improperly permitted the claimants to pursue bad faith claims because coverage under the policies had not yet been conclusively established. The Kentucky Supreme Court reversed.

DECISION

Addressing this matter of first impression under Kentucky law, the Kentucky Supreme Court ruled that a third party may pursue a bad faith claim against an insurer even if a final coverage determination is not yet made. The court emphasized that a finding of bad faith is dependent upon a preliminary finding of coverage under the policy, but clarified that coverage need not "be finally and conclusively determined prior to a third party bringing its bad faith claim."

COMMENTS

Kentucky, unlike many other jurisdictions, allows a third party to assert a bad faith claim against a tortfeasor's insurer. However, the decision leaves intact two well-established rules of law: (1) in order to ultimately prevail on a third-party bad faith claim, the claimant bears the burden of establishing that the policy covers the underlying liability; and (2) a tort victim does not have a direct contractual cause of action against a tortfeasor's insurance company without first obtaining judgment against the insured.

California Appellate Court Rules That Compromised Frozen Embryos Do Not Satisfy "Direct Physical Loss" Requirement In Homeowners Policy

HOLDING

A California appellate court ruled that policyholders were not entitled to coverage under a homeowners policy for the loss of compromised embryos based on a mechanical failure of a cryogenic storage tank. *Wong v. Stillwater Ins. Co.*, 2023 Cal. App. LEXIS 496 (Cal. App. 1st Dist. July 5, 2023).

BACKGROUND

After completing in vitro fertilization in 2014, the Wongs stored embryos at a fertility center that utilized cryogenic storage tanks. In 2018, one of the tanks failed to maintain the appropriate temperature, and according to the parties' joint stipulation of facts, some or possibly all of the embryos partially or totally thawed. The Wongs filed a claim under their homeowners policy, which the insurer denied. In ensuing litigation, a California trial court granted the insurer's motion for summary judgment, ruling that there was no "direct physical loss" and that none of the listed perils occurred. The appellate court affirmed.

DECISION

The appellate court explained that direct physical loss contemplates "a distinct, demonstrable physical alteration" of property. The court ruled that a statement by the Wongs' fertility physician that "there is no way to know" whether the embryos were damaged was fatal to homeowner's assertion that they incurred direct physical loss. In so ruling, the court emphasized that deeming the embryos "worthless" was "not a substitute for evidence that any of the embryos had actually undergone a physical change." Additionally, the "mere possibility" of physical damage was insufficient to create a triable issue of fact.

The court further held that there was no factual evidence of any of the specifically enumerated perils in the policy, a prerequisite to coverage. The Wongs argued that the loss was caused by an "explosion" (one of the covered perils) because their expert witness utilized the terms implosion and explosion in his testimony regarding the tank failure. The court ruled that this evidence was not only inadmissible on various procedural grounds, but also substantively deficient in creating an issue of fact as to an "explosion" for insurance coverage purposes. In particular, the court explained that the term explosion indicates "a violent expansion or bursting that is accompanied by noise and is caused by a sudden release of energy," which was not alleged here. Additionally, the court noted that the witness's use of the term "explosion" was equivocal ("you have that type of explosion, as we are calling it") and in actuality related to an implosion of vacuum space. The court stated: "Such 'opinion' was not 'explosion' as the insurance cases would have it, as understood by the ordinary man, not the scientist."

COMMENTS

Courts are frequently called upon to decide whether the inability to use property for its intended purpose in various contexts satisfies the "direct physical loss" requirement of first-party insurance policies. Most notably, the wave of COVID-19-related coverage litigation resulted in an overwhelming consensus among courts that a property owner's inability to use property due to actual or potential viral contamination did not constitute direct physical loss. The *Wong* decision reaffirms the well-established principle that an "actual change in insured property" is necessary in order to implicate coverage.

Simpson Thacher News

Simpson Thacher has been recognized by *The New York Law Journal* as its 2023 "Litigation Department of the Year" in the category of Insurance. The Firm will be honored on October 5 at the New York Legal Awards in New York City. *The New York Law Journal* previously named Simpson Thacher its "Litigation Department of the Year" in the Insurance category in 2020 and 2018.

Simpson Thacher has once again been ranked among the leading law firms in the United States in *The Legal 500* United States 2023. The Firm was recognized in 47 practice areas, with a total of 23 rankings in the top tier, including "Insurance: Advice to Insurers."

Chet Kronenberg has been named among the *Los Angeles Business Journal*'s 2023 "Leaders of Influence: Litigators & Trial Attorneys," honoring the top litigators in the Los Angeles area. In addition, Chet participated as a panelists in a webinar produced by *Strafford Publication* titled, "Establishing and Challenging Exhaustion of Insurance Policies: Recurring Issues, Factors to Consider, Below Limits Settlements." The webinar included discussion of exhaustion concepts, challenges to exhaustion, allocation issues and evidentiary matters.

Josh Polster and Charlotte McCary authored an article titled "4th Circ. Ruling Continues Trend of Insurer Bump-Up Wins," published in *Law360*. The article discusses how courts applying bump-up exclusions must grapple with new coverage questions as forms of corporate transactions continue to evolve and the recent ruling in *Towers Watson & Co. v. National Union Fire Insurance Co.*, in which the Fourth Circuit held that a reverse triangular merger was an "acquisition" within the meaning of a bump-up exclusion.

Lynn Neuner was honored as a "Notable Women in Law" for 2023 by *Crain's New York Business*. The awards honor outstanding women lawyers who were selected not only for their skills and accomplishments in the their practice areas, but also for their leadership and impact across the legal profession. Lynn Neuner was also named among this year's "Top 250 Women in Litigation" by Euromoney's *Benchmark Litigation*. The feature honors the accomplishments of leading women litigators in the United States who have participated in some of the most impactful litigation matters in recent history and have earned the respect of their peers and clients. In addition to being named to the "Top 250 Women in Litigation" list, Lynn was also recognized among the "Top 10 Women in Litigation" in the United States.

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Simpson Thacher has been an international leader in the practice of insurance and reinsurance law for more than a quarter of a century. Our insurance litigation team practices worldwide.

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