

Court Rules Insurer Had Duty To Defend Against Superfund Action Filed By Federal Government

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The United States District Court for the Northern District of Illinois recently issued an opinion granting summary judgment against an insurance company based on a duty to defend in *United States v. Clark, No. 08-CV-4158*, which concerned the South Green Plating Superfund Site in Chicago, Illinois.

The federal government sought reimbursement for response costs incurred while cleaning up the site. According to the complaint, heat-treating operations, a thermal process for strengthening metals, were conducted on site. Some of the defendants filed a third-party complaint against several insurance companies seeking a declaratory judgment that the insurers have a duty to defend and indemnify the defendants in the case. The defendants and the insurers filed cross motions for summary judgment on the duty to defend issue.

The Court granted the defendants' motion for summary judgment and denied the the insurers' motion. There was no dispute that Comprehensive General Liability policies established the insurers' duty to defend certain suits. The policies provided for defense and indemnity of suits alleging property damage:

“The company [Liberty] will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of . . . property damage to which this policy applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such . . . property damage, even if any of the allegations of the suit are groundless, false or fraudulent”

The Court first held that the government's complaint adequately alleged "property damage" within the terms of the policies, because the allegations indicated the potential of environmental contamination through releases of hazardous substances.

The Court then held that the complaint alleges an "occurrence," which was defined in the policies as "“an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.”

Finally, the Court held that the allegations of the complaint did not fall under one of the policies' exclusions, which excluded coverage for "property damage to property owned or occupied by or rented to the insured." The complaint sufficiently alleged that there may have been exposure to the environment outside of the property owned by the defendants.

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