



ARTIFICIAL STONE SILICOSIS LITIGATION CONFERENCE

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INSURANCE COVERAGE ISSUES



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Insurance Coverage Issues

- Duties of the Insurer Under Comprehensive General Liability Policies
- Silica Exclusions
- Legacy Insurance Implications
- Allegations More Likely to Trigger Duty to Defend
- Trigger of coverage/Concurrent Causation
- Representative Caselaw
- Notice Issues
- Insurer Recoupment of Defense Costs
- Exhaustion of Policy Limits
- Counsel Issues



Duties of the Insurer – CGL Policies

Duty to Defend

- Broader than the duty to indemnify
- Insurer must defend entire lawsuit if any cause of action is potentially covered
- Doubts resolved in favor of the insured

Duty to Indemnify

- Narrower than the duty to defend
- Insurer must pay claims covered under the policy
- Triggered only when coverage is established



Silica Exclusions

- Excludes coverage for claims arising out of exposure to silica or silica related dust
- Common in CGL policies since 2005
- Have evolved over time
- Differ in scope and content

“‘Silica’ means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds”

“‘Silica related dust’ means a mixture or combination of silica and other dust or particles”



Silica Exclusions (Continued)

“any loss, cost or expense arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of silicon” or any “demand, order, request or regulatory or statutory requirement that any insureds . . . test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of silicon”



Silica Exclusions (Continued)

“Bodily Injury” or “Property Damage” “arising in whole or in part out of the actual, alleged, or threatened” “presence of” “suspected inhalation of, or ingestion of,” or “contact with, exposure to, existence of, or presence of ‘silica’ or ‘silica related dust’”



Legacy Insurance Implications

- Build insurance archaeology into defense strategy
- Understand predecessor corporate histories & coverage types
 - Extant countertop cases allege exposure as far back as 1982
- Map years of exposure to earliest available policies
- Identify policy limits, solvency and possible erosion
- Be proactive
 - Due diligence on future acquisitions
 - Review and organize legacy policies



Trigger of Coverage

- ▶ Relevant trigger is “bodily injury” caused by an “occurrence”
 - “Bodily injury” is defined as “bodily injury, sickness or disease”

- ▶ Three Distinct Concepts
 - Bodily injury / sickness / disease
 - *Armstrong v. Aetna Cas. & Sur.*, 45 Cal.App.4th 1 (1995)

- ▶ Stone Product Case Allegations
 - Silicosis, pulmonary fibrosis, lupus, scleroderma, etc. are all “diseases”
 - Irritation, inflammation, etc. are “bodily injury”

