

Two Courts Reach Opposite Conclusions As To Application Of Pollution Exclusion To Injuries Stemming From Tank Explosions (Insurance Law Alert)

02.28.22



(Article from *Insurance Law Alert*, February 2022)

For more information, please visit the [Insurance Law Alert Resource Center](#).

The Supreme Court of Mississippi ruled that a pollution exclusion is ambiguous and does not bar coverage for injuries arising out of an explosion caused by flammable substances. *Omega Protein, Inc. v. Evanston Ins. Co.*, 2022 WL 178171 (Miss. Jan. 20, 2022).

The injuries arose while contractors were working on a storage tank containing stickwater, a liquid composed of water, fish oil and fish solids—the byproducts of fish oil production. During welding and grinding of the metal tank, an explosion occurred, killing one person and injuring others. The explosion was allegedly caused by the “extremely flammable” gases inside the tank. Evanston sought a declaration that coverage under its excess policy was barred by a pollution exclusion that applied to loss “arising out of or contributed to in any way by the actual, alleged or threatened discharge, dispersal, release, migration, escape, or seepage of pollutants.”

The court ruled that the pollution exclusion is ambiguous because the undefined terms “irritant” and “contaminant” in the definition of “pollutant” are susceptible of more than one reasonable interpretation. In particular, the court noted that a substance can be an irritant or contaminant “at its core and by its very nature” regardless of where it exists, or conversely, may only be an irritant or contaminant when it comes into contact with something else. Construing this ambiguity in favor of coverage, the court ruled that the exclusion did not apply.

In contrast, a Washington district court granted an insurer’s summary judgment motion, finding that a pollution exclusion barred coverage for claims arising out of a tank explosion. *Country Mutual Ins. Co. v. Jackson*, 2022 WL 187808 (E.D. Wash. Jan. 20, 2022).

During the transport of several items to be recycled, a metal tank that was believed to be harmless exploded. The pressurized tank contained poisonous chlorine gas, and the accident resulted in the death of one individual and injuries to several others. The insurer defended the resulting lawsuits under a reservation of rights and later sought a declaration that it had no further duty to defend. The court granted the motion, ruling that the pollution exclusion precluded coverage for all claims.

The policyholder conceded that the injuries arose from a “pollutant” but argued that coverage nonetheless existed under Washington’s efficient proximate cause analysis. In particular, the policyholder claimed that the initial peril of the underlying injuries was the tortfeasor’s negligence in failing to inspect the cylinder, which is a covered peril under the policy. Under state law, if the initial event is a covered peril, “then there is

coverage under the policy regardless [of] whether subsequent events within the chain, which may be causes-in-fact of the loss, are excluded by the policy.” The court rejected this argument, explaining that it “need not consider the efficient cause of the injuries because the initial peril—negligent identification of a metal cylinder for recycling or disposal—fits within the ‘pollution exclusion’ and is an uncovered peril.” The court further noted that “general negligence in this context is not an independent peril distinct from the pollution exclusion.”

Authors and
Contacts

Bryce Friedman

Partner

bfriedman@stblaw.com

[+1-212-455-2235](tel:+12124552235)

