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PPG Indus., Inc. v. American Home Assur. Co., 2007 N.J. Super. Unpub. LEXIS 1494, 2007 N.J. Super. Unpub. LEXIS 1494

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Superior Court of New Jersey, Appellate Division

April 23, 2007, Argued; August 20, 2007, Decided

DOCKET NO. A-2424-05T2

Reporter

2007 N.J. Super. Unpub. LEXIS 1494 * | 2007 WL 2350646

PPG INDUSTRIES, INC., Plaintiff-Appellant, v. AMERICAN HOME ASSURANCE COMPANY; APPALACHIAN INSURANCE COMPANY for itself and as successor-in-interest to APPALACHIAN INSURANCE COMPANY OF PROVIDENCE; EMPLOYERS INSURANCE COMPANY OF WAUSAU, A MUTUAL COMPANY; GREAT AMERICAN INSURANCE COMPANY; HANOVER INSURANCE COMPANY; NEW HAMPSHIRE INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTS-BURGH, PA; OLD REPUBLIC INSURANCE COMPANY; PROTECTION MUTUAL INSURANCE COMPANY; and UTICA MUTUAL INSURANCE COMPANY, Defendants-Respondents, and ACCIDENT AND CASUALTY INSURANCE COMPANY OF WINTERTHUR as predecessor in interest to WINTERTHUR SWISS INSURANCE COMPANY; AETNA CASUALTY AND SURETY COMPANY (now known as TRAVELERS CASUALTY AND SURETY COMPANY); AGRICULTURAL INSURANCE COMPANY; AIU INSURANCE COMPANY; ALBA GENERAL INSURANCE COMPANY LTD.; ALLIANZ INSURANCE COMPANY; ALLIANZ INTERNATIONAL INSURANCE COMPANY LTD.; ALLIANZ UNDERWRITERS INSURANCE COMPANY; ALLSTATE INSURANCE COMPANY as successor-in-interest to NORTH-BROOK EXCESS AND SURPLUS INSURANCE COMPANY formerly known as NORTH-BROOK INSURANCE COMPANY; AMERICAN INSURANCE COMPANY; AMERICAN REINSURANCE COMPANY; ANCON INSURANCE COMPANY (U.K.), LTD.; ANGLO FRENCH INSURANCE COMPANY LTD.; ANGLO SAXON INSURANCE ASSOCIATION LTD.; ARGONAUT INSURANCE COMPANY; ARGONAUT NORTHWEST INSURANCE COMPANY; ASSICURAZIONI GENERALI T.S.; ASSICURAZIONI GENERALI S.p.A.; ASSOCIATED INTERNATIONAL INSURANCE COMPANY; ATLANTIC MUTUAL INSURANCE COMPANY; BELLEFONTE INSURANCE COMPANY (U.K.) LTD.; BIRMINGTON FIRE INSURANCE COMPANY OF PENNSYLVANIA; THE BISHOPSGATE INSURANCE COMPANY, LTD.; BRITISH AVIATION INSURANCE COMPANY; BRITISH NATIONAL INSURANCE COMPANY LTD.; BRITISH NATIONAL LIFE INSURANCE SOCIETY LTD.; BRITISH RESERVE INSURANCE COMPANY; BRITTANY INSURANCE COMPANY, LTD.; THE CAMDEN FIRE INSURANCE ASSOCIATION; C.E. HEATH COMPENSATION AND LIABILITY INSURANCE COMPANY as successor-in-interest to FALCON INSURANCE COMPANY formerly known as COMMERCIAL

