

 <p>SDV SAXE DOERNBERGER & VITA, P.C. Advocates for Policyholders in Insurance Coverage Disputes</p>	<p>Edwin L. Doernberger</p> <p>eld@sdvlaw.com www.sdvlaw.com 203 287-8890</p>
--	---

CURRENT DEVELOPMENTS IN CONTRACTOR'S POLLUTION LIABILITY CLAIMS

IRMI Roundtable San Diego, CA

October 8-12, 2006

THE POLLUTION EXCLUSIONS

- The Qualified Pollution Exclusion
 - The Language
 - Judicial Limitations (e.g. *Morton Int., Inc. v. General Accident Ins. Co. of America*, 134 N.J. 1 (1993))
- Absolute Pollution Exclusion
 - The Language
 - Judicial Limitations
 - Environmental Purpose (e.g. *South Dakota State Cement Plant Comm'n v. Wausau Underwriters Ins. Co.*, 616 N.W. 2d 397 (S.D. 2000), cf. *Doerr v. Mobil Oil Corp.*, 774 So. 2d 119 (La. 2000))
 - Regulatory Estoppel (e.g. *Nav-Its, Inc. v. Selective Ins. Co. of America*, 183 N.J. 110 (2005))
 - Expectation of the Parties (e.g. *Keggi v. Northbrook Prop. & Cas. Ins. Co.*, 13 P. 2d 785 (Ariz. Ct. App. 2000), cf. *Atl. Ave. Assocs. V. Cent. Solutions, Inc.*, 24 P. 3d 188 (Kan. Ct. App. 2001))
- Total Pollution Exclusion
 - The Language
 - Predicting the Future

NEW COVERAGE FOR POLLUTION

- Pollution endorsements
- Separate pollution policies for contractors
- Pollution coverage combined with Contractor's Protected Professional Indemnity and Liability Insurance
- Environmental Cost-Cap Policies for Contaminated Sites