Georgia Farm Bureau Mut. Ins. Co. v. Bobby Chupp and Amy Smith

Year: 2015
Court: Georgia Supreme Court
Case Number: S15G1177

Claims for personal injury resulting from lead-based paint ingestion are not excluded from coverage pursuant to pollution exclusions typically included in commercial general liability ("CGL") insurance policies. Often referred to as the "absolute" or "total" pollution exclusion, this provision – as evidenced by, inter alia, testimony offered by representatives of the insurance industry itself – was intended to apply only to, and to bar coverage only for, claims involving traditional environmental and industrial pollution, such as soil and groundwater contamination from a hazardous waste disposal facility. Indeed, the drafting of this exclusion by the insurance industry was a reaction to the passage of numerous federal environmental laws, such as the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund legislation"), which increased many policyholders' – and insurers' – liability, or potential liability, for environmental pollution.By the admission of its own representatives, the insurance industry never intended the exclusion to apply to claims involving non-environmental or non-industrial irritants, such as lead-based paint in one's home or rental property. Conversely, there is no evidence that the insurance industry intended the pollution exclusion to apply to claims involving lead-based paint. There is no mention of "lead-based paint," or even "lead" more generally, anywhere in the exclusion or in the corresponding, typical definition of "pollutants." Rather, there has long been a separate exclusion available on the insurance market expressly precluding coverage for lead-based-paint-related liabilities. That such a separate exclusion has long been available on the market is strong – if not, decisive – evidence that the pollution exclusion was not intended to preclude coverage for lead-based-paint related liabilities.

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