UNION SURPLUS LINES INSURANCE COMPANY, formerly known as EMPLOYERS SURPLUS LINES INSURANCE COMPANY; CIGNA INSURANCE COMPANY OF EUROPE SANV as successor-in-interest to THE HOME INSURANCE COMPANY; CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY as successor-in-interest to AETNA INSURANCE COMPANY; CIGNA SPECIALTY INSURANCE COMPANY as successor-in-interest to CALIFORNIA UNION INSURANCE COMPANY; CITY GENERAL INSURANCE COMPANY, LTD.; CNA REINSURANCE OF LONDON, LTD.; COLUMBIA CASUALTY COMPANY; COMMERCIAL UNION INSURANCE COMPANY formerly known as EMPLOYERS COMMERCIAL UNION INSURANCE COMPANY and as successor-in-interest to EMPLOYERS LIABILITY ASSURANCE CORPORATION LIMITED; COMPAGNIE D'ASSURANCES MARITIMES AERIENNES ET TERRESTRES (CAMAT); CONTINENTAL CASUALTY COMPANY; THE CONTINENTAL INSURANCE COMPANY for itself and as successor-in-interest to BOSTON INSURANCE COMPANY and HARBOR INSURANCE COMPANY; DELVAG; THE DOMINION INSURANCE COMPANY, LTD.; DRAKE INSURANCE COMPANY, LTD.; EAGLE STAR INSURANCE COMPANY, LTD. as successor-in-interest to HOME AND OVERSEAS INSURANCE COMPANY, LTD.; EISEN UND STAHL; EMERALD INSURANCE COMPANY, LTD.; EMPLOYERS MUTUAL CASUALTY COMPANY; EMPLOYERS REINSURANCE CORPORATION; EVEREST REINSURANCE COMPANY as successor-in-interest to PRUDENTIAL REINSURANCE COMPANY; EXCESS INSURANCE COMPANY, LTD.; EXECUTIVE RISK INDEMNITY COMPANY, INC. as successor-in-interest to EXECUTIVE RE INDEMNITY INC., formerly known as ERIC REINSURANCE COMPANY, formerly known as AMERICAN EXCESS INSURANCE COMPANY; FEDERAL INSURANCE COMPANY; FIDELIDADE INSURANCE COMPANY, LTD.; FIDELITY AND CASUALTY COMPANY OF NEW YORK; FIREMAN'S FUND INSURANCE COMPANY; FIRST STATE INSURANCE COMPANY; FOLKSAM INTERNATIONAL INSURANCE COMPANY (U.K.), LTD.; GANS INSURANCE COMPANY, LTD. as successor-in-interest to MINSTER INSURANCE COMPANY, LTD.; GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA as successor-in-interest to GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION; GENERAL INSURANCE COMPANY; HELVETIA LTD.; GIBRALTAR CASUALTY COMPANY; THE GLENS FALLS INSURANCE COMPANY; GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO); GRANITE STATE INSURANCE COMPANY; GREAT SOUTHWEST FIRE INSURANCE COMPANY; GUARDIAN INSURANCE COMPANY, LTD. as successor-in-interest to BRITISH OAK INSURANCE COMPANY, LTD. and LICENSE & GENERAL INSURANCE COMPANY, LTD.; GUILDHALL INSURANCE COMPANY, LTD.; HARCO NATIONAL INSURANCE COMPANY as successor-in-interest to WASHINGTON GENERAL INSURANCE CORPORATION; HARTFORD ACCIDENT AND INDEMNITY COMPANY; HEDDINGTON INSURANCE (U.K.), LTD.; HELVETIA ACCIDENT SWISS INSURANCE COMPANY, LTD. (GIBBON NM GROUP); HIGHLANDS INSURANCE COMPANY; HIGHLANDS INSURANCE COMPANY (U.K.), LTD.; THE HOME INSURANCE COMPANY; HOME AND OVERSEAS INSURANCE COMPANY, LTD.; HUDSON INSURANCE COMPANY; INSURANCE COMPANY OF NORTH AMERICA for itself and as successor-in-interest to INDEMNITY INSURANCE COMPANY OF NORTH AMERICA formerly THE STUYVESANT INSURANCE COMPANY; INSCO LTD.; INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; INTERNATIONAL INSURANCE COMPANY for itself and as successor-in-interest to INTERNATIONAL SURPLUS LINES INSURANCE COMPANY; IRON TRADES MUTUAL INSURANCE COMPANY, LTD.; LANDMARK INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY, LTD.; LOMBARD MARINE

