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Georgia High Court Affirms That CGL Policy's Pollution Exclusion Bars Coverage For Injury Allegedly Caused By Exposure to Carbon Monoxide

The Georgia Supreme Court affirmed on September 22, 2008, that a CGL policy's pollution exclusion bars coverage for injuries resulting from exposure to carbon monoxide, on the grounds that carbon monoxide is a pollutant as defined in the insurance policy. *Reed et. al. v. Auto-Owners Ins. Co.*, 2008 Ga. Lexis 746 (September 22, 2008).

Background

A residential tenant sued her landlord for injuries allegedly sustained due to carbon monoxide exposure that resulted from the landlord's failure to maintain a rental house in a good state of repair. The landlord tendered the claim to his insurance company, Auto-Owners Insurance Co. ("Auto-Owners"). Auto-Owners initially offered to defend the insured, but later filed a declaratory judgment action seeking a declaration that it did not have an obligation to defend or indemnify the insured.

In its suit, Auto-Owners alleged that the policy excluded coverage for injury resulting from exposure to carbon monoxide because the policy expressly excludes any "bodily injury" or "property damage" arising out of "the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants" at or from any premises, site or location that is or was at any time owned or occupied by, or rented or loaned to, any insured.

The policyholder argued that the policy language was ambiguous because the pollution exclusion was intended to apply only in cases of environmental pollution. The policyholder also argued that application of the pollution exclusion to bar coverage for exposure to carbon monoxide was inconsistent with the insured's reasonable expectations.

The Court's Ruling

The Georgia Supreme Court ruled that in construing an insurance policy, a court should first look at the policy's text. The court held that if the policy's terms unambiguously govern the dispute before a court, the court's only job is to apply the policy terms as written. The court noted that the parties recognized that the question before the court narrowed to whether carbon monoxide is a pollutant, as that term is defined by the policy.

Like most standard-form general liability policies, the Auto-Owners policy defined pollutant as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes material to be recycled, reconditioned or reclaimed." Construing this definition, the Georgia Court of Appeals in *Reed* had held that "there is no dispute that carbon monoxide is a fume and a gaseous irritant or contaminant." Thus, relying on *American*

States Ins. Co v. Zippro Constr. Co., 216 Ga. App. 499, 455 S.E.2d 133 (Ga. App. 1995), the appellate court concluded that the pollution exclusion clause was unambiguous. In *American States*, the Georgia Court of Appeals found the exclusion unambiguously barred coverage for exposure to asbestos, which had infiltrated a home as a result of sanding the home's floors. According to the *American States* court, asbestos satisfied the definition of "pollutant" and, therefore, coverage for any injury caused by exposure to asbestos released in the home would be barred.

The Georgia Supreme Court affirmed the lower court's decision and analysis. The court found that the terms of the policy unambiguously excluded coverage for bodily injury arising

from gaseous or thermal irritants or contaminants. The very nature of the plaintiff's underlying complaint was that the release of carbon monoxide gas poisoned her. The Court found that the policy's express terms barred coverage because the plaintiff alleged that her injuries arose from exposure to carbon monoxide gas or fumes. The Court concluded that this type of injury came squarely within the pollution exclusion's express terms. The Georgia Supreme Court also rejected the analysis of the two dissenting judges, stating that the two dissenters improperly relied on extratextual sources, such as the history and alleged purpose of the pollution exclusion, in order to find an ambiguity. Rather, according to the Georgia Supreme Court, judges should not

rely on such evidence of the text if the contract is not ambiguous.

Implications

Through *Reed*, the Georgia Supreme Court held that insurance policy provisions are to be read according to their plain and ordinary meaning. In doing so, the Court in *Reed* ruled that the pollution exclusion in that case would apply to traditional and non-traditional pollution alike. This ruling has potentially far-ranging implications, particularly with respect to climate change and global warming claims, which could implicate the pollution exclusion where the claims arise from bodily injury or property damage caused by exposure to, among other things, gaseous or thermal irritants.

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