

United States Court of Appeals,

Eleventh Circuit.

No. 96-2794.

WEST AMERICAN INSURANCE COMPANY, a foreign corporation, Plaintiff-Appellee,

v.

BAND & DESEMBERG, a Florida Partnership, Defendant-Appellant,

Marilyn Parkhurst, Marlene Green, Sharon Reilly, Susan Anderson, Defendants.

April 17, 1998.

Appeal from the United States District Court for the Middle District of Florida. (No. 94-1646-CIV-T-24C), Susan C. Bucklew, Judge.

Before CARNES, Circuit Judge, and CLARK and CAMPBELL*, Senior Circuit Judges.

CLARK, Senior Circuit Judge:

This is an appeal from the district court's order granting the plaintiff's motion for summary judgment in an insurance declaratory judgment action. The district court's order, published at 925 F.Supp. 758 (M.D.Fla.1996), contains a concise presentation of the facts and an excellent discussion of the law, but noted that Florida law was not settled on the interpretation of an absolute pollution exclusion. Since the district court's opinion was issued, the Florida Supreme Court decided *Deni Associates of Florida, Inc. v. State Farm Fire & Cas. Ins. Co.*,¹ and ruled that two pollution exclusion clauses nearly identical to the pollution exclusion clause in this case presented no

*Honorable Levin H. Campbell, Senior U.S. Circuit Judge for the First Circuit, sitting by designation.

¹*Deni Associates of Florida, Inc. v. State Farm Fire & Cas. Ins. Co.*, --- So.2d ---- (1998).

ambiguities.² Based on that opinion, we hold that the pollution exclusion clause at issue here is not ambiguous, and AFFIRM the district court's grant of summary judgment to the plaintiff.

²*Id.* at ----.