Simpson Thacher

Insurance Law Alert

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A North Carolina district court ruled that an insurer had no duty to defend claims alleging violations of the Biometric Information Privacy Act, finding that a policy exclusion relating to the collection and distribution of information precluded coverage. *Mass. Bay Ins. Co. v. Impact Fulfillment Servs., LLC*, 2021 WL 4392061 (M.D.N.C. Sept. 24, 2021). (Click here for full article)

Ninth Circuit Affirms Dismissals Of Business Interruption Coverage Suits In Trio Of Rulings

Addressing the "direct physical loss or damage" policy requirement and application of a virus exclusion, the Ninth Circuit affirmed three district court dismissals of COVID-19-related coverage suits. *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 2021 WL 4486509 (9th Cir. Oct. 1, 2021); *Chattanooga Prof. Baseball LLC v. National Cas. Co.*, 2021 WL 4493920 (9th Cir. Oct. 1, 2021); *Selane Products, Inc. v. Continental Cas. Co.*, 2021 WL 4496471 (9th Cir. Oct. 1, 2021). (Click here for full article)

Minnesota Court Rules That Allegations Of COVID-19 Contamination Are Sufficient To Withstand Dismissal Of Coverage Suit

Addressing a matter of first impression under Minnesota law, a Minnesota trial court ruled that allegations of actual contamination of the COVID-19 virus on the insured premises were sufficient to withstand the insurer's dismissal motion. *Life Time, Inc. v. Zurich Am. Ins. Co.*, No. 27-CV-20-10599 (Minn. Civ. Ct. Oct. 7, 2021). (Click here for full article)

Parting Ways With Majority Of Federal Courts, Missouri District Court Allows Some COVID-19 Coverage Claims To Proceed, But Dismisses Others

A Missouri federal district court granted in part and denied in part an insurer's summary judgment motion in a suit seeking coverage for COVID-19-related business losses. *K.C. Hopps, Ltd. v. Cincinnati Ins. Co., Inc.*, 2021 WL 4302834 (W.D. Mo. Sept. 21, 2021). (Click here for full article)

Pharmaceutical Company's Settlement Payment To DOJ Is Not Uninsurable Disgorgement Of Ill-Gotten Gains, Says Illinois District Court

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A Tennessee appellate court ruled that an "other insurance" clause in a policy rendered its coverage primary to another insurer's coverage, declining to adopt an approach under which both clauses are deemed irreconcilable so as to require pro rata allocation. *Sentry Select Ins. Co. v. Tennessee Farmer's Mut. Ins. Co.*, 2021 WL 4352537 (Tenn. Ct. App. Sept. 24, 2021). (Click here for full article)

Washington Supreme Court Rules That Filed-Rate Doctrine Applies To Suits Against Intermediaries Who Do Not File Rates

Answering a certified question, the Washington Supreme Court ruled that the filed-rate doctrine applies to rates charged by mortgage servicers and brokers that participated in the procurement of the policy at issue. *Alpert v. Nationstar Mortgage, LLC*, 494 P.3d 419 (Wash. 2021). (Click here for full article)

Illinois Supreme Court Rules That Insurer May Not Depreciate Labor Costs In Calculating Actual Cash Value

The Illinois Supreme Court ruled that labor costs may not be depreciated in the ACV calculation. *Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126446 (Ill. Sept. 23, 2021). (Click here for full article)

Ohio Court Rules That Absolute Pollution Exclusion Does Not Bar Coverage For Lead Paint Bodily Injury Claims

An Ohio district court predicted that the Ohio Supreme Court would not find a pollution exclusion applicable to bodily injury claims stemming from exposure to lead paint. *Goolsby v. Best in Neighborhood, LLC,* 2021 WL 4391216 (N.D. Ohio Sept. 24, 2021). (Click here for full article)

STB News Alerts

Click here to read more about the Firm's insurance-related honors.

Right To Privacy Alert:

Policy Exclusion Bars Coverage For BIPA Claim, Says North Carolina Court

A North Carolina district court ruled that an insurer had no duty to defend claims alleging violations of the Biometric Information Privacy Act ("BIPA"), finding that a policy exclusion relating to the collection and distribution of information precluded coverage. *Mass. Bay Ins. Co. v. Impact Fulfillment Servs., LLC*, 2021 WL 4392061 (M.D.N.C. Sept. 24, 2021).

