2013 IL App (1st) 111996-U

No. 1-11-1996

SIXTH DIVISION
June 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY BREWING COMPANY, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 06 CH 10134
	)	
LIBERTY MUTUAL FIRE INSURANCE COMPANY,	)	Honorable
	)	Michael Hyman,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Gordon concurred in the judgment.

O R D E R

¶ 1 Held: The unambiguous terms of the insured's policy excluded coverage for the insured's loss as a matter of law regardless of whether hydrogen induced cracking or stress corrosion cracking caused the loss.

¶ 2 This is an insurance declaratory judgment action involving commercial property insurance coverage for damage suffered when the aluminum pull-tab openings of cans of an

energy drink failed and some of the cans burst open. The parties filed cross-motions for summary judgment concerning whether the loss suffered by plaintiff City Brewing Company, LLC, was covered under the terms of its policy with defendant Liberty Mutual Fire Insurance Company (Liberty Mutual). The trial court found that the unambiguous terms of plaintiff's policy excluded coverage for plaintiff's loss regardless of whether it was caused by hydrogen induced cracking, stress corrosion cracking, or plaintiff's operations and procedures. Accordingly, the trial court denied plaintiff's motion for summary judgment and granted defendant's motion for summary judgment.

¶ 3 Plaintiff appeals the trial court's ruling, arguing the trial court erred in construing the terms of the insurance contract and, thus, erred in concluding that plaintiff's loss was excluded from coverage. For the reasons that follow, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff started producing, canning and packaging Rockstar, a carbonated energy drink, in 16-ounce aluminum pull-tab cans in April 2005. In May 2005, the pull-tab openings on numerous cans of Rockstar burst open and, as a result, plaintiff had to dispose of nearly 400,000 cases of Rockstar.

¶ 6 Plaintiff submitted a claim to defendant for the loss, requesting coverage under the policy. In July 2005, defendant denied the claim on the grounds that the loss was excluded from coverage under the policy pursuant to policy exclusions for deterioration, corrosion and inadequate workmanship.

¶ 7 In 2006, plaintiff filed an action for declaratory relief, seeking a judgment that its alleged $3 million property loss was covered under the policy issued by defendant. In 2009, plaintiff moved for judgment on the pleadings, seeking a determination that its loss was covered by the policy as a matter of law. Defendant moved for summary judgment, arguing that plaintiff's loss was caused by stress corrosion cracking and, thus, was excluded by the corrosion exclusion of the policy.

¶ 8 The evidence indicated that about three weeks after plaintiff began canning and packaging Rockstar on plaintiff's production line number five, plaintiff started receiving reports that a number of the cans in its warehouse were experiencing failures at the can opening. Specifically, the lids of some cans were pushing up at the score or groove where the pull-tab would normally be pressed down to open the can. Plaintiff stopped production of Rockstar and two other beverages canned on line number five and notified defendant of the loss.

¶ 9 An investigation was conducted after the loss. The can manufacturer (Ball Corporation) reported nothing wrong with the cans and concluded that transgranular stress corrosion cracking caused the metal at the score line of the pull tab opening to crack and burst. The can manufacturer claimed this phenomenon occurs after production and within weeks of filling when can ends are allowed to remain wet. The can manufacturer found no evidence of corrosion on any of the blown pull-tab openings, even under inspection by electron microscope. When the can manufacturer had previously reviewed plaintiff's manufacturing process, it found fault with plaintiff's failure to dry all the cans coming off the line and warned plaintiff that the cans were slightly wet. The slightly wet cans, however, did not present a problem until plaintiff initiated on

the number five line with the Rockstar cans the packaging technique of immediately shrink-wrapping the cans in plastic after the cans were filled. The shrink-wrapping prevented the tops of the cans from drying out and led to stress corrosion cracking.

¶ 10 Plaintiff hired an engineer, Patrick Lombard at Briem Engineering, and a chemist, Megan Malvey at Ecolab, to investigate the cause of the can failures. Lombard and Malvey also thought stress corrosion cracking was the cause of the can failures. Specifically, Lombard concluded that the pull tab openings on the cans failed as a result of transgranular stress corrosion cracking due to exposure to an external corrosion source. Malvey concluded that the failure "clearly resulted from corrosion that began on the outside of the can lid."

