PLUNKETT COONEY

Herbicide/Pesticide Exclusion, Choice of Law Coverage Update

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Herbicide/Pesticide Exclusion – Texas

StarNet Ins. Co. v. RiceTec, Inc.
--- S.W.3d ---, 2019 WL 4019688 (Tex. App. Aug. 27, 2019)

The Texas Court of Appeals overturned a trial court ruling that had required StarNet Insurance Company (StarNet) to defend its insured, RiceTec, Inc. (RiceTec), against an underlying lawsuit by a neighboring landowner after RiceTec allegedly sprayed herbicide on the neighbor's crops. The underlying lawsuit alleged that RiceTec had commenced aerial spraying of herbicide on its own property, which "was over sprayed, drifted or otherwise came onto" the neighboring property.

StarNet declined to defend RiceTec against the underlying lawsuit under the commercial general liability policy issued to StarNet because of an endorsement entitled "Agricultural Chemicals Applicator Coverage," which precluded coverage for property damage resulting from "[t]he application of herbicides, pesticides, fertilizers or similar agricultural chemicals by aircraft owned, operated by, rented or loaned to you or by any non-owned aircraft." The trial court, however, granted summary judgment to RiceTec, finding that StarNet had a duty to defend the lawsuit. The appellate court ultimately overturned the trial court's decision and held that there was no duty to defend on the part of StarNet based on the exclusion in the Agricultural Chemicals Applicator Coverage endorsement. The appellate court concluded that "[t]he language of this exclusion in the Endorsement is broad enough to encompass application of herbicides by aircraft that is owned, or not owned, by RiceTec. The [underlying] lawsuit ... undisputedly alleged that the herbicides that damaged the [neighboring owner's] rice crops were applied aerially" such that the exclusion applied to preclude coverage.

Choice of Law – California

Pitzer Coll. v. Indian Harbor Ins. Co.
--- P.3d ---, 2019 WL 4065521 (Cal. Aug. 29, 2019)

The Supreme Court of California held that California's notice-prejudice rule can override choice of law clauses that require other states' laws to apply to coverage disputes. In this case, Pitzer College (Pitzer) sought to have its pollution insurer, Indian Harbor Insurance Company (Indian Harbor), pay environmental remediation costs for lead contamination on the college's campus. Indian Harbor sought to deny coverage on the grounds that Pitzer did not provide timely notice of the claim. The pollution policy at issue states that New York law will apply to any coverage dispute, but Pitzer sought a ruling that California law applied to the case. California law requires Indian Harbor to prove that it was prejudiced by Pitzer's late notice, whereas New York law does not.

The U.S. Court of Appeals for the Ninth Circuit certified the question of whether California's notice-prejudice rule can apply to override a policy's choice of law provision to the Supreme Court of California. The Supreme Court of California noted that under California law, the parties' choice of law governs unless it conflicts with the state's fundamental public policy. The court ultimately held that the notice-prejudice rule is a fundamental public policy of California for the purpose of a choice of law analysis in the context of first-party liability coverage because it protects California policyholders from "technical forfeitures of insurance policy coverage." Therefore, because New York law was in conflict with the notice-prejudice rule, the court held that the notice-prejudice rule can apply to override the choice of law provision in the context of a first-party liability policy.

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