

Do We Have Coverage For This? Sometimes It's Worth Getting A Second Opinion

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[Handwritten Insurance Claim Form with pen and calculator](#) Do you have coverage for claims? Here is a perfect example of a situation where you might not want to take no for an answer. Recently, a firm client received a letter from the U.S. E.P.A. advising of an underground environmental contamination which appeared to be coming from their property and would require significant remediation. When the firm client called its insurance broker, he advised that the client had no coverage for the claim, because it was excluded from coverage by the pollution exclusion in their commercial general liability policy. When the client turned to Barnes & Thornburg LLP for help, we submitted the claim to several of the client's commercial general liability insurers. With the notice of claim, we provided the insurers with our legal analysis that included (1) Indiana law would apply to the determination of coverage, (2) Indiana law favors the policyholder on the enforceability of pollution exclusions ever since *American States Ins. Co. v. Kiger*, 662 N.E.2d 945 (Ind. 1996), and (3) the pollution exclusions in their policies did not provide a defense to coverage for this case. Also, since the environmental contamination which was the subject of the EPA action was one that occurred many years before, we were not limited to the current commercial liability policy and its pollution exclusion. Instead, we asserted that the client's policies from prior years also provided coverage, because the contamination the EPA asserted had occurred over ten years earlier. We submitted the claim to each insurance company who sold the client a general liability policy during all years the contamination was in the ground. The insurers all agreed to participate in the defense of this claim. Although the client obtained positive results in this particular instance, that doesn't mean that every environmental situation may be covered, even if a broker has said that there is no coverage. So when a broker or agent tells you that you don't have coverage for that loss, or that there's an exception in your policy that avoids coverage for that claim, don't give up. You might be pleasantly surprised at how there are opportunities for coverage that go against conventional wisdom

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