The underlying suit alleged that the policyholder's practice of keeping employee fingerprints on file as part of payroll procedures violated the BIPA. The company's insurers refused to defend the suit, arguing that several policy exclusions, including a "Recording and Distribution of Material or Information Exclusion" barred coverage. The court agreed and granted the insurers' motion to dismiss.

The exclusion provided that the policy did not cover "personal and advertising injury" that arose directly or indirectly out of any violation or alleged violation of

> (1) The Telephone Consumer Protection Act . . . ; (2) The CAN-SPAM Act of 2003 . . . ; (3) the Fair Credit Reporting Act . . . ; or (4) Any federal, state, or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA . . . that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Applying the principle of *ejusdem generis* (a legal principle of interpretation under which general, catch-all language that directly follows a list of specific items is considered to include "only things of the same kind, character and nature as those specifically listed"), the court concluded that the BIPA, which prohibits the collection and disclosure of biometric identifiers, is of the "same kind, character and nature" as the statutes specified in the exclusion and thus falls within the "catch-all" language of subsection (4). As the court noted, this conclusion comports with *Hartford Cas. Ins. Co. v. Greve*, 2017 WL 5557669 (W.D.N.C. Nov. 17, 2017), *aff'd*, 2018 WL 3752235 (4th Cir. Aug. 7, 2018) (*see* Sept. 2018 Alert), which held that a similar exclusion barred coverage for alleged violations of the Driver's Privacy Protection Act.

The court expressly distinguished *West Bend Mutual Ins. Co. v. Krishna Schaumburgh Tan, Inc.*, No. 125978 (Ill. May 20, 2021) (discussed in our May 2021 Alert), in which the Illinois Supreme Court ruled that a violation of statutes exclusion did not negate an insurer's duty to defend a suit alleging BIPA violations. The exclusion in *West Bend* only referenced the TCPA and the CAN-SPAM Act of 2003, and contained less expansive language in the catch-all provision.

COVID-19 Alerts:

Ninth Circuit Affirms Dismissals Of Business Interruption Coverage Suits In Trio Of Rulings

In *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 2021 WL 4486509 (9th Cir. Oct. 1, 2021), the Ninth Circuit affirmed the dismissal of a putative class action suit seeking business income and extra expense coverage based on losses incurred in the wake of government shut down orders. As discussed in our September 2020 Alert, the district court ruled that the policyholder failed to allege the requisite direct physical loss of or damage to insured property. The Ninth Circuit affirmed, holding that under California law, an inability to use property for its intended purpose does not constitute "direct physical loss of or damage." Rather, a "distinct, demonstrable, physical alteration" is necessary. The court also concluded that a

virus exclusion barred coverage, rejecting the policyholder's assertion that the losses were caused by local orders that restricted use of property, rather than the virus itself.

In a second decision, the Ninth Circuit affirmed an Arizona district court's dismissal of a suit brought by professional baseball teams. *Chattanooga Prof. Baseball LLC v. National Cas. Co.*, 2021 WL 4493920 (9th Cir. Oct. 1, 2021). The teams argued that a virus exclusion in the applicable policies did not preclude coverage because their alleged losses were not attributable to the virus itself, but rather a host of other factors including the "attendant disease," the resulting pandemic, governmental responses and a lack of league players. Applying the law of various states based where the teams were located, the Ninth Circuit concluded that (1) under an efficient proximate cause analysis, the virus exclusion barred coverage because the teams "do not plausibly allege that any of these other causes, and not the spread of the COVID-19 virus, were the 'efficient proximate cause' that set others in motion"; (2) under a concurrent causation analysis, the teams did not allege concurrent causes of losses that would be susceptible to allocation; and (3) under a proximate cause analysis, there were no intervening causes that broke the causal chain originating with the COVID-19 virus.

In a third decision, the Ninth Circuit ruled that allegations that stay-at-home orders caused the policyholder to suspend its operations did not constitute allegations of "direct physical loss of or damage to" property for purposes of coverage under business income, extra expense and civil authority policy provisions. *Selane Products, Inc. v. Continental Cas. Co.*, 2021 WL 4496471 (9th Cir. Oct. 1, 2021). The policyholder argued that a microbe exclusion demonstrated that microscopic organisms can cause physical loss of or damage to property (and thus so could virus particles). The court rejected this assertion, noting that even if it deemed this argument persuasive, coverage would still be unavailable because the policyholder did not allege the presence of the virus on its property.

As reported in previous Alerts, the Sixth, Eighth and Eleventh Circuits have similarly upheld district court dismissals of COVID-19 coverage suits. Appeals are pending in the First and Second Circuits.

