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# Chemical Co. Demands Defense Coverage In PFAS Foam MDL

By **Hayley Fowler**

Law360 (November 26, 2024, 3:07 PM EST) -- Specialty chemical company Clariant Corp. is suing five of its insurers in the North Carolina Business Court seeking defense costs in a host of underlying mass tort lawsuits over forever chemicals found in firefighting foam products.

Clariant has been named as a defendant in upwards of 9,500 cases — including **consolidated multidistrict litigation** out of South Carolina — involving per- and poly-fluoroalkyl substances, also known as PFAS, found in aqueous film-forming foam products used to fight fires, according to a **complaint** designated Monday to the Business Court.

"Clariant has incurred millions of dollars in legal fees/expenses to defend itself against these thousands of AFFF lawsuits and, though it believes it has meritorious defenses, has potential exposure to large liability costs," the chemical company said in a **notice** to the Business Court explaining why the suit qualifies as a mandatory complex business case.

But its insurers, which include three AIG units, have allegedly refused to defend and indemnify Clariant under commercial general liability policies dating back decades, Clariant said.

It's asking the Business Court to force the insurers to fork over coverage, including paying past and future defense costs and litigation expenses.

The defendants include HDI Global Insurance Co., Zurich American Insurance Co., and three AIG units: American Home Assurance Co., Commerce & Industry Insurance Co. and National Union Fire Insurance Company of Pittsburgh PA.

According to the complaint, Clariant had general liability primary, umbrella or excess policies with the insurance companies between 1996 and 2021.

From 1998 to 2013, North Carolina-based Clariant said it sold certain "building-block products" to Dynax Corp. and Chemguard Inc. that were used to make aqueous film-forming foam products. Those AAF products were later found to contain PFAS, which allegedly tainted water supplies and exposed individuals to various types of cancer, resulting in mass tort claims being filed against Clariant starting as early as 2019.

Clariant said the suits generally fall into three categories: cases brought by water providers over contaminated water sources; personal injury and property damage suits brought by individuals allegedly exposed to the forever chemicals through drinking water or whose property was damaged as a result; and enforcement actions brought by state attorneys general.

Each of the defendants allegedly provided some form of coverage to Clariant under 15 different policies spanning 24 years with more than \$400 million in policy limits, the suit states. But Clariant said the insurers have all rejected requests for coverage in the underlying cases or provided minimal repayment.

According to the complaint, HDI denied coverage in April 2022 to the extent the underlying suits didn't allege property damage or bodily injury as defined by its policies with Clariant. In October, Zurich requested more information to investigate but has otherwise not acknowledged that coverage is owed, Clariant said.

The AIG defendants, meanwhile, initially agreed to defend Clariant before doubling back on themselves, the suit states.

American Home specifically acknowledged a duty to defend under a 2005-2006 policy and "reimbursed Clariant for only a small percentage (less than 10%) of Clariant's defense costs," according to the complaint. But Clariant said Commerce & Industry and National Union denied coverage, citing unsatisfied deductibles and pollution exclusions.

All three subsequently sued Clariant in New York state court seeking a declaration that no coverage was owed under any of the policies — including the 2005-2006 policy under which Clariant had already received payment, Clariant said.

The chemical company accused the AIG units of acting underhandedly, saying they "filed the New York Action in a forum with little connection to the AFFF Litigation or the issuance of the AIG Policies solely to gain a tactical advantage over its policyholder, Clariant."

Clariant has consequently filed 19 claims against the insurers, including for breach of contract, declaratory judgment, anticipatory breach of contract and bad faith denial of coverage.

Counsel for the parties did not immediately respond Tuesday to requests for comment.

Clariant is represented by Lucas D. Garber of Shumaker Loop & Kendrick LLP and Stephen A. Klein, Louis M. Russo and Varun K. Aery of Hollingsworth LLP.

HDI Global is represented by Robert L. Joyce of Littleton Joyce Ughetta Kelly LLP.

Zurich is represented by James W. Bryan of Maynard Nexsen PC.

American Home, Commerce & Industry and National Union are represented by Hanna Robbins, Adam Kaiser, Elizabeth Buckel and Alexander Lorenzo of Alston Bird LLP.

The case is Clariant Corp. v. HDI Global Ins. Co., case number 2024CVS50005, in the North Carolina Business Court.

--Editing by Patrick Reagan.