AND GENERAL INSURANCE LTD.; LONDON AND EDINBURGH GENERAL INSURANCE COMPANY, LTD.; LONDON GUARANTEE AND ACCIDENT COMPANY OF NEW YORK; MARYLAND CASUALTY COMPANY; LA MINERVE INSURANCE COMPANY, LTD.; MINSTER INSURANCE COMPANY, LTD.; NATIONAL CASUALTY COMPANY; NEW LONDON REINSURANCE COMPANY, LTD.; NEW YORK MARINE MANAGERS, INC.; NORTH ATLANTIC INSURANCE COMPANY, LTD.; NORTHERN ASSURANCE COMPANY, LTD.; NORTH-WESTERN NATIONAL INSURANCE COMPANY as successor-in-interest to BELLE-FONTE INSURANCE COMPANY (U.K.) LIMITED; PACIFIC EMPLOYERS INSURANCE COMPANY; PHOENIX ASSURANCE COMPANY OF NEW YORK; LA PRESERVATRICE; PROVIDENCE WASHINGTON INSURANCE COMPANY; PRUDENTIAL INSURANCE COMPANY; RANGER INSURANCE COMPANY; REASEGURADORA NACIONAL DE VENEZUELA; RELIANCE FIRE AND ACCIDENT INSURANCE CORP. LTD.; RELIANCE INSURANCE COMPANY; RIVER THAMES INSURANCE COMPANY LTD.; RLI INSURANCE COMPANY; ROYAL INDEMNITY COMPANY; THE ROYAL SCOTTISH INSURANCE COMPANY, LTD.; SAFETY NATIONAL CASUALTY CORPORATION as successor-in-interest to SAFETY MUTUAL CASUALTY CORPORATION; SOUTHERN INSURANCE COMPANY, LTD.; SOVEREIGN MARINE AND GENERAL INSURANCE COMPANY, LTD.; SPHERE INSURANCE COMPANY, LTD.; ST. KATHERINE INSURANCE COMPANY, LTD.; ST. PAUL INSURANCE COMPANY, LTD. successor-in-interest to ST. KATHERINE INSURANCE COMPANY, LTD.; STONEWALL INSURANCE COMPANY; STOREBRAND INSURANCE COMPANY (U.K.) LTD.; STRONGHOLD INSURANCE COMPANY, LTD.; SWISS NATIONAL INSURANCE COMPANY, LTD.; SWISS UNION GENERAL INSURANCE COMPANY, LTD.; SWITZERLAND GENERAL INSURANCE COMPANY, LTD.; TAISHO MARINE AND FIRE INSURANCE COMPANY (U.K.), LTD.; TERRA NOVA INSURANCE COMPANY, LTD.; THREADNEEDLE INSURANCE COMPANY, LTD.; TOKIO MARINE AND FIRE INSURANCE COMPANY (U.K.), LTD.; TRAVELERS INDEMNITY COMPANY; TRENT INSURANCE COMPANY, LTD.; TUREGUM INSURANCE COMPANY; TWIN CITY FIRE INSURANCE COMPANY; UNDERWRITERS AT LLOYD'S LONDON AND LONDON MARKET COMPANIES; UNION-AMERICA INSURANCE COMPANY, LTD.; L'UNION ATLANTIQUE S.A. D'ASSURANCES; UNITED SCOTTISH INSURANCE COMPANY; UNI STOREBRAND INSURANCE COMPANY (U.K.) LTD. as successor-in-interest to STOREBRAND INSURANCE COMPANY LTD.; UNITED STATES FIRE INSURANCE COMPANY; VANGUARD INSURANCE COMPANY, LTD.; WESTCHESTER FIRE INSURANCE COMPANY as assumptive reinsurer of UNITED STATES FIRE INSURANCE COMPANY and INTERNATIONAL INSURANCE COMPANY; WESTPORT INSURANCE CORPORATION formerly known as PURITAN INSURANCE COMPANY which was formerly known as THE MANHATTAN FIRE AND MARINE INSURANCE COMPANY; WINTERTHUR SWISS INSURANCE COMPANY; WORLD AUXILIARY INSURANCE CORPORATION LTD.; WORLD MARINE AND GENERAL INSURANCE COMPANY, LTD.; YASUDA FIRE AND MARINE INSURANCE COMPANY (U.K.), LTD.; ZURICH INSURANCE COMPANY; and ZURICH INTERNATIONAL LTD., Defendants.

