

New Jersey Court Confirms a PRP Letter Constitutes a “Suit” Triggering an Insurer’s Duty to Defend

Insurance Coverage Alert

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A New Jersey Superior Court recently put to rest a tenuous coverage defense to which insurers stubbornly have clung in environmental coverage cases. The court held in *Cooper Industries, LLC v. Employers Ins. of Wausau a Mutual Company et al.*, Docket No. L-9284-11, that a potentially responsible party (“PRP”) letter from the United States Environmental Protection Agency (“EPA”) constitutes a “suit” triggering an insurer’s duty to defend. The court’s opinion follows holdings in the vast majority of jurisdictions addressing this issue.

The EPA sent a PRP letter to Cooper Industries, LLC (“Cooper”), identifying it as a “potentially responsible party” in the contamination of a 17-mile stretch of the Passaic River in Newark, New Jersey. The EPA requested Cooper participate in a group agreement with the EPA and several other PRPs to remediate the site, and warned Cooper its failure to cooperate may subject it to CERCLA enforcement proceedings. Cooper demanded its insurer OneBeacon Insurance Company (“OneBeacon”) provide a defense in connection with the PRP letter. OneBeacon refused to defend on the ground the PRP letter does not constitute a “suit” under its insurance policy.

The court rejected OneBeacon’s argument that the term “suit” requires a civil action commenced by filing a complaint. The court relied on, among other authority, the New Jersey Supreme Court’s decision in *Morton International Inc. v. General Accident and Indemnity Company of America*, 134 N.J. 1 (1993), for the premise that “coverage does not hinge on the form of action taken [or] the nature of relief sought, but on the actual or threatened use of legal process to coerce payment or conduct by a policyholder.” The court reviewed CERCLA’s statutory framework and found a PRP letter to be coercive in nature because it provides that PRPs “shall be liable for,” among other things, the costs of removal or remedial action. CERCLA also imposes strict liability with only a few narrow defenses, and entities that fail to cooperate with a PRP letter run the risk of contempt proceedings, fines and treble damages. The court noted that requiring a complaint in a lawsuit to trigger insurance coverage would defeat CERCLA’s main objective by “discourage[ing] prompt and cooperative remediation efforts and the timely cleanup of hazardous waste.”

The court also reinforced the long-standing principle that an insurer’s duty to defend arises immediately when an underlying complaint asserts a potentially covered claim. The court rejected

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OneBeacon's overbroad interpretation of *Burd v. Sussex Mutual Insurance Company*, 56 N.J. 383 (1970), as almost always converting an insurer's duty to defend into an obligation to reimburse its policyholder's defense expenses at the end of a coverage action. The court confirmed *Burd* applies only where the insurer's conflict of interest with its policyholder means it "cannot assume a defense in good faith."

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