

Takeaways From Alaska Justices' Pollution Exclusion Ruling

By **Lorelie Masters, Geoffrey Fehling and Andrew Koelz** (April 16, 2025, 5:09 PM EDT)

For decades, homeowners and other insurance policies have included broad pollution exclusions, often referred to as a "total pollution exclusion."

In a Feb. 28 decision in *Wheeler v. Garrison Property & Casualty Insurance*, the Alaska Supreme Court held that a total pollution exclusion in a homeowners insurance policy did not apply to exclude coverage for injury arising out of exposure to carbon monoxide emitted by an improperly installed home appliance.[1]

Examining the breadth of the exclusion and applying the generally held principle that exclusions are to be construed narrowly, the court thus fulfilled the policyholder's reasonable expectation of coverage for injuries resulting from the carbon monoxide exposure.

Background

A 17-year-old minor rented a cabin in Alaska and, during his tenancy, was found dead in the cabin's bathtub. An autopsy and investigation by the deputy fire marshal determined that the tenant died of acute carbon monoxide poisoning caused by an improperly vented propane water heater installed in the same bathroom. Testing showed that the bathroom had accumulated high levels of carbon monoxide when the water heater was running.

The cabin owners' homeowners insurance policy included a total pollution exclusion.

The exclusion sought to bar coverage for, among other things, bodily injury or property damage "[a]rising out of the actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of 'pollutants' however caused and whenever occurring." The policy defined "pollutants" as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste."

The cabin owners submitted a claim to their homeowners insurer, which denied coverage under the pollution exclusion. The insurer contended that any losses connected with the tenant's death were excluded because carbon monoxide is a pollutant subject to the pollution exclusion. In denying coverage, the insurer declined to defend the cabin owners against a lawsuit brought by the tenant's estate.

The owners signed a confession of judgment, which admitted that they negligently caused the tenant's death. They also confessed to liability of \$1.54 million and assigned their right to seek coverage under the homeowners insurance policy from the insurer. The tenant's estate then pursued recovery from the cabin owners' insurer by filing suit in federal court.

The U.S. District Court for the District of Alaska entered summary judgment for the insurer, holding that the tenant's death was not covered under the cabin owners' insurance policy.



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In support, the court concluded that the Alaska Supreme Court's 2008 decision in *Whittier Properties Inc. v. Alaska National Insurance Co.* suggested that Alaska's high court would interpret the pollution exclusion literally and conclude that the exclusion was unambiguous, precluding coverage.[2] The district court further ruled that the owners could not have reasonably expected coverage for their tenant's death because carbon monoxide fell within the definition of pollutant, which was excluded under the plain language of the pollution exclusion.

The tenant's estate appealed to the U.S. Court of Appeals for the Ninth Circuit, which **certified** to the Alaska Supreme Court the question of how the pollution exclusion should be interpreted. The Alaska Supreme Court answered that question in its recent decision.

Alaska Supreme Court Decision

The Alaska Supreme Court framed the certified question as follows: "Does the pollution exclusion in [the cabin owners'] insurance policy bar coverage for injury arising out of exposure to carbon monoxide by an improperly installed home appliance?"

For several reasons, the court determined that a policyholder would reasonably expect coverage for carbon monoxide poisoning under the cabin owners' policy and, therefore, the exclusion did not bar coverage for the submitted claim.

The court first distinguished the *Whittier* case on several grounds. That dispute, which involved gasoline leaking from a gas station into surrounding groundwater and soil, presented no ambiguity that gasoline was a pollutant under the insurance policy, and included evidence that the insured knew the policy did not cover damages arising from leaking gas tanks.

In answering the certified question, the Alaska Supreme Court declined to simply follow the holding in *Whittier* and instead examined whether the cabin owners' insurance policy created a reasonable expectation of coverage for the losses related to the carbon monoxide leak.

In performing that analysis, the court concluded that the pollution exclusion could reasonably be interpreted to cover liability from carbon monoxide poisoning from a water heater. The operative terms of the pollution exclusion — namely, "discharge, dispersal, release, escape, seepage, and migration" — are environmental terms of art relating to a pollutant passing from a container to the environment rather than the result of combustion such as was true in this claim with regard to carbon monoxide.

Moreover, the subsections of the exclusion referencing "testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of 'pollutants,'" the court reasoned, further supported the policyholder's reasonable expectation that the reach of the exclusion was limited to environmental pollution.

Finally, the court pointed to two other exclusions in the cabin owners' insurance policy suggesting that the pollution exclusion did not apply to the type of carbon monoxide poisoning that led to the tenant's death. Those exclusions applied to liability arising from exposure to lead paint or other lead-based products and exposure to asbestos.

Although those exposures fell within the policy's literal definition of pollutants, as well as the operative terms of the pollution exclusion regarding "discharge, dispersal, release, escape, seepage, and migration," the insurer included those two additional exclusions, a point that helped confirm the true intent behind the exclusion.

Accordingly, the specific exclusions for certain household pollutants, the court reasoned, supported a narrower interpretation of the pollution exclusion that it did not bar coverage for exposure to all toxic substances commonly found within a home.

Key Takeaways

Given the prevalence of pollution-related claims, there are several takeaways from the Alaska Supreme Court's decision for policyholders to consider in navigating pollution exclusions in

homeowners, and many other, insurance policies.

Facts and policy language matter.

No matter how broad an exclusion may appear on its face, whether an exclusion applies depends on a number of factors, including the specific policy language and the specific facts giving rise to the claim, not to mention the particular state's law governing interpretation of the claim under the policy.

In addition to the reasoning by the court here, a review of the drafting history of pollution exclusions shows that insurers, in seeking regulatory approval, testified that the exclusions were intended to preclude coverage for "true industrial pollution" and "would never be" applied to preclude claims like this one.

Consider reasonable expectations of coverage.

Even when the language of an exclusion, even a broadly worded total pollution exclusion, may appear unambiguous on its face, courts in many states may still consider the reasonable expectations of an insured to determine whether a policy exclusion applies.

Not all jurisdictions place equal weight on the so-called reasonable expectations doctrine, so disputes over choice of law or venue may affect the relevance of the policyholder's reasonable expectations.

Consider all relevant Ppolicy language.

Policy exclusions should not be interpreted in isolation. Rather, policies are read as a whole to interpret provisions in a manner where no language is interpreted in a way that renders other provisions superfluous or illusory. This is especially true when the dispute involves exclusions, as those provisions are construed narrowly and in favor of coverage.

Conduct a case-specific inquiry.

Whether an exclusion bars coverage under an insurance policy ordinarily requires a case-specific inquiry, and prior decisions on the same or similar policy language are not always dispositive.

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[1] Wheeler v. Garrison Property & Casualty Insurance , No. S-18849 (Alaska Feb. 28, 2025).

[2] Whittier Properties Inc. v. Alaska Nat. Ins. Co., 185 P.3d 84 (Alaska 2008).