SIMPSON THACHER

INSURANCE LAW ALERT

APRIL 2012

This Alert addresses decisions relating to an insurer's late notice defense, the scope of absolute pollution and contractual liability exclusions, and the definition of "occurrence." We also discuss rulings regarding a broker's disclosure obligations and the right of a subrogated insurer to enforce an arbitration clause. In addition, we summarize cases relating to attorney-client privilege and work-product protection, and the availability of consequential damages for a breach of the duty to defend. Finally, we highlight a reinsurance ruling and a recent U.K. Supreme Court trigger decision. Please "click through" to view articles of interest.

- ***Overruling Precedent, Connecticut Supreme Court Rules That Insurer Bears Burden of Establishing Prejudice from Late Notice***

  The Connecticut Supreme Court ruled that an insurer seeking to deny coverage on the basis of late notice bears the burden of proving that it has been prejudiced by the policyholder's failure to provide timely notice. *Arrowood Indem. Co. v. King*, 2012 WL 896379 (Conn. Mar. 27, 2012). *Click here for full article*

- ***New York Appellate Court Upholds Broker Disclosure Regulations***

  A New York appellate court upheld a New York State Insurance Department regulation that requires licensed insurance agents and brokers to disclose to prospective policyholders the incentive compensation. *Sullivan Financial Grp., Inc. v. Wrynn*, 2012 WL 739362 (N.Y. App. Div. 3d Dep't Mar. 8, 2012). *Click here for full article*

- ***Missouri Supreme Court Outlines Scope of Broker's Duties and Finds No Duty to Disclose Contingent Commissions***

  The Missouri Supreme Court held that an insurance broker is not required to disclose its receipt of contingent commissions from insurers. *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 2012 WL 724767 (Mo. Mar. 6, 2012). *Click here for full article*

- ***Ninth Circuit Allows Subrogated Insurer to Enforce Arbitration Clause in Contract between Policyholder and Third Party***

  The Ninth Circuit affirmed a district court decision allowing a subrogated insurer to enforce an arbitration clause, even though the insurer was not a signatory to the contract. *Allianz Global Risk U.S. Ins. Co. v. Gen. Elec. Co.*, 2012 WL 689957 (9th Cir. Mar. 5, 2012). *Click here for full article*

- ***Pollution Exclusion Precludes Coverage for Property Damage Caused by Bat Guano, Says Wisconsin Supreme Court***

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  Applying Illinois law, the Seventh Circuit held that a pollution exclusion relieved two general liability insurers of their duty to defend claims based on the contamination of well water from toxic dry cleaning solvents. *Scottsdale Indem. Co. v. Village of Crestwood*, 2012 WL 769730 (7th Cir. Mar. 12, 2012). *Click here for full article*

- ***Fourth Circuit Certifies Drywall Coverage Questions to Virginia Supreme Court***

  The Fourth Circuit certified to the Virginia Supreme Court a question relating to whether several exclusions in a homeowner's policy preclude coverage for claims arising out of the installation of defective drywall. *Travco Ins. Co. v. Ward*, 2012 WL 666230 (4th Cir. Mar. 1, 2012). *Click here for full article*

- ***California Court Rules That Breach of Duty to Defend May Result in Consequential Damages in Excess of Policy Limits, Even Absent Bad Faith***

  A federal court in California held that damages for a breach of the duty to defend are not limited by policy limits, even where the insurer's breach was not in bad faith. *Carlson v. Century Surety Co.*, 2012 WL 601707 (N.D. Cal. Feb. 23, 2012). *Click here for full article*

- ***Eighth Circuit Says That Breach of Contract is Not an "Occurrence" Under General Liability Policies***

  The Eighth Circuit held that a breach of contract claim is not property damage caused by an "occurrence." Therefore, the insurers had no duty to defend. *Secura Ins. v. Horizon Plumbing, Inc.*, 670 F.3d 857 (8th Cir. 2012). *Click here for full article*

- ***Fifth Circuit Finds No Coverage for Contractually-Assumed Liabilities***

  The Fifth Circuit ruled that an insurer had no duty to defend a policyholder for liabilities assumed by contract. *Colony Nat'l Ins. Co. v. Manitex, L.L.C.*, 2012 WL 555524 (5th Cir. Feb. 20, 2012). *Click here for full article*

