

Garrett Well, LLC. v. The Frick-Gallagher Manufacturing Co. et. al.

Year: 2021

Court: Supreme Court of Ohio

Case Number: 2021-0249

In its brief, UP urged the court against departing from the majority rule recognized across the country: that standard historical general liability insurance policy forms insure policyholders against liabilities involving groundwater and damage to other third-party property.

In this case, the Court of Appeals applied a form policy exclusion—the owned property exclusion—to bar liability coverage for clean-up costs even though the contamination had reached the groundwater and other third-party property. In so doing, the Court of Appeals failed to distinguish between liability coverage and property coverage, a fundamental distinction in insurance policies. One insures liabilities, and other insures damage to property.

UP's proposition of law is followed by two points:

1. The majority of courts that have applied this same form policy exclusion has determined that the owned property exclusion *does not bar coverage* where there is groundwater contamination.
2. The owned property exclusion also should not apply where cleanup costs were incurred to protect and mitigate imminent threat of harm to the public and the environment particularly where groundwater contamination has occurred.

This brief was authored pro bono by Jodi D. Spencer Johnson of J Spencer Law, LLC.