

## OHIO CASE SUMMARIES

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**Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.**

Court of Appeals: Court of Appeals, Ninth Judicial District

Case Name: Goodrich Corporation v. Commercial Union Insurance Company

Decided: June 27, 2008

Issue(s): Insurer liability for environmental cleanup due to “sudden and accidental” pollution discharges

Summary of Opinion: This appeal was the product of a 7 year long civil case between Goodrich Corporation and ten insurance companies. The litigation involved excess insurance coverage due to a environmental cleanup of groundwater contamination of ethylene di-chloride (“EDC”) at a Goodrich facility in Kentucky. Although there were many issues on appeal, one issue was a matter of first impression in Ohio.

Many of the policies at issue included pollution exclusions with “sudden and accidental” exceptions. The exclusions provided that there would be no insurance coverage for property damage caused by the discharge or release of pollutants into the environment unless the release or discharge was sudden and accidental. The Court held that Goodrich was required to establish that the claimed property damages were caused by sudden and accidental discharges.

Goodrich presented evidence that there had been several sudden and accidental releases of EDC at their plant during the relevant time frame, and these spills were the main source of EDC contamination at the site. There was also evidence that some of the pollution could not be attributed to sudden and accidental spills, but all the parties conceded it was impossible to measure how much EDC contamination could be attributed to these gradual discharges.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

The parties disputed whether Goodrich's coverage under the sudden and accidental exception to the pollution exclusions was limited to the property damage that it could prove was attributable to the sudden spills. The insurers argued that because Goodrich could not demonstrate how much of an EDC contamination was directly attributable to the sudden and accidental releases, it had failed to prove that *any* of its damages qualified for coverage under the sudden and accidental exception. Goodrich, on the other hand, maintained that because the property damage resulted from both an insured cause and an excluded cause, the causes are indivisible and the insurance policies cover the loss.

The Ninth District held that Ohio courts generally follow the "concurrent cause" theory of insurance recovery:

**Where property damage results from more than one contributing cause, and the insurance policy insures against one cause of the loss but excludes loss or damage from another cause, the coverage extends to the entire loss even though the excluded element is a contributory cause.**

The court held that once the insured established facts to trigger the sudden and accidental exception, the burden of proof shifts back to the insurer to prove that the excluded, gradual releases of pollution were the overriding cause of the insured's damages. The court held that Goodrich had established that it had sustained damages due to sudden and accidental releases of EDC into the groundwater and that those sudden and accidental releases had caused property damage that was indivisible from the damages caused by the gradual releases. Without evidence from the insurers to the contrary, the court held that Goodrich's inability to prove that the sudden and accidental releases were the sole and overriding cause of this loss did not defeat its claims under the sudden and accidental exception. The court held that Goodrich had properly proven its entitlement to coverage for the EDC cleanup.

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