

CONNECTICUT SUPREME COURT HOLDS THAT SILICA EXCLUSIONS ARE NOT AMBIGUOUS AND APPLY TO SILICON IN ALL ITS FORMS

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In a declaratory judgment action initiated by an insurer, styled *Liberty Mut. Ins. Co. v. Lone Star Indus. Inc., et al.*, No. SC 18199 (Conn. Sup. March 24, 2009), the Connecticut Supreme Court, among other things, agreed with certain insurers of Lone Star, a silica and sand supplier, that a silicosis hazard exclusion endorsement that refers to “silicon,” rather than the chemically distinct “silica,” should be read broadly as applying to silicon in all its forms. In addition, affirming in part the decision of the Connecticut Superior Court for the Judicial District of Waterbury, the Supreme Court also determined that the term “silicosis hazard” is not limited to silicosis disease and that because silica is but one form of silicon, the silica exclusions also exclude coverage for bodily injury arising out exposure to silica and any other substance containing silicon.

The Supreme Court first analyzed the September 2005 edition of the Pocket Guide to Chemical Hazards published by the U.S. Department of Health and Human Services and the National Institute for Occupational Safety, as discussed in *Peerless Ins. Co. v. Gonzalez*, 241 Conn. 476 (1997), which provides that amorphous or crystalline silica, also known as silicon dioxide, is a dust or powder that is a compound of two elements: silicon and oxygen. Moreover, the entry for silicon notes that it “[d]oes not occur free in nature, but is found in silicon dioxide (silica) and in various silicates.” Therefore, the use of the word “silicon” in the silicosis exclusion was not ambiguous because silicosis and silica related hazards cannot exist in the absence of silicon, and the exclusion specifically defines “silicon” as “the mineral in any form.” See e.g. *Peerless*, 241 Conn. at 483 (holding that a policy containing a lead

exclusion could be cast in general rather than specific terms and concluding that the lead exclusion also excluded claims arising out of lead paint).

Then, the Supreme Court reviewed other policies with clear and unambiguous asbestos exclusion endorsements, which Lone Star contended were ambiguous because the reference to “silica dust” was hidden within the exclusion. However, the Supreme Court held that the exclusion clearly and unambiguously excluded silica-related claims from coverage because, as the insurers had noted, the term appeared in the same font size as the rest of the endorsement, Lone Star was a sophisticated insured, and the exclusion stated three times that it excluded coverage for damage, injury, or illness claims arising from silica dust. Specifically, the court stated,

Although the *title* of the exclusion doubtless would be clearer and more useful if it were entitled ‘Asbestos *and Silica* Exclusion Endorsement,’ rather than ‘Asbestos Exclusion Endorsement,’ this does not render the language of the endorsement itself ambiguous. Moreover, the term ‘silica dust’ is not buried in the endorsement, and indeed appears at the end of the respective paragraphs, rather than in the middle of them.

Following this partial reversal of the lower court’s decision, which had granted summary judgment to the insured on the silica exclusion issue, the Supreme Court remanded the issue of subject matter jurisdiction regarding the ripeness of a dispute over one insurer’s excess level policies that attach at \$20 million above Lone Star’s primary coverage.

The *Lone Star* opinion will likely operate to preclude thousands of claims against insurers for silicon-related exposure. In addition, it may also result in fewer silicon-related exposure claims brought where insurers' policies contain similarly worded silica exclusions or mention silica within its asbestos exclusion.

For further analysis of this opinion and its impact, please contact Kevin M. Haas or Jennifer B. Jacobson of Cozen's Global Insurance Group. Cozen O'Connor is a nationally recognized leader in representing the insurance industry in all coverage areas, including environmental contamination claims.

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