

## Coverage Team Secures Significant Choice-of-Law Victory in Ohio State Court

4.14.15

The White and Williams Insurance Coverage and Bad Faith Group scored a significant victory in a long-tail insurance coverage action involving alleged long-term exposure to hazardous chemicals in *GrafTech International Ltd., f.k.a. UCAR International Inc., et al. v. Pacific Employers Insurance Company, et al.*, pending before the Ohio Court of Common Pleas for Cuyahoga County.

The insured, GrafTech International Ltd. (GrafTech), sought coverage under a single one-year policy issued by Pacific Employers for defense costs allegedly incurred in connection with at least 84 separate bodily injury claims resulting from the release of hazardous and toxic chemicals over a 70-year period. The underlying claimants alleged that they were exposed to hazardous substances at numerous Alcoa smelting facilities across the country where the insured's products were sold or used between 1942 and 2012. Before discovery even began, GrafTech moved for summary judgment seeking a declaration that Pacific Employers owed GrafTech a "duty to defend" and attorneys fees based on its purported failure to defend. The insured, which has been headquartered in numerous states over the past two decades, sought to apply Ohio's "all sums" allocation law in order to recover its entire loss under a single policy year because, according to GrafTech, the only potentially relevant states were Pennsylvania (Pacific's principal place of business) and Delaware (GrafTech's place of incorporation and headquarters at the time the policy was issued). GrafTech further argued that because there was allegedly no conflict between the laws of those states and Ohio law on the three key issues in dispute, namely, allocation, "trigger," and number of occurrences, the law of the forum state (Ohio) should apply.

On April 7, 2015, the Court, Judge McMonagle presiding, denied GrafTech's motion for summary judgment on the basis that New York law applies to "the merits of these proceedings." In defeating the insured's claims, the Pacific Employers successfully argued that, because the policy at issue was negotiated, contracted and performed (i.e., premiums were paid) in New York, that state's law on allocation should apply. The Court agreed with the insurer's argument and recognized that "certainty, predictability and uniformity of result mandate that the laws of New York be applied to this case," noting that disputes "over insurance coverage contained in policies like the one at issue in this case cannot be subject to the whims of parties to relocate or reincorporate in various forums, especially when a significant advantage in the courts can be gained by doing so." Although the Court did not decide how New York law would apply to the merits of the action, New York allocates defense costs "pro rata" and GrafTech conceded in its papers that application of New York law would result in a finding of no coverage. GrafTech is expected to appeal the decision to the Ohio Eighth District Court of Appeals.

Pacific Employers is represented by Patricia Santelle, Shane Heskin, Adam Berardi and Sara Tilitz.