

The Wisconsin Court of Appeals Reverses A \$68 Million Judgment In An Environmental Insurance Coverage Case

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Johnson Controls, Inc. v. Central National Insurance Company of Omaha, No. 2014AP2050, unpublished slip op. (Wis. App. Apr. 25, 2018)

In *Johnson Controls, Inc. v. Central National Insurance Company of Omaha, No. 2014AP2050, unpublished slip op. (Wis. App. Apr. 25, 2018)*, the Wisconsin Court of Appeals unanimously held that Central National Insurance Company of Omaha and Westchester Fire Insurance Company (collectively "Central National") owed no duty to defend Johnson Controls, Inc. against environmental contamination claims, reversing a \$68 million judgment against Central National in a case that is nearly 30 years old.

In the 1980s, Johnson Controls was identified as a potentially responsible party in connection with environmental contamination at numerous sites across the country. The court of appeals affirmed a circuit court order granting summary judgment to Johnson Controls' primary, umbrella, and excess insurers on the grounds that the policies did not provide coverage pursuant to the Wisconsin Supreme Court decision in *City of Edgerton v. General Casualty Co. of Wisconsin*, 184 Wis. 2d 750, 517 N.W.2d 463 (1994).

The *City of Edgerton* decision was overturned in 2003, and Johnson Controls began resurrecting its previously dismissed claims. In 2012, the circuit court, relying on general concepts instead of specific policy language, ruled in favor of Johnson Controls on summary judgment. The circuit court entered judgment against Central National in the amount of \$68 million.

Central National appealed, contending that its policies included a contingent and limited defense provision that applied only when occurrences covered by its policies were not covered by underlying insurance. Because it was undisputed the scope of coverage for environmental liabilities under the applicable primary and excess policies was identical, Central National argued it could never have a duty to defend the subject claims. Johnson Controls argued that the court of appeals should ignore the relevant policy language and instead look to generalized concepts and the results in other cases with different policy language.

Following Wisconsin Supreme Court precedent, the court of appeals found the "duty to defend analysis must be driven by policy language — not generalizable concepts about the role of excess insurance." Since the scope of coverage for environmental liabilities was co-extensive under the relevant policies, the court determined "it was logically impossible" to trigger Central National's duty to defend. Accordingly, the court concluded that Central National owed no duty to defend Johnson Controls and ordered judgment to be entered in Central National's favor.

Central National was represented by Attorneys Heidi L. Vogt and Jason R. Fathallah of von Briesen & Roper, s.c., Jonathan D. Hacker and Bradley N. Garcia of O'Melveny & Myers LLP, and Harry P. Cohen and Michael K. Robles of Crowell & Moring LLP.

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