

Publication

Connecting the Dots: Insurance Coverage for Corporate Successors

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June 1, 2009

Due to the nature of long-tail claims such as environmental or toxic tort actions, companies are frequently sued for bodily injury and property damage that their corporate predecessors caused many years ago.

Consequently, successor corporations often request defense and indemnification from the insurers that issued policies to the predecessor corporations that are alleged to have caused the damage. In order to analyze whether an alleged successor is entitled to coverage under a predecessor's policies, the predecessor's insurer and the successor's insurer must engage in a complicated analysis that involves concepts of corporate law, insurance law, and the law governing the alleged successor's potential liability. Just as a child must "connect the dots" in a coloring book to form a coherent picture, a predecessor's insurer must "connect the dots" between the putative successor's corporate history, the conduct for which it has been sued, and the language in the predecessor's policies.

Notwithstanding the fact that the issue of coverage for corporate successors arises frequently, relatively little case law exists on the subject in the United States. California has the most developed body of case law pertaining to coverage for corporate successors under their predecessors' policies. However, appellate courts in other prominent jurisdictions such as New York, Illinois, and Texas have not spoken on many of the core issues pertaining to coverage for corporate successors. Those decisions that do exist are often difficult to understand, and in some instances reflect an inaccurate statement of U.S. law.

In the limited amount of cases that do exist, insurers often argue that the successor corporation is not entitled to coverage under the predecessor's policies, either because the asset of the predecessor's insurance coverage was not transferred to the successor, or because the predecessor's policies include non-assignment provisions that state that the policyholder may not assign the policy without the consent of the insurer. The success of the arguments will depend on a variety of factors, including the nature of the corporate transactions between the predecessor and the successor, the claim for which coverage is sought, and the jurisdiction whose laws will govern the interpretation of the predecessor's policies. In this paper, we discuss each of these points and provide insights as to

how insurers should approach “connecting the dots” to determine coverage for corporate successors.

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