

Bond Case Briefs

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ENVIRONMENTAL - HAWAII

Aloha Petroleum, Ltd. v. National Union Fire Insurance Company of Pittsburgh, PA

Supreme Court of Hawai'i - October 7, 2024 - P.3d - 2024 WL 4431797

Insured petroleum company brought action against commercial general liability (CGL) insurers for declaratory judgment that they had duty to defend suits by city and county over greenhouse gas emissions from insured's gasoline.

The United States District Court for the District of Hawai'i certified questions.

The Supreme Court held that:

- "Accident" as used in definition of "occurrence" included company's allegedly reckless conduct in producing fossil fuels contributing to climate change, but
- As a matter of first impression, carbon dioxide from burning gasoline was "contaminant" and thus "pollutant" within meaning of pollution exclusion.

"Accident" as used in commercial general liability (CGL) policy's definition of "occurrence" included petroleum company's allegedly reckless conduct in producing fossil fuels contributing to climate change; awareness of risk differed from awareness of certain harm, negligence and accident would be mutually exclusive if "accident" meant an event where the harm was unforeseeable, including recklessness in an "accident" honored fortuity, and principle of fortuity was more about concept of chance than insured's culpability.

Carbon dioxide from burning petroleum company's gasoline was "contaminant" and thus "pollutant" within meaning of total pollution exclusion of company's commercial general liability (CGL) policy; greenhouse gases contaminated atmosphere and were traditional environmental pollution, exclusion was unambiguous as applied to greenhouse gases, and company could not reasonably expect products liability coverage for pollution.