

# Cohen Ziffer Lawyers Obtain Landmark Decision on Allocation of Liability in Viking Pump

Cohen Ziffer Lawyers have secured a landmark decision for its client Warren Pumps LLC from New York's highest court, the Court of Appeals, on an issue of first impression in New York – how the typically millions of dollars in costs associated with claims involving latent injury over long periods of time, such as asbestos or environmental pollution claims, should be allocated among insurance policies covering those time periods.

The *Viking Pump decision* (available [here](#)), held that standard form insurance policies containing “non-cumulation provisions” or “prior insurance provisions,” present in thousands of policies nationwide, allow a policyholder to obtain coverage for its full liability from policies covering any policy year in which some injury took place, under what has been called an “all sums” allocation methodology. The Court thus rejected insurer arguments that each policy in place during the period of injury only should have to pay a “pro rata” share of liability, which, for example, would allow an insurer on the risk for one year of a thirty-year injury period to pay only 1/30th of the liability associated with the loss.

*Viking Pump* also resoundingly rejected the characterization of prior decisions of the Court, including its 2002 decision in *Consolidated Edison Co. of N.Y. v. Allstate Insurance Co.*, 98 N.Y. 2d 208 (2002), as requiring the application of pro-rata allocation in all cases involving multi-year injuries, reaffirming that under New York law, the choice of allocation method must be determined in each case based on the full policy language.

"The Viking Pump decision will have a broad impact on the insurance industry and provide policyholders with increased protections," said Robin Cohen, lead counsel for Warren, who argued on behalf of the company before the Court of Appeals in March. "Allowing the policyholder to seek coverage for 100% of its liability from any one policy year is usually more advantageous for the policyholder, because it allows the policyholder to assign the claim to a year with the most coverage, pay only one deductible or retention, and avoid triggered years covered by insurers who have become insolvent or whose limits have been exhausted or eroded."

Warren Pumps LLC is represented by Robin L. Cohen and Keith McKenna. The case is *Matter of Viking Pump, Inc. and Warren Pumps LLC*, Case No. 59, in the New York Court of Appeals.

## Related People

Robin Cohen

Keith McKenna