

ENERGY LAW

Energy, Environment and the Law in California

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Aaron Allan, Senior Partner of the Environmental & Energy Department at Glaser Weil speaks on saving clients during lawsuits.

"Managing environmental risks and having appropriate insurance is more important than ever given the high stakes that face our clients," he explains.

"We have been successful not only in identifying risks for clients, but also in obtaining new insurance and maximising the value of historic policies when confronted with new or potential liabilities. "While I pride myself on my ability to win lawsuits, the best lawsuit for a client is the one that never happens."

Below he speaks more on energy law and how it is impacting his clients.

How have you seen insurance coverage change in relation to energy law, with the increasing environmental concerns?

Over the past 10-15 years, there generally has been a reduction in the availability of insurance to cover environmental issues (including shorter terms, and higher self-insured retentions). Environmental disasters, such as the offshore spill in Santa Barbara and the water quality problems in Flint, Michigan, coupled with more aggressive government regulation (prior to 2017), have also led insurance companies to demand higher premiums and deductibles, and to refuse types of coverage that used to be routinely available, such as "cost-cap" environmental coverage, which protects against cost overruns for the remediation of polluted sites. In the energy sector, whether in new shale plays or traditional resource plays, there are a limited number of insurers willing to entertain environmental risks. Those writing policies have been successful, but many insurers appear to be wary of the technology and appear not yet ready to correctly underwrite the risk. The tide may be turning, however, because of several factors: (1) a trend down in oil prices has led to decreased production activities and a reduction in the number of claims, (2) increased regulation and new technologies have led

to improved safety of operations; and (3) recent large spills, such as Deepwater Horizon, have inspired industry wide efforts to better protect workers, property and natural environments, of which insurance companies have taken notice.

Are there any rumored changes expected to occur, which you think may deeply affect your clients?

The recent prolonged downturn in energy prices, which has led to reduced demand for insurance among energy providers, coupled with anticipated relaxed enforcement efforts from the current administration in Washington D.C., is expected to put pressure on insurance carriers to loosen underwriting standards and expand the terms and conditions under which they offer coverage to energy companies. The rise in alternative energy companies and sources is also expected to generate incentives for insurance carriers to come up with creative new products to insure against financial loss in this sector, which should also benefit more traditional energy providers.

What do you think is key in ensuring you obtain full (or the best) coverage for your clients during lawsuits?

First, while it may seem obvious,

it's important to carefully read every term and condition of the policy. Second, in all dealings, I have found it extremely helpful to act reasonably and maintain credibility with the insurance carrier representatives and counsel. Finally, the case law affecting coverage is constantly evolving, particularly here in California, and it's imperative to keep up to date with the most recent decisions that may affect your clients on coverage issues.

What would you claim are three important factors to address during environmental due diligence?

The most important aspect of performing environmental due diligence is completeness. For the deals that I have been involved in handling, there has been simply too much at stake to think about cutting corners. Second, it's important to understand the limitations of a Phase I Environmental Site Assessment. A Phase I should only be used only as a starting point for evaluating the need for other tools to complete due diligence. Third, you must gain a complete understanding of the target company's operations, both present and historical, which often requires interviews with both current and former officers and employees. Without that



About Aaron P. Allan

Aaron P. Allan, a Senior Partner in Glaser Weil's Environmental & Energy Department, has for over twenty-five years represented a diverse range of business entities on significant issues involving energy, environmental, consumer products, insurance coverage, toxic tort and real property issues. He has published and presented on significant topics such as groundwater management, environmental lender liability, and California's Prop. 65, and is currently working on an article discussing California's cap and trade programme to reduce greenhouse gas emissions. He has successfully represented oil and gas companies, solar providers, water utilities, insurance companies, hotels, banks, and other business entities on such matters.

Firm Profile

Glaser Weil, based in Los Angeles, is one of the country's premier full-service law firms. Advising a roster of diverse, selective clients — from start-ups and large global corporations to high-profile entertainers and other well-known individuals — Glaser Weil represents clients' interests with an unprecedented level of dedication and commitment.

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understanding, there is too much of a risk of missing indicators for both on-site and off-site liabilities. **LM**