



**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

HAZELWOOD LOGISTIC CENTERS, LLC,)	
)	
Plaintiff,)	Cause No.
vs.)	
)	Division No. 9
ILLINOIS UNION INSURANCE COMPANY,)	Date: April 26, 2017
)	
Defendant.)	

FINAL ORDER AND JUDGMENT

This matter is before the Court by agreement of the parties per memorandum filed on February 3, 2017 on plaintiff Hazelwood Logistic Centers, LLC’s (Hazelwood) motion for summary judgment on the issue of coverage, as filed on March 2, 2017; and defendant Illinois Union Insurance Company’s (Illinois Union) motion for summary judgment, as filed on August 9, 2016. These motions were heard and submitted on April 20, 2017. The Court, being advised in the premises, enters its rulings as follows:

This case involves Hazelwood’s claim under a premises pollution liability policy with Illinois Union for payment of remediation costs for methane contamination at a landfill site. The liability policy provides, in relevant part, Illinois Union’s agreement to pay for “remediation costs” arising out of “pollution conditions” where such costs result from a “claim” or “government action.” This coverage explicitly “only applies to ‘pollution conditions’ that first commence on or prior to June 7, 2006.”

The undisputed facts in this matter further provide that in 2008 a pollution condition of methane gas discharging from the landfill site was caused by contractors' improperly designed engineered cell that was used to remediate the trash at the landfill site after June 6, 2006, resulting in government action by the Missouri Department of Natural Resources. Hazelwood also admitted this fact in a related federal case by alleging that "the contractors negligently caused methane gas to spread 'across portions of the property previously uncontaminated by same.'" *BancorpSouth Bank v. Hazelwood Logistics Ctr., LLC*, 706 F.3d 888, 892 (8th Cir.2013). Illinois Union is claiming in its motion that it is not liable for the 2008 pollution condition caused by negligent contractors.

Contrary to Illinois Union's position, Hazelwood appears to be relying on a theoretical argument in its motion that the methane gas emissions involved in this matter were coming from the trash [that] was in the landfill site prior to June 7, 2006 and that, *under the terms of the policy as written between the parties*, Illinois Union should be liable for any claim for remediation of these emissions. This theory, however, does not appear to be legally sufficient to create a question of material fact to support the plaintiff's motion for summary judgment, or defeat defendant's motion for summary judgment. See, e.g., *Southers v. City of Farmington*, 263 S.W.3d 603, 608 (Mo. 2008).

ACCORDINGLY, this Court finds that there is no genuine dispute as to material fact and that Illinois Union is entitled to judgment as a matter of law. Plaintiff Hazelwood Logistic Centers, LLC's motion for summary judgment on the issue of coverage is overruled and denied, and further, Defendant Illinois Union Insurance Company's motion for summary judgment is granted and sustained. Defendant's motion to strike plaintiff's motion as untimely is denied as moot.

Furthermore, this Court declares that that there is no coverage for the claimed remediation costs under the terms of the Premises Pollution Liability Insurance Policy No. [REDACTED] issued to Hazelwood Commerce Center, LLC.

Costs assessed against the plaintiff. The Court finds that there is no just reason for delay.
Rule 74.01 (b)

So Ordered:

Dated: April 26, 2017

Hon. David Lee Vincent, III
Circuit Judge, Division No. 9

cc: Attorneys of record

Hazelwood Logistic Center, LLC, v. Illinois Union Insurance Company, Cause No. [REDACTED]