- ***UK's Highest Court Endorses Exposure Trigger for Asbestos Claims***

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- ***New York Court Requires Reinsurer to Indemnify Excess Insurer's Settlement***

  A federal court in New York granted judgment on the pleadings to Lexington Insurance Company, holding that Lexington's excess coverage obligations, and thus its reinsurer's indemnification obligations, were not contingent upon exhaustion of the underlying primary policy. *Lexington Ins. Co. v. Tokio Marine & Nichido Fire Ins. Co. Ltd.*, 11 Civ. 391 (S.D.N.Y. Mar. 28, 2012). ***Click here for full article***

- ***Ohio Appellate Court Issues Mixed Evidentiary Ruling on Internal Law Firm Documents and Communications***

  An Ohio appellate court held that attorney-client privilege did not apply to materials exchanged exclusively between counsel, without client involvement, and that work-product protection depended on a showing of "good cause," which required an *in camera* inspection of the contested documents. *Sherwin-Williams Co. v. Motley Rice LLC*, 2012 WL 682747 (Ohio Ct. App. Mar. 1, 2012). ***Click here for full article***

- ***New York Court of Appeals Reinstates Dismissal of Complaint Against Equitas***

  The New York Court of Appeals reinstated the dismissal of a lawsuit brought by Global Reinsurance Corp. against Equitas Ltd. alleging violations under the Donnelly Act, New York's antitrust statute. *Global Reinsurance Corp. v. Equitas Ltd.*, 2012 WL 995268 (N.Y. Mar. 27, 2012). ***Click here for full article***

- ***STB News Alert***

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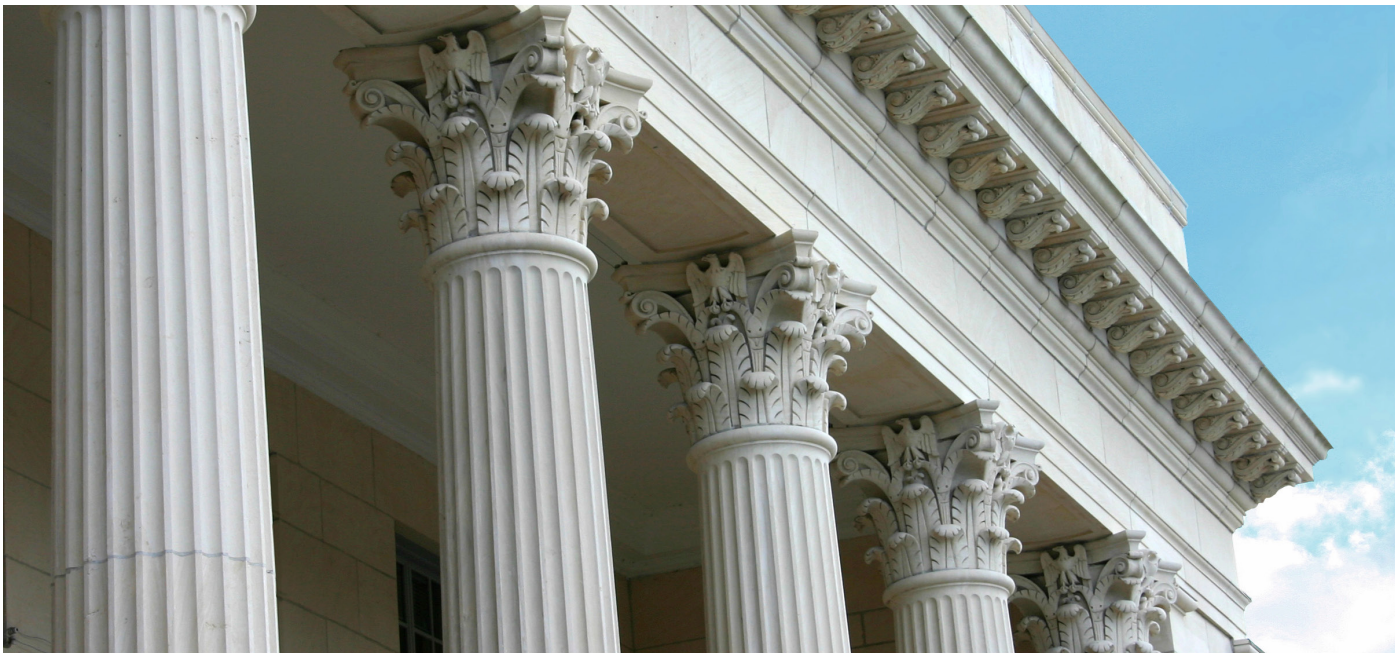

