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## **Client Alert**

### **Forum Selection – Do Not Let Your Insurance Company Make This Important Decision**

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If you are facing liability for an environmental cleanup of "long tail" historical contamination, your insurance company's response to the notice you give of that claim may be to sue you.

Since the mid-1980s, Indiana law on liability insurance coverage for environmental cleanups is one of the most favorable nationally for policyholders. Plews, Shadley, Racher and Braun, LLP, has had a pivotal role in this development – most of the formative cases are cases we pursued on behalf of policyholders. See, for example, *Freidline v. Shelby Ins. Co.*, 774 N.E.2d 37 (Ind. 2002); *Allstate Ins. Co. v. Dana Corp.*, 759 N.E.2d 1049 (Ind. 2001) ("*Dana II*"); *Am. States Ins. Co. v. Kiger*, 662 N.E.2d 945 (Ind. 1996); *Seymour Mfr. Co., Inc. v. Commercial Union Ins. Co.*, et al., 665 N.E.2d 891 (Ind. 1996); *City of South Bend v. Century Indem. Co.*, No. 49F12-0303-PL-000752, 2005 WL 89404 (Ind. Ct. App. 2005); *PSI Energy, Inc. v. Home Ins. Co.*, 801 N.E.2d 705 (Ind. Ct. App. 2004); *Gen. Housewares Corp. v. Nat'l Sur. Corp.*, 741 N.E.2d 408 (Ind. Ct. App. 2000); *Employers Ins. of Wausau v. Recticel Foam Corp.*, 716 N.E.2d 1015 (Ind. Ct. App. 1999); *Travelers Indem. Co. v. Summit Corp.*, 715 N.E.2d 926, 931–33 (Ind. Ct. App. 1999), and *Hartford Acc. & Indem. Co. v. Dana Corp.*, 690 N.E.2d 285, 291 (Ind. Ct. App. 1997).

The insurance companies are very aware of the policyholder-friendly law in Indiana. As a result, an increasing number of them, once they receive notice of a claim that can and should be heard in an Indiana court, sue the policyholder in another state in an attempt to avoid Indiana law. Their desire to avoid Indiana law is so great in some cases that they will file that lawsuit before advising the policyholder that coverage is denied or otherwise acknowledging the notice of claim. If this happens, there are steps that can be taken to have Indiana law applied by that non-Indiana court, or have the case dismissed so that it can be properly filed in Indiana, but those steps result in costly delays for the policyholder who may be facing an expensive cleanup without any way, absent insurance coverage, to pay for it.

Consequently, and particularly with "long-tail" liability for environmental cleanups where the circumstances giving rise to the contamination occurred years ago, the policyholder may want to consider letting its Indiana lawsuit serve as the initial notice of the claim. The policyholder may have fears about suing its insurers – or about litigation in general. Such fears are not uncommon. The insurers and/or the insurance agent may cry foul, but filing the suit does not increase the likelihood that your policy will get canceled. The advantages of first filing in an Indiana court with the benefit of favorable Indiana law is the most important factor in the consideration.



The selection of forum affects the cost and convenience of coverage litigation with your insurer. It can be outcome-dispositive. Do not let your insurers make that decision for you. If you are facing liability for an environmental clean-up, there are steps you can take to minimize the risk of being sued by your insurers in a state other than Indiana.