

## **Illinois Supreme Court Declines to Review Decision of Appellate Court on Interpretation of Corrosion and Deterioration Exclusions Favorable to Insurers**

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On September 25, 2013, the Illinois Supreme Court declined to review a decision of the Illinois Court of Appeals which had ruled that an all risk property policy issued by Liberty Mutual unambiguously excluded coverage for a loss which the insured, City Brewing Company, alleged was caused either by stress corrosion cracking or hydrogen induced cracking. The result achieved by Mark Feinberg and Tom Caswell is an important one for All Risk property insurers because the Court broadly interpreted the corrosion and deterioration exclusions of the policy so as to include all corrosion and all deterioration.

City Brewing filed a declaratory judgment action seeking coverage for damages suffered in 2005 when the pull-tab openings on cans of Rockstar energy drink filled by City Brewing failed, causing cans to prematurely open. Liberty Mutual denied the claim citing the policy's exclusions for deterioration and corrosion. The trial court held that because the potential causes of loss, stress corrosion cracking and hydrogen induced cracking, constituted the perils of deterioration and corrosion, Liberty Mutual was entitled to summary judgment. The Illinois Court of Appeals affirmed the trial court's decision.

City Brewing argued that its loss was caused by hydrogen induced cracking—specifically, that the exposure of the cans to humidity in the air, along with the pressure within the cans, led to the pull-tabs opening. City Brewing claimed that hydrogen induced cracking was not excluded deterioration under the policy because the term “deterioration” means a gradually developing condition and the word “gradual” means slow moving over a long period of time, not the three weeks it took the cans at issue to open. City Brewing further argued that the deterioration exclusion was ambiguous because the policy failed to specify which type of deterioration was excluded—i.e., slow moving deterioration over a long period of time or one proceeding by steps or stages.

The court found that City Brewing “strained” to find ambiguity in the deterioration exclusion, concluding that even if the word “gradual” has two meanings, the broad policy term “deterioration” unambiguously referred to all deterioration, however brought about. As the court explained: “Deterioration is still deterioration regardless of whether it occurred very slowly over the course of several years or, like here, occurred by degrees over a period of several weeks.” Finding that it would be “nonsensical” for an insurer to qualify a deterioration exclusion by designating the time and speed by which a given object or structure will deteriorate, the court held that a loss caused by hydrogen induced cracking is a loss attributable to deterioration under the policy.

The court of appeals also held that a loss caused by stress corrosion cracking is a loss attributable to corrosion. The court rejected City Brewing’s attempt to limit the corrosion exclusion by arguing that stress corrosion cracking is “best described as” a type of cracking, rather than corrosion. The experts all agreed that stress corrosion cracking is made up of three components (stress, corrosion, and cracking), all of which are required for an ultimate failure caused by stress corrosion cracking. The court thus declined to accept City Brewing’s argument that because “stress” and “cracking” are additional components of stress corrosion cracking, a loss caused by stress corrosion cracking is something other than a loss attributable to corrosion. The court explained that the plain meaning of corrosion, persuasive case law, and the testimony of multiple experts who concluded that the condition which led to stress corrosion cracking appeared to be the extended exposure of the lids to moisture with a high chloride level—all supported a finding that stress corrosion cracking is a form of corrosion and therefore excluded under the policy.