

Oregon Court Rules That Pollution Exclusion Bars Coverage For Carbon Monoxide Claims

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Ruling on a matter of first impression under Oregon law, an Oregon federal district court ruled that a pollution exclusion unambiguously bars coverage for claims alleging injury caused by carbon monoxide. *Colony Ins. Co. v. Victory Constr. LLC*, 2017 WL 960024 (D. Or. Mar. 9, 2017).

Lawsuits filed against Victory Construction alleged negligence and failure to warn in connection with the installation of a swimming pool heater. The complaints alleged that as a result of Victory's negligence, excessive carbon monoxide entered a home, causing injury to its residents. Colony Insurance denied coverage based on a pollution exclusion. Ruling on the parties' cross-motions for summary judgment, the court held that the pollution exclusion bars coverage and that Colony has no duty to defend or indemnify the claims.

Predicting that the Oregon Supreme Court would apply a pollution exclusion to preclude coverage for carbon monoxide claims, the court rejected three assertions made by Victory. First, the court held that exclusion is not limited to traditional environmental pollution based on the "plain meaning" of the terms of the exclusion, without resort to extrinsic evidence. In so ruling, the court expressly disagreed with the Nevada Supreme Court's ruling in *Century Surety Co. v. Casino West, Inc.*, 329 P.3d 614 (Nev. 2014) (discussed in our [June 2014 Alert](#)). Second, the court ruled that Victory's reasonable expectations were irrelevant to interpretation of the pollution exclusion, noting that the Oregon Supreme Court has not expressly adopted a reasonable expectations doctrine and that state statutory law (requiring insurance contracts to be interpreted according to their terms and conditions) appears to be inconsistent with the doctrine. Finally, the court concluded that the exclusion was unambiguous on its face, rejecting Victory's assertion of ambiguity based on conflicting case law.

As discussed in previous Alerts, other courts have likewise concluded that carbon monoxide injury claims fall squarely within the scope of a standard pollution exclusion. See [March 2016 Alert](#), [June 2013 Alert](#), [Sept. 2012 Alert](#).

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