

Insurance Coverage Alert: Cohen Ziffer Lawyers Obtain Landmark Decision on Allocation of Liability in Viking Pump

The lawyers at Cohen Ziffer secured a landmark decision for their 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 or so-called “long-tail” claims, such as asbestos or environmental pollution claims, should be allocated among insurance policies covering those time periods.

On certified questions from the Delaware Supreme Court, the *Viking Pump* decision (available [here](#)), held that standard form insurance policies containing “non-cumulation” provisions or “prior insurance” provisions 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 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.

Because this decision interprets standard-form language, it has broad, multi-billion dollar implications for coverage nationwide. Thousands of policies throughout the country contain non-cumulation and

prior insurance provisions, including policies issued in states, like New York, that previously have applied a pro-rata allocation to policies without considering the impact of those provision. Those policyholders can now use the holding in Viking Pump to confirm their right to assign their multi-year losses to a single policy year. Doing so will allow them to assign the claim to a year with the most coverage, pay only one deductible or retention, more easily access their excess coverage, and avoid triggered years covered by insurers who have become insolvent or whose limits have been exhausted or eroded.

The case is *Matter of Viking Pump, Inc. and Warren Pumps LLC*, Case No. 59, in the New York Court of Appeals.

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