¶ 11 Plaintiff also hired Dr. Walter Milligan, a professor of material, science and engineering at Michigan Technological University, who reported that the bursting pull-tab problem was "almost 100% certainly one of stress corrosion cracking." Dr. Milligan was subsequently withdrawn as an expert for plaintiff.

¶ 12 Defendant hired an engineer, Dr. Dennis McGarry, who concluded that the stress corrosion cracking was caused by "corrosion from exposure to moisture that remained on the can lids after the canning operation at City Brewing and the retention of this moisture for an extended period of time because of the plastic shrink-wrap cover." He also faulted the high chloride content of the drinking water used to wash the cans before drying and packaging. He noted that the bursting seemed to have stopped after plaintiff increased the heat of the cans after washing and added two more high pressure blowers, or air knives, for a total of seven on production line number five.

¶ 13 In his report, Dr. McGarry stated that although plaintiff had used the shrink-wrap packaging technique on other canning lines for several years, plaintiff's production of Rockstar was the first time that packaging technique was used on line number five. The suggested cause was that the water used to final wash the cans was not being completely removed before the plastic wrap was placed over the tops of the cans. Plaintiff initiated a fix to the problem by increasing the temperature of the cans from 70 to 90 degrees Fahrenheit at the final wash and adding two new air knives to line number five to blow the water off the lids after washing. When shrink-wrap packaging was then used on line number five with those modifications, the Rockstar product did not have a bursting problem. Although plaintiff had used similar shrink-wrap packaging on its line number 10, the air knives on that line were apparently different from those on line number 5 and were able to expel all the water so that corrosion would not occur even though plastic shrink-wrap covered the lids.

¶ 14 In an affidavit, plaintiff's employee Steven Peters stated that he was the quality assurance supervisor at the time of the Rockstar can failures. He observed the production of Rockstar on line number five on a daily basis and never saw and was never informed of any moisture being left on the can tops before the finished product was shrink-wrapped. He knew that the cans were washed with municipal drinking water and heated to 85 degrees Fahrenheit to promote drying, and then multiple air knives on the line blew off any moisture left on the can tops before shrink-wrapping. Until the pull-tab problem with Rockstar in May 2005, plaintiff was unaware of stress corrosion cracking and had never been warned about leaving moisture on can tops and shrink-wrapping them.

¶ 15 The trial judge denied both plaintiff's and defendant's motions, finding a disputed issue of fact remained concerning the nature of stress corrosion cracking and whether it constituted corrosion.

¶ 16 Thereafter, the parties deposed various expert witnesses again. The experts of both parties and the representatives of the can manufacturer were unanimous that the stress corrosion cracking taking place on the Rockstar cans was a type of corrosion. Furthermore, Lombard explained that while there are more forces involved in stress corrosion cracking than corrosion alone, it is indeed a form of corrosion. Following that consistent testimony concerning stress corrosion cracking, defendant renewed its motion for summary judgment.

¶ 17 Plaintiff, however, presented new opinions from two of its experts, who contradicted their prior testimony that stress corrosion cracking was the cause of plaintiff's loss. In their revised opinions, Dr. Henry Holroyd and Dr. Russell Jones concluded that hydrogen induced cracking caused the can failures and it was a cracking process rather than corrosion. They opined that the naturally occurring hydrogen found in the humid air acted upon and degraded the strength of the Rockstar cans to such an extent that, over the course of approximately three weeks, the internal carbonation pressure of the beverage ultimately became too much for the gradually weakening cans to withstand, causing the pull-tab openings to prematurely pop up.

¶ 18 Plaintiff and defendant filed cross-motions for summary judgment on the issue of coverage. Plaintiff argued the evidence showed that its loss was caused by hydrogen induced cracking, where the initiating event was water vapor–*i.e.*, humidity. According to plaintiff, the source of the problem was the exposure of the Rockstar cans to humidity in the air, which–when

combined with the pressure within the can and cracking–weakened the can and led directly to final blowout of the pull-tab openings.

¶ 19 Defendant, in contrast, argued the evidence showed that the Rockstar cans failed as a result of stress corrosion cracking, where the initiating event was corrosion. According to defendant, the root cause of the stress corrosion cracking was the extended exposure of the Rockstar can lids to moisture that was not removed in the canning operation and was captured by the plastic shrink-wrap used to package the cans. Defendant asserted, however, that regardless of whether hydrogen induced cracking, stress corrosion cracking, or plaintiff's canning operations and packaging procedures caused plaintiff's loss, the premature opening of the Rockstar cans was not a covered loss. Specifically, defendant argued that: (1) if plaintiff's loss was caused by hydrogen induced cracking, the loss was excluded pursuant to the deterioration exclusion; (2) if the loss was caused by stress corrosion cracking, the loss was excluded from coverage pursuant to the corrosion exclusion; and (3) if the loss was caused by plaintiff's operations and packaging procedures, the loss was excluded pursuant to the faulty workmanship exclusion.

