COMMUNITY ASSOCIATION
lawreporter Legal Trends and Analysis for CAI Members

# Exclusion Clause Gives Insurer Right to Deny Association Coverage

***Philadelphia Indemnity Insurance Company* v. *Yachtsman's Inn Condo Association, Inc,* 595 F. Supp. 2d 1319 (S. Dist. Fla. 2009)**

**Contracts: A U.S. District Court ruled that the issuer of a general liability insurance policy did not have a duty to defend a condominium association and its management company against a worker's personal injury claim because the policy contained a pollution exclusion clause.**

Yachtsman's Inn Condominium is located in Key Largo, Fla. Yachtsman's Inn Condominium Association, Inc. contracted with Moss & Associates Property Management, Inc. ("Moss") to manage and maintain the condominium common areas, including the underground parking garage. Philadelphia Indemnity Insurance Company ("insurer") issued a commercial general liability insurance policy to Moss, naming the association as an additional insured.

Moss hired Milton Boone to pressure wash the condominium's underground garage. During this job, he was exposed to feces, raw sewage and battery acid that had accumulated on the premises, causing him to suffer severe dermatological injuries. He sued the association, alleging it negligently failed to maintain the premises in a safe condition. The association sued Moss, arguing that it hired Boone to perform the work. Both parties moved for summary judgment, and both parties' pleadings addressed the interpretation of the insurance policy's pollution exclusion.

The insurer argued that Boone's claims against Moss and the association were not covered under the policy because of the language of the pollution exclusion. Moss argued that summary judgment in favor of the insurer was inappropriate because issues of fact existed stemming from the ambiguity of the policy's terms.

The policy stated:

> This insurance does not apply to … "Bodily injury" … arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" … [a]t or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured … The policy defines pollutants as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste."

The insurer argued that the injuries that were the underlying cause of Boone's action were the result of causes specifically excluded in the policy. The insurer contended that the pollution exclusion was unambiguous and barred coverage for the damages claimed by Boone because the damages arising from exposure to "feces, raw sewage and battery acid," fell under the policy's exclusion's language defining a "pollutant." Moss maintained that the policy language was ambiguous as it pertained to Boone's complaint because no Florida court had specifically defined battery acid as "acid" or feces and sewage as "waste."

The court relied upon *Deni Associates of Florida, Inc.* v. *State Farm Fire & Casualty Insurance Co.*, 711 So.2d 1135, 1136-37 (Fla. 1998) where, under very similar circumstances, the court found that the pollution exclusion excluded liability from coverage, "arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants." It noted that the definition of "pollutant" in *Deni* was identical.

The court ruled in favor of the insurer, finding that the pollution exclusion unambiguously applied to battery acid, raw sewage and feces.



[ return to top ]

community ASSOCIATIONS INSTITUTE

**225 Reinekers Lane, Suite 300, Alexandria, VA 22314 (888) 224-4321**