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# Chemical-Or-Biological Materials Insurance Policy Exclusion: Minnesota Appellate Court Addresses Denial of Coverage Related to Chemical Glyphosate

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The Court of Appeals of Minnesota (“Court”) addressed in a February 8th Opinion an insurance company’s denial of coverage related to a herbicide containing the chemical glyphosate that was introduced into a mink farm water system. See *Lang Fur Farms, Inc., et al. v. Bird Island-Hawk Creek Mutual Ins. Co.*, 2021 WL 416404.

The denial of coverage was based on two exclusions in the insurance policy:

- Chemical-or-Biological materials (“Chemical Exclusion”)
- Anti-Concurrent-Causation Exclusion (“Anti-Concurrent Exclusion”)

The Court’s Opinion provides that Lang Fur Farms and one of its owners (collectively “Lang Fur”) obtained an insurance policy in part from Bird Island – Hawk Creek Mutual Insurance Company (“Bird Island”).

The Chemical Exclusion read in relevant part:

... Regardless of the amount of damage or loss, this exclusion applies to any losses that are carried out or caused by dispersal or application of pathogenic or poisonous biological or chemical materials.

The Anti-Concurrent Causation Exclusion provided in part that:

... if any one exclusion applies, respondent does not cover the loss resulting directly or indirectly from any concurrent cause, i.e., it does not cover a loss “[i]f one or more of the exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

Lang Fur filed a claim with Bird Island for the cost of replacing a water system. A herbicide containing the chemical glyphosate is stated to have been introduced into the water system for the farm’s minks’ cages.

A lower court granted Bird Island motion for summary judgment based on the Chemical Exclusion and the Anti-Concurrent Exclusion.

As to the Chemical Exclusion, the lower court had concluded that glyphosate (an ingredient of the herbicide poured into the damaged watering system) was a pathogen or poisonous chemical that was

dispersed through the water in the system. Consequently, it concluded that this was a dispersal of a chemical and subject to the Chemical Exclusion.

The insured Lang Fur argued that this exclusion does not apply because:

- The herbicide was poured into the water system, therefore is was not “dispersed.”

The Court rejected this argument noting that the word “dispersal” occurs in the phrase “dispersal or application” and the critical inquiry is deposit of glyphosate into the water system as opposed to its escape into it. It distinguished a case cited by the insured addressing the pollution exclusion titled *Sylvester Bros. Dev. Co., v. Great Cent. Ins. Co.*, 480 N.W.2d 368, 374 (Minn. App. 1992).

The second argument by the insured was that the glyphosate is not poisonous. The argument was rejected because the insured is stated to have indicated that vandals caused the drinking water to be tainted and made the minks sick. This was deemed a representation that the glyphosate was a poisonous chemical.

Third, the Court rejected the argument that the vandalism was a covered peril. This was rejected on the basis that accepting this argument would render meaningless all exclusions.

As to the Anti-Concurrent Exclusion, the insured argued that when property damage is caused by the acts of vandals, vandalism coverage applies and there is no concurrent cause sufficient to trigger that exclusion. The Court stated that this exclusion says there is no coverage when any other exclusion applies to a damage claim. This is regardless of when that excluded event occurred. Therefore, it stated there is no coverage for vandalism that occurred before and during the excluded dispersal of a chemical.

A copy of the Opinion can be downloaded [here](#).