Minnesota Court Rules That Allegations Of COVID-19 Contamination Are Sufficient To Withstand Dismissal Of Coverage Suit

Addressing a matter of first impression under Minnesota law, a Minnesota trial court ruled that allegations of actual contamination of the COVID-19 virus on the insured premises were sufficient to withstand the insurer's dismissal motion. *Life Time, Inc. v. Zurich Am. Ins. Co.*, No. 27-CV-20-10599 (Minn. Civ. Ct. Oct. 7, 2021).

Life Time sought coverage under a builder's risk policy for losses incurred after it was forced to cease numerous construction projects. It alleged that infiltration of the virus onto its construction sites, as well as shut down orders, required cessation of work and resulted in business losses. The court denied the insurer's motion to dismiss, ruling that under Minnesota law, Life Time alleged facts which, if proved, could support a finding of direct physical loss.

The court relied on Minnesota decisions finding coverage where contamination of property resulted in a loss of function or value. While those decisions involved contamination by asbestos, pesticide and smoke, the court deemed them persuasive authority for the proposition that "structural damage to property" is not required to establish direct physical loss.

Parting Ways With Majority Of Federal Courts, Missouri District Court Allows Some COVID-19 Coverage Claims To Proceed, But Dismisses Others

A Missouri federal district court granted in part and denied in part an insurer's summary judgment motion in a suit seeking coverage for COVID-19-related business losses. *K.C. Hopps, Ltd. v. Cincinnati Ins. Co., Inc.*, 2021 WL 4302834 (W.D. Mo. Sept. 21, 2021).

A restaurant owner sought coverage under policy provisions for business income, extra expense, civil authority and ingress/egress. The insurer denied coverage, and in ensuing litigation, both parties moved for summary judgment. Applying Kansas and Missouri law (after finding that no conflict of law existed), the court denied the insurer's

motion as to claims under the business income and extra expense provisions, finding that the policyholder raised material issues of fact as to the existence of "direct physical loss" or "direct physical damage" to insured property. In particular, the court held that those undefined terms could be satisfied by proof of physical contamination of the COVID-19 virus—evidence of which was submitted by the policyholder's expert witnesses. In so ruling, the court explained that policy exclusions for contaminants would be rendered meaningless if contamination could never constitute a covered loss. The court rejected the insurer's contention that the contaminants listed in the exclusion were distinguishable from COVID-19 in that each of the excluded conditions "could be reasonably expected to cause actual, tangible alteration to property," whereas the COVID-19 virus could be eliminated easily and "over a period of time, dies off without any need for repair."

The court distinguished *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2020 WL 2753874 (8th Cir. July 2, 2021), in which the court, faced with identical policy language, dismissed COVID-19-related coverage claims based on the absence of direct loss to property (see July/August 2021 Alert). The court reasoned that *Oral Surgeons* precludes coverage where a policyholder alleges physical loss based on government orders, but does not where, as here, the policyholder submits proof of physical contamination. The court also distinguished *Promotional Headwear, Int'l v. Cincinnati Ins. Co.*, 504 F. Supp. 3d 1191 (D. Kan. 2020), in which the court stated that even "assuming that the virus physically attached to covered property, it did not constitute direct, physical loss or damage required to trigger coverage because its presence can be eliminated," noting that case did not have the benefit of discovery and expert testimony.

However, the court dismissed the civil authority and ingress/egress coverage claims, explaining that while the government orders limited the policyholder's operations, they did not prevent the policyholder from accessing the premises. In addition, the court denied the policyholder's summary judgment motion, finding that issues of material fact existed as to the actual presence of the virus on insured premises, whether such presence caused physical loss or damage, and the extent of damages.

Finally, the court addressed the following additional issues:

Expert testimony: The court held that the policyholder raised a triable issue of fact as to physical loss or damage by viral contamination on the premises even though its experts never specifically tested the insured premises. The court deemed it sufficient that the expert relied on data related to the community spread of the virus in the relevant geographic region, together with testimony that numerous employees were infected with the COVID-19 virus during the relevant time frame.

Continued, limited use of insured property: The court rejected the insurer's assertion that the policyholder's continued, albeit reduced use of insured premises throughout the relevant time period indicated the absence of direct physical loss or damage. The court explained that "while the fact that the premises were still used in some capacity is relevant to the extent of Plaintiff's damages, that fact does not preclude coverage."

