

Insight

A Broad Brush

Georgia Supreme Court issues lead paint ruling that takes on absolute pollution exclusions.

The Georgia Supreme Court just handed down an interesting decision enforcing the plain meaning of absolute pollution exclusions. *Georgia Farm Bureau Mutual Insurance Co. v. Smith* addressed lead paint, but the court's ruling—and reasoning behind it—goes much further.

In fact, much like the New York store that advertised it sold a variety of home improvement items back in the '80s, this lead paint decision "ain't just paint."

Lead paint continues to be a source of injuries and coverage disputes. In this particular case, a tenant sued her landlord for injuries caused by lead paint. The landlord asked its insurer to defend. The insurer filed a declaratory judgment action seeking a ruling that the absolute pollution exclusion barred coverage because lead paint is a pollutant. After decisions from a trial court and an intermediate appellate court, the case reached Georgia's Supreme Court.

The Supreme Court held that lead paint is a "pollutant." The court's reasoning and the decision's ramifications go beyond lead paint, though. And from the insurer's perspective, the decision is perfect.

The policy excluded injuries from "pollutants," and it defined pollutant as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste." The Supreme Court addressed whether this definition included lead paint, and in doing so considered several arguments that policyholders often raise.

The most interesting policyholder argument concerned history: Put aside the words of the exclusion and consider its purpose. "Any pollutant" suggests a broad meaning. But, policyholders argue, the definition of pollutant should be understood to mean traditional industrial pollutants.



By
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Policyholders have enjoyed success with this argument; some states accept it. The Georgia Supreme Court acknowledged the acceptance by some other states, and then rejected this view. It found that Georgia courts apply these clauses "outside the context of traditional environmental pollution." They refuse to limit the exclusions to "what is traditionally considered environmental pollution."

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The court also rejected another common policyholder attack: the "resort to external guides." Citing an earlier case, the court noted that it "need not consult a plethora of dictionaries and statutes." Plain meaning sufficed. The court warned that resorting to extra-textual sources may lead to a finding of ambiguity where none exists.

The policyholder argued that lead paint was not a pollutant because it was not specifically mentioned in the definition of pollutant. Again, the court did not buy it. The court said Georgia routinely enforced absolute pollution exclusions without requiring the specific contaminant at issue to be named in the exclusion.

The Georgia Supreme Court said it would read pollutants with a view to the "usual and common' meaning." The policy should be read as a layman might read it, not as an expert or attorney would.

The court also stated the limits of judicial interpretation in an interesting way. Just as courts surely cannot change the amount of the insurance coverage, they surely cannot change the terms of the coverage by stretching the language to cover things that might not otherwise be covered.

So, this was a good day for insurers facing lead paint claims. But, the reasoning will help all insurers with absolute pollution exclusions. The decision "ain't just paint."

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