¶ 20 In response, plaintiff asserted that: (1) neither hydrogen induced cracking nor stress corrosion cracking fell under the plain meaning of deterioration or corrosion, respectively; (2) the loss was the result of both covered and excluded causes of loss; (3) the faulty workmanship exclusion was inapplicable in this case; and (4) the loss of the cans and their liquid contents was a covered ensuing loss.

¶ 21 The trial court granted summary judgment in favor of defendant. The trial court found that although an issue of material fact existed concerning whether plaintiff's loss was caused by

hydrogen induced cracking, stress corrosion cracking, or plaintiff's operations and packaging procedures, all three potential causes of loss were excluded under the policy and, thus, defendant was entitled to summary judgment as a matter of law. Plaintiff timely appealed.

¶ 22 II. ANALYSIS

¶ 23 In appeals from summary judgment rulings, this court conducts *de novo* review and construes all evidence strictly against the movant and liberally in favor of the nonmoving party. *Tarsitano v. Board of Education of Township High School District 211*, 385 Ill. App. 3d 868, 871 (2008). Where the pleadings, depositions, admissions, and affidavits on file show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, summary judgment should be granted. *Id*. If reasonable persons could draw different inferences from undisputed facts, summary judgment should be denied. *Atlantic Mutual Insurance Co. v. Orthopaedic Surgeons*, 315 Ill. App. 3d 552, 559 (2000). The drastic means of disposing of litigation through summary judgment should be allowed only when the right of the moving party is clear and free from doubt. *Tarsitano*, 385 Ill. App. 3d at 871.

¶ 24 On appeal, plaintiff argues, *inter alia*, that the trial court erred by finding that: (1) hydrogen induced cracking was excluded deterioration under the policy; (2) stress corrosion cracking was excluded corrosion under the policy; (3) the faulty workmanship exclusion was applicable; and (4) plaintiff's loss for damages resulting from the spewing, sugary liquid fell outside the policy's ensuing loss coverage.

¶ 25 Defendant responds that the factual dispute concerning the cause of plaintiff's loss was irrelevant because the plain language of the policy compels the conclusion that plaintiff's loss

was excluded from coverage under the deterioration, corrosion, or faulty workmanship exclusions. Defendant also argues that plaintiff cannot assert a new ensuing loss theory for the first time on appeal.

¶ 26 The construction of an insurance policy and its provisions is a question of law that we review *de novo*. *Rohe ex rel. Rohe v. CNA Insurance Co.*, 312 Ill. App. 3d 123, 126 (2000). When construing the language of an insurance policy, a court's primary objective is to ascertain and give effect to the intentions of the parties as expressed by the words of the policy. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). Because the court must assume that every provision was intended to serve a purpose, an insurance policy is to be construed as a whole, giving effect to every provision (*Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004)), and taking into account the type of insurance provided, the nature of the risks involved, and the overall purpose of the contract (*American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 479 (1997)). If the words used in the policy are clear and unambiguous, they must be given their plain, ordinary, and popular meaning, and the policy will be applied as written, unless it contravenes public policy. *Hobbs*, 214 Ill. 2d at 17.

¶ 27 "Although policy terms that limit an insurer's liability will be liberally construed in favor of coverage, this rule of construction only comes into play when the policy is ambiguous." *Id.* "Ambiguity exists in an insurance contract if the language is subject to more than one reasonable interpretation, but we will not strain to find an ambiguity where none exists." *Abram v. United Services Automobile Ass'n*, 395 Ill. App. 3d 700, 703 (2009). "In determining whether the terms of a policy are ambiguous, the test is not what the insurer intended its words to mean, but what a

reasonable person in the position of the insured would understand them to mean." *Allstate Insurance Co. v. Smiley*, 276 Ill. App. 3d 971, 977 (1995).

