

THOUGHT LEADERSHIP

News

FORT WORTH FEDERAL COURT FINDS ROCK DUST IS AN EXCLUDED POLLUTANT WHEN IMPROPERLY DISCHARGED

Newsbrief

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A Federal District Court Judge in Fort Worth recently granted summary judgment in favor of a CGL carrier finding it had no duty to defend or indemnify its insured in a pollution case involving the discharge of rock fines, or very fine dust, into a waterway. In *Great American Ins. Co. v. Ace American Ins. Co.*, 4:18-CV-114-A, 2018 WL 3370620 (N.D. Tex. July 10, 2018), the underlying suit against the insured involved an accidental discharge of rock fines from settling ponds where they are ordinarily settled out, dried, and either used as reclamation fill in the insured's quarry operations, or sold as commercial fill.

The court found that characterizing the rock fines as a valuable commodity while they were in their proper place in the settling ponds did not change their role as a pollutant once they escaped the settling ponds and damaged the waterway. The court observed that a substance does not have to be inherently irritating, toxic, or otherwise deleterious to become a contaminant when it is in the wrong place. Therefore, the carrier had no duty to defend the suit seeking remediation costs, and the court also concluded the carrier had no duty to indemnify for the same reasons.