Notice:

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1]

On appeal from the Superior Court of New Jersey, Law Division, Civil Part, Hudson County, L-1845-95.

Counsel: [Michael G. Zanic](#) of the Pennsylvania bar, admitted pro hac vice, argued the cause for appellant, Anthony P. LaRocco, appearing ([Kirkpatrick & Lockhart](#) Nicholson Graham, attorneys; [Paul E. DelVecchio](#) of the Pennsylvania bar, admitted pro hac vice, Mr. LaRocco, [Robert F. Pawlowski](#), and Mr. Zanic, of counsel and on the brief).

[William T. Hassler](#) (Steptoe & Johnson) of the District of Columbia bar, admitted pro hac vice, argued the cause for respondents, American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, PA, and New Hampshire Insurance Company (Mound Cotton Wollan & Greengrass and Mr. Hassler, attorneys; [Roger E. Warin](#) (Steptoe & Johnson) of the District of Columbia bar, admitted pro hac vice, and Mr. Hassler, of counsel and on the joint brief).

[H. Richard Chattman](#) argued the cause for respondents, Appalachian Insurance Company and Protective Mutual Insurance Company ([Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman](#), attorneys; [Marianne C. Tolomeo](#) and Mr. [Chattman](#), of counsel and on the joint brief).

[Peter E. Kanaris](#) (Fisher Kanaris) of the Illinois [*2] bar, admitted pro hac vice, appeared for respondent, Utica Mutual Insurance Company (Leary Bride Tinker & Moran, attorneys; John G. Tinker, Jr., and Mr. Kanaris, of counsel and on the joint brief).

[Jay Lavroff](#) appeared for respondent, Great American Insurance Company ([Lindabury, McCormick & Estabrook](#), attorneys; Mr. [Lavroff](#), of counsel and on the joint brief).

[Lawrence D. Mason](#) of the Illinois bar, admitted pro hac vice, appearing for respondent, Employers Insurance Company of Wausau (Segal McCambridge Singer & Mahoney, attorneys; [Lisa P. Wildstein](#) and Mr. Mason, of counsel; Mr. Mason, on the joint brief).

[Mound Cotton Wollan & Greengrass](#), attorneys for respondent, Hanover Insurance Company (William D. Wilson, of counsel and on the joint brief).

[David H. Bavli](#) appeared for respondent, Old Republic Insurance Company (Clausen Miller, [James R. Swinehart](#) of the Illinois bar, admitted pro hac vice, and [Mark S. Wolf](#), attorneys; Mr. Swinehart and Mr. Wolf, of counsel; Mr. Swinehart, on the joint brief).

Judges: Before Judges [LINTNER](#), [S.L. REISNER](#) and [C.L. MINIMAN](#).

Opinion

PER CURIAM

Plaintiff PPG Industries, Inc. (PPG) appeals from a dismissal on statute-of-limitations grounds of its action to compel insurance [*3] coverage from defendants American Home Assurance Company, Appalachian Insurance Company, Employers Insurance Company of Wausau, Great American Insurance Company, Hanover Insurance Company, New Hampshire Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, Old Republic Insurance Company, Protection Mutual Insurance Company, and Utica Mutual Insurance Company (collectively, insurers) for environmental contamination at its Barberton, Ohio (Barberton) and Lake Charles, Louisiana (Lake Charles) plants. We affirm.

On March 7, 1995, PPG instituted a declaratory judgment action against sixty comprehensive general liability insurers and thirty-five all-risk property insurers. PPG sought coverage for environmental contamination damage occurring at fifteen owned sites located in twelve states and Puerto Rico, and at other sites it did not own located in seventeen states and Puerto Rico. Some of the properties were located in New Jersey. The answers filed by insurers between 1995 and 1996 generally contained affirmative defenses alleging that PPG failed to commence suit within the time period set forth in the respective policies, its claims were barred by the applicable statute [*4] of limitations, and PPG failed to provide timely notice of claim.

