

THOUGHT LEADERSHIP

News

U.S. DISTRICT COURT FINDS POLLUTION EXCLUSION PRECLUDES EMPLOYEE INJURY CLAIMS BASED ON INHALATION OF TOXIC HARD-METAL SUBSTANCES

Newsbrief

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The U.S. District Court for the Southern District of Texas recently examined an insurer's duty to defend its insured, an employer, for an employee's injury claims alleging physical injury and death resulting from the inhalation or ingestion of toxic hard-metal substances. In *Century Surety Co. v. Oates Metal Deck & Building*, CA No. H-11-3349 (S.D.Tex. October 3, 2012)(No. 4:11-CV-03349 Document 20), Century denied a request from its insured seeking a defense to the injury claims against it under two commercial general liability policies and then filed a declaratory judgment action against its insured. Century asserted two exclusions, the pollution exclusion and a silica exclusion as precluding coverage under the policy.

After reviewing the rules of insurance policy interpretation, the court noted that Texas courts have found pollution exclusions similar to the one at issue here, to be clear and unambiguous. The insured claimed, however that "pollutants" is defined so broadly as to preclude injuries or illnesses stemming from anything a person might come in contact with. But after reviewing Texas law addressing the definition, the court concluded that "pollution" was not defined so broadly so as to create an ambiguity. And observing that while the complaint lacked specificity, it mentioned several times that the injured employee "inhaled or ingested" hard-metal substances that found their way into his respiratory system. Accordingly, the court held that Century met its burden that the pollution exclusion was applicable and coverage was precluded. Accordingly, summary judgment was granted in favor of Colony.