

Duty of Insurance Agent, Pollution Exclusion Coverage Update

September 15, 2025

Duty of Insurance Agent – Connecticut

Deer v. Nat'l Gen. Ins. Co.

--- A.3d ---, 2025 WL 2576439 (Conn. Sept. 9, 2025)

situation with your insured, as repairs are required as a condition to continued coverage,” and it required proof of repair by March 27, 2020. A follow-up email was sent to Trahan on March 27, but the insureds dispute that they received the communication from Trahan. Compounding the issue, on April 19, 2020, Century-National sent a nonrenewal notice to the insureds by certified mail. The U.S. Postal Service tried to deliver the notice multiple times, but there was no authorized recipient available. The notice was eventually declared as unclaimed and returned to Century-National on May 6, 2020.

The insurance policy expired on June 27, 2020, and weeks later, the insureds' home was destroyed in an accidental fire. Century-National denied the insureds' claim because the home was not insured at the time of the loss. The insureds filed a lawsuit against Century-National and Trahan. The trial court struck the insureds' negligence claim against Trahan, relying on the general rule in Connecticut that, absent exceptional circumstances, a broker becomes an agent of its client when procuring insurance for that client, but the agency relationship ends once the insurance policy is procured. The insureds appealed, and the Connecticut Court of Appeals affirmed.

On appeal, the state's Supreme Court reiterated that the established general rule is that an insurance broker owes no legal duty to an insured after the broker has successfully procured the requested policy. An exception to this general rule arises when a broker agrees, or gives some affirmative assurance, that it will assist in the renewal of an insurance policy for the insured. The Supreme Court found that Trahan did not owe a duty to inform the insureds of the information it had received regarding the renewal because there was no evidence that Trahan agreed to assist in maintaining or renewing the coverage after the policy expired. The Supreme Court further concluded that the insureds no longer had a long-standing relationship with Trahan after it switched agents between 2017 and 2019, overcoming any potential argument that the longstanding, continued relationship between the insured and agent creates a duty to inform of the nonrenewal.

The dissenting justices disagreed with the majority and would have concluded that an insurance agent's duty to exercise reasonable skill, care and diligence in effecting the insurance policy does not end once the policy is procured. Instead, the dissent would have held that an insurance agent has an ongoing duty to notify the insured if the insurer declines to continue to insure the risk or threatens to do

so. In summary, the dissent would have concluded that Trahan had a duty to inform the insureds of the impending nonrenewal of their homeowners insurance policy.

By: Joshua LaBar

Pollution Exclusion – Georgia

Auto-Owners Ins. Co. v. Tabby Place Homeowners Assoc., Inc.

No. 4:21-CV-346, 2025 WL 2532679 (S.D. Ga. Sept. 3, 2025)

The U.S. District Court for the Southern District of Georgia granted Auto-Owners Insurance Company's (Auto-Owners) dispositive motion, finding that Auto-Owners had no duty to defend or indemnify its insured, Tabby Place Homeowners Association, Inc. (Tabby Place), for damage to nearby properties caused by Tabby Place's stormwater drainage system because the pollution exclusion in Auto-Owners' policy applied.

Tabby Place and others were sued in 2019 by various property owners (the property owners) for damages caused by the construction and maintenance of retention ponds and other storm water runoff maintenance systems located at the Tabby Place subdivision and an adjacent subdivision.

Auto-Owners insured Tabby Place under a commercial general liability policy and a commercial umbrella policy. Both policies contained, among other things, pollution exclusions. Auto-Owners agreed to defend Tabby Place in the underlying lawsuit under a reservation of rights and filed a complaint for declaratory judgment, seeking a declaration that it had no duty to defend or indemnify Tabby Place in the underlying action. All parties to the declaratory judgment action filed dispositive motions.

In ruling on the dispositive motions, the trial court, applying Georgia law, found that the pollution exclusion was the determinative factor for all of the motions. In making its ruling, the trial court focused on the allegations in the underlying lawsuit to determine whether the alleged property damage was caused by the discharge of "pollutants" as defined by the Auto-Owners' policies. Given the allegations in the underlying lawsuit, the trial court focused on two arguments made by the parties: (1) whether stormwater alone can be considered an "irritant or contaminant" and, thus, a pollutant; and (2) whether rising groundwater (rather than stormwater flowing on the surface of one property to another) qualifies as a pollutant.

With regard to the first argument, the trial court agreed with Auto-Owners that Georgia law holds that stormwater is a pollutant even when it is uncontaminated. As to the second argument, the Tabby Place defendants contended that the pollution exclusion is ambiguous because Georgia courts have never held that rising groundwater is a pollutant under a typical pollution exclusion. Auto-Owners, on the other hand, contended that the pollution exclusion applies regardless of how the excess stormwater

manifests or is discharged.

The trial court again agreed with Auto-Owners finding that the alleged property damage claims in the underlying lawsuit stem from the “discharge, dispersal, seepage, migration, release, or escape” of stormwater from Tabby Place’s retention ponds, and, therefore, the pollution exclusion applies to preclude coverage for Tabby Place for the underlying lawsuit. The trial court granted Auto-Owners’ dispositive motion and directed the clerk of the court to enter judgment in favor of Auto-Owners.

By: Amy Diviney