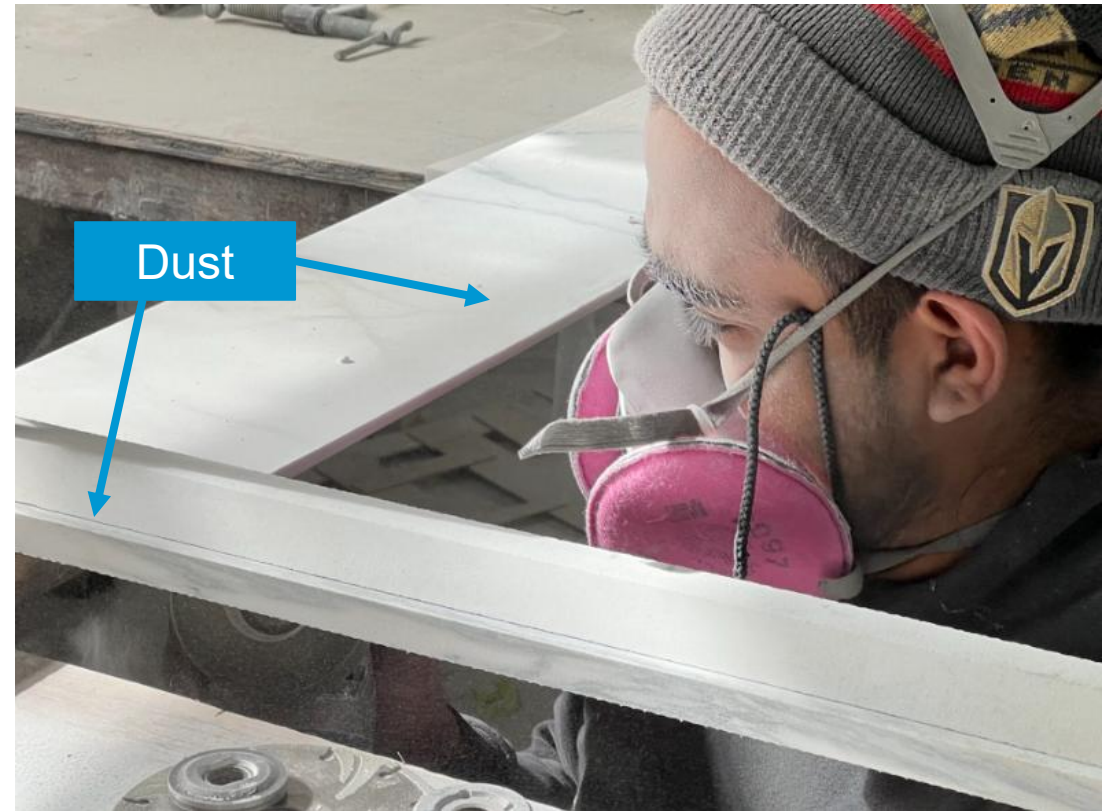


Silica Exclusions: Potential Triggers of Coverage

- ▶ Non-silica constituents
 - VOCs, metals, etc.
- ▶ Non-dust exposure pathways
 - Vapors, fumes, mists, etc.
- ▶ Low or no-silica products
 - Solid surface ATH, marble, dolomite
- ▶ Not-exclusively-silica injuries
 - Inflammation, systemic immune response, kidney damage, etc.
- ▶ Non-silicosis diseases
 - Scleroderma, lupus, kidney disease, etc.

Non-Dust Exposure Pathways

“high levels of exposure were reported even when wet cutting” Quiroz ¶183



Non-Dust Exposure Pathways





Non-Silica, Non-Dust Injury Allegations

“ . . . pulmonary fibrosis . . . is caused by many metals that are constituents of artificial stone” *Quiroz* ¶97

“ . . . polyester resin . . . when cut or ground . . . , releases toxic volatile organic compounds (VOCs) These chemicalscause various toxic effects to the human lungs” *Quiroz* ¶464.

Re: Caesarstone

“ . . . polyester resin . . . when cut or ground . . . , releases toxic volatile organic compounds (VOCs) These chemicalscause various toxic effects to the human lungs” *Quiroz* ¶464.

Re: Silestone

“ . . . [failure to warn] why . . . [vapor formation] is a hazard, what vapors form, and how workers should protect themselves from such unspecified vapors.” *Quiroz* ¶983.

Re: Viatera



Concurrent Causation: California View

“[C]overage is available whenever an insured risk constitutes a proximate cause of an accident, even if an excluded risk is a concurrent proximate cause”

Disclaimer: This perspective is disputed. Analysis varies from state-to-state.

State of California v. Allstate Ins. Co., 45 Cal.4th 1008, 1032 (2009); quoting *State Farm Mut. Auto Ins. Co. v. Partridge*, 10 Cal.3d 94, 105 (1973).



Concurrent Causation Causes Confusion

Inquiry is whether a cause of injury that:

- within the scope of the insuring agreement;
- is a proximate cause / substantial factor; and
- standing alone would not be excluded

Yes

No

Coverage

No
coverage

A showing by the insurer that an excluded cause “also contributed [to the injury] is insufficient to defeat coverage.” *State v. Allstate*, 45 Cal.4th at 1032.

Disclaimer: This perspective is disputed. Analysis varies from state-to-state.



Allegations re: Concurrent Causation

“1320. From his use of the foregoing toxic stone products, [underlying plaintiff] was exposed to Defendants’ toxic stone products, including artificial stone products as well as natural stone products including granite, marble and other natural stone products.”

“1322. As a result of [underlying plaintiff’s] exposure to the foregoing toxic stone products, silica, metals and other toxins within said stone products entered [his] body.”

“1325. Each toxin, including silica and metals, that entered [his] body was a substantial factor in bringing about [his injuries]”

Representative Caselaw Favoring Policyholder



Am. Zurich Ins. Co. v. James N. Gray Co., Case No. SACV 13-1966 AG (JPRx), 2014 U.S. Dist. LEXIS 186460, at *3 (C.D. Cal. July 25, 2014) (silica exclusion did not absolve insurer of duty to defend)

Sompo America Insurance Co. v. LX Hausys America, Inc., Central District of California, Case No. CV 25-2832-JFW, Decision December 22, 2025 (Hon. John F. Walker) (found potential for coverage and therefore a duty to defend despite silica exclusion)

Century Sur. Co. v. Oates Metal Deck & Bldg., Civ. A. No. H-11-3349, 2012 U.S. Dist. LEXIS 205152, at *16 (S.D. Tex. Oct. 3, 2012) (silica exclusion alone did not relieve insurer of duty to defend as cause of illness and death was not limited to silica exposure)

Hanover American Insurance Co. et al. v. Francini, Inc., Central District of California, Case No. 2:23-cv-10047-MRA-MAA (Mar. 31, 2026) (potential for coverage where exposure to non-silica substances contributed to injuries; neither silica exclusion nor pollution exclusion barred coverage)

