
Pollution Exclusion Bars Coverage For Claims Alleging Harm From Foul Odors

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Lawsuits over foul or offensive odors are increasingly common. Those lawsuits present the common question of whether the claims will be covered by the defendant's liability insurance. Courts in a number of jurisdictions have held that the pollution exclusion to commercial general liability policies bars coverage for claims based on foul or offensive odors.

Last week, South Carolina joined those jurisdictions. In South Carolina Reserve Fund v. East Richland County Public Service District, __ S.E.2d, 2016 WL 1125810 (S.C. Ct. App. Mar. 23, 2016), the South Carolina Court of Appeals held that a liability policy's pollution exclusion bars coverage for claims based on foul odors routinely emanating from a sewage system. The exclusion provided that there is no coverage for:

... personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritant, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental[.]

The Court explained that sewage odors, which are usually the result of hydrogen sulfide and methane, are properly classified as "fumes" or "gases" as listed in the exclusion. The Court also noted that "the fact that the odors were comprised of irritating and offensive gases suffices to demonstrate the odors are encompassed within the ordinary meaning of the pollution exclusion's terminology."

The South Carolina Court of Appeals decision comports with decisions from other jurisdictions around the country finding that the pollution exclusions in liability policies bar coverage for claims based on odors coming from treatment plants, composting facilities, and hog farms and their waste management practices.

Attorneys at Young Moore and Henderson regularly counsel clients on insurance coverage issues. Please contact Andrew if you have questions or would like to discuss further.

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