insurers to defend and indemnify them. Rather than accepting responsibility for these claims under their broad, all-risk policies, however, most CGL insurers refused to defend and indemnify their Oregon insureds. After paying premiums for decades, policyholders were deprived of the benefit of coverage when they most needed it. Policyholders had little choice

for financial assistance. Without insurance coverage, a significant portion of this financial burden would fall to the public,[10] or alternatively, sites would be left unremediated and would continue to threaten the health of Oregonians and the Oregon environment.

Therefore, CGL policies play a critical role in restoring the health of Oregon's polluted lands and waters. Although it is clear that insurers must cover environmental cleanups, it is not easy to access these funds: the uncertainty under Oregon law as to the allocation of the policyholder's environmental liability among the policyholder's insurers leads to litigation and delays the cleanup. CGL policies that work well in the face of simple, one-time losses (such as fires or auto accidents) are more difficult to interpret when presented with the complex problem of long-term, indivisible environmental damage.

The first part of the allocation problem is the long-term nature of contamination. Pollution damage typically occurs over a long period of time, as numerous releases of contaminants, and their subsequent migration to new areas, causes ongoing environmental harm. Because policyholders commonly purchased CGL policies covering one or three-year periods, and may over the course of many years have obtained policies from a variety of different insurance companies, pollution damage claims potentially invoke coverage under many different insurance policies and from many different insurance companies. Oregon courts have adopted the "injury-in-fact" rule for determining which policies are triggered by a contamination.[11] co -1.12o E05/uh041-0.4(suran3stfor d)m CGL edetrshdrk e u

rata" rule). Other courts conclude that the policyholder may recover fully from the policy or policies of its choice, up to the limits of each policy, after which the chosen insurer(s) may seek contribution from other insurers (the "all sums" rule).

In Oregon, the allocation question remains unsettled. Oregon's appellate courts have yet to face the question of environmental insurance allocation. The consequences of this gap in our case law are enormous—policyholders and insurers litigate the allocation issue time and time again, and in the process delay cleanups by months or years and consume funds that could be used more efficiently for remediation.[15] Although the lack of a rule harms both policyholders and insurers, it also injures the Oregon public, as contaminated sites continue to threaten the health of Oregonians and our environment. Last, the lack of a clear rule also clogs Oregon courts and strains judicial resources. Judges recognize that the allocation issue is the most important unanswered question in environmental insurance law[16] and, not surprisingly, it is often litigated.

Part II of this Article explains the all sums and pro rata approaches. Part III explores the legal and equitable analysis underlying the pro rata and all sums rules as developed by courts outside of Oregon. Finally, Part IV analyzes relevant Oregon law, and Part V concludes that existing Oregon insurance and contract law requires the adoption of the all sums rule, and that equitable concerns also favor all sums allocation.

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15. *See*