UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

McGinnes Industrial Maintenance Corporation v. The Phoenix Insurance Company; The Travelers Indemnity Company

631 F. App'x 258 (5th Cir. 2016) · No. No. 13-20360 · Decided February 2, 2016

SUMMARY

The Fifth Circuit considered whether EPA enforcement proceedings under CERCLA constitute a “suit” triggering an insurer’s duty to defend under commercial general liability policies. Following the Supreme Court of Texas’s answer to the certified question that such proceedings qualify as a suit, the court reversed the district court’s summary judgment for the insurers and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Barksdale; Clement; Owen
JURISDICTION	Federal
DECIDED	February 2, 2016
DOCKET	No. 13-20360
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Southern District of Texas after the district court granted summary judgment for the insurers on the ground that they had no duty to defend. In a prior opinion, the Fifth Circuit certified the dispositive insurance-law question to the Supreme Court of Texas.
STANDARD OF REVIEW	De novo review of the district court's summary judgment ruling
PRECEDENTIAL VALUE	Unpublished and nonprecedential under 5th Cir. R. 47.5, except as permitted by Rule 47.5.4.
PARTIES	McGinnes Industrial Maintenance Corporation v. The Phoenix Insurance Company, The Travelers Indemnity Company

TOPICS

duty to defend · insurance coverage · cercla · appellate procedure · standard of review

PRACTICE AREAS

insurance coverage · environmental law · contracts · appellate procedure

QUESTIONS PRESENTED

1. Whether EPA enforcement proceedings under CERCLA constitute a suit within the meaning of the commercial general liability policies and therefore trigger the insurers' duty to defend.

HOLDINGS

1. The term suit in the policies includes CERCLA enforcement proceedings brought by the EPA, thereby triggering a duty to defend.

KEY QUOTATIONS

> *"must also include CERCLA enforcement proceedings by the EPA"* (Document page 2)

FACTUAL BACKGROUND

The dispute arose from commercial general liability policies issued to McGinnes by Phoenix Insurance and Travelers. The Environmental Protection Agency pursued enforcement proceedings against McGinnes under CERCLA. The insurers denied a duty to defend on the ground that the EPA proceedings were not a suit within the policies.

PROCEDURAL HISTORY

McGinnes appealed the district court's summary judgment ruling that the insurers had no duty to defend. The Fifth Circuit certified whether EPA enforcement actions under CERCLA constitute a suit under the commercial general liability policies. The Supreme Court of Texas answered that CERCLA enforcement proceedings by the EPA are included within the policies' meaning of suit and later denied rehearing. The Fifth Circuit then reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the district court for further proceedings consistent with the conclusion that the insurers had a duty to defend.

CASES CITED

- McGinnes Indus. Maint. Corp. v. Phoenix Ins. Co., 571 F. App'x 329, 333, 335 (5th Cir. 2014) (per curiam)
- McGinnes Indus. Maint. Corp. v. Phoenix Ins. Co., No. 14-0465, 2015 WL 4080146 (Tex. June 26, 2015), reh'g denied (Jan. 22, 2016)
- McGinnes Indus. Maint. Corp. v. Phoenix Ins. Co., No. 4:11-CV-4000, 2013 U.S. Dist. LEXIS 186670 (S.D. Tex. Apr. 18, 2013)