

# COVERAGE DISPUTES

KCIC analyzes policy language to facilitate resolution



Pump Corp. has been a major target of asbestos personal injury lawsuits over the past 15 years. They have spent, on average, \$10 million each year to defend and resolve such cases.

Until recently, the litigation was entirely funded and managed by Pump Corp.'s primary insurers. However, the company was notified that the limits of its primary policies were expected to exhaust in stages over the coming years. As a result, Pump Corp. risked incurring millions of dollars in unfunded costs and financial peril unless funding from excess insurance could be secured. The company and its counsel, Best Law Firm, came to KCIC to help them secure that continued coverage after the excess insurer initially refused. Best Law Firm specializes in insurance coverage for legacy liabilities.

**CASE  
STUDY**



## SNAPSHOT OF THE STORY:

- An excess insurer's initial refusal to contribute to cost-sharing created substantial financial risk for Pump Corp.
- The company, with its counsel, needed to place the excess policies on notice, counter the intransigent insurer's arguments based on the language of the policies, and better understand how its excess coverage works.
- KCIC applied web-based database technology to turn policy language into information that can be searched, sorted, analyzed, and categorized via KCIC's Ligado Platform.
- With these new insights, Pump Corp. and its counsel secured continued insurance coverage and now can make informed decisions on how to mitigate future coverage risks.



## THE CLIENT CHALLENGE:

Best Law Firm had understood that with exhaustion imminent, Pump Corp.'s 150 excess policies should be placed on notice for the asbestos losses. The firm also initiated discussions with Acme Insurance Co., since Pump Corp. had placed an umbrella layer from Acme above the primary policies.

TIME FRAME	EXHAUSTING LIMITS
This Year	25%
Next Year	75%
In Two Years	100%

The goal was to secure Acme's agreement to cover the soon-to-exhaust 25% share. Acme refused, however, arguing that it should not contribute until all the primary policies, including three issued by insolvent carriers, had paid their full limits. The parties also disputed whether and how investigation and defense costs are covered under Acme's policies. These kinds of disputes are extremely common between primary and excess insurers and policyholders. Surprisingly, there was no dispute regarding exhaustion of the other primary policies.

## PUMP CORP. AND ITS COUNSEL NEEDED:

- Easy access to all of Pump Corp.'s insurance policy data, both in tabular and coverage chart format
- Clean and organized copies of the policies to read and analyze
- Key policy language captured and coded for analysis and brief-writing
- Guidance on how to provide proper notice according to each policy's terms and conditions
- The ability to perform sophisticated analyses across the insurers and years, including financial evaluation of potential court rulings and choice of law decisions
- A full understanding of Pump Corp.'s insurance portfolio and where coverage gaps may exist

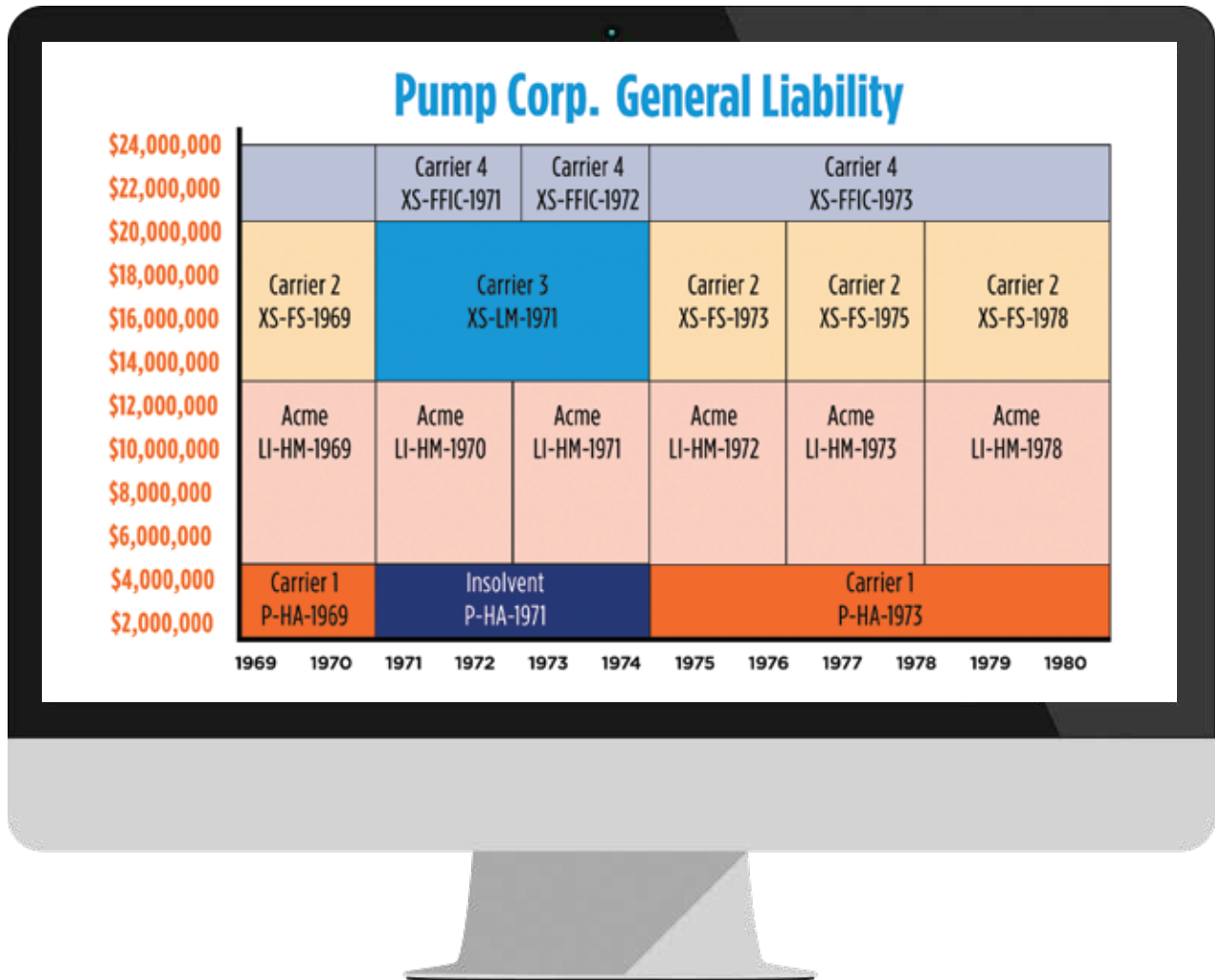
To evaluate the strength of Acme's arguments, and others that may arise later, Best Law identified 30 key terms to locate in the policies, including notice provisions and defense treatment. But how could it go about analyzing all of them?

