

Colony Ins. Co. v. Victory Construction LLC

Year: 2017

Court: U.S. Court of Appeals, 9th Circuit

Case Number: 17-35357

The duty to defend is broader than the duty to indemnify. It is the most fundamental duty of a liability insurer. The absolute pollution exclusion (“APE”), which exists in nearly every CGL (Commerical General Liability) policy, relieves the insurer of the duty to defend when the claims alleged against the insured arise from injury caused by pollution. However, the burden to prove the exclusion rests with the insurer. In addition, insurance policies are to be interpreted broadly, from the standpoint of an “ordinary purchaser of insurance.” Thus, when a policy’s terms are subject to multiple, reasonable expectations, coverage must be interpreted in favor of the insured. In this case, the insured allegedly, negligently created carbon monoxide, a pollutant, through it’s normal business operations. However, the exclusion applies only to “handling” a pollutant. Since the insured did not “handle” carbon monoxide in its normal business operations, the exclusion should not apply. UP argued that a broad reading of the exclusion, in contravention of the long-held rule that coverage is to be construed broadly, while exclusions are to be construed narrowly, would exclude coverage for injuries arising from even normal household items such as shampoo and cleaning supplies. The APE is meant, instead, to apply only to traditional environmental pollution.

UP's brief was authored pro bono by Seth H. Row, Esq. and Christopher A. Rycewicz, Esq. of Miller Nash Graham and Dunn; UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.