

First Circuit Rules Excess Insurer Must Provide Coverage for Fuel Spill

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The First Circuit recently held that a “Special Hazard and Fluids Limitation Endorsement” was ambiguous and therefore there was excess coverage for a fuel spill that occurred after a tanker-truck overturned.

In *Performance Trans. Inc. v. General Star Indem. Co.*, the First Circuit reversed the District Court’s grant of summary judgment in favor of General Star Indemnity Company. The District Court held that the excess policy General Star issued to Performance Trans. Inc. precluded coverage for a spill that resulted in the leaking of thousands of gallons of fuel. The District Court relied on the existence of a total pollution exclusion to bar coverage and held that the policy’s Special Hazards and Fluids Limitation Endorsement could not create an ambiguity that would afford coverage.

In reversing, the First Circuit found that the plain text of the Special Hazard Endorsement was ambiguous because “it [was] susceptible to at least three interpretations.” First, the endorsement could be read to provide coverage for each exception listed in the endorsement, regardless of any other policy exclusions. Second, the endorsement could be interpreted to provide coverage for a single exception, which was the only item that began with the phrase “coverage under this item: . . . will be available...” Finally, the endorsement could be interpreted to only provide coverage where it was not otherwise excluded by the policy.

Additionally, the First Circuit held that other language in the Special Hazards Endorsement added to the ambiguity. The Endorsement contains the word “limitation” in its title but then states “this exclusion . . .” and contains at least one affirmative grant of coverage. The Court held that the use of the terms “exclusion” and “limitation” created confusion about the purpose and effect of the provision. Thus, the plain text of the Special Hazard Exclusion was ambiguous. Further, the First Circuit found that other provisions in the policy, including a total pollution exclusion, did not resolve the ambiguity in the Special Hazards Endorsement because the policy was unclear as to whether any overlap or redundancy was intentional.

Finally, the First Circuit held that since the Special Hazards Exclusion was ambiguous, it must be construed in favor of coverage for the fuel spill. Thus, it reversed the District Court’s summary

judgment order and ruled there was coverage for the fuel spill.

This decision provides an important reminder that inconsistent language in a policy and its endorsements can create an ambiguity, which is generally interpreted in favor of coverage.

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