Representative Caselaw Favoring Insurer



Century Sur. Co. v. Oates Metal Deck & Bldg., Civ. A. No. H-11-3349, 2012 U.S. Dist. LEXIS 205152, at *16 (S.D. Tex. Oct. 3, 2012) (silica exclusion alone did not relieve insurer of duty to defend as cause of illness and death was not limited to silica exposure)

Grinnell Mutual Reinsurance Company v. Dingmann Brothers Construction of Richmond, Inc., 34 F. 4th 649 (8th Cir. 2022) (silica exclusion unambiguously barred coverage for silica losses)

Garamendi v. Golden Eagle Insurance Co. (2005) 127 Cal. App. 4th 480 (coverage for silica claims excluded under total pollution exclusion)

Clarendon America Insurance Company v. Bay Inc., 10 F. Supp. 2d 736 (S.D. Tex. 1998) (coverage for silica claims excluded under toxic substance exclusion and total pollution exclusion)

Pending Case of Interest



M S International, Inc. v. Ironshore Specialty Insurance Company,
Southern District of New York, Case No. 1:25-CV-01742 (Feb. 28,
2025)

- MSI sued insurer to challenge insurer's position that all stone-countertop lawsuits in California were the result of a single "occurrence"

Exemplary Case



Regent Insurance Company et al. v. Cambria Enterprises et al., Central District of California, Case No. 2:25-cv-04142-MRA-MAA (Mar. 31, 2026)

- Demonstrates the importance of specific exclusionary language
- Every Plaintiff alleged injuries caused by non-silica toxic substances *and* silica **in a single action**
- Policies with narrower silica exclusions did not bar coverage, potential for coverage under:
 - Policies that excluded bodily injury “arising, in whole or in part” or “arising out of or in any way related to” silica or silica-related dust; and
- Policies with broader silica exclusions did bar coverage, no potential for coverage under:
 - Policies that excluded injuries arising from silica or silica-related dust and injuries arising from other substances that are part of the same claim or suit



Notice Issues

- Always give notice immediately
 - *No recovery for defense costs incurred prior to giving notice*
- Never settle without insurer's consent (unless insurer has unequivocally denied coverage)
 - *No recovery for voluntary payments made by insured*
- Claims made policy → deadlines strictly construed
- Occurrence policy → whether delay materially prejudiced insurer



Insurer's Recoupment of Defense Costs

- A possibility of coverage for any claim means insurer must defend entire case
- Insurer that has properly reserved its rights can later seek to recoup defense costs as to claims for which there was never any possibility of coverage

See Buss v. Superior Court, 16 Cal. 4th 35 (1997)



Exhaustion of Policy Limits

Vertical Exhaustion

- Coverage under single policy year; excess triggered as soon as primary exhausts
- Earlier access to excess layers

Horizontal Exhaustion

- Coverage under all triggered policy years; all primaries must exhaust before reaching any excess layers

California is a **vertical exhaustion** state (*Truck Ins. Exchange v. Kaiser Cement & Gypsum Corp.*, 16 Cal. 5th 67, 98 (2024))

Counsel Issues



Defendant-Retained Counsel → selected and paid for by defendant, insurer not involved

Insurer-Appointed Counsel → selected and paid for by insurer, insurer controls defense

Personal Counsel → selected and paid for by insured to oversee insurer-appointed counsel, insurer controls defense

Independent or “Cumis” Counsel → selected by insured but paid for by insurer, insured controls defense subject to limitations

Coverage Counsel → represents insured on coverage matters



Counsel Issues (Continued)

Ethical Considerations

- Dual role of appointed counsel
 - Cannot give coverage advice
 - May need to recognize coverage issues
 - Management of information harmful to coverage
- Hazards of being both coverage counsel and independent counsel



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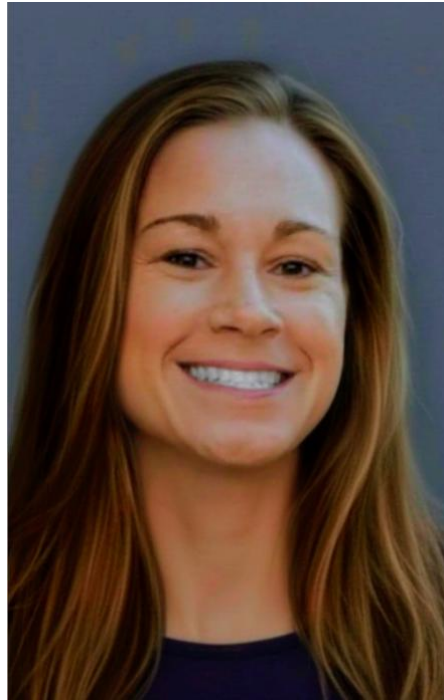
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