NOTICE ALERT:

Overruling Precedent, Connecticut Supreme Court Rules That Insurer Bears Burden of Establishing Prejudice from Late Notice

Answering a question certified by the Second Circuit, the Connecticut Supreme Court ruled that an insurer seeking to deny coverage on the basis of late notice bears the burden of proving that it has been prejudiced by the policyholder's failure to provide timely notice. *Arrowood Indem. Co. v. King*, 2012 WL 896379 (Conn. Mar. 27, 2012).

Under Connecticut law, an affirmative defense based on untimely notice requires two conditions: (1) an unexcused, unreasonable delay in providing notice to the insurer, and (2) resulting material prejudice to the insurer. Under previous Connecticut precedent, the policyholder bore the burden of disproving prejudice arising from late notice. In *Arrowood*, however, the court expressly overruled its decision in *Aetna Casualty & Surety Co. v. Murphy*, 206 Conn. 409, 538 A.2d 219 (1988), to the extent that it allocated the burden to the insured to disprove prejudice. Although not all states require a showing of prejudice for a late notice defense, for those that do, many place the burden on the insurer to establish the existence of prejudice.

BROKER ALERTS:

New York Appellate Court Upholds Broker Disclosure Regulations

A group of insurance producers and insurance-related associations sought to annul a New York State Insurance Department regulation that requires licensed insurance agents and brokers to disclose to prospective policyholders the incentive compensation that intermediaries would receive based on the sale of insurance. A New York trial court denied the petition, finding that the regulation is valid. The New York Appellate Division, Third Department affirmed. *Sullivan Financial Grp., Inc. v. Wrynn*, 2012 WL 739362 (N.Y. App. Div. 3d Dep't Mar. 8, 2012).

The "Producer Compensation Transparency" regulation, issued in January 2010, requires insurance intermediaries to disclose their compensation to potential insurance consumers, and if requested, to provide detailed information about the nature of the expected compensation. Prior to the effective date of the legislation, New York common law did not require such disclosure. *See People v. Wells Fargo Ins. Servs., Inc.*, 2011 WL 534198 (N.Y. Feb. 17, 2011) (discussed in March 2011 Alert). In the present case, the petitioners initiated an Article 78 proceeding, arguing that the Superintendent of Insurance exceeded the scope of his authority in issuing the regulation. The trial court and

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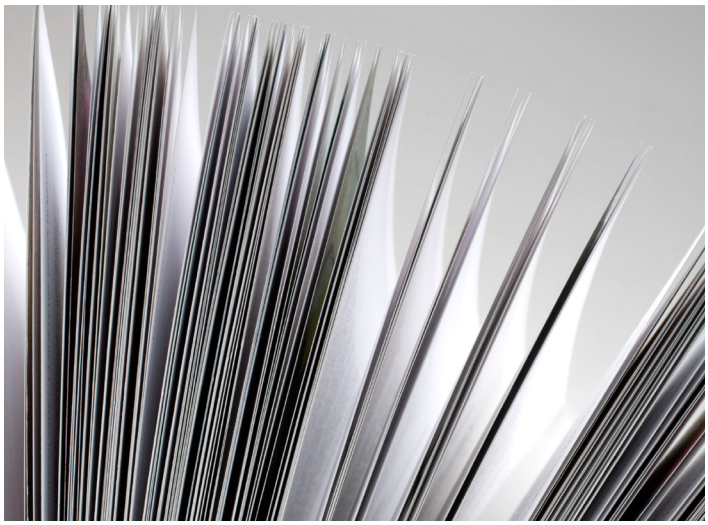
appellate court disagreed. In upholding the legislation, the appellate court cited to the Superintendent's broad power to implement insurance-related policy, and to the rational basis for the regulation in light of previous alleged bid-rigging schemes involving insurers and intermediaries in New York.

Missouri Supreme Court Outlines Scope of Broker's Duties and Finds No Duty to Disclose Contingent Commissions

The Missouri Supreme Court held that an insurance broker is not required to disclose its receipt of contingent commissions from insurers. *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 2012 WL 724767 (Mo. Mar. 6, 2012).

