Coverage – SJC Ruling – First Party Polllution

SERVICES

Insurance Law and Coverage

RELATED ATTORNEYS

Jeffrey E. Dolan

Shareholder Jeff Dolan prevailed before the Supreme Judicial Court ("SJC") of Massachusetts on an insurance coverage issue of first impression. The case involved a first-party pollution insurance policy. The insurer paid costs associated with a release of wastewater under the terms of the policy, but declined to pay the costs of preventing a covered "suspension of operations" at the insured's facility because such costs were not covered by the policy. The insured argued that such costs should be awarded under common-law principles of public policy and fairness, notwithstanding the lack of coverage under the policy. The trial court allowed summary judgment in favor of Attorney Dolan's client. The First Circuit Court of Appeals recognized a split in authority and a lack of binding guidance in Massachusetts and certified the following question to the SJC: "To what extent, if any, does Massachusetts recognize a common-law duty for insurers to cover costs incurred by an insured party to prevent imminent covered loss, even if those costs are not covered by the policy." The SJC declared that such costs were not recoverable as a matter of Massachusetts law.

Attorney Dolan successfully persuaded the SJC that the language of insurance policy established a binding allocation of risk between the parties, and that courts cannot award coverage beyond the terms of the contract under the common law. The SJC further agreed and concluded that it was bound to enforce the terms of the agreed-upon allocation of risk because a contrary result "would be to rewrite the insurance contract and reallocate the risks negotiated by the parties."

If you have any questions or would like more information, please contact Attorney Jeff Dolan at 781-428-4700 x655 or jdolan@boyleshaughnessy.com.

©2026 Boyle Shaughnessy All Rights Reserved