

Proving Sudden and Accidental Discharge Requires an Expert With a Reliable Methodology

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Environmental damage claims are often very technical. Those technical aspects tend to permeate insurance coverage disputes. This is especially true where the policyholder seeks coverage in the face of a pollution exclusion. As we know, the pollution exclusion has evolved over the years. Some pollution exclusions are not absolute and provide coverage for discharges that are “sudden and accidental.” Proving that contamination found at an industrial site resulted from sudden and accidental discharges of chemicals into the groundwater requires an expert. But the expert has to meet the criteria necessary for the expert testimony to be admitted.

In *Varlen Corp. v. Liberty Mutual Ins. Co.*, No. 17-3212 (7th Cir. May 16, 2019), the 7th Circuit affirmed a district court’s exclusion of an expert’s testimony, which when excluded resulted in summary judgment in favor of the insurance company. The policyholder sought coverage for groundwater contamination related or operations on two industrial sites.

The insurance company disclaimed based on the policy’s pollution exclusion and the policyholder sued. To overcome the pollution exclusion, the policyholder relied on the “sudden and accidental” exception to the pollution exclusion.

The policyholder’s expert testified that the releases of the chemicals were sudden and accidental based on his experience with the sump pumps on the site. Both parties moved for summary judgment and the insurer moved to strike the expert’s testimony. The district court granted the motion to strike, holding that the expert’s opinions were unreliable and speculative. The opinion details the testimony.

In affirming, the circuit court noted that the expert’s testimony was the only evidence on the sudden and accidental issue. The court found that the district court did not abuse its discretion when it found that the expert’s testimony was not based on reliable methods or principles. The court stated that the expert was not able to show that his experience or expertise led to his conclusions because he based his conclusions on inferences. He failed to explain why his inferences were justified, according to the court, and acknowledged that the data he used was an indication, but not conclusive of a sudden and accidental discharge. The court concluded that the expert “failed to demonstrate that his conclusions were anything more than guesses.”

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