Emerson Electric Company alleged that its insurance broker, Marsh & McLennan Companies, violated a fiduciary duty of loyalty by failing to disclose contingent commissions received from insurers in return for steering Emerson's business to them. Emerson also claimed that Marsh violated its duties by failing to obtain the lowest cost insurance for Emerson, and by depositing Emerson's premiums into an interest-bearing account before forwarding them to insurers. The court rejected all of these contentions.

Under Missouri law, a broker acting on behalf of an insured has a fiduciary duty to act with reasonable care, skill and diligence, which inherently includes a duty of loyalty. However, the court held that this duty is limited in scope, and does not encompass an obligation to obtain the lowest cost insurance available—a burden that would effectively transform brokers into "guardians of insureds and require them to have unreasonable knowledge of their insured's needs and of the marketplace." Similarly, the court rejected Emerson's argument that Marsh's practice of depositing premiums into an interest-bearing account constituted a violation of the duty of loyalty. State



statutory law governing broker premium collection does not prohibit the earning of interest, and the court declined to create such a common law prohibition.

Turning to the issue of contingent commissions, the court held that because state statutory law expressly allows a broker to obtain commissions from insurers with which it places insurance, and does not distinguish between contingent and other commissions, Marsh's receipt of contingent commissions was lawful. *See* Mo. Rev. Stat. 375.116. The court further held that Marsh was under no common law duty to disclose its receipt of contingent commissions. The court reasoned that because commissions were statutorily authorized, Marsh had no duty to disclose its receipt of contingent commissions "any more than it would have a duty to disclose other statutorily authorized aspects of its financial arrangements."

Although the *Emerson* court declined to impose various duties on brokers as a matter of law, the court noted that a broker may assume additional duties by contract or course of conduct. The court remanded the matter to the trial court for a determination of, among other things, whether any written or oral agreements imposed additional duties on Marsh, or whether certain expectations arose through the parties' course of dealing.

ARBITRATION ALERT:

Ninth Circuit Allows Subrogated Insurer to Enforce Arbitration Clause in Contract between Policyholder and Third Party

The Ninth Circuit affirmed a district court decision allowing a subrogated insurer to enforce an arbitration clause, even though the insurer was not a signatory to the contract. *Allianz Global Risk U.S. Ins. Co. v. Gen. Elec. Co.*, 2012 WL 689957 (9th Cir. Mar. 5, 2012).

In the underlying breach of contract action, the Los Angeles Department of Water and Power ("LADWP") alleged that it purchased a defective turbine from General Electric. Allianz indemnified the LADWP for turbine repairs, and then sought to recover those amounts from General Electric. Because the sales contract between LADWP and General Electric contained an arbitration clause, Allianz moved to compel arbitration of the dispute. General Electric countered that Allianz could not enforce the arbitration clause because it was not a signatory to the sales contract. A California district court granted Allianz's motion, reasoning that General Electric was equitably estopped from refusing to arbitrate because the issues in Allianz's claim were intertwined with General Electric's obligations under the contract. The Ninth Circuit affirmed on different grounds.

The Ninth Circuit held that under the doctrine of equitable subrogation, Allianz stood in the shoes of the LADWP and was thus entitled to enforce its rights and remedies under the contract, including enforcement of the arbitration provision. It did not matter that Allianz was not a signatory to the sales contract because Allianz's subrogation claim did not require contractual privity. In other contexts, courts have issued conflicting rulings on whether, and under what circumstances, a non-signatory may enforce an arbitration clause. However, under the reasoning set forth in *Allianz*, it appears that the non-signatory status of an insurer does not preclude enforcement of an arbitration clause where the insurer is asserting rights pursuant to the doctrine of equitable subrogation.

POLLUTION EXCLUSION ALERTS:

Pollution Exclusion Precludes Coverage for Property Damage Caused by Bat Guano, Says Wisconsin Supreme Court

Reversing an appellate court decision, the Wisconsin Supreme Court ruled that a pollution exclusion in a homeowner's policy barred coverage for damage caused by the accumulation of bat guano and its corresponding odor. *Hirschhorn v. Auto-Owners Ins. Co.*, 2012 WL 695081 (Wis. Mar. 6, 2012). The court reasoned that bat guano fell unambiguously within the definition of "pollutants" and that the homeowner's alleged loss resulted from the "discharge, release, escape, seepage, migration or dispersal" of the odor and excrement. In so ruling, the court rejected the appellate court's finding that the exclusion was ambiguous and thus must be construed in favor of coverage.

