

ACI Advanced Forum on
Welding Rod Litigation

November 15-16, 2004



Insurance Coverage Issues

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Who Is Potentially Affected By Welding Rod Litigation In The Insurance Context?

- **Liability Insurers Of Welding Rod Manufacturers, Distributors, Designers, Retailers, Importers, Trade Associations, Consumers, Industrial Users**
- **Reinsurers**
- **Workers' Compensation Insurers**
- **D&O Insurers**



Coverage Issues



- General Principles
- Trigger of Coverage
 - Manifestation
 - Exposure
 - Injury-In-Fact
 - Continuous/Triple Trigger
- Notice

Coverage Issues

The Pollution Exclusion

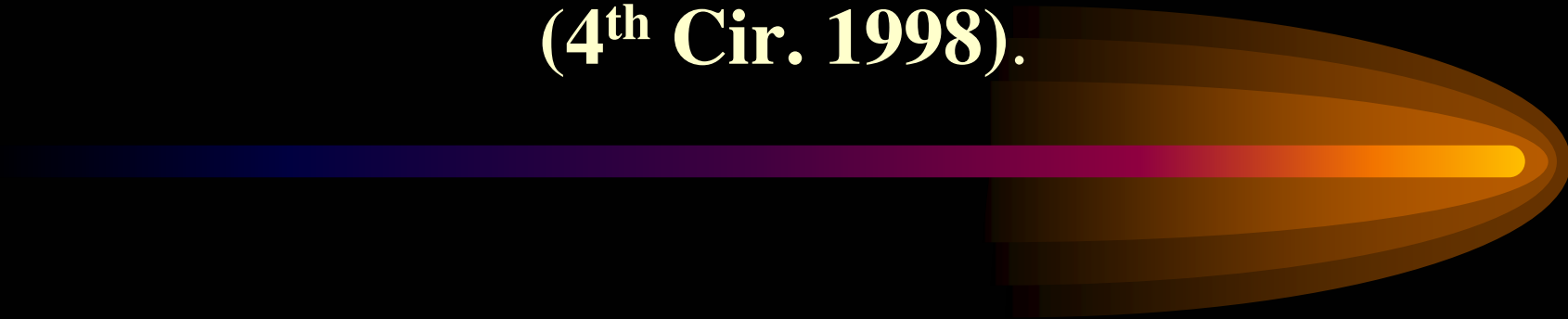
- **Classification of Welding Fumes as “pollutant”**
- **“Traditional” Environmental/Industrial (Outdoor) Pollution v. “Non-Traditional” (Indoor) Pollution Claims (i.e., carbon monoxide, lead paint, biological organism/raw sewage)**




Discussion of Select Cases



**National Electrical Manufacturers
Association v. Gulf Underwriters
Insurance Company, 162 F.3d 821
(4th Cir. 1998).**



**Air Products and Chemicals Inc. v. Hartford
Accident and Indemnity Company, the
Liberty Mutual Insurance Company and
Aetna Casualty and Surety Company, et al.,
25 F.3d 177 (3rd Cir. 1994).**



**The Lincoln Electric Co. v. St. Paul
Fire & Marine Ins. Co., 210 F.3d
672 (6th Cir. 2000)**



**MacKinnon v. Truck Insurance
Exchange, 31 Cal.4th 635, 3 Cal.
Rptr. 228 (2003)**



**Bechtel Petroleum Operations, Inc.
v. Continental Ins. Co., 117
Cal.Rptr.2d 399 (Cal. App., 2d Dist.
2002)**

*** Dismissed/Remanded; May not be
cited**

Belt Painting Corp. v. TIG
Insurance Company, 100 N.Y.2d
377, 795 N.E.2d 15 (2003).

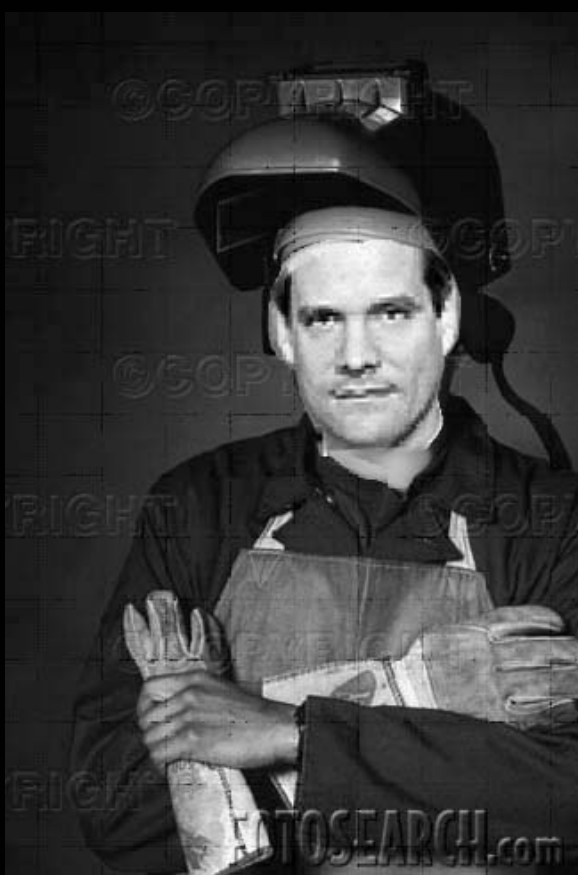


Other Issues

- **Products Liability/Completed Operations**
- **Knowledge-Based Defenses**
- **Punitive Damages**



Who Should Handle Your Welding Rod Litigation Insurance Coverage Disputes?



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