



**In the
Missouri Court of Appeals
Western District**

**CERTAIN UNDERWRITERS
AT LLOYD'S LONDON,**

Respondent,

v.

**NORTHROP GRUMMAN
CORPORATION, ET AL.,**

Appellants;

**CERTAIN OTHER LONDON MARKET
INSURANCE COMPANIES AND
EMPLOYER'S INSURANCE COMPANY
OF WAUSAU,**

Respondents.

WD87343

**OPINION FILED:
NOVEMBER 4, 2025**

**Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Charles H. McKenzie, Judge**

**Before Division Four: Anthony Rex Gabbert, Chief Judge, Presiding,
Lisa White Hardwick, Judge, Thomas N. Chapman, Judge**

Northrop Grumman Corporation appeals the judgment of the Jackson County Circuit Court finding that multiple insurance companies did not have a duty to defend or indemnify it in a class action lawsuit. The appellants argue in nine points that the circuit court erred in granting summary judgment. The judgment is affirmed.

Facts

Certain Underwriters at Lloyd's London, Certain London Market Insurance Companies, and Certain Other London Market Insurance Companies ("the London Insurers") sold policy number 64/10996/1, in effect for the policy period of May 2, 1964 to May 2, 1967 ("the London Policy") under which both Litton Industries, Inc. and Litton Systems, Inc. (collectively "Litton") are insureds. The London Policy states in relevant part:

[London Insurers] pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of injury sustained by any person or organization. . . .

[London Insurers] shall . . . defend any suit against the Insured alleging any such injury and seeking damages on account thereof, even if such suit is groundless, false or fraudulent. . . and the amounts so incurred, except settlements of claims and suits, are payable by the Underwriters in addition to the applicable limit of liability of this certificate and irrespective of any deductible.

The term "injury" is defined in the London Policy to include both (1) "property damage," another defined term that encompasses "injury to or loss, destruction or loss of use of property," as well as (2) "personal injury," defined to include (among other things) injury arising out of "wrongful entry," which the London Policy does not define.

Employers Insurance Company of Wausau ("Wausau") sold policy number 202200035036, in effect for the policy period of January 1, 1969 to April 1, 1971 ("the Wausau Policy"), under which both Litton Industries, Inc. and Litton Systems, Inc. are insureds. The Wausau Policy's insuring agreement states in relevant part:

[Wausau] will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

Coverage A: Personal Injury

Coverage B: Property Damage

to which this policy applies, caused by an occurrence, and [Wausau] shall have the right and duty to defend any suit against the insured seeking damages on account of such personal injury or property damage even if any of the allegations of the suit are groundless, false, or fraudulent[.]

The Wausau Policy defines “property damage” to include “injury to or destruction of property.” The Wausau Policy defines “personal injury” to include injury arising out of “wrongful entry . . . or other invasion of the right of private occupancy,” but the phrases “wrongful entry” and “invasion of the right of private occupancy” are not further defined.

From the 1960s through the 1980s, Litton manufactured printed circuit boards at a site in Springfield, Missouri (“the Contamination Site”). Litton generated waste containing metals, predominately copper, and volatile organic compounds such as trichloroethylene (“TCE”) at the Contamination Site. Litton managed waste in a series of on-site waste management units consisting of shallow lagoons, waste piles, and pits. This waste management procedure did not fully contain the materials. The Missouri Department of Natural Resources (“DNR”) became involved. In 1983, Litton paid a fine for violations of Missouri’s hazardous waste management law and cleaned up the contaminated site. A network of monitoring wells and extraction wells were put in place.

In 2001, Northrop Grumman Corporation (“Northrop”) acquired Litton. In September 2021, a class of plaintiffs (“the Class Action Plaintiffs”) filed a class action

lawsuit in federal court against Northrop (“Class Action Lawsuit”). In December 2021, the Class Action Plaintiffs filed a first amended class action complaint. The complaint stated that, sometime after 1982, well water located on the putative class members’ respective properties became contaminated with trichloroethylene (“TCE”) and other contaminants that migrated from the Contamination Site. The original and first amended complaint alleged five causes of action against Northrop: (1) negligence; (2) temporary nuisance; (3) continuing nuisance; (4) trespass; and (5) preliminary and permanent injunction.

