

Pesticide/Herbicide Pollution Insurance: Federal Court Addresses Coverage Question



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The United States District Court for the District of Rhode Island (“D.R.I.”) addressed in an Opinion whether insurance coverage is applicable to the release of gasoline from an aboveground storage tank (“AST”) associated with a country club’s pesticide or herbicide operations. See *Glocester Country Club v. Scottsdale Ins. Co.*, 2021 WL 3508605.

The coverage question involved a commercial general liability insurance policy with a pollution exclusion. Plaintiff Glocester Country Club (“GCC”) pursued an action in the D.R.I. against Defendant Scottsdale Insurance Company (“Scottsdale”) seeking to recover losses arising from damages to its own and a neighbor’s property as a result of an April 2018 gasoline leak from an AST on GCC’s property. GCC made a claim on its commercial general liability insurance policy (as an additional insured – the policy was actually under the grounds superintendent’s name).

The policy included a “Pesticide or Herbicide Applicator Limited Pollution Coverage Endorsement” (“Pesticide Endorsement”).

GCC claimed that the Pesticide Endorsement covered the damages resulting from the AST leak.

Scottsdale moved for summary judgment arguing:

1. The policy’s “Pollution Exclusion” barred GCC from recovering damages,
2. GCC’s status as an additional insured barred GCC from recovering damages because it did not show that the leak was caused by an act or omission of the grounds superintendent, and
3. GCC could not sustain its burden of showing that a gasoline leak of unknown origin is “an accident,” and therefore a covered “occurrence” as defined by the policy.

GCC made a cross motion for summary judgment on its claims.

The Court granted Scottsdale’s motion for summary judgment in part and denied it in part while denying GCC’s motion for summary judgment.

The Court agreed with Scottsdale that the insurance policy’s Pollution Exclusion barred GCC from recovering damages. The Pollution Exclusion excluded coverage for environmental contamination caused by a pollution discharge that occurs on premises owned or occupied by GCC. Further, the Pesticide Endorsement did not override the Pollution Exclusion. The endorsement was deemed to only apply to

losses that occurred while the grounds superintendent's pest control services operations were being performed and the discharged pollutant was brought to the premises leaking specifically in connection with those operations.

The gasoline in the AST was used in connection with nine pieces of equipment for GCC's ongoing pesticide and herbicide application operations. It was also used for more than twenty other pieces of gasoline-powered equipment at GCC (including golf carts). The gasoline had been brought to and placed in the leaking AST in connection with GCC's general golf course operations.

Consequently, the leak was determined to have not occurred as a direct result of GCC's pesticide operations. Therefore, the policy did not cover the damages that occurred.

The Court rejected Scottsdale's contention that GCC's status as an additional insured barred it from recovering damages because GCC did not show that the leak was caused by an act or omission of the grounds superintendent. It concluded a fact finder could determine that the release from the AST was caused by the omissions of the grounds superintendent. This individual was responsible for overall maintenance of GCC's golf course.

Finally, the Court rejected Scottsdale's argument that GCC could not sustain its burden of showing that a gasoline leak of unknown origin is "an accident," and therefore a covered "occurrence" as defined by the policy. A fact finder was deemed necessary to determine whether there was an "occurrence."

Scottsdale's summary judgment motion was granted. It was held to be significant enough to resolve the case. As a result, judgment terminating the case was entered in favor of Scottsdale. Accordingly, GCC's pest control liability insurance was not broad enough to cover the AST gasoline release.

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