

Sample.brf

This Court has recognized that the existence duty to defend presupposes that a complaint has been filed and a suit commenced Ryan v. Ins. Co., 1990 U.S. App. LEXIS 17400 (CA1, 1990).

The lower court erroneously relied on the decision of a federal court in In re G.S. OMNI Corporation, 835 F.d 1317, (CA10, 1987) a case in which a lawsuit actually was filed, to support its conclusion that the PRP letters constitute a suit. That decision, reviewing in hindsight the insured's expenditure of defense costs in a large and complex damage suit, held only that some pre-suit expenses, incurred shortly before suit was filed and when "it was almost certain that a suit would be filed," could be covered, "under these particular circumstances." Id. at 586. The court's holding was expressly limited to the unusual facts present there. Moreover, the court considered the insurer's argument that the duty to defend is normally triggered only by the filing of a lawsuit in court, and stated, "we do not disagree with this general proposition." Id. at 585.

A great number of decisions outside the context of environmental enforcement requests have recognized this meaning of "suit," refusing to find the defense obligation triggered by claims or requests outside of actual litigation. Even the broadest definition of "suit" requires at least "adjudicatory proceedings taking place in [a] forum." Solo Cup Co. v. Federal Ins. Co., 619 F.2d 1178, 1188 n. 7 (6th Cir. 1981). In that case, the Seventh Circuit held that a GSA administrative allegation of discrimination and proposal for backpay and interest was not a "suit" because that proposal merely meant that in the future there might be a binding hearing. Soloo, 619 F.2d at 1188-89.

Numerous cases recognize the separate, temporal meaning of sudden. Just v. Land Reclamation, Ltd., No. 88-1656, slip op. at 8-9 (Wis. Ct. App. July 12, 1989) ("[t]he term 'sudden and accidental' does not apply to pollution damage occurring over a substantial period of time. . . . 'sudden' is defined temporally and not in terms of unexpectedness") (citations omitted).