¶ 28 The terms of the policy at issue here provided that, "[s]ubject to all the terms and conditions of this policy, [Liberty Mutual] will pay for direct physical loss or damage to covered property as a result of an occurrence, unless excluded." According to the definitions section of the policy,

> "A. **Accident** means a sudden, fortuitous event that causes direct physical damage to an object, which requires that the object be repaired or replaced, in whole or in part. Accident, however, does not include *** [d]epletion, deterioration, rust corrosion, erosion, settling or wear and tear or any other gradually developing condition.
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> * * *
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> F. **Covered loss** means a loss to covered property at a covered location resulting from a peril insured against.
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> G. **Covered property** means property insured by this policy.
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> * * *
>
> X. **Occurrence** means all loss or damage attributable directly or indirectly to one (1) cause or series of similar causes. All such loss or damage will be added together, and the total loss or damage will be treated as one (1) occurrence irrespective of the amount of time or area over which such loss or damage occurs.

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Y. **Perils insured against** means causes of loss for which this policy provides coverage.

* * *

L.L. **Specified peril(s)** means direct physical loss or damage caused by or resulting from: 1. Fire; 2. Lightning; 3. Aircraft; 4. Explosion; 5. Riot; 6. Civil commotion; 7. Smoke; 8. Vehicles; 9. Wind or hail; 10. Malicious mischief; 11. Leakage or accidental discharge from automatic fire protection system; 12. Collapse."

¶ 29 Defendant has the burden of proving that an exclusion applies. *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453-454 (2009). The policy exclusions relied on by defendant state the following:

"Group B

"We will not pay for losses caused by or resulting from any of the following:

* * *

7. Loss attributable to:

(a) Wear and tear, *deterioration*, depletions, erosion, rust, *corrosion*;

* * *

If a *covered loss ensues*, we will pay for that loss.

* * *

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13. Loss attributable to *faulty*, defective or inadequate:

(a) Construction, *workmanship* or material;

(b) Maintenance;

(c) Design, plan or specification;

(d) Developing, surveying or siting of buildings or structures during the course of construction or alterations.

If a *covered loss ensues*, we will pay for that loss."

(Emphasis added.)

A. The Deterioration Exclusion

¶ 30 Plaintiff argues that hydrogen induced cracking is not excluded deterioration under the policy because the policy term "deterioration" means a gradually developing condition and the word "gradual," according to plaintiff, commonly means slow moving over a long time. Plaintiff argues that the hydrogen induced cracking that occurred here was a fast moving, abrupt, abnormal, and freakish event, and thus does not fall under the ordinary meaning of "deterioration."

¶ 31 Our primary purpose is to ascertain the intent of the parties. Initially, we look to the nature of the policy at issue and the risks undertaken by the insurer. According to plaintiff, the wording of the policy issued by defendant is typical, "all-risk" property insurance wording that covers all risks of property loss caused by any means unless expressly excluded. Such a policy creates a special type of coverage extending to risks not usually covered under other insurance policies and allows recovery for fortuitous losses not resulting from misconduct or fraud unless

an express exclusion applies. *Board of Education of Maine Township H.S. Dist. 207 v. International Insurance Co.*, 292 Ill. App. 3d 14,17 (1997).

¶ 32 With this in mind, we turn to the interpretation of the term "deterioration." This term is not defined in the policy. Therefore we interpret it by affording it its plain, ordinary and popular meaning. Webster's dictionary defines "deterioration" as "the action or process of deteriorating or state of having deteriorated **:** gradual impairment." *Webster's Third New International Dictionary* at 616 (1981). Webster's defines "deteriorate" as "*vt* **:** to make inferior in quality or value **:** impair <laxity ~s discipline> ~ *vi* **:** to grow worse <the weather had *deteriorated* during the night–Nevil Shute> **:** become impaired in quality, state, or condition : degenerate <idle houses ~>." *Id*. This definition does not require a slow-moving speed or lengthy temporal component.

¶ 33 Furthermore, the parties generally agree that the term "deterioration" should be given its ordinary meaning, which is the gradual worsening of an object. This meaning of "deterioration" as a gradual worsening is consistent with the policy's definition of an "accident," which refers to a sudden, fortuitous event but does not include "[d]epletion, *deterioration*, rust corrosion, erosion, settling or wear and tear *or any other gradually developing condition*." (Emphasis added.)

