

Georgia Supreme Court Expands Scope Of Absolute Pollution Exclusion

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The Georgia Supreme Court recently addressed and reversed the Georgia Court of Appeals on the question of whether lead paint is a “pollutant” for purposes of an exclusion within a commercial general liability. In a recent case, *Georgia Farm Bureau Mutual Insurance Company v. Smith*, a tenant sued her landlord for personal injury after her daughter ingested lead-based paint found in the home. The landlord’s commercial general liability insurer brought a declaratory judgment action to determine whether the personal injury claim was excluded under the policy’s absolute pollution exclusion. See 2016 WL 1085397 (Ga. Mar. 21, 2016). The policy defined “pollutant” as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.” *Id.* at *2. Even though policy exclusions are supposed to be interpreted narrowly under Georgia law, the Georgia Supreme Court held that lead-based paint was a “pollutant” under the commercial general liability policy at issue. In doing so, the Georgia Supreme Court reversed the Georgia Court of Appeals, which had previously held that the policy did not unambiguously include lead-based paint as a pollutant under the policy’s pollution exclusion. The Georgia Court of Appeals looked to other jurisdictions that had held ingestion of lead-based paint did not fall under similarly worded pollution exclusions. In a matter of first impression, the Georgia Supreme Court disagreed. They relied on a 2008 decision, *Reed v. Auto-Owners Insurance Company*, where the Georgia Supreme Court held that carbon monoxide gas was a pollutant under that policy. See 667 S.E.2d 90 (Ga. 2008). The Georgia Supreme Court reiterated in this decision that pollutants are not limited to traditional environmental pollution and the plain language of the policy should govern. The *Georgia Farm Bureau Mutual Insurance Company v. Smith* decision further expands the scope of the absolute pollution exclusion under Georgia law and what can constitute a “pollutant.” Policyholders, especially residential rental companies like the insured here, should consider carefully evaluating their risk of claims relating to “pollutants” that may be excluded under the Georgia Supreme Court’s recent interpretation of the policy’s absolute pollution exclusion.

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