The first order from which PPG appeals determined a summary judgment motion filed on September 25, 1998, by some of the property insurers based upon "suit limitation provisions in the policies of insurance at issue" with respect to the Barberton site. In granting defendants' motion in a letter opinion dated December 11, 1998, the motion judge found the suit-limitation provision contained in the 1965 to 1983 policies, which required suit against the insurer to be "commenced within twelve (12) months next after the happening of the loss, unless a longer period of time is provided by applicable statute," to be unambiguous. The judge further held "that PPG's coverage claims with respect to the Barberton site we[re] untimely even under the six-year statute of limitations on contract actions because PPG was aware of contamination at the Barberton site prior to March 1989," that is, over six years prior to the date it filed its initial complaint. An order was entered on December 11, 1998, and a corrected order was entered in January 1999.

The second order from which PPG appeals was entered after the same property insurers moved [*5] on January 15, 1999, for partial summary judgment based upon suit-limitation provisions contained in the policies with respect to the Lake Charles site. By letter opinion dated April 1, 1999, the first motion judge granted this motion, and entered in an order on the same date.

On April 3, 2000, Century Indemnity Company (Century) moved against PPG for partial summary judgment on the issue of choice of law. Between April 28, 2000, and July 3, 2000, other insurers cross-moved for partial summary judgment or joined in Century's

application. PPG cross-moved on October 2, 2000, for partial summary judgment on choice of law with respect to pollution-exclusion and notice issues. In a November 6, 2000, oral opinion, another motion judge ruled that the respective laws of the sites applied to the undisputed issue of pollution exclusion and to the disputed issue of late notice. An order to that effect was entered on November 20, 2000. [1](#)

By May 2005 PPG had settled its claims against the remaining insurers. An order entered November 1, 2005, by the third motion judge, granted PPG's motion for leave to file [\[*6\]](#) a fifth amended complaint against the all-risk property insurers who prevailed on their summary judgment motions and provided that "[a]ll claims . . . relating to all sites . . . other than the Barberton, Ohio site and the Lake Charles Louisiana site," were dismissed with prejudice with the consent of PPG. PPG's fifth amended complaint sought a declaratory judgment that it was entitled to insurance coverage "for losses incurred by it as a result of environmental damage existing at and about two sites, Barberton, Ohio and Lake Charles, Louisiana," under "All-Risk Property Insurance Policies" issued by the insurers. In a final order and judgment dated December 20, 2005, a third motion judge granted a declaratory judgment in favor of the insurers on the basis of the above-described orders. PPG's fifth amended complaint was also dismissed with prejudice by the final order and judgment. This appeal followed.

I.

PPG, originally Pittsburgh Plate Glass Company, purchased all-risk property insurance policies from 1963 until 1985. These policies broadly promised to cover all risk of physical loss or damage to insured property, but contained the following suit-limitation provision:

*Suit Against [\[*7\]](#) the Company:* No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the requirements of this policy, nor unless commenced within twelve (12) months next after the happening of the loss, unless a longer period of time is provided by applicable statute.

This clause was contained in the all-risk property policies in effect between 1965 and 1983 (the 1965 clause) [2](#) and applies to the contaminated sites described in the fifth amended complaint.

The 3000-acre Barberton facility is located in the cities of Barberton and Norton in northeastern Ohio. Beginning in 1899, Columbia Chemical Company, which merged into PPG, produced synthetic soda ash on that site. Since that time, PPG and its predecessors manufactured inorganic and organic chemicals there. Located on the facility are six "lime lakes" covering some 600 acres. Over the years, the lime lakes became repositories of solid wastes from the production of soda ash. They also contained soda ash wastewaters (Lime Lake 1); tarry still bottom materials from chlorinated hydrocarbon manufacture (Lime

Lake 2); an unknown quantity of light halogenated organic fluids and finely divided asbestos from the periodic disposal of chlorine production that contained these materials (Lime Lake 3); possibly "finely divided asbestos" (Lime Lake 4); chlorine-caustics, amorphous silicas, bleach, chlorinated organics, herbicides, chloroformates and CR-39 monomers (Lime Lakes 4 and 5); "silicas, chlorinated hydrocarbons and initiator wastes, as well as biological treatment sludges from the city of Barberton Wastewater Treatment Plant" (Lime Lake 6). Waste **[*9]** materials had also been deposited in other areas of the facility.

