

# Eleventh Circuit Holds Pollution Exclusion Bars Coverage

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The United States Court of Appeals for the Eleventh Circuit, applying Florida law, has held that the pollution exclusion in a professional liability policy applied to a claim made against the insured engineering firm and one of its engineers based on alleged negligent failure to discover construction debris and fuel tanks located on a parcel of real property during an environmental site assessment. *James River Ins. Co. v. Ground Down Eng'g*, 2008 WL 3850687 (11th Cir. Aug. 20, 2008). After a development company purchased the property and discovered the contamination, it filed suit against the insured firm and its engineer, asserting that they had negligently failed to identify environmental contamination. In the subsequent declaratory judgment action filed by the insurer against the engineering firm, the engineer and the development company, the Eleventh Circuit held that the pollution exclusion, which barred coverage for "[a]ll liability and expense arising out of or related to any form of pollution, whether intentional or otherwise," excluded coverage for the allegations in the complaint.

The court explained that the Florida Supreme Court interpreted the phrase "arising out of" to be unambiguous and to have a broad meaning. The court concluded that the site contamination was within the policy's definition of "pollutants" and, thus, the suit clearly "arose out of" pollution because the complaint alleged that the firm and its engineer had failed to discover the contamination caused by the pollutants, leading to damages incurred in remediating the property.