

# INSURANCE DAY

**In *RT Vanderbilt Co Inc v Hartford Accident and Indemnity Co* (2017), an intermediate appellate court in Connecticut issued a decision in an asbestos coverage case that included a ruling with national significance.**

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It ruled the occupational disease exclusion appearing in many excess and umbrella policies not only bars coverage for diseases contracted by the insured's employees, but also by employees of other parties who use the insured's products.

This is the first time the issue has been addressed by any appellate court and could have national significance in asbestos and other toxic tort cases.

For a period of 60 years, Vanderbilt produced industrial talc which many other manufacturing and chemical companies used in their own industrial processes. Thousands of claims have been filed alleging the talc contained asbestos, which Vanderbilt denies.

The court made several rulings on other issues, which although creating new law in Connecticut, were consistent with asbestos coverage decisions in other states. First, the court joined most of the other states in holding the "continuous trigger" rule applied, thereby invoking all policies in effect from the date of first exposure to the date of manifestation of disease.

Next, it pro-rated liabilities based on the insurers' respective time of the risk, but in so doing adopted the "unavailability of coverage rule". It found Vanderbilt was not responsible for costs allocated to years after 1985, in which liability insurance was not available or was extremely limited because most companies had withdrawn from the market.

The court declined to apply an "equitable exception" for companies that continued to manufacture and sell products with asbestos after 1985, pointing to Vanderbilt's good faith belief its talc did not contain asbestos. Third, like other courts, it held the pollution exclusion does not bar coverage for asbestos claims.

The most significant ruling, however, was on the scope of the occupational disease exclusion. In its analysis, the court recognised the exclusion addressed workers' compensation claims, but refused to limit its application to them. Even though the decision remains subject to appeal to the Connecticut Supreme Court, insurers will undoubtedly seek to extend this ruling as widely as possible throughout the US.

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