

2018 WL 1887459

Only the Westlaw citation is currently available.

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EVANSTON INSURANCE COMPANY,
Plaintiff-Counter Defendant-Appellant,

v.

J&J CABLE CONSTRUCTION, LLC, Dixie Electric Cooperative, Marrell A. Crittenden, Jr., individually and as Next Friend of M. C. and A. C., Courtney Bynum Crittenden, individually and as Next Friend of M. C. and A. C., Caroline Torrence, Defendants-Counter Claimants-Appellees.

No. 17-11188

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Filed April 20, 2018

Appeal from the United States District Court for the Middle District of Alabama, D.C. Docket No. 3:15-cv-00506-CDL-WC

Attorneys and Law Firms

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Before [WILSON](#) and [JORDAN](#), Circuit Judges, and [CONWAY](#),* District Judge.

* Honorable Anne C. Conway, United States District Judge for the Middle District of Florida, sitting by designation.

Opinion

PER CURIAM:

*1 Following oral argument and a review of the record, we affirm the district court's summary judgment order. First, on these facts, there are no legally significant distinctions between the pollution exclusion clause here (including its definition of "pollutants") and the clause at issue in *United States Fidelity & Guaranty Co. v. Armstrong*, 479 So.2d 1164, 1168 (Ala. 1985). Second, the "pollutant" here (sewage) is the same as the one at issue there. *Id.* at 1166. Third, the incident's context here puts it *further* from "industry-related pollution" than the "flow[ing]" of "raw sewage ... onto adjacent land" in *Armstrong*. *Id.* at 1166, 1168. Under the circumstances, the district court correctly ruled that *Armstrong* controls.

AFFIRMED.

All Citations

--- Fed.Appx. ----, 2018 WL 1887459 (Mem)