

Gasoline Reclassified as Carcinogen: Insurance Recovery Implications

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On March 21, the International Agency for Research on Cancer (IARC), a non-governmental entity, identified automotive gasoline as a “Group 1” carcinogen. Given the ubiquity of gasoline, it is certainly conceivable that we will see an increase in litigation across jurisdictions filed against refiners, distributors and chemical manufacturers alleging injury due to exposure to automotive gasoline. Therefore, it is vital that companies closely examine their insurance policies to determine whether such claims can be covered.

More specifically, according to IARC:

The Working Group evaluated automotive gasoline as carcinogenic to humans (Group 1) on the basis of sufficient evidence for cancer in humans and the combination of sufficient evidence for cancer in experimental animals and strong mechanistic evidence in exposed humans.

This designation, which is still preliminary, represents a significant departure from IARC’s previous classification of automotive gasoline as only “possibly” carcinogenic in humans (*i.e.*, a “Group 2B” carcinogen), which was in place for 37 years. Specifically, as will be reflected in the forthcoming IARC Monographs Vol. 138, IARC stated that automotive gasoline causes urinary bladder cancer and acute myeloid leukemia in adults but found only limited evidence connecting gasoline with acute lymphoblastic leukemia in children, and non-Hodgkin lymphoma (including chronic lymphocytic leukemia), multiple myeloma, myelodysplastic syndrome, and cancers of the stomach and kidney in adults. IARC further stated that “[t]he IARC Monographs programme seeks to identify cancer hazards, meaning agents with the potential for the exposure to cause cancer. However, the classification does not indicate the level of cancer risk associated with exposure at different levels or in different scenarios. The cancer risk associated with substances or agents that are assigned the same classification may be very different, depending on factors such as the type and extent of exposure and the size of the effect of the agent at a given exposure level.”

The final monograph is not expected to be issued until 2026. Given the current lack of disclosure regarding new studies or testing (and the limited scientific studies even cited by IARC at this time), corporate policyholders defending against such claims should be prepared to push back with countervailing scientific evidence on causation, and it is debatable whether IARC’s classification is admissible evidence.

In the meantime, this alert outlines the initial steps that policyholders should take in anticipation of this potential new wave of litigation.

Potentially Responsive Insurance Policies

Given the categorization by IARC, the earliest insurance policies all the way to present insurance policies may respond to potential claims. As noted below, commercial general liability insurance first

arose in the 1940s, and those occurrence-based policies may be triggered by claims that are filed today. Additionally, given that automotive gasoline is still widely used, current policies may likewise be responsive.

Thus, the first step is for companies to ensure that they have collected and organized their insurance program. This includes not just identifying the policies but also confirming which policies are still available if prior settlements of claims made on them were executed.

Categories of Responsive Policies

Several types of insurance policies may be responsive to a company's losses arising from automotive gasoline exposure, including, but not limited to the following:

- Commercial general liability (CGL) policies: CGL policies generally offer coverage for a wide range of liabilities, including defense and indemnity for claims alleging bodily injury and property damage due to companies' operations. Companies refining and/or distributing automotive gasoline may experience losses relating to defending and settling lawsuits filed by plaintiffs alleging bodily injury (*i.e.*, cancer) due to gasoline exposure. Indeed, although it did not address the importance of cumulative dose or protective measures like personal protective equipment or vapor recovery systems, IARC specifically enumerated the following individuals as being potentially exposed to automotive gasoline: service station attendants, mechanics, workers in the production and transportation of gasoline, and the general population via air pollution or gasoline vapors at service stations.
- Environmental pollution liability (EPL) policies: Starting around 1986, insureds have been purchasing pollution liability policies, which may be responsive to potential claims. EPL covers liability arising from alleged pollution, potentially including clean-up costs. These policies may be responsive to a company's losses arising from, for example, the alleged pollution of the environment due to spills, leaks, and the improper disposal, transportation, storage, or use of automotive gasoline.

Issues Related to Notice

Policyholders should be aware that, given the potential breadth of the policies at issue (both as to timeframe and applicable lines of coverage), providing notice will be a complicated endeavor and companies should start early on this process. This effort may also demand a close review of the available insurance policies originally issued to a company's predecessors-in-interest. Further, companies should consider providing a notice of circumstance to its insurers in order to begin (1) discussions with those insurers regarding coverage and (2) identify any issues that the insurers may raise to coverage.

Conclusion

The impact of IARC's re-classification of automotive gasoline as a Group 1 carcinogen may have far-reaching effects, and policyholders should act now to minimize potential losses. Haynes Boone will continue to provide alerts as this develops and will be addressing additional issues related to IARC's designation of automotive gasoline.