

Environmental Impairment Liability/Contractor Pollution Liability Policies: Federal Court Addresses Coverage Dispute



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author: David Mancia-Orellana

The United States District Court for the District of Montana (“Court”) addressed in a May 2021 Order a dispute involving an Environmental Impairment Liability Policy (“EIL”) and a Contractors Pollution Liability Policy (“CPL”). See *Admiral Insurance Company v. Dual Trucking, et al*, No. CV-20-53-GF-BMM, 2021 WL 1788681 (D. Mont. 2019).

The issues addressed included whether there was a duty to defend or indemnify the insured party under the policies.

Plaintiff, Admiral Insurance Company (“Admiral”) filed a Motion for Partial Summary Judgment against Defendants Dual Trucking and Transport, LLC (“DTT”), Dual Trucking of Montana, LLC (“DTM”), Dual Trucking, Inc. (“DTI”) (collectively “Dual Entities”), and the entities’ representative Anthony Alford (“Alford”) seeking a declaration that it has no obligation to defend or indemnify Dual Entities involving:

- Two underlying Montana state district court lawsuits
- Cause No. DV-15-15 (the “Harmon Action”)
- Cause No. DV-14-67 (the “Montana DEQ Action”),
- Six Violation Letters sent from the Montana Department of Environmental Quality (“Montana DEQ”) to Dual Entities

Admiral argued that it owed no duty to defend or indemnify Dual Entities under the six insurance policies issued to Dual Entities because:

1. Dual Entities made material misstatements in its policy application, which violated the terms of the policy; and
2. Dual Entities had knowledge of the pollution before the policy periods, which violated the policy terms.

Garth and Wagner Harmon (the “Harmons”) leased the Bainville Site—three tracts of land in Montana—to DTT in 2011. On September 17, 2012, the Montana Department of Environmental Quality (“Montana DEQ”) sent a Warning Letter to Dual Entities’ representatives notifying them that a complaint had been filed alleging that oil field exploration and production waste (“Special Waste”) had been placed on the

Bainville Site. The letter further advised that if the allegations were correct, Dual Entities was operating in violation of the Montana Solid Waste Management Act (“SWMA”).

DTM was told to take corrective-steps and provide Montana DEQ with a cleanup report. Dual Entities disputed the significance of the Warning Letter. They characterized the letter as merely advisory relating an unsupported hearsay allegation.

DTT applied for two annual EIL policies for coverage at the Bainville Site from Admiral. The first EIL policy period ran from October 2012 to October 2013. The second EIL policy ran until October 2014.

The two EIL policies were claims-made policies. They provided coverage for certain pollution conditions at the property.

The policy application asked DTT:

- Whether it operated in compliance with applicable environmental laws
- Whether DTT knew of any conditions on the property that could result in claims under the EIL policies.

DTT checked no. It did not disclose the September 2012 Montana DEQ Warning Letter.

Admiral issued DTT four additional CPL policies for the same coverage periods as the EIL policies. In March 2013, after the issuance of those six policies, Montana DEQ sent Dual Entities’ representatives, including Alford, three violation letters within two days detailing the allegations against it. The state agency asserted there had been a failure to perform the required tasks in the 2012 Warning Letter.

On March 20, 2013, DTT replied with a single letter. Twenty-days later, Montana DEQ received an application from DTT for a Solid Waste Management Facility license at the Bainville Site. Montana DEQ then sent a fourth letter to DTT informing that it was still in violation of the SWMA.

On September 25, 2013, the Harmons sent Alford and DTM a Breach of Contract Letter. The Harmons asserted that Dual Entities had “caused environmental impairment to the property” and had “used the property in a manner that has caused pollution of waterways flowing through or underneath the property.”

When DTT renewed its 2013-2014 Admiral EIL Policy and CPL Policies, it did not include any of the four Violation Letters and did not reference the Breach of Contract Letter.

DTT and Montana DEQ commenced settlement negotiations in December 2013.

The company hired an environmental consulting firm to prepare a Site Characterization and Environmental Condition Report (“2013 Site Report”). The initial report references “three prior suspected or known release” events.

In its revised Site Report (“2014 Site Report”), DTT indicated the three previously disclosed release events occurred in July 2013. Settlement negotiations continued and a fifth Violation Letter was sent to DTT in April 2014.

DTT responded that it had ceased all operations on the Bainville Site. Montana DEQ then sent DTT a sixth violation letter in June 2014 addressing DTT’s admission that three suspected or known waste or stormwater releases had occurred at the site.

On July 1, 2014, DTT terminated their 2013-2014 EIL Policy effective July 1, 2014. The EIL policy entitled DTT to a 30-day extended reporting period upon cancellation of the Policy. The following day DTT provided Admiral with the first notice of any claims related to the Bainville Site.

DTT indicated that the date of occurrence had been July 5, 2013. It sought coverage under the 2012-2013 EIL Policy that was in effect at the time. The Montana DEQ’s sixth violation letter was attached to the notice of claim.

Montana DEQ filed an enforcement action against DTT in November 2014 alleging that DTT operated an unlicensed Solid Waste Management facility at the Bainville Site from July 2012 to April 2014. The Harmons also filed a breach of contract suit against Dual Entities in June 2015. Admiral then brought suit and sought a partial summary judgement ruling that it has no duty to defend or indemnify Dual Entities under the six insurances polices issued during 2012-2014.

The Court found that Admiral possessed no duty to defend Dual Entities for claims arising under the 2012-2013 EIL Policy. It noted that DTT's July 5, 2013 claim was discovered before the reporting period and not reported within the applicable policy period.

The Court also found that Admiral owed no duty to defend claims under the 2013-2014 EIL Policy. It determined that Admiral had no obligation to defend Dual Entities for claims arising under the 2013-2014 EIL policy because Admiral had not received notice of any claim during the applicable policy period.

Finally, the Court addressed claims under the CPL Policies.

The Dual Entities were found to have materially misrepresented their knowledge of the pollution conditions at the Bainville site, in both the 2012-2013 CPL and 2013-2014 CPL policies. It therefore held that any duties that Admiral owes to Dual Entities "shall terminate as a result of a material misrepresentation."

The Court granted Admiral's Motion for Partial Summary Judgement.

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