

Pollution Exclusion, Bad Faith Coverage Update

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Pollution Exclusion – Eleventh Circuit (Georgia Law)

Evanston Ins. Co. v. Sandersville Railroad Co.

--- Fed. Appx. ---, 2019 WL 495131 (11th Cir. Feb. 8, 2019)

The U.S. Court of Appeals for the Eleventh Circuit held that an insurer has no duty to defend or indemnify a suit brought by a railroad worker against his employer based on the absolute pollution exclusion in its commercial general liability policy. In the underlying lawsuit, the railroad employee (Flowers) contracted lung disease as a result of inhaling welding fumes. Flowers sued his employer, Sandersville Railroad Company (Sandersville), claiming, among other things, that Sandersville failed to provide him with proper welding and safety equipment and a properly ventilated workspace. Sandersville's liability insurer, Evanston Insurance Company (Evanston), agreed to defend Sandersville in the underlying lawsuit while reserving its right to deny coverage under the policy's absolute pollution exclusion.

Sandersville ultimately settled the underlying lawsuit without any contribution from Evanston. Evanston then filed suit against Sandersville in the United States District Court for the Middle District of Georgia, seeking a ruling that the policy's absolute pollution exclusion applied to preclude coverage for the expenses incurred by Sandersville in the underlying lawsuit. The trial court ruled that the welding fumes constituted a "pollutant" as defined in the policy such that the absolute pollution exclusion applied to preclude coverage. The appellate court ultimately agreed with the trial court, holding that "[u]nder the policy's absolute pollution exclusion, welding fumes unambiguously qualify as an 'irritant or contaminant, including ... fumes'" such that there was no coverage for the underlying lawsuit under the policy.

Bad Faith – Louisiana

Harold Fils v. Starr Indem. & Liab. Co. et al.

--- So.3d ---, No. 17-896 (La. App. 3 Cir. Feb. 4, 2019)

The Louisiana Court of Appeals for the Third Circuit held that bad faith claims against Uninsured Motorist (UM) insurers are subject to a 10-year statute of limitations period. Harold Fils (Fils) was

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injured while driving a vehicle owned by his employer when he was struck by a car driven by an uninsured motorist. His employer's UM insurer, Starr Indem. & Liab. Co. (Starr), issued Fils two payments totaling \$45,000, but refused to make further payments due to Fils' preexisting injuries and medical history. Fils sued Starr in August 2015, alleging that Starr's payments were insufficient because his medical bills alone exceeded \$45,000. In January 2017, Fils amended his pleadings to allege that Starr's bad faith refusal to make further payments entitled him to penalties and attorneys' fees.

Starr moved to dismiss the bad faith claims, asserting that they were time-barred by the one-year statute of limitations for tort claims. The trial court ruled in Starr's favor and dismissed the bad faith claims, and the appellate court initially affirmed the dismissal. On rehearing, however, the appellate court noted that state and federal courts, applying Louisiana law, have been split over whether bad faith claims against insurers are governed by the one-year or 10-year statute of limitations. Upon weighing those cases, the appellate court ultimately agreed with Fils that his bad faith claims were indeed timely filed because they derived from contractual obligations and fiduciary duties owed by Starr under the insurance policy, and were, therefore, governed by the 10-year limitations period for contractual actions. The appellate court further reasoned that it would be illogical to apply a one-year statute of limitations period to a bad faith claim arising out of failure to pay UM benefits as claims for UM coverage are subject to a two-year limitations period.

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