Up in Smoke—Court Denies Coverage for Explosion "Arising Out of" Marijuana Production

Ohio Security Insurance Co. v. Smith, 2025 WL 2912972 (D. Or. Oct. 10, 2025), speaks to the breadth of exclusions containing "arising out of" language.

As alleged in the complaint, Mary and Randall Leach owned an industrial warehouse in White City, Oregon. They leased the property to Joseph Donahue and his company, Primordial Mountain LLC, which manufactured cannabinoids from cannabis plants using the "Butane Hash Oil" extraction process, which involves using cooled liquid butane—which is highly flammable—as a solvent to extract chemically reactive compounds from cannabis. *Id.* at *1. Donahue hired Furious Talon Eldridge to help design and operate the plant. *Id.*

While Eldridge was operating the extraction system, a component failed, resulting in a butane gas leak and the building's evacuation. Donahue directed Eldridge back into the building to stop the leak. Before Eldridge could do so, the gas exploded, burning Eldridge, who died the following day. *Id.* at *2. Eldridge's estate sued Donahue, Primordial (Donahue's company), and the Leaches for creating or allowing hazardous conditions at the extraction plant. Ohio Security insured Primordial and defended Donahue, Primordial, and the Leaches. *Id.*

Ohio Security brought suit, alleging that it had no duty to defend or indemnify Donahue, Primordial, or the Leaches, relying on the policy's "Marijuana Exclusion," which provided in relevant part that:

This insurance does not apply to: "Bodily injury", "property damage" or "personal and advertising injury" **arising out of, caused by, or attributable to, whether in whole or in part**, the following: a. The design, **manufacture**, distribution, sale, serving, furnishing, use or possession of "marijuana."

Id. at *3 (emphasis added). The Leaches moved to dismiss Ohio Security's complaint (Donahue and Primordial had a default judgment entered against them), arguing that they could be liable to Eldridge's estate without proof of "any facts about the manufacture of marijuana." Nothing about marijuana itself caused the gas leak and subsequent injury. *Id.* Ohio Security argued that "every claim asserted . . . is necessarily rooted in the **manufacture** of marijuana . . . . [T]he claims [are] not merely incidental to marijuana manufacturing, but rather fall within the Marijuana Exclusion for bodily injury 'arising out of, caused by, or attributable to, whether in whole or in part' the manufacture of marijuana." *Id.* at *5 (emphasis added).

The court looked to the meaning of "arising out of" under Oregon law:

Oregon Courts have held that the ordinary meaning of "arising out of" is "very broad." . . . For instance, when used in an automobile liability provision for coverage for damages "arising out of" the ownership, maintenance, or use of an automobile, the words "'arising out of' . . . are of broader significance than the words 'caused by,' and are ordinarily understood to mean originating from, incident to, or having connection with the use of the vehicle." The breadth of the phrase can vary with the context, but when interpreting an "arising out of" exclusion in a certain context, a court must not adopt an interpretation that would turn the exclusion into a "null set" in that context.

Id. at *6 (internal quotations and citations omitted).

The court concluded that the explosion fell within the "design" or "manufacture" parts of the exclusion. "The relevant claims here, as Ohio Security identifies, are inseparable from the process of manufacturing marijuana extracts at the Property. These claims, at least in part, 'originat[e] from, [are] incident to, or hav[e] [a] connection with' the design or manufacture of marijuana and therefore 'aris[e] out of' the manufacture of marijuana. Even if, as the Leaches point out, the Eldridge Complaint does not necessarily rely on direct reference to marijuana, Ohio Security has adequately pleaded that the Eldridge Estate's claims did not arise independently from marijuana manufacturing." *Id.* at *6 (internal citation omitted).

The court was willing to allow that not every incident tied to the operation would be excluded: "To be sure, claims based on general property maintenance or workplace injury would not trigger the Marijuana Exclusion under similar circumstances—for instance, an ordinary gas leak on the Property." *Id.* However, in the court's view, because the explosion was allegedly caused by the manufacturing operations, the exclusion applied. *Id.*

Looking back to the language of the exclusion, it is perhaps understandable why the insureds argued that the exclusion did not apply: the loss did not arise out of a risk exclusive to or strongly affiliated with marijuana. In some ways, the exclusion reads like an exclusion for product or completed operations liability. Even so, it is difficult to argue that the loss did not "aris[e] out of . . . in whole or in part . . . the **manufacture** . . . of marijuana." Whether the original intent of the parties or not, it seems like the plain language of the policy applies.

The more difficult case, which was not presented but to which the court alluded, *see id.*, is whether a loss resulting from something unrelated to the marijuana manufacturing process would also be excluded simply because the property was being used for that purpose.

No one appears to have raised the question of underwriting intent. If Primordial's only business was marijuana-related manufacturing, a broad interpretation of the exclusion could result in illusory coverage. A narrower interpretation—such that the exclusion does not apply to the company's general business operations—would seem to be required. That would be consistent with the result here and the judge's musings. Although not relevant to the outcome in this case, this might be a circumstance where resort to the parties' negotiations would genuinely illuminate *ex ante* intent regarding the exclusion.

Click the link to read the full opinion: Ohio Security Insurance Company Plaintiff v Jessica Smith