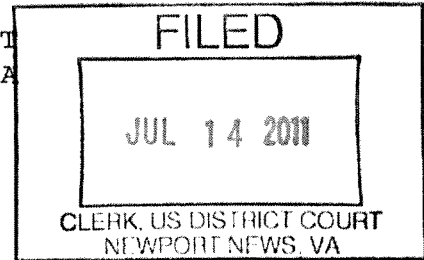


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division



BUILDERS MUTUAL INSURANCE
COMPANY,

Plaintiff,

v.

Civil Action No. 4:10cv68

PARALLEL DESIGN & DEVELOPMENT
LLC, and

RICKY L. EDMONDS,

Defendants.

ORDER

On May 13, 2011, the Court issued an Opinion and Order in this case wherein it held that the term "pollutants," when undefined, and in the context of the relevant insurance policy, does not unambiguously apply to sulfide gases emitted from defective drywall, as pled in Defendant Edmonds' state court complaint. Builders Mut. Ins. Co. v. Parallel Design & Dev. LLC, No. 4:10cv68, 2011 U.S. Dist. LEXIS 55279, at *45 (E.D. Va. May 13, 2011); Docket No. 68. In response to that Opinion and Order, Builders Mutual has filed a Motion for Reconsideration. Docket No. 70. Builders Mutual makes two main arguments in this motion and its accompanying memoranda as to why the Court erred in determining that the term "pollutants," as used in the relevant insurance policy, is ambiguous. First, according to Builders Mutual, the Court reached its conclusion by comparing

several separate and distinct insurance exclusions and determining that inconsistencies that arise when reading those exclusions together result in a finding that the term "pollutants" is ambiguous. Builders Mutual contends that such legal reasoning is a clear error because exclusions must be read *seriatim* rather than cumulatively. Second, Builders Mutual argues that multiple dictionary definitions alone do not create an ambiguity and that the Court erred when it concluded that the term "pollutants" can reasonably be read as only encompassing traditional outdoor environmental pollution. Mem. Supp. Mot. Recons. 16-17.

With respect to Builders Mutual's first point, although the Court agrees with Builders Mutual to the extent it argues that any overlap between policy exclusions provides no basis for a finding of ambiguity, such an argument does not affect the Court's conclusions with respect to the ambiguity of the Total Pollution Exclusion in the present case. In the Court's Opinion and Order, it looked to dictionary definitions and determined that "the ordinary popular meaning of the term 'pollutants' can be understood in more than one way." Builders Mut. Ins. Co., 2011 U.S. Dist. LEXIS 55279, at *30-31. The Court then looked to the relevant policy to determine whether any aspect of that policy clarified this ambiguity borne out by the dictionary definitions. In discussing the additional exclusions present in

the policy, the Court did not use a comparison of those exclusions to find an ambiguity. Nor did the Court use the existence of additional exclusions to expand the scope of agreed coverage. See Bryan Bros. Inc. v. Cont'l Cas. Co., No. 10-1439, 2011 U.S. App. LEXIS 6131, at *11 (4th Cir. Mar. 24, 2011) (citations omitted) ("[I]t is elemental that exclusions and exceptions in an insurance policy cannot expand the scope of agreed coverage."). Rather, the Court merely concluded that the presence of the additional exclusions does not clarify the ambiguity created by the policy's failure to define the term "pollutants." The Court stated:

While the Court recognizes that these additional exclusions may represent an effort on the part of Builders Mutual to make doubly sure that damages caused by those substances are excluded, a so called "Belt and Suspenders" approach, when the term "pollutants" is undefined as it is here, those additional exclusions do not provide clarity to the meaning of the term in the context of the Total Pollution Exclusion.

Builders Mut. Ins. Co., 2011 U.S. Dist. LEXIS 55279, at *33-34.

The Court continued:

Having determined by reference to dictionary definitions that the meaning of the undefined policy term "pollutants" can be understood in more than one way, and having determined that the language and context of the Applicable Policy fails to clarify this ambiguity, the reader is left asking what the term means. While the term may have more than one reasonable meaning, it is not for the Court to decide which meaning is "correct," provided all meanings are reasonable. Therefore, as a result of the analysis

above, the Court concludes, as an initial matter, that the term "pollutants" is ambiguous.

Id. at *35-36. The Court then proceeded to address several countervailing considerations which it determined did not change the Court's initial conclusion regarding ambiguity. As a result, given the fact that the Court's determination of ambiguity was not based on a comparison of exclusions, the Court sees no reason to reconsider its prior holding.

As to Builders Mutual's second contention, namely that "the **only** plausible meaning of the word 'pollution' when modified by the word 'total' in the title [of the Total Pollution Exclusion] is that the word necessarily includes indoor pollution," Mem. Supp. Mot. Recons. 26, Builders Mutual has not raised any points that persuade the Court to reconsider its previous decision on the issue. In the Court's earlier Opinion and Order, it looked at several definitions of the word "pollutant" and concluded that "[i]n analyzing these definitions, one of the most significant commonalities among them all is that they appear to carry with them a traditional outdoor environmental connotation." Builders Mut. Ins. Co., 2011 U.S. Dist. LEXIS 55279, at *30. While the Court noted that "it is certainly plausible that the term could be used in a broader fashion to apply to all environmental harms, both traditional and non-traditional," id., it found no basis for concluding that a broad

interpretation of the term was more reasonable than the interpretation borne from many of the sources the Court referenced - that the term, when undefined, carried with it only a "traditional outdoor environmental connotation." Id. at *31. Builders Mutual's motion does not raise arguments that, in the Court's view, compel the conclusion that the term "pollutants," when undefined and in the context of the relevant policy, must include substances that cause harm indoors and therefore could not be reasonably understood as only applying to traditional environmental pollution. As a result, Builders Mutual's motion for reconsideration is DENIED.

The Clerk is DIRECTED to send a copy of this Order to all counsel of record.

IT IS SO ORDERED.



Mark S. Davis
UNITED STATES DISTRICT JUDGE

Newport News, Virginia
July 14, 2011