

ROCK ACSR Newsletter

“Reaching Out, Communicating, Knowledge”



INDEPENDENT INSURANCE AGENTS OF VIRGINIA

Pollution Exclusion Requires Irritation or Contamination by: Bill Wilson

ACSR Newsletter
April 2015

In the September 10, 2014 issue of his email newsletter, *Coverage Opinions*, attorney Randy Maniloff cites the court case Charter Oak Fire Ins. Co. v. Endurance American Specialty Ins. Co., No. 13-00558 (D. Hawaii Aug. 20, 2014) in an article entitled "[Insurer Cherry Bombs: Court Holds That Pollution Exclusion Does Not Apply To Fireworks \[Yes, Fireworks\]](#)." The federal government had contracted with VSE to destroy seized fireworks. The company subcontracted with Donaldson to carry out the disposal of the fireworks. An explosion occurred at the storage site, killing five Donaldson employees. Donaldson's insurer initiated a defense of VSE under a reservation of rights until coverage issues could be resolved.

The policy in question included a pretty standard pollution exclusion for the "discharge, dispersal, seepage, migration, release or escape of 'pollutants'...." The policy defined "pollutants" to mean "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed." The insurer argued that the fireworks were waste being disposed of and the explosion constituted the discharge of a "pollutant."

The court rejected this argument, pointing to the "irritant or contaminant" requirement in the exclusion and opining that even waste must be an "irritant or contaminant" in the context of how BI or PD arises in order for the exclusion to apply. This illustrates a very important point about the pollution exclusion that we have used on a number of occasions to assist members in reversing the initial denial of pollution related claims through our "Ask an Expert" service.

In one claim, a customer in a grocery store slipped in a puddle of Clorox bleach from a plastic bottle that had fallen off a shelf and ruptured and broke her hip. The insurer ended up paying the claim but it took several weeks while they considered whether to apply the pollution exclusion in the grocery's CGL policy. In another claim, a patron slipped in oil at a convenience store gas pump and suffered a head injury. The adjuster initially cited the pollution exclusion until we pointed out that the injury did not arise from any kind of "contamination" or "irritation" by the oil.

So, just because BI or PD arises from a "pollutant," that doesn't necessarily mean that the injury or damage is excluded. The BI or PD must arise from irritation or contamination by the "pollutant."

Note: I only subscribe to two attorney newsletters that I read regularly. One I'll tell you about in a future newsletter. The other is Randy Maniloff's [Coverage Opinions](#) newsletter that is always full of important, relevant court cases and legal analysis presented with a dry wit that will make you smile as you learn. To subscribe for free, [click here](#). – Ed.

Last Updated: March 19, 2015

Upcoming Events:

- May 5: Cinco de Mayo
- May 7: [Cocktails for a Cause](#)
- May 7: Lag BaOmer
- May 10: Mother's Day
- May 14: Ascension Day
- May 16: Isra and Mi'raj
- May 16: Armed Forces Day
- May 22: National Maritime Day
- May 24: Pentecost
- May 25: Memorial Day
- May 31: Trinity Sunday

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Flood Insurance and the 30-Day Wait

By: David Thompson

Question:

I had a customer who purchased a home located in a flood zone X. The lender was not requiring a flood policy as a condition of the loan approval, but my customer still wanted to purchase the policy. (I like to think it was due to my amazing selling skills!) An underwriter at my Write Your Own (WYO) flood company told me that since the policy was not required by the lender for a loan closing there was a 30-day wait for coverage to become effective. I don't think the underwriter was correct and maintain that the policy should have been effective at the time of closing. Who is correct?"

Answer:

Dear Amazing Salesman, you are correct so take the day off! As many flood gurus know, there often is a 30-day wait for coverage to become effective. The National Flood Insurance Program (NFIP) flood manual lists exceptions to the 30-day wait. I have reproduced the applicable rule (direct from the manual) where the wait does not apply.

Note paragraph number 2 is exactly what you describe. The NFIP manual even states, "... regardless of flood zone." The key question to ask is as follows: "Is the customer purchasing the policy to be effective at the time of the loan closing?" If such is the case then there is no 30-day wait, even if the lender does not require flood coverage and even if the house is not located inside a "Special Flood Hazard Area" (SFHA)... what your customer refers to as "a flood zone."

