

Pollution Exclusion Coverage Update

July 15, 2024

Pollution Exclusion – New York

St. Paul Fire and Marine Ins. Co. v. Getty Props. Corp.

-- N.Y.S.3d --; Case No. 2021-09202 (N.Y.S. June 26, 2024)

The New York Supreme Court, Appellate Division, reversed the trial court's decision denying the plaintiff insurers' motion for summary judgment on the applicability of pollution exclusions in their policies. The appellate court concluded that the insurers did not have a duty to defend or indemnify the insured, defendant Getty Properties Corporation (Getty), because the pollution exclusions in the policies unambiguously precluded coverage.

In 2007, the New Jersey Department of Environmental Protection commenced an action against Getty related to contamination of surface and ground waters with Methyl Tertiary Butyl Ether (MTBE), which is a fuel additive that was incorporated into gasoline. The action was removed to a Multidistrict Litigation (MDL) action in New York. Between 2007 and 2017, two additional actions in Pennsylvania and Maryland were filed and then removed to the New York MDL. In April 2018, Getty sought coverage for defense and indemnity costs from its insurers for the New York MDL. In December 2018, the insurers filed a declaratory judgment action in the New York Supreme Court, asserting they were not obligated to defend or indemnify Getty for the New York MDL. Additional insurers intervened, and the parties filed motions for summary judgment, including on the issue of whether the pollution exclusions in the insurers' policies precluded coverage.

The first issue addressed by the appellate court was whether MTBE is a pollutant. The appellate court concluded that MTBE was a pollutant despite the fact that the U.S. Environmental Protection Agency required Getty to use the fuel additive. The second issue the appellate court addressed was whether the sudden and accidental exception to certain pollution exclusions applied. If it did, then there would be coverage under those policies for the contamination. The appellate court explained that "sudden" and "accidental" each had separate meanings, both of which had to be established for the exception to nullify the pollution exclusion. "Sudden" has a temporal quality, which is only met if the discharge occurred "abruptly or within a short timespan." The appellate court concluded that the alleged pollution occurred undetected over many years and was not "sudden" within the meaning of the applicable law. For that reason, it concluded that the pollution exclusion in the policies precluded coverage for the underlying MDL actions, and the exception to the exclusion did not apply.