

# Misrepresentation in Application Coverage Update

March 1, 2024

## Misrepresentation in Application – Delaware

***Zurich Am. Ins. Co. v. Syngenta Crop Prot. LLC***,  
No. 135, 2023, 2024 WL 763418 (Del. Feb. 26, 2024)

The Delaware Supreme Court affirmed the state's Superior Court ruling that Zurich American Insurance Company (Zurich) was not entitled to a declaratory judgment that Zurich had no duty to defend or indemnify Syngenta Crop Protection, LLC (Syngenta) in underlying cases due to alleged misrepresentations, omissions, concealments, and incorrect statements by Syngenta on the insurance application, and that Zurich did not act in bad faith when it denied liability coverage to Syngenta for underlying lawsuits.

Syngenta was named as a defendant in several lawsuits seeking damages for alleged bodily injury, sickness or disease caused by exposure to paraquat, a chemical used in herbicides that has been linked to the onset of Parkinson's disease (Paraquat actions). Syngenta sought liability coverage from Zurich for these lawsuits under three primary commercial general liability policies and three umbrella policies (collectively, the Zurich policies). The Zurich policies were "claims-made" policies, which provided that they apply only to "claim[s] for damages ... first made against [Syngenta] ... during the policy period." The Zurich policies were effective from Jan. 1, 2017 to Jan. 1, 2020.

Before the Zurich policies became effective, Syngenta received letters in 2016 from attorney, Stephen M. Tillery, in which Tillery claimed to represent several individuals with Parkinson's disease and alleged a connection between the disease and paraquat. Tillery, however, did not identify any of his clients, provided no medical documentation specific to any of his clients, and made no demands for money in his 2016 letters (the 2016 Tillery letters).

Zurich learned of the 2016 Tillery letters after agreeing in 2019 to assume the defense of Syngenta in one of the Paraquat actions. In light of the Tillery letters, Zurich withdrew its agreement to defend Syngenta, denied coverage and filed a declaratory judgment action in Delaware state court seeking a declaration that it owed no duty to defend or indemnify Syngenta in the Paraquat actions under the Zurich policies because the actions were based on claims made in January 2016 before the inception of the Zurich policies. Zurich also determined, as a result of the Tillery letters, that Syngenta was not entitled to coverage because of its misrepresentations, omissions, concealment of facts and incorrect statement in its applications for the Zurich policies.

MISREPRESENTATION IN APPLICATION COVERAGE UPDATE Cont.

The Delaware Superior Court determined that Zurich had a duty to defend Syngenta in the Paraquat actions because the 2016 Tillery letters were not a “claim for damages” within the meaning of the Zurich policies. The trial court also held that Zurich did not act in bad faith because there was a bona fide dispute over coverage. The parties appealed these decisions.

On appeal, the Delaware Supreme Court upheld the Superior Court’s rulings. The Supreme Court held that, as a matter of first impression, a demand or request for monetary relief by or on behalf of an identifiable claimant is a “claim for damages” within the meaning of a claims-made liability policy.

However, because the 2016 Tillery letters did not make a demand or request for monetary relief on behalf of any identifiable claimants and merely threatened future litigation, which may or may not happen, it was not a “claim for damages” within the meaning of the Zurich policies. Zurich, therefore, had a duty to defend and indemnify Syngenta in the Paraquat actions. Because there was a bona fide dispute over coverage, the Superior Court’s dismissal of Syngenta’s bad faith claim was not in error.

By: Amy L. Diviney