Exclusions: The court ruled that policy exclusions entitled "Ordinance or Law," "Delay or Loss of Use," and "Acts or Decisions" did not preclude coverage because the cause of the policyholder's loss was the alleged presence of the COVID-19 virus on its premises, not government orders or decisions.

Damages: The insurer argued that the policyholder did not sustain damages because the amount it received in pandemic relief, including forgiven government loans, exceeded the amount it allegedly lost as a result of the virus and shutdown orders. Rejecting this assertion, the court noted that the purpose of such governmental relief was to keep employees paid, not to compensate businesses for lost income.

D&O Alert:

Pharmaceutical Company's Settlement Payment To DOJ Is Not Uninsurable Disgorgement Of Ill-Gotten Gains, Says Illinois District Court

An Illinois district court granted a policyholder's summary judgment motion, finding that a settlement payment constituted a covered "loss" under an excess policy and that coverage was not barred based on considerations of public policy. *Astellas US Holding, Inc. v. Starr Indem. & Liab. Co.*, 2021 WL 4711503 (N.D. Ill. Oct. 8, 2021).

The Department of Justice initiated an investigation of Astellas' charitable donations to certain patient assistance programs. The investigation, which focused on whether Astellas had made donations in order to "funnel impermissible co-pay assistance" to patients using its drugs, resulted in the issuance of subpoenas and a civil investigation demand relating to potential False Claims Act ("FCA") violations. The parties ultimately settled for $100 million plus interest. Federal denied coverage, arguing that the settlement was not for a covered "loss," defined to exclude "matters which may be deemed uninsurable under applicable law." Federal also argued that coverage was prohibited as a matter of Illinois public policy. The court rejected these assertions.

The court ruled that Federal did not meet its burden of establishing that the settlement was an uninsurable disgorgement payment intended to divest Astellas of the benefit it received by virtue of its wrongdoing. Federal argued that the settlement agreement's designation of $50 million as "restitution to the United States" demonstrated that the payment was, in fact, restitution based on Astellas' ill-gotten gains. Rejecting this contention, the court explained that the "restitution" label in the settlement agreement was used to identify the tax-deductible portion of the payment, as required by federal law, and did not support a finding that such amounts represented disgorgement payments.

Instead, the court concluded that the settlement payment constituted damages to compensate the government for loss incurred. In so ruling, the court noted that the purpose of the False Claims Act (and the damages allowed under it) supported Astellas' assertion that the settlement payment represented compensation to the government rather than restitution.

The court also rejected Federal's contention that the overall intention of the settlement was to "divest Astellas of the net benefit of its unlawful scheme" and was thus uninsurable under Illinois law. The court stated:

> despite the Government's allegations and 'themes' about Astellas' intent to profit from its donations to the ARI Funds, the damages sought by the Government and agreed upon in the Settlement Agreement were primarily (if not solely) compensatory damages under the FCA meant to cover the Government's losses in the form of Medicare payments.

The court distinguished decisions in which settlement payments were held to constitute uninsurable disgorgement, reasoning that in those cases damages were based on a calculation of the money the insured had wrongfully taken directly from underlying claimants. Here, however, there was no calculation of wrongfully obtained profits and the record established that the settlement amount was derived from the number of "tainted" prescriptions paid by Medicare to third parties.

Federal also argued that the settlement payment was uninsurable because it released liability for unjust enrichment, among other claims for which the government could seek disgorgement. However, applying a "primary focus" analysis, the court concluded that Astellas was entitled to coverage for the entire settlement because a covered loss was a primary focus of the settlement.

Finally, the court ruled that coverage of the settlement would not contravene public policy, which prohibits insurance coverage for liability arising out of a policyholder's intentional or willful wrongs. The court reasoned that the wrongful conduct was "only alleged" and not admitted in the settlement agreement, and emphasized the absence of authority supporting Federal's assertion that "it is against Illinois public policy to insure the payment of damages to a third party resulting from an insured's fraudulent conduct."

Policy Interpretation Alert:

Tennessee Appellate Court Declines To Find "Other Insurance" Clauses Mutually Repugnant

A Tennessee appellate court ruled that an "other insurance" clause in a policy rendered its coverage primary to another insurer's coverage, declining to adopt an approach under which both clauses are deemed irreconcilable so as to require pro rata allocation. *Sentry Select Ins. Co. v. Tennessee Farmer's Mut. Ins. Co.*, 2021 WL 4352537 (Tenn. Ct. App. Sept. 24, 2021).