In May 2022, the federal court granted Northrop’s motion to dismiss because the claims asserted were preempted by the Comprehensive Environmental Response, Compensation, and Liability Act and previously executed consent decrees and agreements with governmental authorities. In June 2022, the Class Action Plaintiffs filed a second amended complaint asserting a single claim of negligence. That claim was premised on the theory that Northrop breached a duty to warn about the TCE contamination and that Northrop negligently performed its duties under the previously executed Consent Decree and Settlement. In August 2022, the federal court dismissed the negligence claim to the extent that it was premised on Northrop’s allegedly negligent performance of duties under settlement agreements.

The federal court did not dismiss the Class Action Plaintiffs’ negligence claim premised on Northrop’s alleged failure to warn the public of TCE discovered in private

wells. The parties reached a settlement in April 2023. They filed a stipulation of dismissal of the class action suit in May 2023, dismissing the claims with prejudice.

In December 2021, Northrop tendered defense and indemnity of the class action lawsuit to the various insurers. The London Insurers denied coverage, claiming there was no alleged property damage or personal injury during the period of the London Policy. Wausau also denied defense and indemnity coverage for the Class Action Lawsuit. In June 2022, Northrop unsuccessfully attempted to obtain defense and indemnity a second time when the Class Action Plaintiffs filed the second amended class action complaint.

In October 2022, Certain Underwriters at Lloyd's London and Certain London Market Insurance Companies ("London") filed a declaratory judgment action in the Jackson County Circuit Court. The petition sought a declaratory finding that London had no duty to defend or indemnify Northrop in the Class Action Lawsuit. Northrop filed a counterclaim against London, Nominal Defendants, and Wausau. Wausau filed a counterclaim for declaratory judgment against Northrop seeking a declaratory finding that Wausau had no duty to defend or indemnify Northrop in the Class Action Lawsuit.

All parties filed motions for summary judgment. The circuit court found that London, Nominal Defendants, and Wausau do not have a duty to defend or indemnify Northrop in the Class Action Lawsuit. Specifically, the circuit court found in its judgment:

The Court finds that the allegations in the Underlying Suit were claims against Northrop for their own actions or for actions after the expiration of

the policies in either exacerbating the conditions, or for failing to correct damage that was known to them or for failing to warn of the conditions.

Northrop now appeals to this court.¹

Standard of Review

“Appellate review of the grant of summary judgment is *de novo*.” *Sprint Lumber, Inc. v. Union Ins. Co.*, 627 S.W.3d 96, 106 (Mo. App. W.D. 2021). “The reviewing court applies the same criteria as the trial court in determining whether summary judgment was proper.” *Id.* “Summary judgment is proper if the movant is entitled to judgment as a matter of law and no genuine issues of material fact exist.” *Id.* “Facts contained in affidavits or otherwise in support of a party’s motion for summary judgment are accepted as true unless contradicted by the non-moving party’s response to the motion.” *Id.* “The record is reviewed in the light most favorable to the party against whom judgment was entered, according that party all reasonable inferences that may be drawn from the record.” *Id.*

“The interpretation of an insurance contract is a question of law given *de novo* review.” *Id.* “When interpreting an insurance contract, the policy language is given its plain meaning, or the meaning that would be attached by an ordinary purchaser of insurance.” *Id.* “If the policy language is clear and unambiguous, it must be construed as written.” *Id.* (internal quotation marks omitted). “A phrase is ambiguous only if it is reasonably open to different constructions.” *Id.* (internal quotation marks omitted).

¹ London and Wausau have filed separate Respondents Briefs with this court.

“Courts may not create an ambiguity when none exists.” *Id.* (internal quotation marks omitted).

Insurance Coverage

“An insurer owes two distinct duties to its insured: a duty to indemnify and a duty to defend.” *Id.* (internal quotation marks omitted). “The duty to defend is broader than the duty to indemnify.” *Id.* “The duty to defend arises only when there is a possibility or potential for coverage at the outset of the case.” *Id.* (internal quotation marks omitted). “The duty to defend is determined by comparing the insurance policy language with facts: (1) alleged in the petition; (2) the insurer knows at the outset of the case; or (3) that are reasonably apparent to the insurer at the outset of the case.” *Id.* (internal quotation marks omitted). “If the complaint merely alleges facts that give rise to a claim potentially within the policy’s coverage, the insurer has a duty to defend.” *Id.* (internal quotation marks omitted). “The insurer is not relieved of its duty to defend merely because the plaintiff in the underlying lawsuit pleaded its claims inartfully.” *Id.* “The duty to defend potentially insured claims arises even if claims beyond coverage may also be present.” *Id.* “To extricate itself from the duty to defend the insured, the insurance company must prove that there is *no possibility* of coverage.” *Id.* at 106-07 (internal quotation marks omitted) (emphasis in original).

