
One Man's Cow Manure Is Another's Liquid Gold: The Wisconsin Supreme Court Dumps On Policyholders

Blog Post

March 23, 2015

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The Wisconsin Supreme Court recently held that cow manure used to fertilize a farm was a "pollutant" triggering the pollution exclusion in a farmer's insurance policy. See *Wilson Mutual Insurance Company v. Falk* (Dec. 30, 2014). The Wisconsin Department of Natural Resources ("DNR") advised the farmer that manure used as fertilizer had contaminated neighboring wells. The DNR cleaned up of the neighboring wells, and sought reimbursement from the farmer.

The farmer sought coverage under two farm-owner insurance policies. The insurer, Wilson Mutual, then filed a declaratory judgment action to determine whether the alleged contamination was covered by the policies. The central question before the Court was whether cow manure used to fertilize farm fields was a "pollutant" falling within the exclusion for bodily injury or property damage which results from the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" into or upon land, water or air. *Id.* at 6.

The trial court found that the manure triggered the pollution exclusion but the court of appeals reversed, holding that a reasonable farmer considers cow manure to be "liquid gold," and not a pollutant.

The Wisconsin Supreme Court agreed with the trial court, and held that a "reasonable insured would consider manure that seeped into a well to unambiguously be a pollutant." *Id.* at 18. The Court had some precedent for this holding, the Wisconsin Supreme Court having concluded previously that bat guano can be a pollutant, despite its potential beneficial use as a fertilizer.

The Court noted that while "to a reasonable farmer" manure is generally not a pollutant under the test, manure "in relation to a well" is a pollutant. *Id.* at 23. The analysis of whether manure is a pollutant had to take place in the context of the occurrence at issue. Thus, the Court held that "manure is a unique and largely undesirable substance commonly understood to be harmful when present in a well." *Id.* at 25.

The news wasn't all bad for the farmer. A separate policy provision under the incidental coverages section provided that Wilson Mutual would indemnify the farmer up to \$500 for each occurrence of damage to the property of others. The pollution exclusion did not apply to this provision. The provision additionally required Wilson Mutual to defend the farmer for claims of property damage. This actually entitled the farmer to a full defense for all claims because "[w]here an insurer's policy provides coverage for even one

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claim made in a lawsuit, that insurer is obligated to defend the entire suit.” Id. at 39. Of course, the Court noted that, practically speaking, Wilson Mutual could extinguish its duty to defend and indemnify by settling each claim at the policy limit of \$500.

Overall, the case serves as an important reminder that the interpretation of insurance policies is often subjective and largely dependent on context. One man’s pollutant is quite often another’s liquid gold.

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