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## General Casualty Co. v. Burke Engineering Corp. 2020 IL App (1st) 191648

In General Casualty Co. v. Burke Engineering Corp., 2020 IL App (1st) 191648, the First District Illinois appellate court upheld summary judgment in favor of the insurer, finding no coverage for dozens of personal injury lawsuits filed by residents of the Village of Crestwood and its engineering firm alleging exposure to contaminated drinking water. The court was not deterred by the fact that the case involved an \$18.3 million settlement, stating: “In applying insurance law...the amount of harm is not, and should never be, taken into consideration. Otherwise the law becomes unpredictable, arbitrary, and dependent on the whim of the individual judge, all of which is repugnant to the rule of law.”

In addition to the Village, the residents sued Burke, the Village’s engineering firm. Burke allegedly assisted the Village in reporting to the Illinois EPA that the village was supplying its residents with water from Lake Michigan, and using water from the Village’s own well only as emergency backup. The court said, “This was not true.” All the residents’ claims against Burke were dismissed except for civil conspiracy. That count alleged Burke advised the Village how to conceal the use of its well for the illegal purpose of avoiding detection by authorities and avoiding mandatory testing and reporting.

After Burke’s insurer General Casualty denied coverage, Burke settled with the residents and assigned its rights under the General Casualty policy to the residents. General Casualty filed a declaratory judgment action, arguing the residents’ complaints alleged only non-covered intentional conduct. The trial court granted summary judgment in favor of General Casualty. The court found the factual allegations failed to allege an accidental “occurrence.” Instead, the court found, the residents alleged Burke knew the Village used water from the contaminated well and had intentionally advised the Village to hide that fact. The court found the negligence counts were irrelevant because a court looks to the facts alleged, not the label. The residents appealed.

The appellate court affirmed. The court noted the negligence counts adopted and alleged all of the factual allegations of intentional conduct. The underlying complaints, the court held, did not contain any factual allegations supporting the existence of a potentially covered accidental “occurrence.” In addition, the court rejected the plaintiffs’ attempt to rely on evidence outside the four corners of their complaints, and also found the possibility that the complaints might be amended in the future to allege negligence was insufficient to trigger the duty to defend. The court acknowledged its conclusion was “a disappointing result for the residents of Crestwood.” However, the court nevertheless concluded there was no coverage.

A dissent argued the court should have held a duty to defend existed, arguing the majority applied the incorrect legal standard. The dissent relied on cases holding an insurer has a duty to defend unless the complaint precludes any possibility of coverage.



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