**Best Law considered typing the relevant policy clauses into spreadsheets or memos and making decisions on how to treat each policy for each key term.** However, it would be a struggle to quickly analyze key risks across the entire coverage block. If an attorney reconsidered how to treat a certain piece of language, finding that same text in the other policies in this fashion and updating accordingly could prove difficult.

**Best Law knew that a specialized support tool like KCIC's Ligado Platform was needed to develop a comprehensive picture of Pump Corp.'s complex insurance portfolio in a cost-effective manner.**

## THE KCIC SOLUTION:

At KCIC, we know firsthand how cumbersome it can be to manage the data for a large, complicated corporate insurance portfolio, not to mention extract meaningful insights. With The Ligado Platform, we're able to store and analyze policy language at the most granular level — enabling coverage attorneys to make sense of the expansive information contained in a client's insurance policies.



### INCREASED ACCESSIBILITY

We extracted all the basic policy data — including dates, named insureds and limits — from the insurance policies and uploaded the data to Ligado, making it accessible online to Pump Corp. and Best Law users. When new attorneys or corporate personnel join the team, they can quickly obtain login credentials and get a picture of what analyses have already been performed.

### ORGANIZED POLICY FILES

KCIC combed through duplicate policy document productions from Pump Corp., its insurers and its brokers to produce the most complete, legible and organized version, then uploaded an electronic copy to Ligado.

### EXTRACTED POLICY LANGUAGE

In collaboration with Best Law, KCIC consultants utilized our database of common policy forms and Optical Character Recognition (OCR) technology to capture the exact text of the 30 key terms and conditions from the insurance policies. Once input into Ligado, this language can be searched for keywords or phrases and easily exported to support brief-writing.

## ANALYZED POLICY LANGUAGE

KCIC worked with Best Law to identify the important types of language for each category and to enforce consistency across policies. Each piece of language captured was associated with one or more of the 30 key terms identified. As Best Law's understanding of the legal issues develops, policy coding can be quickly and consistently updated. KCIC also analyzed complex follows form language to assist with understanding the impact of key assumptions made for excess policies.

## ENABLED CUSTOM REPORTS

Best Law now uses Ligado to generate custom reports and export policy listings and language reports to support brief-writing and correspondence with the excess insurers. In only a few clicks, the firm can search for keywords or phrases across the entire language database.

## PROVIDED VISUALIZATION

Best Law now can use dynamic coverage charting software to isolate key towers or layers of the insurance portfolio and view the policies color-coded according to key provisions. Together with their client, they identified several towers where policies appeared to be missing or where insolvency may impact strategy in the future. The firm also can use the chart when analyzing the impact of future court rulings.

## BUILT-IN INTEGRATION

As Pump Corp.'s insurance recovery needs progress, KCIC is able to integrate the Ligado policy database seamlessly with the platform's claims administration and insurance allocation tools.

# EXACT LANGUAGE

The company will pay on behalf of the insured all sums which the insured shall become legally Obligated to pay as damages because of Coverage A — bodily injury or Coverage B — property damage to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

*KCIC captured exact text from the insurance policies, making it searchable in Ligado and easily exported.*

## THE RESULT:

Best Law gained digital access to all the analyses performed on Pump Corp.'s insurance policies. With the information needed to confirm the policy coding, as well as a copy of the policy evidence used to generate it, the attorneys used the exact language captured to send notice to the insurers, agents and claims administrators, according to the terms of each policy. They also pulled favorable Qualcomm/attachment language to refute Acme's arguments. As a result, Acme agreed to cover 25 % of Pump Corp.'s costs when the initial primary policies exhausted. Ultimately, Best Law agreed with Acme that defense costs eroded policy limits.

All of this was achieved in a few months — compared to similar disputes, which drag on for years, even decades. As the remaining primary insurance policies exhaust and insurers raise new arguments, Best Law and KCIC can mine existing policy language or capture additional text and update the policy coding accordingly.

Pump Corp. now has peace of mind knowing its asbestos losses will continue to be covered by its insurers. It also has a better understanding of where future risks may arise in the portfolio and what strategies it can take to mitigate them. Should new risks emerge, Pump Corp. and its counsel will be ready to swiftly identify responsive policies, provide notice, and negotiate with insurers from an informed perspective.



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