

Client Alert

A report
for clients
and friends
of the Firm March 2009

High Court Says Policyholder is Entitled to Coverage

State of California v. Allstate Insurance Company

On March 9, 2009, the Supreme Court of California held that a policyholder is entitled to coverage for environmental damage that results from a combination of covered and excluded causes. In *State of California v. Allstate Insurance Company*, 09 C.D.O.S. 2890, the high court issued one of its most important insurance coverage decisions in recent years. “The insured’s inability to allocate the damages by cause does not excuse the insurer from its duty to indemnify,” the court explained.

This decision will likely influence the outcome of insurance disputes around the country in which the policyholder is unable to quantify the extent to which an excluded cause might have contributed to the damage for which it seeks coverage. Such disputes are central to many first-party property claims such as hurricane claims, which often involve a combination of covered wind damage and excluded flood damage, and third-party liability claims such as environmental and product claims.

In *Allstate*, the trial court had granted summary judgment in favor of four insurers that had denied coverage for the State of California’s costs of remediating environmental contamination related to the Stringfellow Acid Pits, a disposal site in Riverside County, California. The trial court ruled that the State was not entitled to coverage because it could not quantify the amount of damage resulting from

“sudden and accidental” releases, which were covered, as opposed to gradual or expected releases, which were excluded. The Court of Appeal reversed, and the California Supreme Court largely affirmed that ruling.

First, the Supreme Court explained that the operative event for determining whether the release of a contaminant into the environment is “accidental” is not the initial deposit of hazardous waste into a disposal site, but the subsequent migration of contamination into the surrounding environment. The court held that the policyholder is entitled to coverage unless subjectively “substantially certain” that further damage will ensue. Even intended releases of hazardous waste into the environment are covered, the court reasoned, if the policyholder does not expect further damage to result.

Second, if covered (“sudden and accidental”) releases contribute “appreciably” to the property damage, along with excluded (gradual or expected) releases, the insured is entitled to full coverage for the resulting damage unless the insurer can prove how much of the damage was caused solely by the excluded causes. The fact that the policyholder cannot prove how much of the property damage resulted from covered causes does not relieve the insurer from its duty to indemnify the policyholder in full.

The *Allstate* decision will benefit policyholders not only in California, but also around the country as other states frequently look to California’s highest court for guidance on the “concurrent causation” issue – that is, the important question of whether insurance companies must pay for damage that may have been caused in part by causes that are excluded under their insurance policies. This issue arises not only in environmental insurance coverage cases involving “sudden and accidental” pollution exclusions, like *Allstate*, but also in first-party property cases.

For example, a central issue in hurricane and other property claims is often whether excluded causes such as flooding or mold or earthquake contributed to damage that would otherwise be covered. The same issue is often at the heart of third-party liability claims – which frequently hinge on disputes such as whether damage to a structure is due not only to a contractor's covered negligence but also to excluded earth movement, or whether flood damage is caused not only by an excluded storm surge but also by the covered, negligent design of a levy. In such cases, Allstate provides an important pro-policyholder precedent from a court to which courts around the country often look for guidance.

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