

Nuclear Insurance Coverage Experience



K&L Gates has extensive knowledge and experience helping clients secure valuable insurance coverage for nuclear-related liabilities, including property damage and business interruption claims, onsite and offsite remediation, and bodily injury claims. Our experience includes a comprehensive understanding of the issues arising under the particularized insurance policies issued to cover nuclear-related liabilities issued by American Nuclear Insurers (“ANI”), formerly known as the “Nuclear Energy Liability Insurance Association”; Mutual Atomic Energy Liability Underwriters; and Nuclear Electric Insurance Limited (“NEIL”), formerly known as “Nuclear Mutual Limited.”

These policies include, but are not limited to, the ANI “Facility Form Policy,” a liability policy issued to owners or operators of nuclear facilities; the ANI “Facility Worker Form Policy,” issued to cover radiation tort claims of workers at nuclear facilities; the ANI “Supplier’s and Transporter’s Policy,” purchased primarily by companies that provide products or services to operators of nuclear facilities; and the Secondary Financial Protection Policy, which, together with the Facility Form Policy, is used by the operators of nuclear facilities to meet the financial protection requirements under the Price-Anderson Nuclear Industries Indemnity Act (“Price-Anderson Act”). These policies also include the NEIL Primary Property and Decontamination Liability Insurance Policy, an all-risk property policy that often includes business interruption and extra expense coverage; the NEIL Decontamination Liability, Decommissioning Liability and Excess Property Insurance Policy, an excess policy that provides excess property, decontamination, and decommissioning liability insurance; and the NEIL Blanket Excess Decontamination Liability, Decommissioning Liability and Excess Property Insurance Policy, a follow-form blanket excess policy.

K&L Gates has successfully advised nuclear policyholders in negotiating retention of counsel and defense and non-waiver agreements in the face of insurer reservation of rights and in the context of underlying claims potentially implicating both nuclear and non-nuclear related insurances.

Additionally, we have been retained in nonpublic representations in connection with corporate due diligence relating to the evaluation of historical nuclear insurance assets. As such, we work closely with our colleagues with expertise in underlying nuclear claims defense and experience with the Price-Anderson Act and the regulatory aspects of the Act’s financial protection requirements.

K&L Gates has successfully represented client owners and operators of nuclear fuel processing and waste disposal facilities in securing insurance coverage for various types of claims under nuclear insurance policies. The following are representative litigation matters in which K&L Gates coverage lawyers represented the policyholder:

- K&L Gates represented Westinghouse Electric Corporation and its subsidiary, Hittman Nuclear Co., in matters regarding nuclear liability insurance coverage in connection with the Maxey Flats disposal site. See *Aetna Casualty & Surety Co., et al. v. Commonwealth of Kentucky, et al.*, 179 S.W.3d 830 (Ky. 2005) *aff’g Aetna Cas. & Sur. Co. v. Nuclear Engineering Co.*, 2002 WL 363373 (Ky. App. Mar. 8, 2002). This decision of the Kentucky

Supreme Court represents the first appellate guidance regarding the coverage afforded under nuclear energy liability policies in connection with claims alleging radiation-related property damage. The decision rejected the insurer's multiple coverage defenses, including its narrow definition of "damages" and "property damage," its onsite exclusion, prophylactic measures, and various other defenses.

- K&L Gates led The Babcock & Wilcox Company ("B&W") to trial and appellate court victories, securing coverage under nuclear liability insurance policies. In September 2011, a Pennsylvania jury in the Allegheny Court of Common Pleas found in favor of B&W in an \$80 million insurance dispute with ANI over settlements entered by B&W and another entity to resolve a lawsuit involving more than 500 claims of bodily injury and property damage arising out of nuclear fuel fabrication facilities in Apollo and Parks Township, Pennsylvania. In a **July 21, 2015** decision, the Supreme Court affirmed the trial court's judgment including an award of substantial interest. See *Babcock & Wilcox Co. v. Am. Nuclear Insurers*, No. 2 WAP 2014, 2015 WL 4430352 (Pa. July 21, 2015). This decision, recognized as one of the most important insurance coverage decisions of 2015, represents the first appellate guidance regarding the coverage afforded under nuclear energy liability policies in connection with claims alleging radiation-related bodily injury; it also is a landmark decision that will assist companies across the country seeking to settle claims over the objections of insurers (not just nuclear insurers).