“The duty to defend does not depend simply on a comparison of the policy’s coverage with the allegations in the pleadings against the insured; instead, a duty to defend may also be triggered by the facts [the insurer] knew or could have ascertained

from a reasonable investigation.” *Id.* (internal quotation marks omitted). “Thus, even though the pleadings do not show coverage, a duty to defend may exist where a possibility of coverage is demonstrated by known or reasonable ascertainable facts.” *Id.* (internal quotation marks omitted). “[T]he allegations contained within the petition alone are not the sole determinant of the duty to defend.” *Id.* (internal quotation marks omitted). “[T]he insurer cannot ignore safely actual facts known to it or which could be known to it or which could be known from reasonable investigation.” *Id.* (internal quotation marks omitted).

Points I, II, IV, V, VI, and VII

In its first and second points on appeal, Northrop claims the trial court erred in granting summary judgment because the allegations in the Class Action Lawsuit original/first amended complaint² (Point I) and the Class Action Lawsuit second amended complaint (Point II) give rise to potentially covered claims for property damage that took place during the London Policy period. Northrop states the trial court erred in concluding that the complaints alleged claims for actions and resulting damage that took place after the expiration of the London Policy. Point IV makes the same argument with respect to claims for unlawful entry.

In its fifth and sixth points on appeal, Northrop claims the trial court erred in granting summary judgment because the allegations in the Class Action Lawsuit

² The Class Action Lawsuit first amended complaint made only minor changes, and is substantively similar, to the Class Action Lawsuit original complaint.

original/first amended complaint (Point V) and the Class Action Lawsuit second amended complaint (Point VI) give rise to potentially covered claims for property damage that took place during the Wausau Policy period. Northrop states the trial court erred in concluding that the complaints alleged claims for actions and resulting damage that took place after the expiration of the Wausau Policy. Point VII makes the same argument with respect to claims for unlawful entry.

The Class Action Lawsuit first amended complaint and second amended complaint contained essentially the same factual allegations, including the following: Northrop purchased Litton in 2001. At that time, Northrop was aware of the TCE contamination. After 2001, public attention about the contamination was limited, in most part due to a lack of disclosures from Northrop and the DNR. TCE only received renewed public attention because it was found at a popular tourist attraction when testing occurred in 2016-2017. In 2018, DNR began testing wells around the Contamination Site. While TCE contamination was not present in nearby wells in 1982, TCE was detected in numerous nearby wells in 2018. This TCE contamination was a surprise to Springfield property owners. One of the Class Action Plaintiffs has owned contaminated property since 2006. Another Class Action Plaintiff has owned contaminated property for at least over twenty years. If the Class Action Plaintiffs had been made aware of the TCE contamination, they would not have used their well water, purchased their properties, and/or spent money improving their properties.

Northrop had a duty to prevent the spread of TCE. Northrop has had at least two decades to remediate the Contamination Site and to prevent the spread of TCE. As can be seen due to the numerous positive well tests for TCE, Northrop has failed and refused to fully remediate the TCE contamination. Although in 1983 there was no “contamination of nearby wells,” through mismanagement of the site, not just nearby wells, but wells throughout Springfield have tested positive for TCE.

At the time the Class Action Plaintiffs purchased their property, they were unaware of the TCE contamination and that TCE had spread from the site; there was no signage at the former Litton site warning of contamination and there is not signage currently. Northrop knew since at least 2004 of TCE contamination of the Springfield Aquifer, the Ozark Aquifer, and at least one “private well,” and yet withheld this information. Northrop’s knowledge of offsite contamination due to TCE from the Contamination Site appears to arise even prior to 2004. At least as early as 2002, DNR sent Northrop a letter referring to its “grave concerns” that the TCE Contamination Site was “a contributing source of the VOCs found in Big Williams Spring and the Little Sac River at Fantastic Spring.” Positive TCE tests from the Contamination Site continued for years after 2004, reinforcing that Northrop’s duty arose and continued until 2018-2019 when Northrop finally informed the community of the TCE contamination from the Site. During this time, it was foreseeable, if not known, to Northrop that since people were unaware of TCE contamination, that people would drink, bathe, wash their clothing, and cook with well water.

