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Broad Application of Pollution Exclusion in CGL Policy by Michigan Court of Appeals

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Summary: The Michigan Court of Appeals has extended the scope of pollution exclusion clauses contained in Commercial General Liability (CGL) policies beyond traditional environmental pollution. Since most pollution exclusion clauses contain very broad definitions of pollutants, it is important for insurance companies and practitioners to be aware of the implications and the opportunity to deny insurance coverage for claims arising out of any release, discharge, escape, or migration of any solid, liquid, gaseous, or thermal contaminant or irritant.

When one thinks of the pollution exclusion in a typical CGL policy, the traditional environmental contamination, such as an oil spill or industrial waste, comes to mind. But what about more common chemicals and more common situations such as being overcome by paint fumes, adhesive fumes, or fumes contained in common cleaning solvents? Can an insurer rely on their pollution exclusion in cases such as these? The answer may often be 'yes' depending on the language of the pollution exclusion.

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In a recent Michigan Court of Appeals Opinion¹, summary disposition was affirmed in favor of an insurer denying coverage based upon a pollution exclusion clause in its CGL policy under the following facts: The insured, Thomas Brown Roofing and Siding Company, was a roofing contractor who was performing roofing work on a residence hall at Central Michigan University. The insured regularly used containers of diesel fuel as a solvent to clean its Burmastic (roofing adhesive) application equipment. In the course of its work, the insured accidentally knocked one of the containers of diesel fuel off the roof of the building, which resulted in the diesel-Burmastic mixture being spilled through the window of a resident's room. The resident claimed personal injuries resulting from inhalation of fumes and stemming from the insured's negligence.

Travelers Indemnity Company denied coverage based on its pollution exclusion which clearly and unambiguously excluded coverage for any "discharge," "dispersal," "seepage," "migration," "release," and "escape" of pollutants which included "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste." The trial court granted summary disposition in favor of the insurer, and the Court of Appeals affirmed refusing to "judicially engraft" any limitation to the broad but unambiguous language of the pollution exclusion.

¹ *Thomas Brown Roofing and Siding Company v. Travelers Indemnity Company*, ____ Mich App ____ (Unpublished No. 253127, April 12, 2005)

The cases the Court relied upon included another unpublished opinion² where a plaintiff claimed injuries resulting from inhalation of fumes from a floor adhesive, as well as, a product liability case³, where plaintiffs were injured when a high pressure hose failed and released toxic chemicals. These cases make clear that the pollution exclusion may be applied regardless of the nature of the claim be it product liability or some other tort.

If you should have any questions concerning this issue or any other insurance coverage issues, please do not hesitate to contact Kamron K. Lessani or Anthony F. Caffrey.

² *Carpet Workroom v Auto Owners Ins Co*, ____ Mich App ____ (Unpublished No. 223646, July 30, 2002)

³ *McGuirk Sand & Gravel v Meridian Mut Ins Co*, 220 Mich App 347, 354; 559 NW2d 93 (1996).



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