

Eleventh Circuit Reaches Different Conclusions While Examining Pollution Exclusion

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The Eleventh Circuit recently examined two insurance coverage cases involving the applicability of the pollution exclusion. In one case it held that sewage was not a pollutant, but in the other case it held that storm water was a pollutant. These cases provide guidance to policyholders who may face a pollution exclusion argument from their carrier in the Eleventh Circuit. In the case Evanston Insurance Company v. J&J Cable Construction, LLC, the Eleventh Circuit held that damage caused by a sewage leak was not barred by the pollution exclusion. (Case No. 17-11188, April 20, 2018). The court looked to a prior Alabama case that distinguished industrial waste from residential sewage. However, the Eleventh Circuit reached the opposite conclusion in the case Centro Development Corp. v. Central Mutual Insurance Company (Case No. 17-13489, April 27, 2018). There, the Eleventh Circuit found that storm water was a pollutant excluded by the policy's pollution exclusion. The court looked to a Georgia Supreme Court case that held that a pollutant did not have to be specifically named in the policy in order for the exclusion to apply, as was the case in the Central Mutual policy. These decisions serve as a good reminder that the Eleventh Circuit will look to precedent from the state law that governs the coverage dispute. In addition, whether a pollutant is tied to industrial waste may be a determining factor for the application of the pollution exclusion in the Eleventh Circuit.

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