The Class Action Lawsuit first amended complaint and second amended complaint discussed the class of plaintiffs as follows:

Plaintiffs bring this action for themselves individually and as representatives of class of all other similarly situated plaintiffs. Plaintiffs intend to seek certification of four classes: (a) an Owner-Occupant Class and (b) a Tenant Class both of whom used well water on their property any time from 2004 until present within the geographic range where DNR is currently offering free water well testing for TCE and (c) an Owner-Occupant Class and (d) a Tenant Class who have used private wells on their property any time between 2004 until present with a 10-mile radius of the Contamination Site.

The Class Action Lawsuit first amended complaint asserted the following claims:

(1) negligence based on the failure to monitor the spread of TCE from the contamination site, failure to warn that TCE had spread from the contamination site, and negligent operation and/or remediation in a manner that allowed the TCE to spread from the contamination site; (2) temporary nuisance based on the TCE spreading and creating a physically harmful nuisance; (3) continuing nuisance based on mismanagement of the contamination site; (4) trespass based on the failure to stop the spread of TCE; and (5) preliminary and permanent injunction to remediate the TCE and prevent its further spread. The Class Action Lawsuit second amended complaint alleged one count of negligence based on: (1) the failure to warn that TCE had contaminated private wells starting in at least 2004; and (2) the failure to perform obligations imposed by the consent decree in at least 2002, 2003, 2007, 2010-2013, 2018, and 2020. Both the first and second amended complaints alleged in their claims for negligence:

As of 1982, nearby wells were not contaminated with TCE.

In 2004, however, Defendants found at least one “private well” that tested above the MCL for TCE. In both first and second amended

Defendants knew starting in at least 2004 there was a significant risk that Plaintiffs and the Classes would be exposed to TCE, at a minimum through contaminated well water.

The London Policy covered acts that occurred from 1964-1967 that caused property damage or personal injury. The Wausau Policy covered acts from 1969-1971 that caused property damage or personal injury. As set forth in great detail above, the Class Actions Plaintiffs alleged that contamination of off-site wells occurred sometime after 1982 because of Northrop’s failure to contain TCE seepage. The class of plaintiffs is people who were harmed from 2004 through the present. The Class Action Plaintiffs claim that Northrop knew as of at least 2004 that TCE contamination had spread, but did not warn the public. The Class Action Lawsuit does not give rise to a claim potentially within the London or Wausau Policy’s coverage.

Northrop focuses on the factual allegations stating the history of TCE contamination in Springfield. These facts include: Litton began manufacturing printed circuit boards in the 1960s; Litton generated waste containing TCE and other contaminants; until the 1980s, Litton managed waste in a series of shallow lagoons, waste piles, and pits; this waste management procedure did not fully contain the materials, the State of Missouri brought an action in 1982 alleging that Litton did not properly monitor the groundwater; since 1983, contamination of wells has occurred due to the failure to contain the TCE seepage; in 1983, Litton paid a fine for violations of Missouri’s

hazardous waste management law and cleaned up the contaminated site; and that a network of monitoring wells and extraction wells were put in place. These facts give a fuller understanding of the history of the TCE contamination; the Class Action Plaintiffs are not asserting a claim based on Litton's actions in the 1960s and 1970s.

Points I, II, IV, V, VI, and VII are denied.

Points III and VIII

Northrop argues that the trial court erred in finding that the London Policy (Point III) and Wausau Policy (Point VIII) did not cover the types of claims alleged. Northrop states that, even if Northrop's actions after the London Policy and Wausau Policy lapsed are alleged to be the cause of the Class Action Plaintiffs' injury, the TCE contamination occurred as far back as the 1960s and is a but for and proximate cause of the injury.

Northrop claims that the Class Action Plaintiffs would not have suffered any damage and Northrop would not have been sued had it not been for the actions of Litton during the London and Wausau Policy periods.

Northrop cites *Old Republic Ins. Co. v. Kenny Constr. Co.*, No. 15-CV-03524, 2017 WL 4921970, at *9–10 (N.D. Ill. Oct. 31, 2017) in support of its argument. In that case, the court held that an insurance company had a duty to indemnify a general contractor under an insurance policy obtained by a subcontractor. The subcontractor installed clamps that failed, but the general contractor approved the use of the clamps. *Id.* The court cited law holding that “*any* causal connection between [the subcontractor's]

work and the liability is sufficient to establish [the general contractor's] status as an additional insured.” *Id.* at *10 (internal quotation marks omitted) (emphasis in original).

