

# "FOREVER CHEMICALS"

## PFOA/PFOS A CHALLENGING TRANSACTION

### BACKGROUND OF PFOA & PFOS

CAC Specialty's Environmental Practice was contacted by a leading law firm to create an insurance solution for a challenging transaction involving a paper products company (Client) that operated numerous paper mills for decades in the U.S. and internationally. These mills have a long history of using perfluorinated chemicals in their manufacturing processes. More specifically, the chemicals used were PFOA & PFOS, sometimes referred to as "*forever chemicals*," a part of a larger group of chemicals known as PFAS compounds.

The Client's creditors wanted to avoid a full-fledged bankruptcy proceeding and find a solution for the business to continue its operations. This included analyzing their overall environmental liability and finding a risk transfer solution to minimize potential exposures.

PFAS compounds are a group of chemicals thought to be everlasting in our environment (*not known to break down by natural causes*). PFAS have been shown to be harmful to human health and the environment and have recently come under the scrutiny of many state environmental regulators, as well as the United States Environmental Protection Agency (EPA). These chemicals are used in a wide array of products, including but not limited to water-repelling clothing, firefighting foams, stain-resistant furniture & carpeting, certain older forms of non-stick cookware, food packaging, and car waxes and detergents, to name a few. It is also found

in many drinking water sources, including private wells and municipal utilities. Many experts agree that most people in the Western Hemisphere have been exposed to these chemicals and already have them in their body<sup>1</sup>. What's more, it was found in the blood of more than 98% of people who took part in the U.S. 1999–2000 National Health and Nutrition Examination Survey (NHANES) ([11Trusted Source](#)).

### CHANGING REGULATORY CLIMATE

During CAC Environmental's due diligence process, federal environmental regulators developed cleanup standards for PFOA/PFOS compounds<sup>2</sup>. In certain states, standards became more stringent, creating further liability around remediation and leading to increased awareness and concerns by insurance carriers. *This ultimately resulted in PFAS exclusions.*

Before CAC's engagement, two class action lawsuits were filed against certain fast food companies and their use of paper wrappers known to contain PFAS compounds. The same type of paper product was produced by the Client, leading to uncertainty around the possibility of similar lawsuits for products pollution claims from toxic tort liability. Other concerns included claims from environmental advocacy groups and other third parties claiming damage to natural resources (*bodies of water, tributaries, etc.*).

### SOURCES

<sup>1</sup> PFAS in the U.S. Population - <https://www.atsdr.cdc.gov/pfas/health-effects/us-population.html>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-09-06/pdf/2022-18657.pdf>

# ENVIRONMENTAL EXPOSURES

Several key environmental liability exposures were identified during CAC's review of the environmental documents and contracts:



Claims from third parties for bodily injury and property damage from releases on and migrating from operating sites



Cleanup costs, both on- and off-site



Products pollution liability



## TRANSACTIONAL SOLUTIONS

Creditors foreclosed on a specific group of assets and left two non-performing assets to transfer into a liquidation trust. With certain insurance products to support either Newco or the Oldco/Trust entities, the transaction was able to close, avoiding bankruptcy proceedings and arranging new financing for Newco.

## RISK TRANSFER SOLUTIONS

*Three policies were placed in support of the transaction:*

### **SITE LIABILITY POLICY (PLL) – FOR THE CARRY-FORWARD NEWCO OPERATING COMPANY**

- Cleanup costs for all unknown pollution conditions
- Toxic tort liability coverage for PFCs for all locations both in U.S. and Internationally
- Long-term policy of 10 years
- \$75M limit policy program with four carriers
- All stakeholders, owners, leaseholders, lenders, and any potential buyers are covered as insureds

### **PRODUCTS POLLUTION POLICY – FOR THE NEWCO COMPANY FOR ANY POLLUTION EXPOSURES RESULTING FROM USE OF PRODUCTS**

- \$25M limit policy with four carriers
- Covers toxic tort claims arising from damages resulting from the insured's products
- Multi-year term, (3) years with an automatic extension
- All stakeholders are covered

### **SITE LIABILITY POLICY (PLL) – FOR THE LIQUIDATING TRUST ENTITY, WHICH RETAINED TWO DECOMMISSIONED ASSETS:**

- Cleanup costs for all pollution conditions, including PFAS, which are not a result of a Voluntary Site Investigation or Capital Improvements
- Toxic tort liability coverage for PFC for all locations both in U.S. and internationally
- Long-term policy of 5 years
- \$20M limit policy program
- Named Insureds are the Liquidating Trust, the Trustee, and certain Oldco entities that owned the sites





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## KEY TAKEAWAYS



### CHALLENGES & OPPORTUNITIES

There are always solutions of varying degrees, but this requires engaging the right parties with the right experience. Environmental issues require a careful but creative engagement with clients, legal, consultants, and underwriters.



### DETAILS MATTER

Info gathering and presentation to underwriting partners must be managed in a way that presents known issues while providing information that ringfences the risk in a way the underwriters can gain comfort with the exposures, enabling them to provide more meaningful coverage.



### TIMING RESPONSIVENESS

Early engagement is critical to set mutually agreeable expectations with all stakeholders and develop a strategy with the underwriting partners.

## CAC SPECIALTY ENVIRONMENTAL TEAM

*Our approach is fairly simple: Think beyond the ordinary boundaries to bring unique solutions to our clients.*



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