

Van Houten and Van Osselaer in Law360: Wisconsin PFAS Insurance Ruling a Beacon in Sea of Uncertainty

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Haynes Boone Partner [Greg Van Houten](#) and Associate [Andrew Van Osselaer](#) authored an article for *Law360* describing how a recent decision in Wisconsin fits within the broader jurisprudence on the application of standard-form pollution exclusions.

Read an excerpt below.

When Chief Judge James Morrison of the Marinette County Circuit Court of Wisconsin issued his July 7 order in *Century Indemnity Co. v. Tyco Fire Products LP*, he joined a growing list of judges rejecting insurers' contentions that standard-form pollution exclusions exclude direct-exposure product liability claims.

When viewed in isolation, this decision is both correct and unsurprising.

Wisconsin law interprets pollution exclusions to apply only to instances of so-called traditional pollution and not, for example, product liability claims. But while the outcome makes sense under Wisconsin law and under the circumstances at bar, the spectrum of potential PFAS liability — and states' interpretations regarding the scope of pollution exclusions — remains varied.

As such, while this ruling comports with Wisconsin law, it also serves to highlight the sea of uncertainty that surrounds coverage for PFAS liability, particularly for so-called product-pollution liabilities, which involve harm to the environment by way of an insured's product.

The Decision

Century Indemnity v. Tyco Fire Products involves a coverage dispute over claims brought by firefighters who were allegedly injured as a result of their direct exposure to Tyco's products that contained PFAS, a shorthand for perfluoroalkyl and polyfluoroalkyl substances. Those products include firefighting foam (aqueous film-forming foam or AFFF), to which the firefighters were allegedly exposed during training and in the field.

Tyco's excess insurers filed a motion for partial summary judgment, arguing that their policies' standard-form pollution exclusions barred coverage. Tyco cross-moved, contending that the exclusions would apply only to environmental releases and had no application where injury resulted from direct product exposure.

The court ultimately agreed with Tyco, emphasizing Wisconsin's long-standing rule that pollution exclusions apply only when a contaminant has been "discharged, dispersed, released or escaped" into the environment. This, the court went on to explain, does not encompass personal contact with an allegedly harmful product. Accordingly, the court granted Tyco's motion, declaring that the pollution exclusions at issue did not bar the firefighters' claims.

To read the full article from *Law360*, click [here](#).