

Silica Insurance Coverage Experience



For more than two decades, K&L Gates has represented corporate defendants in the defense of silica-related bodily injury claims and in disputes with insurers regarding coverage for these claims. In the course of that long and varied experience, our lawyers have worked to fashion some of the most innovative settlements to insurance coverage disputes on behalf of policyholder clients and have demonstrated the ability to litigate to successful outcomes when necessary.

K&L Gates has commenced litigation on behalf of corporate policyholders in jurisdictions throughout the country in order to resolve disputes over coverage for silica claims. By way of example:

- K&L Gates represents U.S. Silica Company in three related silica insurance coverage actions pending in state courts in West Virginia, California, and New York. In the West Virginia action, after the trial court ruled in U.S. Silica's favor on a number of key coverage issues in pretrial proceedings, the jury unanimously rejected the insurer's last remaining defense and awarded U.S. Silica 100% of its requested damages—over \$8 million. The trial court subsequently awarded U.S. Silica all of its requested attorneys' fees and expenses incurred in the three coverage actions, as well as pre- and post-judgment interest, bringing the total judgment in the policyholder's favor to more than \$18 million. In addition to the verdict, K&L Gates has secured a number of favorable settlements for U.S. Silica with respect to insurance for its silica-related liabilities.
- In November 2003, K&L Gates lawyers filed a breach of contract and declaratory judgment action in Harris County, Texas, on behalf of Air Liquide America L.P. against more than 50 domestic and foreign insurers that refused to provide coverage for the client's silica-related liabilities. Since the litigation commenced, our team has negotiated a number of favorable settlements with various insurer-defendants.
- In connection with a pre-packaged Chapter 11 bankruptcy, K&L Gates recently resolved all of the silica-related bodily injury liabilities of DII Industries, Inc., and Kellogg, Brown & Root, Inc., and of their corporate affiliates (including Halliburton Company). As part of the debtors' reorganization, we also reached settlements with virtually all the insurers for asbestos- and silica-related claims.

K&L Gates' silica coverage lawyers have widely published and presented on topical legal questions at a number of national conferences, including questions of corporate successorship and the insurance implications of Judge Jack's groundbreaking decision in the federal silica multidistrict legislation. We routinely collaborate with firm lawyers who defend silica-related bodily injury claims, as well as firm lawyers who focus their practices in securities, corporate, and bankruptcy law, so that we can craft a comprehensive strategy aimed at resolving the dispute over coverage for the client's silica liabilities.

This interdisciplinary approach can lead to disparate strategies for maximizing the coverage available for a client's present and future silica-related liabilities. For some clients, the best strategy is comprehensive litigation with the goal of eliminating the various obstacles to coverage raised by the insurers. For other clients, it means reaching out through our relationships in the

insurance industry to facilitate discussions regarding the terms of a coverage-in-place agreement or policy buy-back. In all events, we counsel a comprehensive, forward-looking approach that does not forsake the client's future for the sake of an immediate, nonstrategic gain.