

White and Williams Secures Decision on Application of Pollution Exclusion in Ohio Court of Appeals

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In *GrafTech International, Ltd., et al. v. Pacific Employers Ins. Co., et al.*, the Ohio Court of Appeals held that coverage for alleged injurious exposures to coal tar pitch was barred by a liability insurance policy's absolute pollution exclusion. The court concluded that Pacific Employers had no duty to defend GrafTech or pay defense costs in connection with claims by dozens of workers at Alcoa smelting plants that they were exposed to hazardous substances in GrafTech products supplied to Alcoa as early as 1942.

In approving the application of the exclusion, the court found that a localized release of substances in one part of a plant is sufficient to constitute a fouling of the "environment" as defined in the exclusion. "Environment" is defined to include "any air, land, structure or the air therein, watercourse or water, including underground water."

The court also dismissed GrafTech's suggestion that tort allegations in underlying worker complaints – essentially, that it failed to provide a safe product which in its normal use released toxic chemicals – stated a potentially covered claim and gave rise to a defense obligation. "These are allegations that GrafTech's products had the effect of making the environment impure, harmful, or dangerous. The pollution exclusion thus applies."

Pacific Employers Insurance Company was represented by Shane Heskin, Adam Berardi and Sara Tilitz.