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New York Court of Appeals Holds Insurer Not Responsible To Indemnify Insured For Environmental Contamination Happening Outside Insurer's Policy Periods When Insurance Was Otherwise Unavailable To Insured.

On March 27, 2018, in Keyspan Gas East Corp. v. Munich Reinsurance America, Inc., involving an issue of first impression, the Court of Appeals affirmed the Appellate Division, First Department, and held that an insurer was not obligated to indemnify an insured for cleanup costs the insured incurred that were related to contamination occurring before and after the periods of the insurer's policies when insurance was otherwise unavailable to the insured. A discussion of the facts of Keyspan and the First Department's decision were the subject of our e-alert dated August 5, 2016, and are available by clicking the following link: https://klrw.law/news/new-york-supreme-court-appellate-division-holds-that-insurer-is-not-required-to-indemnify-insured-for-environmental-contamination-outside-of-policy-period/

In rendering its decision, the Court of Appeals noted that New York has not adopted a "strict pro rata or all sums allocation rule. Rather, the method of allocation is governed foremost by the particular language of the relevant insurance policy." The Court of Appeals held that a pro-rata allocation theory should apply to policies containing language limiting indemnification to losses and occurrences during the policy period, such as the policy at issue in Keyspan, and that the insured, not the insurer, should be responsible for costs incurred within periods when insurance is unavailable to the insured under a pro-rata allocation theory.

If you would like more information on this decision or on the issue of allocation under New York law, please contact either Kevin E. Wolff, Esq. or Michael S. Chuven, Esq.

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