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ENVIRONMENT

Current Topics in Environmental Litigation and Strategy

About this Newsletter

At a recent ABA insurance seminar, The Brattle Group organized a panel discussion on climate change and historical insurance.

This issue of ENVIRONMENT addresses topics presented at the ABA seminar including, methods of evaluating and allocating losses in litigation and settlement.

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Climate Change: Valuing Insurance Claims for Settlement or Litigation

By Gregory A. Brusseau and Gayle S. Koch

Introduction

The allocation of losses between a policyholder and its insurers is a complex process that can involve a range of issues and result in costly litigation or settlement processes. Traditional mass tort or environmental issues are already difficult, and nascent and controversial topics such as damages related to climate change will only exacerbate the situation.

Both policyholders and insurers can benefit greatly if the parties can achieve an expeditious settlement or focus on well-defined issues at trial. However, what is the best method to achieve resolution? The answer begins with understanding the concerns of the parties involved in the dispute, and continues with systematic evaluation.

Policyholders continue to face losses arising from environmental or product liability claims, catastrophic events resulting in property damage or busi-

ness interruption, and worker injury or health disputes. A mix of the damages is likely when climate change is involved. Moreover, policyholders face the dilemma of how to fund both defense and potential awards to claimants.

Insurers need to evaluate the claims from policyholders, address a range of coverage disputes that often arise from contract interpretation and incomplete claims facts, and satisfy the requirements of reinsurers. They will want to examine settlements of underlying policies to ensure exhaustion, assess products versus operations claims, and evaluate the allocation of claims to available coverage. They also will want to participate in or monitor any bankruptcy proceedings that affect the timing and magnitude of claims.

The following sections discuss how these parties can address their own concerns while resolving their differences.

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