

Insurance Coverage/Boatyard Operator: Federal Appellate Court Addresses City of Los Angeles Request for Indemnity for Alleged Discharges



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

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The United States Court of Appeals of the Ninth Circuit (“Ninth Circuit”) addressed in a March 13th memorandum issues arising out of a boatyard operator’s insurance policies. See *City of Los Angeles v. Traverlers Indemnity Company; et al.*, 2024 WL 1086874.

The question involved whether the City of Los Angeles could recover from the boatyard operator’s insurers for alleged discharges into the Port of Los Angeles.

The City of Los Angeles (“LA”) obtained a judgment against Wilmington Marine (“WM”). WM is a boatyard operator that leased a site at the Port of Los Angeles from LA.

The District Court awarded LA \$230,000, determining that WM allowed over a 50-year period scrapings of boat paint (and other toxic materials) to enter the LA Harbor. WM was found to have made no attempt to contain the paint waste before it washed into the harbor.

WM was defunct when the lawsuit was filed. As a result, it could not pay the award. Therefore, LA sought indemnification from Travelers Indemnity Company and United National (WM’s insurers).

The District Court granted the insurers summary judgment because it determined that the policies excluded coverage for pollution-related damage unless it was caused by sudden and accidental discharges.

The Ninth Circuit addressed the following three issues:

- Did the District Court err in limiting its analysis to the underlying Superior Court judgment?

LA argued that the District Court should not have restricted its analysis to the evidence introduced in support of the District Court’s judgment. It argued that the underlying judgment was concerned with liability as opposed to indemnity. As a result, LA contended that it should have been permitted to offer new evidence to prove that WM’s actions were sudden and accidental.

The Ninth Circuit states:

... Under California law, the duty to indemnify arises only “where a judgment has been entered on a theory which is actually (not potentially) covered by” the underlying insurance policy. To determine whether an insurance policy covers a judgment, a court must “compare” the judgment with the terms of the insurance policy.

The Ninth Circuit holds that the District Court did not err in comparing the Superior Court judgment with the insurance policies in excluding LA's new evidence. It also held that the District Court properly excluded new evidence because it conflicted with evidence introduced by Law in the Superior Court litigation.

- Did the District Court err in determining that the relevant discharges were the initial waste deposits?

LA argued that under *State v. Allstate Insurance Co.* the District Court was required to find that the relevant discharges were the escape of pollutants to the water. All State Insurance was stated to hold that the relevant discharges are those on which liability was based. The Ninth Circuit notes that the Superior Court held WM liable because of its alleged decades-long failure to contain the pollutants and waste it dropped onto pavement above the harbor. Consequently, it held that the District Court did not err in concluding that these discharges (on which liability was based) were the relevant discharges for indemnity purposes.

- Did the District Court err in concluding that the discharges were neither sudden or accidental?

California law requires sudden and accidental discharges to be abrupt, unintended, and unexpected. The Ninth Circuit concludes that intentional discharges and discharges that occur over a long period of time are not sudden and accidental.

Cited was LA's introduction of evidence in the Superior Court that the discharges were from WM's "longstanding business practices and intentional acts, not from unintended or unexpected events." An LA witness is stated to have testified that WM obtained and disregarded environmental audits instructing it to adopt containment measures. Further, an additional witness stated that WM allowed waste to flow directly from the pavement to the harbor. In addition, evidence was introduced that WM refused to sweep or clean up waste but instead let it wash into the mud. The Ninth Circuit viewed these actions as being opposite to sudden and accidental.

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