



March 13, 2009



The California Supreme Court Holds That Sudden and Accidental Pollution Need Only Be a “Substantial Factor” to Trigger Insurance Coverage

Carlos Needham

The California Supreme Court just handed down another major decision in favor of policyholders in the Stringfellow Acid Pits litigation. A few months ago in that litigation, the California Court of Appeal ruled in favor of stacking policy limits. Earlier this week, the state’s high court ruled that policyholders need only establish that sudden and accidental pollution was a “substantial factor in causing indivisible property damage” to defeat the application of a pollution exclusion with a “sudden and accidental” exception. *State of California v. Allstate Ins. Co.*, S14988 (Mar. 9, 2009).

In its opinion, the Supreme Court expressly disapproved *Golden Eagle Refinery Co. v. Associated Intern. Ins. Co.*, 85 Cal. App. 4th 1300 (2001). Insurers have frequently cited that intermediate appellate court opinion in support of the argument that policyholders must prove the quantum of pollution that was due to sudden and accidental events. As a practical matter, the *Golden Eagle* ruling often foreclosed coverage where the pollution at issue was the result of both “sudden and accidental” events (for example, an explosion) and gradual or nonaccidental phenomena (for example, corrosion of containers or dumping). In many instances, there was simply no way to make the required showing because the pollution was intermixed in the environment – say, a groundwater plume. The California Supreme Court’s new ruling removes the burden of making that (difficult) showing. The Court based its holding primarily on its prior holding decades ago in *State Farm Mut. Auto Ins. Co. v. Partridge*, 10 Cal. 3d 94 (1973). Litigants in insurance coverage cases have often cited that case on the issue of concurrent causation. *Partridge* dealt with a homeowner’s policy that excluded claims arising from the use of motor vehicles. The insured had negligently altered his gun

NEWSLETTER EDITORS

Carlos E. Needham

Partner
cneedham@manatt.com
310.312.4193

Amy B. Briggs

Partner
abriggs@manatt.com
415.291.7451

Jeremiah P. Sheehan

Counsel
jsheehan@manatt.com
212.830.7205

OUR PRACTICE

Manatt’s insurance practice group is multi-faceted. Our insurance regulatory lawyers represent insurers, producers and related parties in connection with examinations and investigations by state insurance departments, insurer mergers and acquisitions, ... [more](#)
. [Practice Group Overview](#)
. [Practice Group Members](#)

INFO & RESOURCES

- . [Subscribe](#)
- . [Unsubscribe](#)
- . [Sarbanes-Oxley Act](#)
- . [Newsletter Disclaimer](#)
- . [Technical Support](#)
- . [Manatt.com](#)

to create a hair trigger. While he was with some friends in his truck hunting jackrabbits, the truck hit a bump and the gun discharged, wounding a friend. The insured's liability was the proximate result of two concurrent causes, the negligence in creating the hair trigger and the use of the truck. The former was covered, and the latter was not. The Court held that in such concurrent causation scenarios, there is coverage so long as the covered cause would suffice, in itself, to produce the underlying liability – regardless of whether the excluded cause contributed to the underlying harm from which the liability arose. Applying that reasoning to the pollution caused by the Stringfellow Acid Pits, the Court observed that, under the governing environmental laws, several purported sudden and accidental events would have rendered the insured liable for the contamination at issue, even absent gradual leakage that contributed to the contamination, if those sudden and accidental events were deemed to be “substantial factors” in causing the contamination.

Accordingly, the California Supreme Court held that there is a triable issue as to whether the purported sudden and accidental events “contributed substantially” to the environmental contamination for which the insured was liable. The Court importantly qualified its holding by stating that it did not mean to extend coverage to situations where the policyholder could marshal only speculation that some polluting events may have occurred suddenly and accidentally, or where such events caused no more than a trivial or *de minimis* amount of the damages for which the insured is liable.

The Supreme Court also held that, in determining whether releases into the environment were sudden and accidental, the trier of fact must look to releases from the acid pits through seepage and overflow, rather than to the initial, intended deposit of hazardous waste into the pits. The Court's holding was based on a distinction that will potentially be very significant for other pollution cases involving waste disposal sites. The Court distinguished the lower appellate court holding in *Standun, Inc. v. Fireman's Fund Ins. Co.*, 62 Cal. App. 4th 882 (1998). In that case, the court held that the relevant releases were the intentional releases into the waste disposal site. As the Supreme Court pointed out, however, the waste disposal site in *Standun* was a set of unlined ponds. The deposit of waste was, therefore, directly into the land. In contrast, the Stringfellow pits were designed to contain the waste and prevent it from entering into the land. The insured's liability arose from allowing the seepage and overflow from the

pits, rather than from the deposit of waste into the pits alone.

FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



Carlos Needham Mr. Needham's practice focuses on insurance coverage, complex litigation matters involving product liability, science-related issues, mass tort claims, consumer class actions and environmental matters. He has a broad-based litigation and trial practice, primarily representing large companies in the defense of suits in the areas of insurance coverage, product liability, and commercial contracts.

ATTORNEY ADVERTISING pursuant to New York DR 2-101(f)
Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.
© 2009 Manatt, Phelps & Phillips, LLP. All rights reserved.