

Arizona Appellate Court Limits Application Of Pollution Exclusion To Claims Arising Out Of Traditional Environmental Contamination

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An Arizona appellate court ruled that a pollution exclusion did not bar coverage for personal injury claims arising out of exposure to hazardous fumes released during construction because the underlying factual scenario did not constitute “traditional environmental pollution.” *Starr Surplus Lines Ins. Co. v. Star Roofing, Inc.*, 2019 WL 5617575 (Ariz. Ct. App. Oct. 31, 2019).

A woman suffered bodily injury after passing out and falling in a building’s parking lot. Her injuries were allegedly caused by inhaling toxic fumes that were released during the course of roofing work. Star Roofing tendered the claim to its liability insurer, which agreed to defend under a reservation of rights. In ensuing litigation, a trial court ruled that a pollution exclusion did not apply to the underlying claims. The trial court relied on Arizona precedent, which has limited application of pollution exclusions to “traditional environmental pollution.” The appellate court affirmed.

The appellate court acknowledged that the roofing materials “may be classified as hazardous substances under state and federal statutes and should not be handled without the use of protective equipment due to their caustic nature.” The court also noted that inhalation of the chemicals can cause “irritation to the respiratory tract, mucous membranes, dizziness, blurred vision, and headaches.” Notwithstanding these facts, the court held that the pollution exclusion did not apply because the overall scenario did not constitute a traditional environmental event. The court declined to overturn, limit or re-examine Arizona precedent despite the insurer’s assertion that Arizona law follows the “minority” position in this context.

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