

29 INSURANCE COVERAGE FOR ENVIRONMENTAL CONTAMINATION

The United States District Court, applying Alaska law, interpreted the language of a standard comprehensive general liability policy in the context of an environmental claim.¹ The *Mapco* court held that environmental clean-up costs incurred to comply with governmental regulations were "damages" covered under the policy.² In reaching this holding, the *Mapco* court relied heavily on the legal analysis set forth by the California Supreme Court in *AIU Insurance Co. v. FMC Corp.*, 799 P.2d 1253 (Cal. 1990), and the Washington Supreme Court in *Boeing Co. v. Aetna Casualty & Surety Co.*, 784 P.2d 507 (Wash. 1990).

Furthermore, the *Mapco* court ruled that contamination of groundwater was "property damage," covered under Mapco's CGL policy.³ In reaching this conclusion, the court reasoned that the Alaska Constitution provides that water is a resource for the common use of all Alaskans and that discharge of petroleum products into the water is a prohibited act, for which civil penalties are available. Accordingly, the court concluded that groundwater is not the "owned property" of the insured, and as such did not fall within the "owned property" exclusion of Mapco's CGL policy.

Next, the *Mapco* court held that coverage under the policy was triggered at the time the groundwater was exposed to contaminants, rather than when the damages were manifested.⁴

Finally, the *Mapco* court interpreted the pollution exclusion clause in the policy, which contained a "sudden and accidental" exception to the exclusion. The court concluded that "the phrase 'sudden and accidental,' as well as having a temporal meaning, can also refer to that which occurs without notice."⁵ Consequently, the court held that summary judgment was not appropriate because the question of whether or not the contamination of groundwater with benzene was sudden and accidental was really a question of fact for the jury.

The Alaska Supreme Court commented on the applicability of pollution exclusion clauses, and recognized that "[m]ost courts which have interpreted the pollution exclusion consider the phrase 'sudden and accidental' to be ambiguous and thus construe it against the insurer to mean 'unexpected or unintended.'"⁶ This statement demonstrates that, when faced squarely with the question, the Alaska Supreme Court

¹ *Mapco Alaska Petroleum, Inc. v. Central National Insurance Co. of Omaha*, 784 F. Supp. 1454 (D. Alaska 1991).

² *Mapco Alaska Petroleum, Inc.* 784 F. Supp. at 1464-65.

³ *Id.* at 1465.

⁴ *Id.* at 1461.

⁵ *Id.* at 1460.

⁶ *Sauer v. Home Indemnity Co.*, 841 P.2d 176, 181 n.8 (Alaska 1992).

probably will give the term "sudden and accidental" an expansive interpretation favorable to insureds, as predicted by the court in *Mapco*. The *Sauer* court also held that the insurer has a duty to defend when the damages suffered by an insured are "at least potentially outside the scope of the pollution exclusion and thus potentially within policy coverage."⁷

In *Whittier Properties, Inc. v. Alaska Nat. Ins. Co.*, the Alaska Supreme Court held that "even though gasoline . . . a 'product' for purposes of other parts of the insurance policy, when the gasoline escapes or reaches a location where it is no longer a useful product it is fairly considered a pollutant."⁸ The court went on to hold that there was no coverage because the insurance policy was unambiguous in its exclusion of coverage for the gasoline leak.

⁷ *Sauer*, 841 P.2d at 181-82.

⁸ 185 P.3d 84, 90-91 (Alaska 2008)