Here's the excerpt from the manual:

2. New Policy – No Waiting Period (Loan Transaction)

Flood insurance that is initially purchased in connection with the making, increasing, extending, or renewal of a loan shall be effective at the time of loan closing, provided that the policy is applied for at or before closing. Use the rules below to determine the effective date.

- a. Premium payment from the escrow account (lender's check), title company, or settlement attorney is considered made at closing if the check is received by the writing company within 30 days of the closing date (closing date plus 29 days) and the Application is dated on or before the closing date. If received after 30 days, the effective date is the receipt date regardless of the flood zone.*
- b. If premium payment is from other than the escrow account (lender's check), title company, or settlement attorney, and the Application is dated on or before the loan closing date, the effective date is the closing date if the Application and premium are received within 10 days of the closing date (closing date plus 9 days). If received after 10 days, the effective date is the receipt date regardless of the flood zone.*

(Example: presentment of premium and application date – April 3; refinancing – April 3 at 3:00 p.m.; policy effective date – April 3 at 3:00 p.m.)

If a loss occurs during the first 30 days of the policy period, the insurer must obtain documentation, such as settlement papers, to verify the effective date of the policy before adjusting the loss.

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ACSR Newsletter

UPDATES AND UPCOMING EVENTS



IIABA's ACT Presents "The Customer Service Journey"

Join IIABA on Monday, June 22 for a focused webinar discussing the critical role Customer Experience plays in every consumer and client interaction. The [Agents Council for Technology](#) ('ACT') hosts an active Work Group focused on mapping out the technology interactions within the Customer Experience journey.

Claudia McClain and Judy DeLaRosa, the co-chairs for ACT's 'Customer Experience' Work Group will discuss the top implementations within each phase, using ACT's "CX Recommendations" document to help agents plan and elevate their technology strategy.

Don't miss a chance to review and refine your customer service experience journey and learn more about resources for your agency.

[Click here to register.](#)

IIAV's Cocktails for a Cause Takes Place on May 7

Come join IIAV on May 7 for our annual Cocktails for a Cause event hosted by IIAV's Young Agents' Committee.

This event will take place from 5:00-7:30 pm at Hardywood Park Craft Brewery in Richmond, Virginia. It is being held in tribute to Eddie Benson of Saunders & Benson. All proceeds from this event will be donated to the Huntington's Disease Society of America.

Food trucks will be on site! Friends and family are welcome to attend the event.

If you would like to make a donation please bring a check made out to Huntington's Disease Society of America.

This event is free to attend. \$10 is the suggested donation.

Please register so we have an accurate count of who is attending.

[Click here to register!](#)

Join IIAV at the Beach!

IIAV's 117th Annual Convention will be taking place June 21-23 at the Hilton Oceanfront in Virginia Beach. This year's event will feature:

- Mary Eisenhart with Eisenhart Consulting Group – Back by popular demand, Mary will focus on executing the plan for the exceptional agency.
- Bill Cundiff, Jr, CIC, AAI – Will challenge attendees to look at 21st Century insurance challenges from autonomous vehicles, the sharing society, cyber risk, fracking and the role of the agency and producers.
- IIAV's Annette Ardler, CPIW, DAE, AIAM and Doug Palais, Esq. will team up to review the E&O minefield and review a sampling of claims in Virginia and provide practical tips on how to avoid them.
- And Mike Beavers – Chief of Investigations with the Bureau of Insurance will team up with IIAV's Joe Hudgins and Bob Bradshaw to review common mistakes found during agent investigations.

With the theme of "Finding Treasures on the Open Seas", IIAV will seek to provide fun for the whole family – starting off with the nation's largest juried art show on the Virginia Beach Boardwalk on June 21.

There will be young agent events, social opportunities, and golf. This conference begins with a welcome reception on the evening of June 21 and concludes on the evening of June 23 with a concert by The Janitors – "more than just a band....they are a show!"

For details go to www.iiav.com or call 804-747-9300.

