

July 2, 2010

Client Alert

Indiana Supreme Court to Hear *Standard Fusee*

By: Jeffrey D. Clafin

The Indiana Supreme Court recently granted transfer in *Standard Fusee v. National Union Fire Insurance Company of PA, et al.*, and oral arguments are now scheduled for July 29.

In *Standard Fusee*, consistent with settled Indiana law, the Court of Appeals had affirmed the trial court's rulings (1) that the so-called "absolute" pollution exclusion is ambiguous and unenforceable under Indiana law, (2) that "voluntary" remediations in nominal cooperation with governmental authorities are "suits" under Indiana law, and (3) that, because there is at least a potential for coverage under the policies for environmental liability actions, Standard Fusee is entitled to defense from its insurers against those actions. But while the trial court had ruled that Indiana law would apply to the entire controversy to determine coverage for the actions arising in both Indiana and California, the Court of Appeals had rejected Indiana's "uniform contract interpretation approach" in favor of a site specific approach, where Indiana law would be applied to determine insurance coverage for the Indiana claim, and California law for the California claim.

On transfer, the Supreme Court can affirm or reverse the Court of Appeals' decision, or any part of it. As things now stand, by granting transfer, the Supreme Court has vacated the Court of Appeals' decision and it is no longer of any force or effect. This does not affect Indiana's prior decisions in favor of policyholders on the pollution exclusion, "suit," or the duty to defend. However, it does mean that the Court of Appeals' decision in *Standard Fusee* can no longer be cited in support of the site specific approach for making a choice of law in such cases.

Standard Fusee is represented by Plews Shadley Racher & Braun attorneys Jeff Clafin, Thao Nguyen, Greg Gotwald and Theresa Willard.