A farm owner purchased insurance from Sentry to cover damage to certain equipment. That policy included an "other insurance" clause containing two subsections. The first section stated that if the policyholder had insurance subject to the "same plan, terms, conditions and provisions" as the Sentry policy, Sentry would pay a proportionate share of coverage. The second section stated that if the policyholder had insurance "other than that described" in the first section, Sentry would pay only the amount in excess of that due from the other insurer.

Two years after obtaining the Sentry policy, the farm owner added the equipment to an existing Farmer's Mutual policy. The "other insurance" clause in that policy stated that its coverage "is excess over any other insurance" unless "other insurance is specifically written as excess over the insurance provided in this endorsement."

When a fire destroyed the insured equipment, the policyholder sought coverage under both policies. Both insurers argued that their coverage was excess to the other policy. A trial court ruled that the two-year gap between the purchase of the Sentry policy and purchase of coverage under the Farmer's Mutual policy demonstrated that the Sentry policy was intended to be primary and the Farmer's Mutual policy was intended to be excess. The appellate court affirmed on different grounds.

The appellate court held that the order in which the policies were obtained is immaterial to interpretation of "other insurance" clauses, so long as both policies were in effect at the time of injury or loss. Further, the court held that "other insurance" clauses are not necessarily repugnant where, as here, each includes different language that could be reconciled. The court explained that Farmer's Mutual policy would be deemed primary only if the Sentry policy was "specifically written as excess," which was not the case. The court emphasized that language in subsection one of the Sentry policy, requiring it to pay a pro rata share when another policy contains the same terms and conditions, indicates its intent to be primary. The court noted that even under the second subsection, which applied when another policy contained different terms and conditions, Sentry would still be primary because that provision stated that Sentry would pay the amount "in excess of the other amount due from that other insurance." The court explained that because the Farmer's Mutual policy was written strictly as excess, there was no "amount due" from that policy.

Filed Rate Alert:

Washington Supreme Court Rules That Filed-Rate Doctrine Applies To Suits Against Intermediaries Who Do Not File Rates

Our January 2021 Alert reported on a Ninth Circuit decision that asked the Washington Supreme Court to decide whether the filed-rate doctrine extends to scenarios in which an intermediary, rather than a regulated entity, charges the filed rate to its customers. Last month, an *en banc* panel of the Washington Supreme Court answered the certified question in the affirmative, ruling that the filed-rate doctrine applies to rates charged by mortgage servicers and brokers that participated in the procurement of the policy at issue. *Alpert v. Nationstar Mortgage, LLC*, 494 P.3d 419 (Wash. 2021).

A homeowner was required by Nationstar, his mortgage company, to maintain a hazard insurance policy. When his policy lapsed, Nationstar purchased "force placed" insurance and charged the homeowner a rate approved by the Washington Insurance Commissioner. The homeowner sued Nationstar and the insurer's brokers, alleging that although the rate he was charged accurately reflected the rate approved by state authority, it did not represent the true cost of the insurance. He claimed that Nationstar and the brokers participated in an unlawful kickback scheme in which his premiums were artificially inflated. The defendants argued that the homeowner's claims were barred by the filed-rate doctrine.

The Washington Supreme Court agreed, ruling that the doctrine applies to suits against intermediaries that, unlike regulated insurers, do not actually file the rates with state agencies. The court emphasized that "labels do not necessarily govern the doctrine's applicability" and noted that the Second, Third and Eleventh Circuits have also concluded that application of the doctrine does not depend on the identities of the defendants as rate filers. Rather, it "turns on whether awarding damages squarely attacks the filed-rate."

The court declined to answer a second certified question, relating to what damages are barred by the filed-rated doctrine. Instead, the court remanded the matter to the Ninth Circuit with instructions to analyze whether the particular relief sought by the homeowner comports with state law precedent.

Property Insurance Alert:

Illinois Supreme Court Rules That Insurer May Not Depreciate Labor Costs In Calculating Actual Cash Value

As discussed in previous Alerts, several state supreme courts and federal appellate courts have addressed whether an insurer may depreciate labor costs in calculating actual cash value ("ACV"). *See* May 2021 Alert; March and April 2020 Alerts; April 2019 Alert; March 2017 Alert; January and February 2016 Alerts. Outcomes have turned largely on policy language, as well as governing jurisdictional law and public policy considerations. Last month, the Illinois Supreme Court weighed in, ruling that labor costs may not be depreciated in the ACV calculation. *Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126446 (Ill. Sept. 23, 2021).