¶ 34 Webster's dictionary defines the adjective "gradual" as "**1 :** arranged in grades or degrees; *also* **:** admitting of such an arrangement **2 a :** proceeding by steps or degrees **:** advancing step by step (as in ascent or from one state to another) **b** (1) **:** moving, changing or developing by fine, slight, or often imperceptible gradations or modulations <a ~ change for the better in the patient's

condition> (2) of an incline **:** not steep or abrupt <a ~ slope> <a ~ drop down to the town>." *Webster's Third New International Dictionary* at 985 (1981). Like the term "deterioration," this definition of "gradual" also does not indicate or require a slow-moving speed or lengthy temporal component.

¶ 35 Plaintiff, however, cites the online *Longman Dictionary of Contemporary English*, www.ldoconline.com/dictionary/gradual (last visited May 7, 2013), which defines "gradual" as "1 happening slowly over a long period of time [≠ sudden]: <*There has been a gradual change in climate.*> <*the gradual decline in manufacturing industry*> <*Education is a gradual process*>. 2 a gradual slope is not steep." Plaintiff also cites the online *Cambridge Advanced Learner's Dictionary & Thesaurus*, http://dictionary.cambridge.org/dictionary/british/gradual?q=gradual (last visited May 7, 2013), which defines "gradual" as "happening or changing slowly over a long period of time or distance: <*There has been a gradual improvement in our sales figures over the last two years.*> <*As you go further south, you will notice a gradual change of climate*>."

¶ 36 Plaintiff asserts that the deterioration exclusion is ambiguous and warrants a finding of coverage in favor of plaintiff. According to plaintiff, the policy term "deterioration," which means a gradually developing condition, is ambiguous because the word "gradual" could mean either slow moving over a long time or proceeding by steps or stages. Plaintiff asserts that because defendant failed to specify which type of deterioration was excluded, defendant failed to carry its burden to prove that its exclusion has only one reasonable meaning and that its one meaning is free of any doubt.

¶ 37 We disagree. Plaintiff strains to find an ambiguity in the deterioration exclusion where none exists. Even if the word "gradual" has the two meanings urged by plaintiff, the broad policy term "deterioration" unambiguously refers to all deterioration, however brought about. Consequently, the existence of multiple shades of meaning for the word "gradual" does not result in more than one reasonable interpretation of the deterioration exclusion. The policy expressly excludes any loss attributable to "deterioration" and does not qualify that term. Accordingly, the policy excludes all deterioration regardless of whether it was slow moving and occurred over a lengthy time period. Plaintiff tries to fault the insurer for failing to specify in the policy a time or speed component for the type of deterioration excluded from coverage. Plaintiff's argument, however, is unsound and irrelevant. Deterioration is still deterioration regardless of whether it occurred very slowly over the course of several years or, like here, occurred by degrees over a period of several weeks.

¶ 38 We cannot find that the parties intended the deterioration exclusion in this all-risk policy to be limited to slow-moving processes that occur over a long period of time. On the contrary, we find that, in light of the scope of this type of all-risk insurance policy and the popular meaning of "deteriorate," the parties intended to exclude coverage for losses caused by deterioration regardless of whether the damage was slow-moving and occurred over a long period of time. Just as the policy does not qualify its exclusions for wear and tear, depletions, erosion, rust, and corrosion, it does not qualify its exclusion for deterioration. The exclusion broadly bars coverage for a loss arising from deterioration without regard to the speed of the deterioration process or the length of time over which the deterioration process occurred. Accordingly, in the

sense in which "deterioration" is used in the policy, the term is inclusive and clearly does not require a slow-moving speed or lengthy temporal dimension. Consequently, plaintiff's assertion that the deterioration exclusion is subject to more than one reasonable interpretation lacks merit.

¶ 39 Even granting the existence of the alternative definition of slow-moving to the word "gradual," plaintiff's loss still falls within the deterioration exclusion. Under a reasonable reading of the word "gradual," the process of disintegration or wearing away that occurred here over a period of three weeks before some of the can pull-tab openings began to fail would not be considered a quick occurrence. The experts for both parties agreed that neither hydrogen induced cracking nor stress corrosion cracking are conditions that develop and cause instantaneous loss. Although the final act of some of the can pull-tabs actually bursting open may have seemed sudden, it was merely the final consequence of a gradual process that took three weeks to develop. Moreover, it is not surprising that the deterioration that occurred here happened in weeks as opposed to months or years because the deterioration affected the score or groove of the pull tab opening, which is meant to be easily opened by the consumer pulling the tab with one finger. This is not a case that involves the deterioration of a roof or thick pipes. Inevitably, the time and speed by which an object will deteriorate will depend on factors like the size, structure and components of the object itself. Consequently, it would be nonsensical to require an insurer, in the context of an all-risk policy, to qualify a deterioration exclusion by designating the time and speed by which any given object or structure will deteriorate.

