

## Nanotechnology Excluded from Insurance by Continental Western Insurance Group

The decision by a major insurance group to exclude coverage for nanotechnology comes at a time when the science regarding the possible human health effects of nanomaterials is still in its infancy.

As of Nov. 15, 2008, policies written by the members of Continental Western Insurance Group no longer cover bodily injury, property damage, or personal and advertising injury from “nanotubes or nanotechnology in any form.” Continental Western group is comprised of Acadia Insurance Co., Continental Western, Firemen’s Insurance Co. of Washington, D.C., and Union Insurance Co. The exclusion applies to “the use of, consumption of, ingestion of, inhalation of, absorption of, contact with, existence of, presence of, proliferation of, discharge of, dispersal of, seepage of, migration of, release of, escape of, or exposure to nanotubes or nanotechnology.”

In announcing the new exclusion, Continental stated “reports have raised concerns regarding health risks from workers that may be inhaling carbon nanotubes during the manufacture of certain products. The carbon nanotubes resemble asbestos fibers in appearance, raising the concern that they may cause illness similar to that linked to asbestos.” Continental further noted that it would not be prudent “to knowingly provide coverage for risks that are, as of yet, unknown and unquantifiable. We are all too aware of what happened to companies involved with asbestos-related exposures in the past, and see this as a very similar issue. By excluding coverage for bodily injury and property damage specifically caused by nanotubes and

nanotechnology, we can continue to provide coverage for other exposures for the multitude of companies and products using nanotechnology now and in the future.”

Continental’s decision to exclude coverage for nanotechnology appears to have been precipitated by recently reported animal studies appearing in *Nature Nanotechnology* and *The Journal of Toxicology*, which suggest that carbon nanotubes may have health effects similar to asbestos. Specifically, the studies conclude that inhaled carbon nanotubes are capable of producing mesothelioma, a rare and incurable cancer of the lining of the lung that is generally associated in the United States only with asbestos exposure and therapeutic levels of radiation. Asbestos litigation has had a widely publicized impact on industry. By the end of 2002, (i) 730,000 people had filed asbestos related lawsuits; (ii) 8,400 entities had been named as defendants in those lawsuits; and (iii) a total of approximately \$70 billion had been spent defending those lawsuits and compensating those with alleged injuries. Multiple companies were forced into bankruptcy as a result of the costs of that litigation.

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For further information on this issue, contact a member of our nanotechnology group:

**Theodore A. Boggs**

taboggs@vorys.com  
614.464.8319

**Richard P. Fahey**

rpfahey@vorys.com  
614.464.5601

**Gail C. Ford**

gcford@vorys.com  
614.464.6394

**Susan B. Hartly**

sbhartly@vorys.com  
614.464.6376

**Peter A. Lusenhop**

palusenhop@vorys.com  
614.464.8263

**Corinne M. Pouliquen**

cmpouliquen@vorys.com  
202.467.8835

**Richard D. Schuster**

rdschuster@vorys.com  
614.464.5475

**Brent C. Taggart**

bctaggart@vorys.com  
614.464.8330

**Kristin L. Watt**

klwatt@vorys.com  
614.464.8398

**Scott J. Ziance**

sjziance@vorys.com  
614.464.8287

is still in its infancy. Against this backdrop, nanomaterials are also starting to receive increased scrutiny from regulatory agencies, including OSHA, EPA and the EU's REACH program. These developments

underscore the importance of increased attention to risk management by companies that utilize nanotechnology in their products or workplaces.

*Vorys, Sater, Seymour and Pease LLP has one of the largest asbestos and toxic tort defense practices in the United States. It serves as national counsel to several Fortune 500 companies in the defense of well over 100,000 such cases, and as trial counsel in Ohio for more than 20 large and small clients. In addition, Vorys counsels large and small business clients in risk management, including insurance assessment and regulatory compliance.*

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