

Pollution Exclusion/Insurance Coverage: U.S. District Court Addresses Applicability to Heating Oil Tank Release



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A United States District Court (Eastern District Pennsylvania) (“Court”) addressed in a January 19th Memorandum and Order insurance coverage issues associated with a claim related to a heating oil tank spill. See *Dorothy Biela v. Westfield Insurance Company*, 2020, WL 181432.

The insured had brought an action for breach of contract in bad faith based on the insurance company’s denial of insurance coverage for resulting losses.

Dorothy Biela (“Plaintiff”) utilized a 275 gallon outdoor, above-ground oil tank (“Tank”) at her home in Line Lexington, Pennsylvania. She called a contractor in January 2019 to inspect the Tank because oil was smelled in the house. It was discovered that the Tank had lost half of its contents.

Plaintiff ceased living in the house due to lack of heat or running water and the strong odor. An environmental contractor hired by Plaintiff estimated that approximately 250 gallons of fuel oil were released which migrated beneath the stone foundation and discharged into a swale. The estimated cost for investigating and remediating the basement, soil and groundwater is \$265,000 to \$273,000.

Plaintiff filed a claim with Westfield Insurance Company (“Westfield”). An engineer hired by Westfield reported that patches of surface corrosion were found throughout the surface of the Tank. The engineer concluded that the leak in the heating oil Tank was the result of long-term corrosion.

Westfield denied the claim. One of the bases for denial cited was the insurance policy’s exclusion for loss caused by pollutants (i.e., a pollution exclusion).

Plaintiff filed suit for breach of contract and bad faith. Westfield filed for summary judgment arguing that it properly denied coverage based on policy exclusions (including the pollution exclusion).

The Court quotes the pollution exclusion language:

We do not insure, however, for loss...[c]aused by...[a]ny of the following...[d]ischarge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril insured against under Coverage C.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.

Plaintiff argued that the home heating oil was not considered a pollutant under Pennsylvania law. She cited two cases in which it was contended that similar exclusions did not apply to heating oil spills. Westfield argued that the cases were not analogous because they did not address whether heating oil was a pollutant.

The Court distinguishes the cited cases noting that there is a report from an environmental consultant referencing soil samples taken at the Plaintiff's property. Various substances found in the soil such as benzene were referenced and identified as pollutants by federal law and regulations. Also noted is the environmental consultant's recommendation of extensive investigation and remediation consistent with pollutant contamination.

The Court cites a case it deems similar in which it was determined that heating oil leaking from a furnace constituted a pollutant for purposes of a policy exclusion. The similarities identified included:

- Plaintiff engaged the services of an environmental services firm (as opposed to an ordinary construction contractor)
- Soil testing revealed contamination by pollutants including benzene
- The pollutants were identified as toxic pollutants or hazardous substances pursuant to federal regulations

The Court held based on these facts that the pollution exclusion was applicable.

A copy of the Memorandum and Order can be downloaded [here](#).