Hirschhorn offers further support for application of the pollution exclusion in non-traditional environmental pollution contexts, particularly those involving the dispersal of odors, fumes or gases.

Seventh Circuit Affirms Enforcement of Pollution Exclusion to Contamination Claims

Applying Illinois law, the Seventh Circuit held that a pollution exclusion relieved two general liability insurers of their duty to defend claims based on the contamination of well water from toxic dry cleaning solvents. *Scottsdale Indem. Co. v. Village of Crestwood*, 2012 WL 769730 (7th Cir. Mar. 12, 2012). The court found that the solvent was a "contaminant" within the meaning of the policies and that the water wells were allegedly contaminated via the solvent's "dispersal" through the town's water main system. In so ruling, the court rejected the town's active-polluter argument, finding it irrelevant that the town had not originally introduced the contaminant into the soil. "The pollution exclusion would mean little if the insured were required to have been the original author of the pollution in order to be within the exclusion," the court observed. The court also rejected the town's argument that there was no "pollution" because the toxin levels in the town water supply were below the maximum level permitted by environmental regulations: "[a]ll that counts is that the suits are premised on a claim that the [toxin] caused injuries for which the plaintiffs are seeking damages, and that claim triggers the pollution exclusion," regardless of whether those claims might ultimately fail.

In other cases, Illinois courts have declined to apply pollution exclusions in non-traditional environmental contexts (*e.g.*, individualized injury in workplace or other confined settings). However, as *Village of Crestwood* demonstrates, the exclusion will negate an insurer's defense and indemnity obligations where, as here, the complaint alleges damages caused by the release of traditional pollutants.

DRYWALL ALERT:
Fourth Circuit Certifies Drywall Coverage Questions to Virginia Supreme Court

In our July/August 2010 Alert, we summarized a Virginia district court ruling holding that a homeowners policy did not provide coverage for drywall-related claims by virtue of exclusions for latent defects, defective materials, corrosion and pollution. *Travco Ins. Co. v. Ward*, 2010 WL 2222255 (E.D. Va. June 3, 2010). Numerous courts across jurisdictions have relied on *Travco* in denying coverage for drywall-related claims.

The policyholder appealed the ruling in *Travco*, arguing that the language in each of the exclusions is ambiguous and/or overly broad, and thus should have been interpreted in favor of coverage. Concluding that the issues raised were unresolved under Virginia law and of "exceptional importance for state insurers and insureds," the Fourth Circuit certified the following question to the Supreme Court of Virginia:

> For purposes of interpreting an "all risk" homeowners insurance policy, is any damage resulting from this drywall unambiguously excluded from coverage under the policy because it is loss caused by: (a) "mechanical breakdown, latent defect, inherent vice, or any quality in property that causes it to damage

itself"; (b) "faulty, inadequate, or defective materials"; (c) "rust or other corrosion"; or (d) "pollutants," where pollutant is defined as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste"?

Travco Ins. Co. v. Ward, 2012 WL 666230 (4th Cir. Mar. 1, 2012).

Bad Faith Alert:

California Court Rules That Breach of Duty to Defend May Result in Consequential Damages in Excess of Policy Limits, Even Absent Bad Faith

A federal court in California held that damages for a breach of the duty to defend are not limited by policy limits, even where the insurer's breach was not in bad faith. *Carlson v. Century Surety Co.*, 2012 WL 601707 (N.D. Cal. Feb. 23, 2012).

In this coverage dispute, the court determined that although Century breached its duty to defend a policyholder in an underlying action, the breach did not constitute "bad faith." The court explained that because Century's denial was not unreasonable under the circumstances, it did not constitute a breach of the covenant of good faith and fair dealing. The court granted summary judgment to Century on the issue of punitive damages, which, under California law, requires a showing of conduct that exceeds bad faith. Nonetheless, the court concluded that Century could be held liable for damages that exceeded the policy limits. (The underlying suit resulted in a default judgment of $3.3 million, whereas Century's policy limits were $500,000). The court reasoned that settlements or judgments in excess of policy limits are a "foreseeable outcome" of the breach of the duty to defend, and that a default judgment against a policyholder is a "proximate result" of an insurer's failure to defend. As such, the court concluded that such damages may be awarded as consequential contractual damages, even in the absence of tortious or bad faith conduct on the part of the insurer.

