

Asbestos Insurance Coverage Experience



OUR EXPERIENCE

K&L Gates' lawyers are preeminent in advising clients regarding insurance coverage for asbestos claims. We have advised and litigated on behalf of clients facing asbestos liabilities from the first wave of those claims, beginning around 1980, and continued through the succeeding decades, as the quantum of these claims has increased and the number of asbestos defendants has expanded. In the course of our long and varied experience, we have worked to fashion many innovative settlement approaches

to asbestos insurance coverage disputes for policyholders, and have litigated asbestos insurance coverage cases to successful outcomes (including through final judgment and appeals) when necessary.

Our "public record" representations of asbestos defendants have included: Air & Liquid Systems Corporation, Alcoa Inc., Trane US Inc. (formerly American Standard, Inc.), American Standard, Inc., Ampco-Pittsburgh Corporation, Arkema Inc., Ashland Inc., Babcock & Wilcox Company, Combustion Engineering, Crane Co., DuPont, Eaton Corporation, ESAB Group, Fuller Austin Company (Creditors' Committee), Halliburton Company, Hexcel Corporation, H.K. Porter Company, Inc., Harbison Walker Refractories Company, Honeywell International Inc., Ingersoll-Rand Company, Koppers Industries, Inc., Michelin North America, Inc., National Gypsum Company (n/k/a/ Asbestos Claims Management Corporation), PPG Industries, Inc., Square D Company, United Technologies Corporation, UOP LLC, Westinghouse Electric Corporation (n/k/a CBS Corporation), and Worthington Corporation.

We have represented asbestos defendants in many different contexts regarding coverage:

- In approximately 100 coverage cases filed in state and federal courts in numerous jurisdictions, including most prominently California, Delaware, Illinois, Indiana, Kentucky, Louisiana, New Jersey, New York, Ohio, Pennsylvania, and Texas
- In numerous domestic and international arbitrations
- In addressing historical liability programs with various attributes:
 - Programs with primary insurance available to provide a defense
 - Programs where relevant subsidiaries have been sold or spun-off
 - Programs with primary insurance that is allegedly exhausted after providing a defense for a period and with the primary insurer(s) claiming that the policyholder needs to transition its coverage claims to its excess program for further insurance recovery
 - Programs with excess insurance that attaches above a self-insured retention rather than above primary insurance
 - Programs in which some insurers are settled and others are not

- In the context of various types of asbestos-related underlying claims:
 - Product bodily injury claims, including industrial and consumer products, friction products, refractory products, gaskets, electrical products, ship-related products, and other types of asbestos-containing products
 - Premises bodily injury claims
 - Employee bodily injury tort claims
 - Property damage claims

In addition to our traditional representation of asbestos defendant policyholders in insurance coverage litigation and counseling, including assisting our clients in settlement negotiations prior to litigation, we have developed numerous sub-specialties in this area to advance our clients' interests.

For example, our work for policyholders in asbestos coverage matters includes cutting-edge litigation against the Berkshire Hathaway entities, National indemnity Company and Resolute Management Inc., for tortious interference with insurance agreements between policyholders and insurers that have transferred their claims-handling authority to those entities. In this regard, we also have substantial experience litigating asbestos coverage claims under policies being handled by these Berkshire Hathaway entities.

Additionally, our asbestos bankruptcy-related representations of PPG, Halliburton, and Honeywell have involved addressing complex, interdisciplinary legal issues, conducting negotiations with and litigation against numerous highly motivated insurers and developing creative solutions that addressed our clients' needs and goals with billions of dollars of insurance coverage at issue.

In addition to domestic insurers, K&L Gates has substantial experience in dealing with insurers in the international insurance markets regarding asbestos coverage claims. We have particular experience in resolving asbestos coverage disputes with underwriters at Lloyd's and London Market insurance companies; indeed, it is a matter of public record that our firm has represented the policyholder in three of the largest asbestos coverage settlements entered into by Equitas/Lloyd's Underwriters: Halliburton (\$575 million), Honeywell (\$472 million), and Babcock & Wilcox (\$415 million).

We are also often retained in nonpublic representations involving asbestos coverage matters resolved short of litigation and in connection with corporate due diligence inquiries.

Our asbestos coverage lawyers are widely published and have presented on topical legal questions, including questions of corporate successorship and transfers of historical insurance assets. They work closely with their colleagues with expertise in underlying asbestos claims defense, securities law, corporate law, and bankruptcy law, ensuring our clients receive the benefit of comprehensive approaches to the strategic challenges arising from asbestos claims.

K&L Gates' sophistication and innovative legal strategies in obtaining insurance coverage have created significant value for a large number of clients. We have concluded hundreds of asbestos coverage settlement agreements. The firm's successes in recovering insurance assets have been reported on in various trade journals and the *Wall Street Journal*, *New York Times*, and *Business*

Insurance. The firm has concluded settlements with over 300 different insurers and scores of Lloyd's of London syndicates on behalf of clients, totaling many billions of dollars in coverage paid to or on behalf of clients through developing creative solutions to disputes with insurers and litigating effectively against insurance carriers when necessary.

OUR APPROACH

With each client, we work to customize a strategic, interdisciplinary approach to preserving and accessing historical insurance assets to respond to our client's present and future asbestos-related liabilities. For some clients, this means preemptive litigation, seeking to ground the dispute in a favorable jurisdiction; for others, it means reaching out through our many relationships with insurance industry representatives to jump-start a process leading to a resolution on which the client can depend. In all events, we counsel comprehensive, forward-looking approaches that are designed to meet our clients' current needs and goals without forsaking their overarching long-term strategic aims. In this respect, we counsel clients to think across disciplinary bounds and place their approach to insurance coverage recovery for asbestos liabilities and losses in the context of broader, overall strategies embracing elements of defense, corporate, securities, bankruptcy, and other related disciplines. Because of our experience as national coordinating counsel for asbestos defendants, special securities counsel for major companies designing their asbestos disclosures, unsurpassed Bankruptcy Code Section 524(g) activities on behalf of clients, and general retentions by asbestos defendants, we are able to bring an interdisciplinary perspective to our asbestos insurance coverage representations. This approach has resulted in many successful engagements.