Education....Continuing Your Road to Success

Upcoming Classes	ABEN Webcasts
<p>Chesapeake 1 - Homewood Suites-1569 Crossways Blvd. (23320) May 14 (9:00-4:00): ACSR Mod 2 – Personal Auto-Course # 208292 (6 P&C) \$105/\$135 June 11 (9:00-4:00): ACSR Mod 7-Com. Liability-Course # 208292 (6 P&C) \$105/\$135</p> <p>Chesapeake 2 - Chubb Insurance - 600 Independence Pkwy. (23320) August 24-27 (8:30-4:30): Property & Casualty Pre-Licensing (NA) \$300</p> <p>Manassas 1 - Hampton Inn - 7295 Williamson Blvd. (20109) June 11 (9:00-4:00): ACSR Mod 7-Com. Liability-Course # 208292 (6 P&C) \$105/\$135</p> <p>Manassas 2-NOVA Com. College: Innovation Park-9485 Innovation Dr. (20110) June 8-9 (9:00-6:00): Life & Annuities Pre-Licensing (NA) \$175 June 10 (9:00-6:00): Health Pre-Licensing (NA) \$125 July 27-29 (9:00-6:00): Property & Casualty Pre-Licensing (NA) \$300</p> <p>Richmond - IIAV – 8600 Mayland Dr. (23294) May 13 (8:30-5:00): CRIS Contractual Risk Transfer-Course # 208332 (8 P&C) \$150/\$195 May 14 (8:30-5:00): AAI 82 A Commercial Liability-Course # 208299 (8 P&C) \$165/\$195 May 18-21 (8:30-4:30): Property & Casualty Pre-Licensing (NA) \$300 June 3 (8:30-5:00): AAI 81 B-Personal Insurance-Course # 208297 (6 P&C, 2 L&H) \$165/\$215 June 8 (9:00-4:00): PL Week: ACSR Mod 1-Homeowners-Course # 208297 (6 P&C) \$105 June 9 (9:00-12:00): PL Week: Flood Basic-FEMA Approved-Course # 208545 (3 LR) \$45 June 9 (1:00-4:00): PL Week: Ethics & Business-Course # 208317 (3 Ethics) \$45 June 10 (9:00-4:00): PL Week: ACSR Mod 2-Personal Auto-Course # 208286 (6 P&C) \$105 June 11 (9:00-4:00): PL Week: ACSR Mod 3-Personal Lines-Course # 208289 (6 P&C) \$105 June 12 (9:00-4:00): PL Week: ACSR Mod 4-E&O-Course # 208289 (6 OGI) \$105 June 18 (9:00-4:00): ACSR Mod 7-Com. Liability-Course # 208292 (6 P&C) \$105/\$135 June 22-25 (8:30-4:30): Property & Casualty Pre-Licensing (NA) \$300 July 27-30 (8:30-4:30): Property & Casualty Pre-Licensing (NA) \$300 August 20 (8:30-5:00): AAI 82 B Commercial Lines-Course # 208361 August 24-27 (8:30-4:30): Property & Casualty Pre-Licensing (NA) \$300</p> <p>Roanoke – Roanoke Higher Education Center - 108 N. Jefferson St. (24016) June 10 (9:00-4:00): ACSR Mod 7-Com. Liability-Course # 208292 (6 P&C) \$105/\$135</p>	<p>May 26 (11:00-12:00): IRA Fundamentals & Small Business Retirement Plans Course # 210953 (1 VA L&H) \$24/\$34</p> <p>May 26 (1:00-2:00) Annuity Basics & Where They Fit Course # 210954 (1 VA L&H) \$24/\$34</p> <p>Jun. 11 (11:00-12:00): IRA Fundamentals & Small Business Retirement Plans Course # 210953 (1 VA L&H) \$24/\$34</p> <p>Jun. 11 (1:00-2:00) Annuity Basics & Where They Fit Course # 210954 (1 VA L&H) \$24/\$34</p>
