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PRESS RELEASE

WRF Assists in Insurer Victory in Washington Supreme Court on Absolute Pollution Exclusion

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Washington, DC—In a 5-4 decision, the Washington Supreme Court ruled that a widely used pollution exclusion in a general liability policy bars coverage for bodily injuries allegedly caused by exposure to toxic fumes released during deck sealant operations on the policyholder's premises. *Quadrant Corp. v. American States Insurance Co.*, No. 74663-0 (Wash. Apr. 28, 2005). The court rejected the policyholders' argument that the exclusion should be limited to "traditional environmental harm." The intermediate appellate court had ruled in favor of the insurers, and policyholder advocates had expected the Washington high court to reverse that decision. Wiley Rein & Fielding LLP filed an *amicus curiae* brief on behalf of the Complex Insurance Claims Litigation Association (CICLA) in support of the insurers in this case.

In this case, a restoration company allegedly neglected to warn apartment tenants regarding its sealant operations and failed to ventilate the area properly, exposing a tenant to toxic fumes from its sealant applications. The company and the building owner sought coverage for claims arising from tenant's alleged injuries, and the insurers denied coverage based on the absolute pollution exclusions contained in the policies at issue. The policyholders then brought an action against the insurers, and the trial court granted summary judgment to the insurers, which the intermediate appellate court affirmed. The policyholders then appealed to the state supreme court.

The Washington Supreme Court affirmed the lower courts, ruling in favor of the insurers. In an opinion that drew on arguments advanced by WRF, the court concluded that the exclusion "unambiguously precludes coverage for the ... claim and we decline to find ambiguity

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where none exists." The court stated that its decision accords with the majority of jurisdictions, which have held that the absolute pollution exclusion is not limited to "traditional environmental harm."

This decision is also significant because it limited its prior decision in *Kent Farms, Inc. v. Zurich Insurance Co.*, 140 Wn. 2d 396, 998 P.2d 292 (2000), where it had concluded that the pollution exclusion did not bar coverage for a fuel deliveryman's negligence claim arising from the spill of fuel from a faulty valve. The court stated that *Kent Farms* did not involve a polluting incident, and therefore would be limited to its facts. Instead, the court adopted the reasoning of *Cook v. Evanson*, 83 Wn. App. 149, 920 P.2d 1223 (1996), which applied the exclusion to injuries arising from toxic concrete sealant fumes. The court stated that *Cook* followed "the clear and longstanding rules for insurance contract interpretation adopted by this court." In doing so, the court stated that it would not create an ambiguity where none existed, concluding that, "[w]hen considering the facts of this case, it is difficult to see how a reasonable person could interpret the policy language such that it would not encompass the claim at issue here."

The court also recognized that the insurance contracts were not illusory, citing to potential claims arising out of "slip and fall injuries [that] would clearly fall outside of the pollution exclusion." Importantly, the court also stated that, because the pollution exclusion unambiguously applied to the facts of the claim, "there is no need to turn to evidence regarding the history and purpose of the standard pollution exclusion."

Laura A. Foggan, a partner at WRF who serves as counsel to the CICLA, stated that "this case presents a major victory for insurers, showing that the pollution exclusion is unambiguous." Ms. Foggan added that "the court's refusal to consider the alleged history of the exclusion and to inject qualifications into the exclusion where none exist re-affirm the principle that insurance contracts, like other contracts, should be applied as written."

CICLA is a trade association of major property and casualty insurers.