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Pollution Exclusion Drives Homeowners Batty

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Practice Areas:
- Insurance Coverage
- Commercial Transportation
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Homeowners in Lake Tomahawk, Wisconsin walked in to their house one day to find an "offensive odor emanating from the home." The cause of the odor was bat guano that had accumulated between the home's siding and walls, making "the drapes, carpets, fabrics and fabric furnishings of the home unusable as a result of the absorption of the bat guano odor." Bat guano is a mixture of bat feces and urine, and apparently has quite an odor. The Wisconsin couple decided it was cheaper to demolish the house than to try to remediate it, and they filed a claim with Auto-Owners Insurance Company, their homeowner's insurance carrier, which eventually resulted in Hirschorn v. Auto-Owners Ins. Co.

Initially, the claim was denied because the accumulation of guano was not "sudden and accidental" and because it resulted from faulty or inadequate maintenance under the policy's maintenance exclusion. Auto-Owners later revised its denial to include the additional ground that guano was a "pollutant" under the policy's pollution exclusion. The pollution exclusion excluded losses resulting from the "discharge, release, escape, seepage, migration or dispersal of pollutants." The policy defines pollutants as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, liquids, gases and waste."

The couple sued Auto-Owners for breach of contract and bad faith, and the trial court decided that the pollution exclusion applied and excluded coverage for the loss. The Court of Appeals reversed, saying a reasonable insured reading the policy would not consider bat guano to be a "pollutant." In fact, the Court of Appeals said that while the definition of pollutant includes "waste," "when a person reading the definition [of pollutants] arrives at the term 'waste,' poop does not pop into one's mind."

The Wisconsin Supreme Court reversed again, ruling that bat guano was clearly a pollutant because it was an irritant and a contaminant (citing a web page from the Wisconsin Department of Health that said bat guano can inflame and irritate a person's skin) and was clearly "waste." The Supreme Court went on to say that the loss resulted from a discharge, release, escape or seepage" of the bat guano/pollutant as it seeped and separated from its original location and entered the air to be absorbed by furnishings in the home. Because the Supreme Court found that the bat guano fit the pollution exclusion, there was no insurance coverage for the loss.

About Ross Plyler

Ross Plyler is a senior associate with Collins & Lacy practicing in the areas of insurance litigation, employment law, transportation law and college and university law. His professional reputation has earned him a BV Distinguished rating from Martindale-Hubbell. Ross is a summa cum laude graduate of Wofford College, where he received his undergraduate degree in Government and History and was a member of Phi Beta Kappa. He received his Juris Doctor from the University of South Carolina School of Law. Following law school, he served as a law clerk for The Honorable Henry M. Herlong, Jr., United States District Court Judge. Prior to joining Collins & Lacy, Ross was an associate at a firm based in Greenville, South Carolina.

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