

Fifth Circuit Rules That Pollution Exclusion Encompasses Asbestos Claims

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Addressing a matter of first impression under Texas law, the Fifth Circuit ruled that asbestos is a “pollutant” within the meaning of a pollution exclusion. *Longhorn Gasket & Supply Co. v. United States Fire Ins. Co.*, 2017 WL 3588304 (5th Cir. Aug. 18, 2017).

Longhorn, a manufacturer of asbestos-containing products, sued U.S. Fire Insurance Company, alleging breach of contract for failure to provide coverage. A Texas district court ruled that U.S. Fire was obligated to contribute to underlying defense and settlement costs. On appeal, U.S. Fire contested several district court rulings, including its finding that the pollution exclusion was inapplicable.

The Fifth Circuit concluded that asbestos is a “pollutant” and “irritant” within the meaning of the exclusion based on its harmful effects on the body and atmosphere. As the court noted, other jurisdictions have issued mixed decisions in this context. The court remanded the matter for a determination of whether the “sudden and accidental” exception to the exclusion applies.

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