



By
Alan Rutkin

In the 1980s, I listened to Bruce Springsteen, I had a full head of hair and I handled “sudden and accidental” insurance issues.

Other than the hair, nothing has changed.

Back then, insurers had been using exclusions that barred coverage for pollution, except where the release was “sudden and accidental.” Now, pollution is usually subject to “absolute exclusions,” without “sudden and accidental” exceptions.

The exception led to many cases and articles: When did the “sudden and accidental” exception apply? Policyholders argued that the exception applied if the damage was unexpected

No Oil Change In Rhode Island

Insight: The state's high court reaffirms that pollution exclusions are written clearly.

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and unintended. Insurers argued that the exception meant what it said; it only applied if the release itself was sudden and accidental.

The Rhode Island Supreme Court revisited this issue in its recent decision, *Nunez v. Merrimack Mutual*.

In *Nunez*, the policyholders bought a house. The pre-closing inspection found that the oil heating system was corroded. Eighteen months later, the oil dealer reported that the system leaked oil. An investigator concluded that the line had been leaking over time, probably starting before the policyholders bought the home.

The policyholders made a claim under their homeowners policy. The policy covered releases from heating systems from a “sudden and accidental tearing apart.”

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Citing the earlier pollution exclusion arguments that “sudden and accidental” means unexpected and unintended, the policyholders argued that this release—a release that began more than a year before the claim was made—was sudden and accidental.

Policyholders noted that, back in 2000, the Rhode Island Supreme Court took a policyholder-friendly view of sudden and accidental. The court that year found this provision meant unexpected and unintended. The court did not enforce the pollution exclusion in a situation involving releases over a long term.

The 2014 court sees things differently from the 2000 court.

In the recent *Nunez* decision, the Rhode Island Supreme Court rejected the policyholders' effort to rewrite the policy: “To wedge the loss resulting from the gradually corroded oil feed line into the category of ‘sudden and accidental tearing apart’ ... would require the creation of an ambiguity where one does not exist.”

Nunez suggests that Rhode Island would now enforce an old pollution exclusion as written. Coverage would be limited to releases that are sudden and accidental. But, since insurers stopped using these exclusions long ago, we see fewer disputes concerning these provisions.

The more likely effect is more general. *Nunez* supports enforcing the plain meaning of insurance policies. The court wrote that “we shall refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity into a policy where none is present.”

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Back in the decade before Al Bundy and *Baywatch*, insurers would have been very happy to have the Rhode Island Supreme Court's decision interpreting “sudden and accidental” releases literally. **BR**