In the summer of 1978, PPG became concerned about the dangers of halogenated organic wastes and PPG's perchlor compounds like hexachlorobutadiene and hexachlorobenzene. The author of a memorandum expressed the following concerns:

Although the requests were made months ago, I have not seen any data on the samplings of water from the Calcasieu [River in Lake Charles, Louisiana] or the discharge from Barberton's containment basin. Likewise boreholes that were to be placed in and about the perimeters of the old organics dumps at both Barberton and Lake Charles have not been reported.

....

It is imperative that we have information of the success of the burial techniques employed at Lake Charles and Barberton. The longer the problem persists (if there is a problem), the more difficult it will be to correct.

The environmental catastrophe at the Love Canal in Niagara Falls, New York, in 1978 caught the attention of PPG. Thus, in an August 31, 1978, PPG memorandum, the following appeared:

In looking at the problems which are occurring in Niagara Falls relative to past disposal sites, it is essential that *we have an inventory taken **[*10]** of all disposal sites and materials which we have disposed of over the years.* By this inventory, I mean we should have an identification as much as possible--a quantity determined of materials which has been sent to disposal sites. We should *follow-up on the material which has been disposed of to be sure that there is no danger of exposure to the public.* If sampling stations are necessary to measure leaching from these sites, then these sampling stations should be established.

Please work with these plant locations to determine what our position on chemical disposal has been and develop full information on the history of the material which has been sent to disposal sites. You should work with Environmental Affairs in this assignment to include their recommendations.

A decade later, a September 23, 1988, a PPG memorandum revealed the extent of PPG's awareness of contamination at Barberton and its realization that remediation costs would be astronomical:

PPG has been conducting voluntary environmental site assessment work since December of 1986 at our demolished manufacturing facilities in Barberton, Ohio. This work has been done in two phases, a preliminary work scoping phase in 1986 was [*11] conducted by Engineering Science, Inc., while the second more definitive assessment phase is currently being conducted by IT Corporation.

In late 1987 this second phase of work uncovered chlorinated hydrocarbon groundwater contamination in the areas of the old perc[h]loroethylene manufacturing facility and the old trichloroethylene facility. It also indicated that these solvent contaminations were migrating towards the plant boundaries. Follow-up well drilling investigations conducted this past winter and summer by IT Corp. have revealed that there are several locations at the facility boundaries where contamination is present at significant levels and is moving offsite.

....

Because of the significant areal extent of contamination and unfavorable geology, the costs associated with the remediation of this facility will, unfortunately, be very large. At this time it is impossible to quantify the capital costs except to say they will likely be double digit millions of dollars. Potential annual operating costs for the operation and maintenance of the remedial systems will also be quite significant.

This plant groundwater study and findings are not part of the Lime Lake contamination studies [*12] conducted earlier for which a \$ 4.5 million provision has already been made. The Lime Lake provision will also require additional refinement to accurately define the total remediation costs related to Lime Lakes # 1, and # 2 and the Contractors Landfill

In June of 1989 PPG met with the Environmental Protection Agency (EPA) to discuss a Corrective Action Order of Consent for remediation of the Barberton site. The order was entered on April 5, 1991, and required that PPG implement three interim measures and conduct an environmental investigation and study at Barberton. The interim measures were to "expeditiously abate or remove the threats presented by hazardous waste or hazardous constituents to human health and the environment." The order has been modified on three occasions.

PPG summarized its efforts to determine the nature and extent of contamination and to remediate pollution at Barberton in a December 1991 Community Relations Fact Sheet, issued in compliance with an EPA Administrative Consent Order (ACO). As to the result of studies conducted, PPG reported:

PPG began, in the early 1980's, to perform studies of the Barberton facility on a voluntary basis. Initially, these [*13] studies focused on the Lime Lakes. In 1983 and 1984 remediation pilot studies were performed, and in 1985 full-scale reclamation of Lime Lake 4 began. Additional in-depth studies focusing on all the Lime Lakes and an area known as the Contractors Landfill were also performed. PPG completed these studies in 1987 and at that time approached [the] U.S. EPA regarding a mechanism to accomplish the Corrective

Action Process. The studies that PPG presented to the U.S. EPA concluded that both the soil and groundwater were contaminated with volatile organic compounds (VOCs) and dissolved solids in the form of chlorides.

