

## **Insurance Coverage: Pollution Exclusion**

by [Mike Acosta](#), Esquire

Residents of Pennsylvania should understand the importance of comprehending their homeowners' insurance policy and the coverage that it affords them. If not, residents could be bewildered and frustrated by an insurance company's denial of coverage and have to obtain a court ruling to enforce coverage under a homeowner's insurance policy.

In Whitmore v. Liberty Mutual Fire Insurance Company, 2008 U.S. Dist. LEXIS 76049 (September 30, 2008), despite an abundance of Pennsylvania law interpreting the pollution exclusion broadly, a Pennsylvania federal court concluded that home heating oil is not a pollutant. Id. On December 9, 2006, Major Oil delivered heating oil to the Whitmore's house in Philadelphia, Pennsylvania. Id. During the delivery to the above-ground storage tank, approximately 10 to 15 gallons of oil leaked into the Whitmore's basement. Id. The cost of the damage to the house and personal property was \$12,685.12. Id. Liberty Mutual Fire Insurance Company investigated the oil spill and determined that the oil leaked from the vent pipe fittings/connection at the storage tank caused by overfilling of the tank, and that "there was no evidence of soil impact." Id. The court denied Whitmore's claim under the policy's pollution exclusion.

### The Pollution Exclusion states:

We insure against risk of direct loss to property described in Coverage A and B only if that loss is a physical loss to property. We do not insure, however, for loss:

Caused by the discharge, dispersal seepage, migration, release, or escape of pollutants unless the discharge, dispersal, seepage, migration, release, or escape is itself caused by a Peril Insured against Coverage C of this Policy. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.

After reviewing the Whitmore's homeowners insurance policy, the court indicated that "there is no mention of home heating oil, or for that matter, any other petroleum in the pollution exclusion." Id. Since Liberty Mutual could have simply listed "petroleum products" along with "smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste," in the non-exclusive list of what constituted a "contaminant" in order to avoid ambiguity. Id. Instead, the pollution exclusion clause in the Whitmore's homeowners insurance policy was "subject to more than one reasonable interpretation" in regard to the spilled heating oil that was the subject of the homeowners coverage. Id. Therefore, Liberty Mutual was not permitted to deny the Whitmore's coverage for the oil spill.

In conclusion, the resident's of Pennsylvania need to try and understand the extent of the coverage afforded to them through their homeowners' insurance policy. In many instances, their homeowners' policy will need to be interpreted by the courts to determine the extent and limit of coverage provided to them through the homeowners insurance policy.