PFAS Forecasted to be the Next Asbestos Litigation

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Amid a surge of lawsuits nationwide over alleged PFAS-related harms and growing regulatory efforts to curb their production and use, policyholders are grappling with mounting liabilities and unclear insurance coverage boundaries. Although PFAS chemicals have been in use for decades, they have only recently emerged as a leading focus in toxic tort litigation, posing a challenge comparable to asbestos.

These chemicals have been widely adopted across various industries due to their resistance to fire, oil and water. Now, they are appearing in litigation ranging from environmental contamination claims, product liability suits, and even claims alleging false advertising. Because of this, companies are now turning to their insurers for coverage. For instance, BASF filed a lawsuit against more than 20 of its insurers in South Carolina federal court last February, seeking coverage for lawsuits filed in the AFFF MDL. Although the South Carolina case was ultimately dismissed, a parallel suit in New Jersey state court remains active, along with a separate case in New York state court brought by certain underwriters from a global specialist insurance market.

How a court rules in PFAS coverage cases will depend on several factors, including the specific policy language and how it is interpreted and applied. Because of the newly emerging PFAS litigation, insurance policy exclusions are also adapting.

Courts have already started addressing these issues. In 2022, a Georgia federal court held that a total pollution exclusion barred coverage for a thermoplastics recycling facility in a putative class action that alleged a discharge of PFAS into state waterways.

Additionally, the increase in regulations—at both the state and federal level—will fuel liabilities for companies and increase the number of insurance claims nationwide. Last April, the EPA finalized its first-ever regulatory limits on PFAS in drinking water to reduce exposure for approximately 100 million Americans.

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