Respecting groundwater contamination,

PPG worked with the Summit County and Ohio Health Departments in 1983, 1985 and 1988 to sample residential drinking water wells and to perform a pilot health assessment. In the most recent study performed, only one of the 36 wells tested showed any evidence of VOCs; however, the concentrations of the VOCs was below the established drinking water standards. The earlier studies had likewise concluded that local drinking water supplies met established drinking water standards.

The Lake Charles facility is a chemical manufacturing plant comprised [*14] of approximately 700 acres on the west bank of the Coon Island Reach of the Calcasieu River. Plant operations used about 450 acres. The facility is made up of five areas: three production areas, including the Chlor-Alkali Area, the Derivatives Area, and the Chlor-Alkali and Silicas Area, and two storage and shipping areas known as the North Dock Area and the South Terminal Area. "Surface waters within and adjacent to the [s]ite include: the Sabine River Water Pond, the Coon Island Reach of the Calcasieu River Ship Channel, Bayou Verdine, Bayou d'Inde and the PPG Canal (which discharges to Bayou d'Inde)." The site had been purchased in 1947 by Southern Alkali Corporation of which PPG owned fifty-one percent. An asset purchase occurring on December 21, 1960, resulted in PPG's full ownership of the facility.

The nature of contaminants and areas of site contamination was described in this litigation by PPG as follows:

Investigative and/or remedial measures at the Site have found, *inter alia*, groundwater, surface water, sediments and soil damage by at least the following materials: chlorinated hydrocarbons, . . . heavy metals (mercury and lead) and sodium chloride brine. These substances [*15] allegedly originated from the manufacturing facilities, the material transport operations and/or water storage operation, at the Site.

As early as 1980 a consultant, Ken E. Davis Associates, had detected a plume in the South Terminal Area which it described in a July 31, 1980, report. While that report stated that the plume posed "only a minor threat to the environment or to groundwater . . . at this time," the report further warned "[u]nless some abatement measures are taken, it is possible that the discharge could increase from the *current rate of 2-12 lbs[.]* per day to as much as *174 lbs[.] per day* or more. At this level, some detrimental effects to the surrounding environment could be anticipated."

September 1984 marked the beginning of involvement by the Louisiana Department of Environmental Quality (LDEQ) with the Lake Charles site. In a September 16, 1991, letter from Michael P. Dobrasko, PPG's Environmental Control Specialist, to Madeline Murphy of

the LDEQ, PPG described monitoring and testing, as well as some remediation, conducted at various locations on site commencing in 1978 until at least a portion of 1991.

In 1990, in conjunction with state and federal environmental regulators, [*16] PPG began performing a Resource Conservation and Recovery Act (RCRA) Facilities Investigation (RFI). A June 1992 RCRA Phase I Facility Investigation Report was issued by IT Corporation for PPG. It described the history of contamination investigations by site area as follows:

4.1 WTU Surge Pond Site

....

A comprehensive groundwater assessment at the WTU Surge Pond was completed in May 1987 by Ground-Water Science Consultants, Inc. . . .

....

Groundwater monitoring had been conducted at the WTU Surge Pond site on a quarterly basis since RCRA monitoring began in 1982. . . .

....

4.2 North Dock Site

PPG initiated an investigation to define the source and extent of contamination when chlorinated hydrocarbons were detected in four shallow "plant perimeter" monitor wells in 1984. Following a second phase investigation, Ken E. Davis Associates, Inc. (KEDA, 1986) implemented a monitoring/withdrawal well system in the five uppermost permeable zones beneath the North Dock Site in 1986. . . .

....

4.3 South Terminal Site

In 1978, PPG initiated an investigation to determine if contaminants were migrating from the old disposal pits located in the central portion of the South Terminal site. KEDA [*17] completed the geohydrologic investigations at the South Terminal site in 1983. By December 1984, a containment well system was installed by McClelland Engineers in an attempt to contain the movement of contaminants.

....

