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 court concluded that styrene emissions were part of work within the meaning of the products-operations hazards clause.

Nonetheless, the contract contained additional limitations on the clause to prevent coverage of the claim. The clause itself contained four limitations excluding coverage for waste discharge, clean up costs, and governmentally ordered clean up costs. In holding that the limitation applied to Hydro, the court found that Hydro was disposing waste. The court then rejected Hydro's argument that the clause was limited to losses associated with waste treatment facilities. The court found that the narrow definition suggested by Hydro was inconsistent with the apparent intent of the clause to cover damages associated with Hydro's completed products.

After rejecting Hydro's breach of contract claim, the court then found that the insurer did not breach its duty of good faith to conduct an investigation of the claim. Since the policy unambiguously excluded coverage, the court concluded there was no duty to investigate.