Despite this ruling of law, the court declined to impose upon Century the $3.3 million default judgment, finding that it arose from fraud and collusion between the policyholder and underlying plaintiff.

Coverage Alerts:

Eighth Circuit Says That Breach of Contract is Not an "Occurrence" Under General Liability Policies

Affirming a Missouri district court opinion, the Eighth Circuit held that a breach of contract claim did not constitute property damage caused by an "occurrence." Therefore, the court concluded, the insurers had no duty to defend. *Secura Ins. v. Horizon Plumbing, Inc.*, 670 F.3d 857 (8th Cir. 2012).

In the underlying construction defect case, a housing corporation filed a breach of contract claim against Weitz, the general contractor of the construction project. The claim alleged, among other things, that Weitz had failed to timely complete the project, to appropriately supervise the construction, and to correct deficient and defective plumbing work. Weitz sought defense and indemnity as an "additional insured" under several policies issued to the plumbing company that had performed the allegedly defective work. In ensuing coverage litigation, the district court granted summary judgment in favor of the insurers, finding that the breach of contract claim was not an "occurrence" giving rise to coverage under the policies. The Eighth Circuit affirmed.

Under Missouri law, "a lawsuit seeking damages

caused by breach of contract does not state an 'occurrence.'" The court explained that because the performance of a contract is within the insured party's control, its failure to perform "cannot be described as an undesigned or unexpected event." Therefore, even if a breach of contract claim is premised on allegations that the insured failed to perform certain repair work, it still constitutes an uncovered breach of contract claim, rather than a covered "occurrence."

This decision supports the well-established principle that general liability policies are not intended to protect business owners against risks that are the normal, predictable consequences of doing business.

Fifth Circuit Finds No Coverage for Contractually-Assumed Liabilities

Reversing a Texas district court decision, the Fifth Circuit ruled that an insurer had no duty to defend a policyholder for liabilities assumed by contract. *Colony Nat'l Ins. Co. v. Manitex, L.L.C.*, 2012 WL 555524 (5th Cir. Feb. 20, 2012).

JLG Industries, Inc. manufactured an industrial crane, which it sold to Powerscreen, USC, Inc. Under the sales contract, Powerscreen assumed JLG's liabilities associated with the crane. Powerscreen then sold the crane to Manitex, the policyholder in this case. Two workers who were injured during an alleged malfunctioning of the crane brought suit against JLG. Manitex defended JLG based on its perceived obligation to do so under its purchase agreement with Powerscreen. Manitex turned to Colony, its insurer, for coverage of the defense costs. On cross-motions for summary judgment, the Texas district court concluded that Colony had a duty to defend Manitex for the underlying claim. The district court agreed with Colony that the policy's "Contractual Liability" exclusion applied, but held that an exception to the exclusion restored coverage. The exception restored coverage for contractually-assumed liability where the liability was assumed in an "insured contract," defined as a contract under which the policyholder assumes "the tort liability of another party … that would be imposed by law in the absence of any contract or agreement."

The Fifth Circuit reversed, holding that only JLG had tort liability for the crane's alleged malfunction. The court explained that because the assumption of liabilities from JPL to Powerscreen and then to Manitex occurred strictly by contract, Manitex's liability would not be imposed by law in the absence of any contract or agreement. As such, the "insured contract" exception to the "Contractual Liability" exclusion did not apply. The appellate court also rejected the district court's finding of ambiguity in the policy and its corresponding interpretation of the relevant provisions in favor of coverage.

ASBESTOS ALERT:

UK's Highest Court Endorses Exposure Trigger for Asbestos Claims

The United Kingdom Supreme Court ruled that employers' liability policies were triggered when

individuals were exposed to asbestos. *Durham v. BAI (Run Off) Ltd.*, 2012 WL 1015812 (U.K. Mar. 28, 2012).

The long-running asbestos coverage litigation involved mesothelioma claims by employers and personal representatives of former employees against a group of employers' liability insurers. The insurers had taken the position that policies were triggered at the time that mesothelioma developed as a disease, which in many cases was outside the applicable policy periods. In contrast, the employers and representatives argued that the employees' exposure to asbestos triggered coverage under the policies. The high court held that the policy language supported an exposure-based trigger. In particular, the court reasoned that the policy terms "sustained" and "contracted" justified a trigger that focused on when the illness was caused or initiated, and found that the "weak" causal link of exposure was sufficient to trigger coverage. The decision, which overruled an appeals court ruling, clarified an undecided area of the law in the United Kingdom.

