

Jason Schulze Discusses West Virginia Supreme Court Holding that Continuous Trigger Theory Applies To Latent Bodily Injury Claims

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Hinshaw partner Jason Schulze was quoted in *Law360 Insurance Authority*, discussing the significance for insurers of a recent West Virginia Supreme Court answer to a certified question from the Fourth Circuit. Specifically, the Fourth Circuit asked the Supreme Court to address “[a]t what point in time does bodily injury occur to trigger insurance coverage for claims stemming from chemical exposure or other analogous harm that contributed to the development of a latent illness?”

The court held that a continuous-trigger theory applies to determine when coverage is activated under the insuring agreement of an occurrence-based CGL policy if the policy is ambiguous as to when coverage is triggered.

Schulze noted that most courts already apply the continuous trigger theory:

“Although the issue may have been new to the Supreme Court of Appeals of West Virginia, it has been analyzed by courts, including over 30 state Supreme Courts since the groundbreaking decision on the issue in 1981 by the D.C. Circuit Court in *Keene Corp. v. Ins. Co. of N. America*. The court analyzed a variety of sources, including decisions issued by courts around the country, contemporaneous sources addressing the 1966 CGL policy reforms, and scholarly publications from both the insurer and policyholder perspective.”

One such source the justices reviewed and cited in their answer was a treatise written by Schulze and partner Scott Seaman titled “Allocation of Losses in Complex Insurance Coverage Cases” (*10th Ed. West Thomson Reuters 2021 – 2022*). Note an Eleventh Edition of the treatise was [published in January of this year](#).

Schulze concluded that the ruling would likely have a “minimal impact” on insurers writing policies with risks in West Virginia.

[Read the full article](#) (*subscription required*)

“W.Va. Continuous Trigger Ruling Will Spur Allocation Fights” was published by *Law360 Insurance Authority* on November 17, 2023.

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Jason R. Schulze

Partner

📞 312-704-3661

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