¶ 40 We also note that other courts have not limited the word "gradual" to mean a slow-moving process over a lengthy time frame. See *Atlantic Mutual Insurance Companies v. Lotz*,

384 F. Supp. 2d 1292, 1303 (E.D. Wisc. 2005) (when construing the deterioration exclusion of an all-risk insurance policy, the common and ordinary meaning of the word "gradual" meant arranged in grades or degrees and moving by fine, slight, often imperceptible gradations); *Angerami v. Nationwide Insurance Co.*, 509 N.Y.S. 2d 298, 299 (1986) (water damage caused by ice and snow backup over the course of just one winter constituted a gradual deterioration of property over time and was excepted from coverage). As the term "deterioration" is used in the exclusion clause, the speed of the disintegration is not relevant. See *Arkwright-Boston Manufacturers Mutual Insurance Co. v. Wausau Paper Mills Co.*, 818 F.2d 591, 594-95 (7th Cir. 1987) (where the plaintiff asserted that the damage to a reactor was caused by a sudden acid attack rather than a gradual wearing away, the court found the corrosion exclusion applied and the speed at which the corrosion took place was not relevant); *Richland Valley Products, Inc. v. St. Paul Fire & Casualty Co.*, 548 N.W.2d 127, 132 (Wisc. Ct. App. 1996) (the time lapse over which the contamination occurred was not relevant to the application of the contamination exclusion to the insured's loss).

¶ 41 Plaintiff cites *Outboard Marine Corp. v. Liberty Mutual Insurance Company*, 154 Ill. 2d 90 (1992), to support the proposition that defendant's deterioration exclusion is ambiguous because even though "gradual" may not necessarily mean slow moving, it is one reasonable meaning, particularly for construing an insurance exclusion. Plaintiff's reliance on *Outboard Marine* is misplaced. In that case, the insured sought defense and indemnification from its comprehensive general liability insurers after the government brought actions against the insured for its alleged release of toxic chemicals into a harbor and lake over a period of several years. *Id*.

at 98. The relevant policies excluded coverage for the release of environmentally toxic materials but included an exception for toxic releases that were "sudden and accidental." *Id*. at 118. The policy did not define "sudden" but defined "accident" to include "continuous or repeated exposure to conditions, which results in *** property damage neither expected nor intended from the standpoint of the insured." *Id*. at 123. The insurers argued that the term "sudden" was not ambiguous and meant abrupt. The insured argued that "sudden" was ambiguous because it could also mean unexpected or unintended. *Id*. at 120. The court noted that numerous dictionaries defined "sudden" to mean both unexpected and abrupt. *Id*. Accordingly, the court found that both definitions of "sudden" were reasonable interpretations of the term in the context of the comprehensive general liability policy. As a result, the court concluded that the term "sudden" was ambiguous and construed it in favor of the insured. *Id*. at 121.

¶ 42 The holding in *Outboard Marine* is not applicable to the issue before this court. Unlike *Outboard Marine*, the insurance coverage issue before us does not involve construing a term in an exception to an exclusion. In *Outboard Marine*, one of the two reasonable meanings for the term "sudden"–*i.e.*, abrupt–had a temporal dimension and, thus, excluded coverage for the toxic releases that occurred over several years, whereas the other reasonable meaning of "sudden"–*i.e.*, unexpected or unintended–did not have a temporal dimension and, thus, reinstated coverage for toxic releases. In the context of a policy that made an express exception to an exclusion, the ambiguity created by the temporal and non-temporal meanings of "sudden" was relevant to the application of the exclusion. Here, in contrast, there was no express exception in the policy to the deterioration exclusion; as discussed above, the policy broadly excluded *all* deterioration.

Consequently, plaintiff cannot credibly argue that any ambiguity is created by the speed/temporal and non-speed/temporal meanings of "gradual" because the speed of the deterioration or the time lapse over which the deterioration occurred was not relevant to the application of the deterioration exclusion to plaintiff's loss. See *Arkwright-Boston Manufacturers Mutual Insurance Co.*, 818 F.2d at 594-95; *Richland Valley Products, Inc.*, 548 N.W.2d at 132.

