

Pollution Exclusion Does Not Bar Coverage For Injuries Caused By Release Of Toxins From Fire Equipment, Says North Carolina Court

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A North Carolina federal district court ruled that a pollution exclusion does not bar coverage for injuries stemming from the release of toxic foam from firefighting equipment. *Colony Ins. Co. v. Buckeye Fire Equip. Co.*, 2020 WL 6152381 (W.D.N.C. Oct. 20, 2020).

Hundreds of underlying cases against the policyholder alleged that its firefighting equipment products contained toxic substances, resulting in bodily injuries to firefighters and others. The suits alleged direct exposure to claimants as well as indirect exposure through the environment (e.g., well water sources). Colony argued it had no duty to defend the suits based on a pollution exclusion that applies to injuries “which would not have happened in whole or in part but for the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of ‘hazardous materials’ at any time.” The policyholder conceded that the exclusion bars coverage for the environmental exposure claims, but argued that Colony was obligated to defend the direct exposure claims.

The court granted the policyholder’s summary judgment motion, ruling that under North Carolina precedent, the words “discharge, dispersal, seepage, migration, release, or escape” are “environmental terms of art” and that “policy exclusions using this language require traditional environmental pollution to deny coverage to an insured.”

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