

Other Policy Provisions Do Not Create Ambiguity In Pollution Exclusion, Says Massachusetts Court

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A Massachusetts federal district court ruled that a total pollution exclusion bars coverage for damage caused by a gasoline spill, rejecting the policyholder's assertion that another policy provision, which grants coverage for certain fuel spills, creates ambiguity as to the pollution exclusion. *Performance Trans., Inc. v. General Star Indem. Co.*, 2019 WL 6307227 (D. Mass. Nov. 25, 2019).

The coverage dispute arose out of a car accident in which a tanker truck drove off the road and overturned, discharging more than 4,000 gallons of gasoline and diesel fuel onto the pavement and into a nearby reservoir. The trucking company's insurer denied coverage based on a total pollution exclusion, which excludes "loss, costs or expenses, arising out of, resulting from, caused by or contributed to by the . . . discharge, dispersal, seepage, migration, release or escape of pollutants."

The insured asserted that the policy was ambiguous and that application of the total pollution exclusion would improperly render a "Special Hazards and Fluids Limitation Endorsement" superfluous. That endorsement bars coverage for certain spills, but provides an exception for spills that result from the overturning of a vehicle. The insured argued that by including this exception, the insurer agreed to provide coverage for loss caused by spills resulting from overturned trucks.

Rejecting this contention, the court explained that Massachusetts law "flatly reject[s] the concept that, because [one exclusion] excludes certain possible coverage and then provides for an exception, that exception creates an ambiguity, or an objectively reasonable expectation of coverage, when it is confronted with another explicit exclusion."

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