¶ 43 Contrary to plaintiff's arguments on appeal, none of the cases relied on by plaintiff support a holding that the deterioration exclusion at issue here is limited to a gradually developing condition that was slow-moving and occurred over a long period of time. For example, in *Berry v. Commercial Union Insurance Co.*, 87 F.3d 387, 389 (9th Cir. 1996), the court addressed whether the manufacturer's negligence was the proximate efficient cause of the damage to the insured's irrigation pipes. In a footnote, the court agreed with the lower court's conclusion that the chemical reaction between the pipes and the liquid fungicide the insured had flushed through the pipes was deterioration, because deterioration "include[s]" slow-moving disintegration of the insured material due to external forces and the degradation to the insured's pipes that took two years to manifest was slow-moving. *Id*. at 389 n.3. *Berry*, however, did not conclude that all deterioration must occur slowly over a long period of time in order to constitute deterioration.

¶ 44 None of the other cases cited by plaintiff construed "deterioration" to be a phenomenon dependent on the passage of any minimum time period. See, *e.g.*, *Jardine v. Maryland Casualty Co.*, 823 F. Supp. 2d 955, 961 (N.D. Cal. 2011) (the deterioration exclusion "includes" slow-moving disintegration of the insured material); *Cavalier Group v. Strescon Insurance, Inc.*, 782

F. Supp. 946, 955-56 (D. Del. 1992) (finding "deterioration" was ambiguous because it was reasonable not to associate the term with deterioration caused by abnormal events like design defects and the policy did not make a distinction between naturally and abnormally caused deterioration); *Brodkin v. State Farm Fire & Casualty Co.*, 217 Cal. App. 3d 210, 217 (Cal. App. 1989) (the plaintiffs' claim for damage to the foundation of a house caused by corrosives in the soil like cow urine or swamp seepage was barred by the plain meaning of the exclusions for leakage or seepage of water, wear, tear, deterioration, inherent vice and contamination, *i.e.*, the insurer would "not cover slow-moving disintegration or corrosion of the concrete foundation because of external forces"). Although the fact patterns in the above-cited cases involved instances of deterioration that occurred over an extended time period, nothing in those cases limited the definition of "deterioration" to a process of disintegration that occurs over a long period of time.

¶ 45 Like the trial court, we find that a loss caused by hydrogen induced cracking is a loss attributable to deterioration under the policy. Under plaintiff's theory, the can pull-tab openings were gradually weakened as a result of exposure to humidity in the air. When that weakening was combined with the stress of pressure within the can and cracking, the pull-tab openings of some of the cans eventually popped up or burst open. This theory satisfies the definition of deterioration.

¶ 46 We therefore affirm the trial court and hold that any loss plaintiff sustained as a result of hydrogen induced cracking was excluded deterioration under the policy.

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¶ 47 B. The Corrosion Exclusion

¶ 48 Plaintiff argues that stress corrosion cracking is not excluded corrosion under the policy because stress corrosion cracking is "commonly called" or "best described as" a type of cracking rather than a type of corrosion. Accordingly, plaintiff contends that defendant's exclusion for corrosion is ambiguous and should be construed in favor of coverage.

¶ 49 The policy does not define corrosion, but that term is not ambiguous and should be accorded its ordinary meaning. Webster's defines "corrosion" as "**1 :** the action, process, or effect of corroding: as **a :** the action or process of corrosive chemical change not necessarily accompanied by loss of form or compactness; *typically* : a gradual wearing away or alteration by a chemical or electrochemical essentially oxidizing process (as in the atmospheric rusting of iron) **b :** a gradual weakening, loss, or destruction (as of spirit or force) <the ~ of faith and the corruption of moral standards–*Times Lit. Supp.*> **c :** erosion of land or rock; *specif* : the removal of soil or rock by the solvent or chemical action of running water–compare corrasion **2 a :** a product of corrosion <a hard ~ of white lead> **b :** a study specimen of an organ or other structure prepared by injection of hollow parts (as blood vessels) with a plastic and subsequent removal of the surrounding tissue by corrosion." *Webster's Third New International Dictionary* at 512 (1981).

