UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Restaurant Recycling, LLC v. Employer Mutual Casualty Co.

Restaurant Recycling, LLC v. Employer Mutual Casualty Co., 922 F.3d 414 (8th Cir. 2019) · No. 17-2792 · Decided April 29, 2019

SUMMARY

The Eighth Circuit held that a total pollution exclusion in a commercial general liability policy barred coverage for property damage caused by contaminated animal feed, even though the insured did not intentionally disperse the pollutant. Applying Minnesota's plain-meaning approach, the court ruled that the unintentional blending of lascadoil (a conceded pollutant) into fat products and then into swine feed constituted a "dispersal" of pollutants under the policy. The insurer therefore had no duty to defend or indemnify the insured against the underlying lawsuit. The case addresses the scope of pollution exclusions, the definition of "dispersal," and the duty to defend under Minnesota law.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Colloton; Shepherd; Stras
JURISDICTION	Federal
DECIDED	April 29, 2019
DOCKET	17-2792
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Minnesota, granting judgment on the pleadings to the insurer based on a total pollution exclusion.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Published
PARTIES	Restaurant Recycling, LLC v. Employer Mutual Casualty Company; Hamilton Mutual Insurance Company

TOPICS

insurance coverage · insurance · contract interpretation · commercial litigation · standard of review

PRACTICE AREAS

Insurance Contracts

QUESTIONS PRESENTED

1. Whether the total pollution exclusion in the insurance policy applies to bar coverage for claims arising from contamination of fat products with lascadoil, a conceded pollutant.
2. Whether the term 'dispersal' in the pollution exclusion requires an intentional act by the insured.

HOLDINGS

1. The total pollution exclusion applies because the allegations of damage from the dispersal of lascadoil, a pollutant, trigger the exclusion. The presence of another substance (lasalocid) does not defeat the exclusion if the pollutant caused some measure of damage.
2. The exclusion is not limited to intentional acts. The passive voice does not require the insured to cause the dispersal, and the ordinary meaning of dispersal does not require intent. Additionally, limiting the exclusion to intentional acts would render the 'dispersal' language superfluous, as intentional acts would not be covered occurrences under the policy's general grant of coverage.

KEY QUOTATIONS

> *"The complaint alleged that lascadoil caused some measure of damage suffice to place New Fashion Pork's claims within the pollution exclusion if the damage was caused by 'dispersal' of the pollutant."* (at 415)

> *"The ordinary meaning of dispersal, moreover, is not limited to intentional acts. In Hanson, the Minnesota Court of Appeals concluded that the unintentional chipping of lead paint through opening and closing a window counted as dispersal."* (at 416)

> *"That the insurance policy provides coverage for property damage caused by 'occurrences,' or accidents, does not mean logically that the exclusion is limited to intentional acts. ... If the company is correct that an intentional act would never be a covered occurrence under the insurance policy, then there would be no need to exclude damages arising from intentional dispersals."* (at 416)

FACTUAL BACKGROUND

Restaurant Recycling purchases used fat products, processes them, and resells them to livestock producers. From July to September 2014, Restaurant Recycling delivered several loads of its blended fats to New Fashion Pork. The fat products were contaminated with lasalocid and lascadoil. Lasalocid is a chemical agent not generally recognized as safe and known to cause deaths in animals. Lascadoil is a byproduct of lasalocid manufacture, an industrial waste product approved only for biofuel. New Fashion Pork sued Restaurant Recycling for breach of contract, negligence, and other claims, alleging that the contaminated feed caused serious health issues in its swine.

PROCEDURAL HISTORY

New Fashion Pork sued Restaurant Recycling for contaminated fat products. Restaurant Recycling sought a declaratory judgment that its insurer had a duty to defend and indemnify. The district court granted the insurer's motion for judgment on the pleadings, concluding that the total pollution exclusion applied. Restaurant Recycling appealed.

DISPOSITION

affirmed

CASES CITED

- Thach v. Tiger Corp., 609 F.3d 955 (8th Cir. 2010)
- Midwest Family Mut. Ins. Co. v. Wolters, 831 N.W.2d 628 (Minn. 2013)
- Farmers Home Mut. Ins. Co. v. Lill, 332 N.W.2d 635 (Minn. 1983)
- Auto-Owners Ins. Co. v. Hanson, 588 N.W.2d 777 (Minn. Ct. App. 1999)
- Meadowbrook, Inc. v. Tower Ins. Co., 559 N.W.2d 411 (Minn. 1997)
- Transcon. Ins. Co. v. W.G. Samuels Co., 370 F.3d 755 (8th Cir. 2004)
- MacKinnon v. Truck Ins. Exch., 73 P.3d 1205 (Cal. 2003)