

Cohen Ziffer Lawyers Obtain Another Landmark Insurance Decision in Viking Pump

Cohen Ziffer lawyers have secured another landmark decision for its client Warren Pumps LLC, this time from the Supreme Court of the State of Delaware, in a September 12, 2016 ruling that entitles Warren Pumps to access hundreds of millions of dollars in insurance coverage for their asbestos-related liabilities. The 83-page decision comes on the heels of a ruling that the lawyers at Cohen Ziffer obtained for Warren Pumps in May from New York's highest court, the Court of Appeals, which held that policyholders who purchased policies like those at issue in *Viking Pump* can hold each triggered policy one hundred percent responsible for the entire loss resulting from the asbestos claims.

Most significantly, in the *Viking Pump* decision (available [here](#)), the Delaware Supreme Court reversed a trial court's decision that Warren Pumps may only seek coverage under policies that were in place when underlying plaintiffs first inhaled the asbestos (what is known as the "exposure trigger"), finding instead that coverage was triggered for each policy from date of first significant exposure to the asbestos and in every policy period thereafter. In reversing the trial court, the Supreme Court agreed with Warren Pumps that the trial court's application of an "exposure" trigger was inconsistent with New York law, and fundamentally altered a jury verdict in favor of coverage for the asbestos claims. The Delaware Supreme Court's reversal on these grounds is a significant blow to insurance industry efforts in recent years to significantly limit coverage for asbestos bodily injury claims by claiming they only involved "injury" taking place decades after exposure to asbestos and in policy years after 1985, when the insurance industry began to adopt asbestos exclusions.

The Delaware Supreme Court also rejected the insurance companies' attempt to walk away from otherwise covered claims because rights under the policies were transferred to Warren Pumps in 1985, when the company's assets and liabilities were sold. The Court found that the corporate restructuring did not increase the risk to the insurance companies because all events giving rise to the asbestos claims occurred before the transfer. It therefore rejected the insurers' attempt to use an anti-assignment clause to escape coverage. That holding will protect thousands of policyholders involved in mergers, spin-offs, and other corporate transactions that include the assignments of liabilities and the concomitant right to insurance coverage for those liabilities.

Finally, the Delaware Supreme Court also rejected insurers' contention that certain underlying primary policies had not been fully and properly exhausted because the policyholders allegedly had not paid all deductibles due and owing under those policies. The Court held that the deductibles were irrelevant to policy exhaustion, because deductible obligations fall within, and thus count toward the erosion of, policy limits. This ruling will prevent excess carriers from avoiding their obligation by claiming that the deductibles contained in the primary policies have not been satisfied.

"The Viking Pump decisions will have a broad impact on the insurance industry and provide policyholders with increased rights and protections," said Robin Cohen, lead counsel for Warren Pumps, who argued on behalf of the company before the New York Court of Appeals in March 2016 and before the Delaware Supreme Court in both June 2015 and July 2016. "Though it has been a hard fought road through a jury trial and the highest courts in both Delaware and New York, we are pleased that these Courts have reached the correct and most equitable results for our client on the most significant issues. I believe the precedents that have been set for policyholders here will make the road that much smoother for policyholders in the future."

Warren Pumps LLC is represented by Robin L. Cohen and Keith McKenna. The appeals are *In re: Viking Pump Inc. and Warren Pump LLC Insurance Appeals*, case numbers 518,2014; 523,2014; 525,2014; and 528,2014, the Supreme Court of the State of Delaware.

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Robin Cohen

Keith McKenna