unintended; the definition of "occurrence" focuses on whether the property damage is unexpected and unintended."

In summary the Court considered the differing dictionary definitions, the divergence of judicial opinions and the drafting history in finding the term "sudden and accidental" susceptible to more than one meaning and ambiguous as a matter of law. Thus, the exclusion does not preclude coverage for the insured's liability for clean-up costs where contamination was unexpected and unintentional on the part of the insured even though it occurred over an extended period of time.

Discriminatory Premium Tax Found Constitutional

Gallagher v. Motors Insurance Corporation, case no. 79, 061, filed July 23, 1992. (1992 WL 171313 [Fla.], West Publishing Company.) The Florida Supreme Court found the Florida premium tax scheme, as it existed prior to July 1, 1988 constitutional. Although the Florida premium tax law was changed effective July 1, 1988 the case is significant because it runs counter to decisions in other states which found similar taxing schemes unconstitutional.

Under the Florida taxing scheme, foreign insurers were liable for the premium tax at a rate of two percent. The rate was reduced to one percent if the insurer maintained a regional home office. Domestic insurers were exempt from premium tax. The statutory taxing scheme was challenged by foreign corporations writing insurance in Florida. They argued that the taxing scheme violated constitutional guaranties of equal protection and due process.

The trial court found that the premium tax was unconstitutional under the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution and the due process clause of the Florida Constitution. The trial court found that the premium tax lacked a legitimate state purpose and relied on *Metropolitan Life Insurance v. Ward 470 U.S. 869* (1985) which found a premium tax scheme similar to the one at issue in Florida to be volitive of the equal protection clause.

Similar taxing schemes were held unconstitutional in a number of states, see *Principal Mutual Life Insurance Company v. Division of Insurance*, 780 P 2nd 1023 Alaska, 1989; *Penn Mutual Life Insurance Company v. Department of Licensing and Regulation*, 412 NW 2nd 668 Mich. app. 1987; *State v. American Bankers Insurance Company*, 374 NW 2nd 609 (S.D. 1985); *Metropolitan Life Insurance Company v. Commissioner of the Department of Insurance*, 373 NW 2nd 399 (N.D. 1985).

The Florida Supreme Court distinguished the Florida taxing scheme from the other cases because the trial court had found that the purpose advanced by the state of acquiring a greater degree of regulatory control over insurance companies was a legitimate state purpose and, secondly, the trial court finding that the legislature could have believed that the differential tax treatment would have the effect of causing a company to change its state of domicile and therefore increase the state's ability to regulate such companies. The Supreme Court wrote that despite these findings the trial court appeared to have found Florida's Premium Tax unconstitutional based on the misconception that all otherwise legitimate state purposes are rendered illegitimate if pursued by residency based distinctions. The Florida Supreme Court found this reading of *Ward* too broad.

The only purposes of the Alabama taxing scheme reviewed in *Ward* were the promotion of domestic business and encouragement of capital investment in state assets and securities. These purposes were not found to be sufficient. However, the Florida Supreme Court found that *Ward* did not hold that no state purpose is legitimate when furthered by differential tax treatment based on residency.

Florida's retaliatory tax was also found to be constitutional. That tax imposes on foreign insurers doing business in Florida tax equal to the difference between all taxes, licenses, and fees imposed on Florida insurers by the foreign insurer's state or country of domicile and all taxes, including premium taxes, licenses, and fees imposed on the foreign insurer by the state of Florida. The court relied on *Western and Southern Life Insurance Company v. State Board of Equalization of California*, 451 U.S. 648 (1981) in finding that Florida's retaliatory tax is similar in structure to the retaliatory tax that was upheld against a similar challenge in that case.