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Washington Appeals Court Rules No Coverage for Property Damage Caused by Leaking Underground Tanks After Insurance Policies Expire

Breaking Developments In Environmental Law 04/20/09

Last week, the Washington Court of Appeals upheld the denial of insurance coverage for property damage caused by a release of gasoline from an underground storage tank ("UST"). In *Walla Walla College v. Ohio Casualty Ins. Co.*, a panel in Division Three of the Washington Court of Appeals ruled that there was no insurance coverage for damage to property that occurred ten years after the USTs were improperly installed and eight years after the insurance policies expired.

Walla Walla College (the "College") purchased three fiberglass USTs, which were installed in 1991 at a gas station owned by the College. In September 2001, between 8,000 and 10,000 gallons of gasoline leaked from a 56 inch opening at the bottom of one of the USTs. The College claimed that the contractor negligently obtained or installed backfill under the tank that ultimately caused buckling and cracking. The College incurred cleanup costs and lost revenue to remediate the environmental damage caused by the release.

The tank installer had two commercial general liability policies with Ohio Casualty that were in effect until January 1992. The College initially sued the tank installer and then brought suit against Ohio Casualty to determine whether the policies covered the losses. The trial court granted summary judgment in the insurer's favor and the Washington Court of Appeals upheld that ruling.

The court rejected the College's argument that the damage to the tank occurred immediately upon the improper installation in 1991 and was a continuous process resulting in the tank's failure. The court said that the process indeed began in 1991, but the actual property damage did not occur until 2001 when the tank failed. Furthermore, the court held there was no coverage for the tanks themselves because the policies also excluded damage to the tanks. *"If we assume that stress or damage to the tank occurred during the policy period, the damage would have been excluded under the policies. And the contamination to the surrounding property did not occur until after these policies had lapsed."* Lastly, the court also rejected the College's argument that diminution in the value of the tank was considered as property damage under the policies.

The court did not find coverage under a continuous process theory because the property damage did not occur during the policy period. The opinion carefully distinguished between the improper UST installation that did not result in an actual loss occurring during the policy period and the release that gave rise to the loss occurring *after* the term of the policy.

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