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## **What's all the stink about? No liability coverage for bad odors in California.**

By Samuel H. Ruby

A San Francisco appellate court has confirmed that a pollution exclusion applies to claims for bodily injury and property damage caused by the release of foul and noxious odors. Cold Creek Compost Inc. v. State Farm Fire & Cas. Co., --Cal. Rptr.--(November 20, 2007).

Neighbors in a two-mile radius sued Cold Creek Compost for nuisance, citing various consequences of the company's composting operations. Cold Creek tendered its defense to State Farm, which agreed to defend under a reservation of rights. However, after a jury returned a verdict based solely on a "severe offensive odor" theory, State Farm declined to provide coverage, citing the policy's pollution exclusion.

A trial court granted summary judgment for State Farm, and the Court of Appeal affirmed. Acknowledging the somewhat narrow interpretation of the pollution exclusion adopted by the California Supreme Court in MacKinnon v. Truck Ins. Exchange, 31 Cal. 4<sup>th</sup> 635 (2003), the Court of Appeal nonetheless held that the claim proven against Cold Creek was within the ambit of the exclusion.

The court's ruling brings California in line with other jurisdictions finding no liability coverage for claims based on "smelly" operations.