

Litigating Mass Tort Cases

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Paul D. Rheingold[*]

Part

One. Law and Practice of Mass Tort Litigation

Chapter

14A. Insurance Coverage for Mass Tort Litigation

Eugene R. Anderson[*]

Jean M. Farrell[**]

Carrie L. Maylor[***]

Michael Conley[****]

Paul D. Rheingold

I. General insurance issues

References

§ 14A:1.Purpose of chapter

West's Key Number Digest

West's Key Number Digest, Insurance  2260

Law Reviews and Other Periodicals

Rakhlin, Regulating Nanotechnology: A Private-Public Insurance Solution, 2008 Duke L. & Tech. Rev. 2 (2008) (anticipating problems which may arise in nanotechnology suits)

Virtually all United States businesses buy liability insurance policies which promise to both defend and indemnify them against third-party claims for bodily injury and property damage allegedly caused by the business's negligence. The ability to recover this liability insurance is critical to most mass tort defendants, because it may be the only resource which stands between them and the potential financial ruin that can result from litigating huge numbers of claims, frequently in multiple jurisdictions.

When the mass effect of toxic torts or environmental litigation is encountered, insurance companies are unlikely to pay insurance claims without a fight. Instead of being able to depend on their insurance companies at a crucial point in the litigation, mass tort defendants thus usually find themselves fighting an expensive two-front war: defending mass tort claims on the one hand, and litigating against insurance companies to secure insurance coverage for those claims on the other.[1]

The purpose of this chapter is to provide an overview of some of the key issues that commonly arise between policyholders and insurance companies in the mass tort context, and which frequently give rise to insurance coverage litigation. This chapter covers defenses frequently raised by insurance companies in coverage litigation for alleged tortious conduct, with an emphasis on mass torts—primarily "knowledge-based" defenses such as "known loss," and "expected or intended." The chapter also offers practical advice for maximizing insurance recovery, and minimizing insurance coverage litigation. What this chapter does not do is provide a primer on basic insurance concepts. There are many excellent multi-volume treatises that provide exhaustive evaluation of the current state of insurance law on a variety of topics.[2]

[FN*] Paul D. Rheingold is the founding partner of Rheingold, Valet, Rheingold, Shkolnik & McCartney LLP, a law firm based in New York City.

[FN*] Anderson Kill & Olick, P.C., New York, N.Y.

[FN**] Formerly with Anderson Kill & Olick, P.C., New York, N.Y.

[FN***] Anderson Kill & Olick, P.C., New York, N.Y.

[FN****] Anderson Kill & Olick, P.C., Philadelphia, PA.

[FN1] See Herb Denenberg, *How Insurance Companies Avoid Payment Of Claims*, Reading Eagle, May 26, 1995, at A12; Eugene R. Anderson, et al., *Insurance Nullification By Litigation*, Risk Mgmt., Apr. 1994, at 46 (the authors are lawyers who regularly represent policyholders in insurance coverage disputes).

[FN2] See, e.g., Eugene R. Anderson et al., *Insurance Coverage Litigation*, (2d ed. Aspen Law & Bus. 2000, 2006) (hereinafter "Anderson"), *Holmes' Appleman on Insurance* (2d ed. Lexis/Nexis 2006) (30+ volumes) (hereinafter "Appleman"), *Couch on Insurance* (3d ed. Thomson/West 2006) (25+ volumes) (hereinafter "Couch").

In *Johnson v. Orleans Parish School Bd.*, 975 So. 2d 698, 230 Ed. Law Rep. 961 (La. Ct. App. 4th Cir. 2008), writ denied, 983 So. 2d 1289 (La. 2008) and writ denied, 983 So. 2d 1289 (La. 2008) and writ denied, 983 So. 2d 1289 (La. 2008), reconsideration not considered, 992 So. 2d 964 (La. 2008) and writ denied, 983 So. 2d 1290 (La. 2008) and writ denied, 983 So. 2d 1290 (La. 2008) and writ denied, 983 So. 2d 1290 (La. 2008) and writ denied, 983 So. 2d 1291 (La. 2008) and writ denied, 983 So. 2d 1291 (La. 2008) and cert. denied, 129 S. Ct. 768, 172 L. Ed. 2d 756 (2008), the court found that the Housing Authority of New Orleans' insurers were liable for the damages awarded for plaintiffs' emotional distress claims in a class action brought by those who had lived, worked or attended school on the site of a former landfill.

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