¶ 50 A loss caused by stress corrosion cracking is a loss attributable to corrosion under the policy. There is no dispute among the experts of both parties that corrosion is a necessary component of stress corrosion cracking. Specifically, the experts agreed that stress corrosion cracking is made up of three components: stress, corrosion, and cracking; but each component is

necessary to an ultimate failure caused by stress corrosion cracking. We do not accept plaintiff's argument that because stress and cracking are additional components of stress corrosion cracking, a loss caused by stress corrosion cracking is something other than a loss attributable to corrosion. Moreover, other courts have rejected attempts to limit corrosion exclusions in all-risk policies to certain types of corrosion. See *Adams-Arapahoe Joint School District No. 28-J v. Continental Insurance Co.*, 891 F.2d 772, 777 (10th Cir. 1989) (under Colorado law, corrosion in an all-risk policy "unambiguously refers to all corrosion, however brought about"); *Arkwright-Boston Manufacturers Mutual Insurance Co.*, 818 F.2d at 595 (under Wisconsin law, it was not a reasonable interpretation of an all-risk policy to limit the corrosion exclusion to inevitable corrosion).

¶ 51 According to the record, the water plaintiff used to rinse the cans had a high chloride level, which was a corrosive element. If plaintiff failed to remove that water from the can tops during the canning process and then shrink-wrapped the still-wet cans in plastic, the high level of chlorides were sealed in and hastened the corrosion process. According to multiple experts, the condition that led to stress corrosion cracking of the beverage lids appeared to be the extended exposure of the lids to moisture that had a high chloride level, was not removed in the canning operation, and was captured by the plastic shrink-wrap. Based on the plain meaning of corrosion, persuasive case law, and expert testimony, we conclude that stress corrosion cracking is a form of corrosion and falls under the policy's exclusion for corrosion as a matter of law.

¶ 52 Defendant also raised the faulty workmanship exclusion as an alternative basis for denying plaintiff's claim for coverage. Essentially, defendant argued that plaintiff's failure to

remove the rinse water from the can tops before shrink-wrapping the cans caused the stress corrosion cracking that caused the cans to fail. This argument concerning plaintiff's operations and packaging procedures is tied to the issue of stress corrosion cracking. Given our analysis and conclusion concerning the corrosion exclusion, there is no need for this court to determine whether the faulty workmanship exclusion provides an alternative basis to deny coverage for plaintiff's loss. Accordingly, we do not review the trial court's finding concerning the faulty workmanship exclusion and do not address the parties' arguments concerning that exclusion.

¶ 53 C. Ensuing Loss Coverage

¶ 54 Plaintiff contends it is entitled to coverage because it suffered an ensuing loss. On appeal, plaintiff does not present any argument or authority to challenge the trial court's ruling that plaintiff did not sustain an ensuing loss because the loss of the bursting cans and their liquid contents was attributable to an excluded cause. Instead, plaintiff argues that it is entitled to coverage for its ensuing loss for everything damaged following the bursting. Specifically, when the sugary liquid spewed out of the bursting cans, it spoiled everything around the cans: the "good" cans, the plastic shrink-wrapping, and the cardboard base of each packaged case. Plaintiff also claims that it suffered the loss of the thousands of cases that did not burst but were later dumped, with defendant's consent, after the investigation. Plaintiff complains that the trial court addressed only the loss of the burst cans and their liquid contents, and "mistakenly ignored" plaintiff's claim for everything damaged following the bursting.

¶ 55 Defendant responds that plaintiff has forfeited this issue because plaintiff never raised before the trial court any claim or alleged factual basis for damage to surrounding materials

caused by the spewing liquid. Our review of the record establishes that defendant is correct. We also reject plaintiff's assertion that it is simply "fleshing out" its ensuing loss claim on appeal. To the contrary, the argument plaintiff now presents for review alleges a different basis for ensuing loss coverage that was not presented to the trial court. It is well established under Illinois law that an appellant's failure to raise an issue in the circuit court results in forfeiture of that issue and it may not be raised for the first time on appeal. *In re Shauntae P.*, 2012 IL App (1st) 112280 ¶ 93.

¶ 56 III. CONCLUSION

¶ 57 Regardless of whether the cause of plaintiff's loss was hydrogen induced cracking or stress corrosion cracking, plaintiff's loss was excluded under the unambiguous terms of the policy as a matter of law. Therefore, we affirm the circuit court's grant of summary judgment in favor of defendant.

¶ 58 Affirmed.