Northrop cites *Great Am. E & S Ins. Co. v. Power Cell LLC*, 356 F. Supp. 3d 730, 744 (N.D. Ill. 2018) for the proposition that the Class Action Plaintiffs were injured because of Litton's actions during the London and Wausau Policy period dates. That case involved a business that sells battery-operated window shades and coverings suing its battery supplier in part for damage done to customer's homes. *Id.* at 738-39. The court held that “damages sought ‘because of’ property damage includes consequential damages precipitated by property damage, including those that do not affect the plaintiff's own tangible property.” *Id.* at 745.

Northrop also cites *Cincinnati Insurance Co. v. H.D. Smith, L.L.C.*, 829 F.3d 771 (7th Cir. 2016). In that case, the court noted that a policy that covers suits seeking damages “*because of* bodily injury” ... “provides broader coverage than one that covers only damages ‘*for* bodily injury.’” *Id.* at 774 (emphasis in original). The court gave the example that a policy with the “because of” language would cover not only a paralyzed individual's medical costs, but also the costs of making paralyzed individual's house wheelchair accessible. *Id.*

We find all of these cases distinguishable from the current case. As discussed above, Northrop is being sued because of its actions decades after the London Policy and Wausau Policy coverage dates. The Class Action Lawsuit is not asserting a claim that

Litton contaminated water with TCE. Instead, it asserts claims premised on what Northrop did or did not do after it acquired Litton.

Points III and VIII are denied.

Point IX

In its ninth point on appeal, Northrop argues that the trial court erred in its judgment because the court did not consider the Class Action Plaintiffs' own explanations of their allegations made in their underlying briefing. Northrop states that Class Action Plaintiffs confirmed that they were seeking damages from Northrop because Northrop was liable for Litton's conduct. Northrop relies on language from the Class Action Plaintiffs' briefing.

In their suggestions in opposition to Northrop's motion to dismiss the first amended complaint, the Class Action Plaintiffs stated that "the original hazardous waste deposit of TCE" is "the culprit." They did so in the context of whether the Comprehensive Environmental Response, Compensation, and Liability Act savings clause applies so as not to bar a state action because the savings clause allows for common law claims that concern the original waste deposit. The Class Action Plaintiffs also stated that their suit was not preempted because they were not trying to interfere with Northrop's remedial actions on the Contaminated Site but were instead seeking "relief under common law theories that have long been recognized by Missouri courts as a basis for recovery for personal injury and property damage from parties found to be

responsible for the release of hazardous substances.” In their second amended complaint, the Class Action Plaintiffs stated:

109. Further, Defendants’ 2020 Technical Update confirmed that all along, Defendants were aware that “[i]t is technically infeasible to hydraulically capture contaminant mass in the karst system under dynamic flow conditions.” Ex. A at 82. In other words, Defendants were aware that containing the TCE plume under the Contamination Site was “infeasible.” Id. This information should have been provided to the public, and certainly should have been provided prior to the entry of any Consent Decree, including the 2010 Consent Decree.

In their suggestions in opposition to Northrop’s motion to dismiss the second amended complaint, the Class Action Plaintiffs argued that their claims do not conflict with the Comprehensive Environmental Response, Compensation, and Liability Act because the TCE contamination happened prior to the consent decrees and because the TCE contamination is the original pollution that gave rise to the consent decrees. The Class Action Plaintiffs argued that their claims were not preempted because they were based on the original contamination.

We do not find that these statements by the Class Action Plaintiffs are inconsistent with our analysis above. The London Policy and Wausau Policy only provide coverage for injury or damage that occurs during the policy period. The Class Action Plaintiffs alleged they were injured from Northrop’s actions when Northrop failed to monitor the

spread of TCE, failed to warn about TCE, failed to remediate TCE, and failed to stop the spread of TCE. These actions occurred outside the policy period.³

Point IX is denied.

Conclusion

The judgment is affirmed.



Anthony Rex Gabbert, Chief Judge

All concur.

³ Northrop argues that when it acquired Litton, Litton simply changed its name to Northrop and that Northrop is Litton as it existed prior to acquisition. We need not address this issue despite whether the acquisition changed any status. If Northrop is Litton as it exists after a name change, neither the London Policy and Wausau Policy provide coverage because the Class Action Lawsuit asserted claims for actions after the policies ended. If Northrop acquired Litton, and as a result of the acquisition is not the same entity as Litton, neither the London Policy and Wausau Policy provide coverage because the Class Action Lawsuit asserted claims for actions after the policies ended.