

Environmental Contractor: U.S. District Court (Northern District Indiana) Addresses Whether an Insured had a Right to Choose



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

04/24/2017

A United States District Court (Northern District Indiana) addressed in an April 11th opinion whether an insured covered by various insurance policies had the right to continue to retain an environmental contractor it had been utilizing to address certain contamination. See *Ranburn Corporation v. Argonaut Insurance Company*, Case No. 4:16 CV-088 JD.

Plaintiff Ranburn Corporation (“Ranburn”) had been ordered in 2009 to investigate and remediate environmental contamination associated with a dry cleaning business it had formerly operated.

Ranburn was provided coverage under a number of insurance policies (and the insurers) pursuant to a reservation of rights. The insurers therefore agreed to indemnify Ranburn in regards to the matter subject to the reservations of rights. As a result, Ranburn utilized an environmental contractor for a number of years to undertake relevant site work.

In 2016 the insurers withdrew the reservations of rights and agreed to fully defend and indemnify the company. Consequently, the insurers would fully defend and indemnify Ranburn in regard to the cleanup and resolution of the environmental matter at no cost to the insured.

The insurers, however, mandated that a different environmental contractor be utilized. Ranburn objected to the use of a different contractor. The company argued:

- Changing contractors at this point could cause delays
- Such delays could subject it to penalties from the Indiana Department of Environmental Management (“IDEM”)
- Delays could cause the company to lose credibility and goodwill with the IDEM

Ranburn filed an action in the United States District Court (“Court”) asking for a preliminary injunction. During the pendency of the action Ranburn’s existing environmental contractor continued performing work at the site at the company’s direction and expense. Ranburn sought an injunction:

...requiring the insurers to continue paying Ranburn’s existing contractor throughout the pendency of this action, and to reimburse Ranburn for the remediation expenses it has paid on its own thus far.

The Court found in the April 11th opinion that a preliminary injunction was not warranted. The basis for this finding was the Court’s determination that Ranburn failed to demonstrate that, without an injunction,

it would suffer irreparable harm for which monetary relief would be inadequate. The Court noted Ranburn's argument citing a statement from the company's brief which read:

If . . . the Court denies Ranburn's requested injunction, the Insurers will stop paying [Ranburn's existing consultant's] bills, and Ranburn will be forced to choose between paying its environmental consultant out of its own pocket – in spite of the Insurers' duty to defend – or starting over with a new environmental consultant not of its own choosing and with whom it has prior negative history.

The Court states that all of the harm Ranburn cited was predicated on it taking the second option (i.e., agreeing to use the insurer's preferred contractor). The use of such contractor is argued to:

- Delay the remediation
- Expose the company to sanctions by IDEM
- Damage its credibility

Ranburn is stated to have admitted it can avoid that harm by continuing to pay its existing contractor during the pendency of the litigation. As a result, the Court states that Ranburn will suffer no irreparable harm that could not be remedied by legal relief. The Court notes that if Ranburn prevails the insurers can be ordered to reimburse it for all the expenses it incurs which would fully remedy the harm. It further notes that Ranburn's request for reimbursement of expenses it has already incurred "presents an even clearer case." The Court characterizes this as purely legal relief and states the company has offered no reason why it must receive that relief now instead of after a final judgment.

The Court determines that Ranburn is not entitled to a preliminary injunction.

[A copy of the opinion can be downloaded here.](#)