

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

THE DOE RUN RESOURCES CORPORATION,)	No. ED103026
)	
Respondent,)	Appeal from the Circuit Court of
)	St. Louis County
vs.)	10SL-CC01716
)	
AMERICAN GUARANTEE & LIABILITY INSURANCE and LEXINGTON INSURANCE COMPANY,)	Honorable Thomas J. Prebil
)	
Defendants,)	
)	
ST. PAUL FIRE AND MARINE INSURANCE COMPANY,)	
)	
Appellant.)	Filed: September 27, 2016

This is an insurance coverage case. St. Paul Fire and Marine Insurance Company (“St. Paul”) appeals the trial court’s judgment which found that St. Paul has the duty to defend the Doe Run Resources Corporation (“Doe Run”) in the toxic-tort lawsuits that underlie this litigation, and which ordered St. Paul to reimburse Doe Run for its defense costs and to pay prejudgment interest on those damages. St. Paul contends that the trial court erred (1) because the “pollution exclusion” in Doe Run’s Commercial General Liability policy (“CGL policy”) bars coverage for the bodily injuries alleged in the underlying lawsuits; (2) because under the circumstances Doe Run’s CGL policy constitutes “excess insurance” and another insurer has the duty to defend Doe Run; (3) because even if St. Paul had the duty to defend, St. Paul still should not be obligated to reimburse Doe Run for its defense costs incurred prior to March 16, 2012, since according to St. Paul, Doe Run did not until then demand coverage in the underlying lawsuits under the CGL policy; and (4) because the award to Doe Run of prejudgment interest on the damages awarded was improper, since the damages were not liquidated until just before the trial.

AFFIRMED IN PART, AND REVERSED AND REMANDED IN PART.

DIVISION THREE HOLDS: (1) The policy is ambiguous as to whether the pollution exclusion excuses St. Paul from the duty to defend Doe Run, and thus the terms of the policy must be construed in favor of coverage for the insured. (2) Even if there was a dispute of material fact as to whether the policy constitutes “excess insurance,” there is no question St. Paul has the duty to defend Doe Run in the lawsuits underlying this litigation because no other insurer has been found to have the duty to defend Doe Run with respect to all the same parts of those lawsuits for which the trial court here found St. Paul has the duty to defend. (3) The trial court erred in ordering St. Paul to reimburse Doe Run for its defense costs incurred prior to March 16, 2012, since Doe Run did not until then demand coverage in the underlying lawsuits under the CGL policy. (4) The trial court erred in awarding prejudgment interest on the damages awarded from the date they were incurred, since the damages were not by then liquidated; however, by the date each particular invoice or other record of the defense costs Doe Run seeks from St. Paul was received by St. Paul, that portion of the defense costs was liquidated, and prejudgment interest on such costs is owed.

Opinion by: James M. Dowd, J.

Robert M. Clayton III, P.J., and Lawrence E. Mooney, J., concur.

Attorneys for Appellant: Robert C. Johnson, Daniel E. Feinberg, David M. Fedder,
Deborah C. Druley

Attorneys for Respondents: Marc D. Halpern, Heather L. Mayer, Jamie L. Boyer

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS
BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT
BE QUOTED OR CITED.**