Reinsurance Alert:

New York Court Requires Reinsurer to Indemnify Excess Insurer's Settlement

A federal court in New York granted judgment on the pleadings to Lexington Insurance Company, holding that Lexington's excess coverage obligations, and thus its reinsurer's indemnification obligations, were not contingent upon exhaustion of the underlying primary policy. *Lexington Ins. Co. v. Tokio Marine & Nichido Fire Ins. Co. Ltd.*, 11 Civ. 391 (S.D.N.Y. Mar. 28, 2012).

Lexington, an excess insurer, sought indemnification for a below-limits settlement from its reinsurer. The reinsurer rejected the claim on the basis that the primary policy limits had not been exhausted at the

time of settlement, and thus that Lexington had no excess coverage obligations. The court disagreed. Applying New York law, the court held that "[a]n insured is entitled to coverage from an excess insurer even when the insured has not received payment from the primary insurer sufficient to exhaust the underlying primary limit, so long as the total loss exceeds the primary policy and ventures into the scope of the excess policy." However, the court noted that an excess insurer may require primary insurers to make full payment on underlying policies in order to trigger excess coverage, but that "such a condition would have to be unambiguously stated in the policy." Lexington was represented by Simpson Thacher partner Andrew S. Amer.

Privilege Alert:

Ohio Appellate Court Issues Mixed Evidentiary Ruling on Internal Law Firm Documents and Communications

In litigation arising from lead paint injuries, the Sherwin-Williams Company brought a motion to compel the production of various documents and communications in the possession of Motley Rice

LLC, a law firm representing the people of the state of Ohio in the action against Sherwin-Williams. Motley Rice refused to produce the materials, arguing that they were protected by attorney-client privilege and work-product protection. The trial court rejected these contentions and granted the motion to compel. The appellate court affirmed in part and reversed in part. *Sherwin-Williams Co. v. Motley Rice LLC*, 2012 WL 682747 (Ohio Ct. App. Mar. 1, 2012).

The trial court held that attorney-client privilege protects communications between a client and his/her attorney, not communications between attorneys at a law firm and/or communications between co-counsel at different law firms. Because the materials at issue were exclusively among attorneys (without client participation), the appellate court affirmed that the privilege did not apply.

The appellate court reached a different conclusion with respect to the work product doctrine. The trial court had concluded that Sherwin-Williams established the requisite "good cause" to overcome the work-product protection because the materials were deemed relevant and otherwise unavailable. The appellate court reversed this ruling, explaining that a finding of "good cause," absent an *in camera* review, constituted an abuse of discretion. Therefore, the appellate court remanded with instructions to the trial court to conduct an *in camera* review of the contested documents in order to evaluate "good cause."

Litigation Alert:

New York Court of Appeals Reinstates Dismissal of Complaint Against Equitas

The New York Court of Appeals reinstated the dismissal of a lawsuit brought by Global Reinsurance Corp. against Equitas Ltd. alleging violations under the Donnelly Act, New York's antitrust statute. *Global Reinsurance Corp. v. Equitas Ltd.*, 2012 WL 995268 (N.Y. Mar. 27, 2012).

The complaint alleged, among other things, that Equitas violated New York antitrust law by conspiring with certain underwriters at Lloyd's of London to reduce payments to reinsurers allegedly owed under retrocessional treaties. The Court of Appeals held that Global failed to allege that Equitas and the underwriters had market power in the relevant worldwide market, a predicate showing under the Donnelly Act. In addition, the court held that the Donnelly Act does not have extra-territorial application, explaining that the alleged injury was not redressable under the Donnelly Act because there was an insufficiently close nexus between the alleged conspiracy and injury to competition in New York. In this respect, the decision sends a sends a message about the "outer jurisdictional limits" of state antitrust laws. Equitas was represented by Simpson Thacher partners Kevin Arquit, who argued the appeal, Mary Kay Vyskocil, and Arman Oruc.

STB News Alert:

Deborah L. Stein was named by *Law360* as one of five insurance "Rising Stars" under forty. A March 28, 2012 article detailed Deb's accomplishments in several matters, including coverage disputes arising from construction defect actions.

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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"Clients and peers herald [Simpson Thacher] as a true leader when it comes to insurer-side dispute work, be it on a local or national level."

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