pollution was intentional. Because the spills were not accidental, American, the insurer, refused to defend the claims or indemnify the judgments and settlements against American Salt and its parent, General Host. A trial court granted the insurer summary judgment in its request for a declaratory judgment that its refusal was within its authority under a pollution exclusion clause. The court of appeals affirmed.

In affirming, the court of appeals looked to the policy to determine the scope of American's coverage. The policy provided coverage for bodily injury or property damage caused by an "occurrence" which was defined as "an accident or a happening or event or a continuous or repeated exposure to conditions which results during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured." The policy then excluded coverage for "bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water." The pollution exclusion, however, did not apply if the release was "sudden and accidental." Although the court did not enter the semantic quagmire of what was sudden, it had no trouble finding there was no duty to defend because the discharge was not accidental.

Relying on decisions from several other courts of appeals and state courts, the Eighth Circuit noted "accidental" refers to acts which are unexpected, unintended, or fortuitous. Those acts that result from conscious choices did not fall within the term. The court then reviewed the findings of the lower court in the private action and found that the pollution was the result of a deliberate choice of American Salt not to perform maintenance. In particular, the court was critical of management's "reasoned business decision to maximize profits at the expense of the necessary and required preventative maintenance of their complex physical plant and equipment." As a result, the resulting pollution was foreseeable, not accidental. Having found no duty to defend, the court further held that the insurer did not have an obligation to indemnify.

Criminal Conviction Prevents Pollution Coverage

Town of Moreau v. Orkin Exterminating Co., Case No. 61170 (N.Y. Sup. Ct., App. Div. Apr. 4, 1991) (LEXIS, States, N.Y. file).

As in the *American Motorists* decision, a preceding case can trigger an exclusion of coverage for environmental hazards. In *Moreau*, Walter and Jane Blank demanded that their general liability carriers defend a nuisance action against them that resulted from the disposal of pesticides. The Blanks' corporation, however, had previously been convicted of criminal violations for the dumping of the hazardous waste in their landfill. Based on the criminal convictions, the insurers successfully argued that their policies did not cover an intentional release of pollutants.

The policies interpreted in this case provided that coverage extended to occurrences defined as accidents which were not expected or intended by the insured. The court found that the criminal convictions precluded the Blanks from contending that the burial of pesticides was unintentional. Further, the court noted that the release of hazardous waste had occurred for ten years. As a result, the court held that the release was neither accidental nor sudden. As a result, the insurers did not have an obligation to defend.

Emissions Not Covered under Products-Operations Hazards Clause

Hydro Systems, Inc. v. Continental Insurance Co., 929 F.2d 472 (9th Cir. 1991).

In this case, the Ninth Circuit Court of Appeals concluded that a products-operations hazards clause unambiguously excluded coverage for emissions from the production of fiber glass bathtubs. Hydro produced the tubs using products that released styrene. The styrene left the plant through stacks as waste. Neighbors of the plant complained about the smell of the emissions, and the local government took action to prevent the emissions by suspending Hydro's operating permit. Hydro filed suit and obtained a temporary restraining order against the enforcement of the suspension. Ultimately, however, Hydro agreed to install a system to neutralize the emissions. It then sought coverage for the litigation and compliance costs from its insurer, Continental. After the insurer denied coverage, Hydro sued for breach of contract and the covenant of good faith. Finding that the insurance contract did not provide coverage, the court of appeals affirmed the trial court's grant of summary judgment against Hydro.

The general liability policy contained coverage for bodily injury and property damage but excluded coverage for damages due to emissions, clean up of pollution damage, and related litigation costs. Hydro conceded that this general exclusion precluded coverage. It, instead, pointed to another policy provision, the products-operations hazards clause, to claim that the policy contained an exception to the exception.

The products-operations hazards clause provided that the pollution exclusion did not apply to damages occurring away from the insured's premises and arising out of the insured's product or work. Product within this clause included a thing "disposed of" by the insured. It further defined "work" to include operations performed by the insured.

The court rejected the argument that including the term "disposed of" within the definition of product meant that the emissions were a product within the meaning of the clause. It concluded that the term implied that the emission must be something the insured produces for trade. Since Hydro did not attempt to market the styrene emissions, it was not a product.

Under the definition of "work," however, Hydro fared better. Work, the court found, was sufficiently ambiguous to include the emission of styrene. Since the construction of an insurance contract tends to favor coverage, the