Chubb Custom Ins. Co., et al. v. Space Systems/Loral, Inc.

Year: 2010
Court: U.S. Court of Appeals, 9th Circuit
Case Number: 11-16272

UP's brief argued that insurers should not be allowed to recoup funds under subrogation in CERCLA cases, arguing that allowing otherwise would create the risk of a windfall gain to insurers and that the intent of CERCLA was to maximize the amount of funds available for environmental clean-up, not indemnification of entities whose very purpose is to absorb contingent risks.UPDATE:On January 13, 2014, the U.S. Supreme Court declined to review the Ninth Circuit's March 15, 2013 holding that insurers could not seek subrogation under CERCLA section 107 because they do not "incur costs of response." The Ninth Circuit also held that claims under section 112 were barred because the insurer did not allege that the policyholder was a "claimant" within the meaning of the statute. UP's brief countered the insurer's argument that the lower court decisions could undermine the future availability of environmental insurance. The Ninth Circuit agreed with UP that there is no evidence that insurer's rely on CERCLA remedies when issuing environmental liability policies. UP further argued, and the Ninth Circuit agreed, that insurers are adequately compensated through policyholder premiums to assume the risk of payment.

UP's brief was written pro bono by Alexander Hardiman, John G. Nevius and Peter A. Halprin of Anderson Kill & Olick, P.C. (NYC).

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