



Alerts

Decorative Art Fountain Not Consumable for Purposes of Exception to Fungi or Bacteria Exclusion

October 9, 2013

Insurance Coverage Alert

Recently, in [Heinecke v. Aurora Healthcare Inc.](#), the Wisconsin Court of Appeals held that a decorative art fountain was not “a good or product for consumption” within the meaning of a “consumption exception” contained in an insurance policy’s Fungi or Bacteria exclusion. The Heinecke case arose from a Legionnaire’s disease outbreak caused by exposure to Legionella bacteria found in water contained in a decorative art fountain constructed by the insured and located in the lobby of Aurora St. Luke’s South Shore Hospital. Specifically, the court found that defining a decorative art fountain as “a good or product intended for consumption” did not comport with the parties’ objectively reasonable expectations.

In its decision, the court of appeals reiterated that Wisconsin courts must interpret the terms of an insurance policy from the perspective of a reasonable person in the position of the insured, and should not adopt any grammatically plausible interpretation of a term. In other words, dictionary definitions that do not comport with the insured’s reasonable expectation should be rejected as unreasonable. Applying this standard, the court found that the phrase “a good or product intended for consumption” clearly did not refer to the observation and enjoyment of art as argued by the plaintiff. Rather, a reasonable insured would understand the term to refer to products or goods meant to be eaten, drank, or otherwise used up. The court also found that the insured’s proffered definition would lead to an absurd result given the context of the surrounding policy language. The court noted that the Fungi or Bacteria exclusion was developed to exclude coverage for mold present in buildings with construction defects, and that the insured had been sued for construction defects. Further, application of the insured’s proffered definition would result in coverage for mold appearing on decorative walls or molding, a result directly adverse to the purpose of the Fungi or Bacteria exclusion.

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