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## NO COVERAGE FOR PREVENTIVE MEASURES IN OREGON

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On June 30, 2006, the Oregon Supreme Court issued an opinion in Schnitzer Investment Corp. v. Certain Underwriters at Lloyd's of London, et al., 341 Or. 128, 137 P.3d 1282 (2006), which reviewed a Court of Appeals decision that the defendant insurers had no duty to indemnify policyholder Schnitzer for cleanup of environmental contamination on its property. The Court held there was no duty to indemnify the policyholder for pollution cleanup costs where the Oregon Department of Environmental Quality ("DEQ") required Schnitzer to clean up soil only. *Id.* at 136. The Court agreed with the lower court that the policyholder had not been "legally obligated" by the agency to clean up groundwater that was contaminated, but at a level that the agency determined was not actionable (i.e., did not pose a risk to human health or the environment). *Id.* Therefore, the costs incurred were not covered under the insuring agreements of the policies.

The Court also rejected Schnitzer's argument that the insurers should indemnify certain preventive measures ordered by DEQ. In support of this argument, Schnitzer pointed to the agency's statement that capping the soil will "reduce[e] the potential of contaminants to leach [into the] groundwater" and to the agency's requirement that Schnitzer monitor the groundwater to ensure that the groundwater quality did not worsen. *Id.* at 136. However, the Court agreed with the Court of Appeals on this issue as well, stating:

[T]he terms of defendants' policies require defendants to indemnify plaintiff only if DEQ's Records of Decision legally obligated plaintiff to remedy "property damage" to the groundwater, and defendants' policies define "property damage" as an injury that occurs during the policy period, not an injury that may occur in the future. Under the terms of the policies, defendants had no obligation to indemnify plaintiff for the costs that it incurred in complying with DEQ's orders.

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Id.

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*Cozen O'Connor's **Thomas M. Jones** and **Helen A. Boyer** represented a prevailing insurer in this matter, assisted by **Thomas J. Braun** and **Melissa O'Loughlin White**. To discuss any questions you may have regarding the opinion discussed in this Alert, and how it may apply to your particular circumstances, please contact **Helen A. Boyer** at (206) 373-7204 or [hboyer@cozen.com](mailto:hboyer@cozen.com), **Thomas J. Braun** at (206) 808-7828 or [tbraun@cozen.com](mailto:tbraun@cozen.com), and/or the Vice Chair of the Cozen O'Connor National Insurance Department, **Thomas M. Jones**, at (206) 224-1242 or [tjones@cozen.com](mailto:tjones@cozen.com).*