<p>Webinars (Computer and phone required, no exam) May 5 (9:00-12:00): Trucking Insurance for Beginners-Course # 212521(3 P&C) \$55/\$70 May 6 (1:00-4:00): ISO CGL Property Damage Exclusions-Course # 212880 (3 P&C) \$79 May 7 (9:30-11:30): Data Breach & Its Perils-Course # 211090 (2 P&C) \$40/\$55 May 12 & 13 (9:00-12:00): ACSR Mod 7-Com Liability-Course # 208292 (6 P&C) \$105/\$135 May 15 (9:30-10:30): Personal Inland Marine Cvrng Forms-Course # 211633 (1 P&C) \$25/\$35 May 19 & 20 (9:00-12:00): E&O: Challenge of Change-Course # 208589 \$105/\$135 ** June 3-4 (9:00-12:00): ACSR Mod 3-Pers Lines Related-Course # 208287 (6 P&C) \$105/\$135 June 5 (9:30-10:30): Waiver of Subrogation-Course #212021 (1 P&C) \$25/\$35 June 10 (9:30-11:30): Traps & Tricks of Homeowners-Course #211902 (2 P&C) \$40/\$55 June 16 & 17 (9:00-12:00): E&O: Challenge of Change-Course # 208589 (6 OGI) \$105/\$135 June 19 (9:30-10:30): Insuring the College Experience-Course # 208554 (1 P&C) \$25/\$35 June 22 (1:00-3:00): ACT Presents: The Customer Experience Journey (NA) \$59 June 25 (9:30-10:30): Dealing with Fluctuations in Com Prop-Course # 211629 (1 P&C) \$25/\$35 July 8 (3:00-4:00): Biggest Homeowners Ins. Change in 40 Years Explained (NA) Free July 14 & 15 (9:00-12:00): E&O: Challenge of Change-Course # 208589 \$105/\$135 ** July 15 (1:00-4:00): Data Breach, The New Wild West: Cyber Risk Exposures & Ins \$79 July 20 (9:30-10:30): Debris Removal: The Hidden Jewel-Course # 212026 (1 P&C) \$25/\$35 July 22 & 23 (9:00-12:00): ACSR Mod 2-Personal Auto-Course # 208286 (6 P&C) \$105/\$135 July 24 (9:30-10:30): Employee Theft -Who is an Employee?-Course # 208480 (1 P&C) \$25/\$35</p> <p>Click here for the full list of classes.</p> <p>** This class may qualify your agency for a loss control credit through IIAV's Westport and Fireman's Fund E&O programs.</p>	<p>Designation Programs</p> <p>Here are the designation programs that IIAV will be offering in 2015 to help you meet your educational and career goals.</p> <ul style="list-style-type: none"> • Accredited Advisor in Insurance (AAI) • Accredited Customer Service Representative (ACSR) • Agribusiness & Farm Insurance Specialist (AFIS) • Associate in Insurance Account Management (AIAM) • Associate in Insurance Supervisory Management (AISM) • Construction Risk and Insurance Specialist (CRIS) • Management Liability Insurance Specialist (MLIS) <p>Click here to find out dates and pricing for these designations</p>

Virginia's Independent Spirit Since 1898!

INDEPENDENT INSURANCE AGENTS OF VIRGINIA

IIAV
8600 Mayland Dr.
Richmond, Virginia 23294
Phone: 804-747-9300
Fax: 804-747-6557
Website: www.iiav.com



Take A Moment To Relax:

Random Facts for Your Next Conversation

Here are a few interesting facts for the next time you are at a dinner party .

1. Tug of war was an Olympic summer sport between 1900 and 1920.
2. Winston Churchill's mother was born in Brooklyn, NY.
3. In 1986, Apple had a clothing line.
4. In the U.S. the most shoplifted food item is candy, in Europe it is cheese
5. Louis Reard designed the bikini.

IIAV Services:

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- **Virtual University:**
Articles relating to insurance, business, technology and more.

These services and more can be found at www.iiav.com

Recipe of the Month



Ricotta-Strawberry Napoleons

Strawberry season is almost here.

[Click here to view!](#)

Quote of the Month

“Remember, we all stumble, every one of us.
That’s why it’s a comfort to go hand in hand. ”

~ Emily Kimbrough, American author & journalist