

California Appellate Court Holds That Insurer Is Not Required to Show Proof of Prejudice to Deny Coverage Based On Failure to Comply With Notice Condition

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In [Venoco, Inc. v. Gulf Underwriters Ins. Co., 2009 WL 1875640 \(July 1, 2009\)](#), the Second District Court of Appeal affirmed a summary judgment entered in favor of Gulf Underwriters Insurance Company (“Gulf”) with regard to Venoco’s suit brought against Gulf for indemnification and a defense for lawsuits filed against it by former students and employees of Beverly Hills High School for personal injuries allegedly arising out of exposure to toxic pollution from Venoco’s oil and gas operations performed adjacent to the high school campus.

Gulf asserted that Venoco’s claim for a defense under the policy was not covered by virtue of an exclusion for instances of toxic pollution. However, an exception to the exclusion, a “buy-back” provision, provided that if Venoco notified Gulf of an occurrence within sixty (60) days of such occurrence, the toxic pollution exclusion would not apply so as to preclude coverage.

Gulf moved for summary judgment in the trial court claiming it had no duty to defend or indemnify Venoco because it had failed to provide notice of the lawsuits brought by the former high school students and employees within the 60-day notice period. Venoco argued in part that the notice requirement was invalid, unfair and unusual because it was hidden in the policy, and it was also a violation of public policy. It further argued that Gulf’s reliance on the notice requirement was barred by California’s “notice-prejudice” rule which operates to bar insurance companies from disavowing coverage on the basis of lack of timely notice unless the insurance company can show actual prejudice from the delay. Specifically, Venoco argued that because Gulf could not show it was actually prejudiced as a result of Venoco’s delay in reporting, that it could not rely on the notice requirement to deny coverage. The trial court granted Gulf’s motion finding that it was undisputed that Venoco did not comply with the 60-day notice requirement, that the 60-day requirement was not unusual or unfair under the law, and that the notice-prejudice rule did not bar Gulf’s disavowal of coverage.

The Second District Court of Appeal affirmed. It held that pollution buy-back provisions containing reporting time limits were not unusual in the oil industry, and further were not unfair or against public policy. It further rejected Venoco’s argument that the 60-day reporting requirement was unenforceable because Gulf did not prove it would suffer prejudice if notice were given later than 60 days. Rather, it held that where a policy provides that special coverage for a particular type of claim is conditioned on express compliance with a reporting requirement, the time limit is enforceable without proof of prejudice.