The State Farm policy provided that "we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability." The policy did not define ACV. When State Farm depreciated both labor and materials in calculating ACV payment, the policyholder filed a putative class action, alleging breach of contract and deceptive business practices.

An Illinois trial court denied State Farm's motion to dismiss. Noting the lack of Illinois case law and jurisdictional split on this issue, the court concluded that ACV was ambiguous and should be construed in the policyholder's favor. The trial court rejected State Farm's argument that Illinois statutory law, which states that the method for calculating ACV is "replacement cost of property at time of loss less depreciation, if any," permits depreciation of both labor and materials. 50 Ill. Adm. Code 919.80 (d)(8)(A) (2002). The trial court certified the following question to the appellate court:

> Where Illinois' insurance regulations provide that the "actual cash value" or "ACV" of an insured, damaged structure is determined as "replacement cost of property at time of loss less depreciation, if any," and the policy does not itself define actual cash value, may the insurer depreciate all components of replacement cost (including labor) in calculating ACV?

The appellate court answered the question in the negative. Deeming the policy unambiguous, the court held that the phrase "replacement cost of property" refers to "real property—an asset that can lose value over time due to wear and deterioration, resulting from use or the elements, and does not refer to services, such as labor." The Illinois Supreme Court affirmed, though on different grounds.

The Illinois Supreme Court found that the policy was ambiguous because its language was susceptible to two reasonable interpretations. The court rejected State Farm's contention that even if the policy was ambiguous, it may not be construed against State Farm because Illinois statutory law supplies the definition of ACV. The court explained that while the statute generally prescribes the method of calculating ACV as "replacement cost of property at time of loss less depreciation, if any," it does not define depreciation or identify a specific method for its calculation. Having found the policy ambiguous, the court construed it in the insured's favor. Notably, the court expressly limited its ruling to cases in which the policy does not define ACV to expressly include labor depreciation.

Pollution Exclusion Alert:

Ohio Court Rules That Absolute Pollution Exclusion Does Not Bar Coverage For Lead Paint Bodily Injury Claims

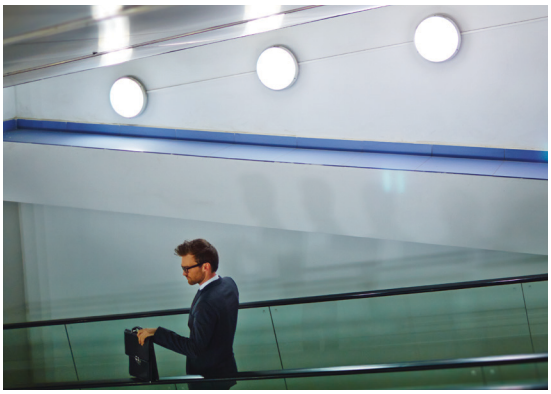
Courts across the country are split as to whether a pollution exclusion precludes coverage for lead paint bodily injury claims. Last month, an Ohio district court predicted that the Ohio Supreme Court would not find the exclusion applicable to such claims. *Goolsby v. Best in Neighborhood, LLC*, 2021 WL 4391216 (N.D. Ohio Sept. 24, 2021).

The court noted that Ohio courts have held that standard pollution exclusions are intended to apply to "traditional environmental contamination" claims and that the Ohio Supreme Court has ruled that a pollution exclusion did not bar coverage for carbon monoxide claims. As such, the court deemed the exclusion ambiguous as to whether it encompasses claims arising out of exposure to lead paint. The court recognized that this issue was "not a definitively settled question of Ohio law" but declined to certify the matter to the Ohio Supreme Court.

STB News Alerts

Simpson Thacher has been named a finalist by *The American Lawyer* for its biennial "Litigation Department of the Year" in the category of Insurance. *The American Lawyer*'s "Litigation Department of the Year" is a highly-competitive contest that recognizes the nation's top litigation departments and honors outstanding achievements in the legal profession.

Lynn Neuner was selected for the fourth consecutive year by Euromoney's *Benchmark Litigation* as one of the "Top 100 Trial Lawyers in America." The list highlights elite trial attorneys in the U.S. who are selected based on client and peer review. In addition, Lynn was recently inducted as a Fellow into the American College of Trial Lawyers, an invitation-only fellowship of trial lawyers from the United States and Canada who have shown the highest standards of trial advocacy, ethical conduct, integrity, professionalism and collegiality.



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Simpson Thacher has been an international leader in the practice of insurance and reinsurance law for more than a quarter of a century. Our insurance litigation team practices worldwide.

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