Groundwater monitoring has been conducted at the South Terminal site on a quarterly basis since pumping began [in] 1984. . . .

....

4.4. VCM II Separator Site

PPG initiated an investigation of the site after chlorinated hydrocarbons were detected in the shallow ground water in the initial monitoring system. Soil Testing Engineers, Inc. . . . completed the investigation of the site for PPG in 1984. An additional monitor well . . . was installed in August 1985. [Three] Existing Monitor Wells . . . were converted to withdrawal wells in November 1985, the fourth quarter of 1988, and the first quarter of 1990, respectively.

The report revealed the full nature and extent of the continuing contamination of the Lake Charles property and uncovered numerous additional areas of contamination of which PPG had not previously been aware. When the RFI was completed, PPG was to perform a Corrective Measures Study (CMS) to identify appropriate remediation measures for the site.

PPG **[*18]** seeks to recover the remediation costs it has incurred under the April 5, 1991, Corrective Action Order governing Barberton. It also seeks to recover remediation costs it has incurred under the 1990 RFI and subsequent CMS regarding Lake Charles.

II.

PPG contends that the trial court erred in granting summary judgment in favor of the insurers on their affirmative defense that PPG's action, first filed in 1995, was untimely. PPG urges that the six-year limitations period contained in [N.J.S.A. 2A:14-1](#), not the twelve-month policy limitation, is applicable to its coverage claim because: (1) ambiguities in an insurance policy must be construed in favor of the insured; (2) PPG's interpretation of the suit-limitation clause is consistent with the dictionary definition of the material terms in dispute; (3) by modifying the language in the suit-limitation provision, the insurers modified its meaning; (4) judicial disagreement with respect to the meaning of the suit-limitation provision is evidence of ambiguity; (5) PPG's interpretation of that provision does not render it meaningless; and (6) application of the standard rules of contract construction dictate the conclusion that [N.J.S.A. 2A:14-1](#) **[*19]** applies to this action. PPG further maintains that it timely brought this action within the six-year limitation period contained in [N.J.S.A. 2A:14-1](#) because it filed suit within six years of the happening of the loss and, at a minimum, material questions of fact precluded summary judgment as to when the loss happened.

PPG's argument on appeal is essentially that the language contained in the 1965 clause, "unless a longer period of time is provided by applicable statute," nullifies the one-year contractual suit-limitation language and brings a state's applicable statute of limitations into play, here, [N.J.S.A. 2A:14-1](#). Defendant insurers, on the other hand, interpret the words to mean that the twelve-month period controls unless the jurisdiction has a statute that requires insurers to provide a limitation period in excess of twelve months, as a number of states do.

With respect to Barberton, in finding the 1965 clause unambiguous, the first motion judge held in her December 11, 1998, letter opinion (citations omitted):

It is undisputed that the provision references a one-year limitation period within which PPG must bring its coverage suits. Such contractual limitations provisions are utilized [*20] by insurers as a means of limiting present and future liabilities as well as to close stale claim files. It is practical, reasonable and sensible to accept defendants' construction of the clause "unless a longer period of time is provided by applicable statute" as manifesting the defendants' intention of prohibiting the extension of the period within which suits can be brought except in those jurisdictions that have state statutes that expressly invalidate the one-year period of limitation.

....

Read as a whole, the contractual limitations provisions cannot reasonably be construed as manifesting the defendants' intent to import the general six-year statute of limitations on contracts. Such a distorted construction would always establish a longer period of limitation than that prescribed by the policy itself, thus, rendering the reference to the one-year limitations period surplusage. PPG's construction is not consonant with the application of an otherwise legitimate condition commonly prescribed by an insurer. Accordingly, this court will not modify or rewrite the provision at issue, but must enforce it as written.

The court also held that "PPG's coverage claims with respect to the [*21] Barberton site are untimely even under the six-year statute of limitations on contract actions because PPG was aware of contamination at the Barberton site prior to March 1989." The court found that PPG had firm knowledge of contamination during the 1980's and did not file suit until March 1995.

The same motion judge, in an April 1, 1999, letter opinion, granted the insurers' motion for summary judgment with respect to the Lake Charles site based upon the same reasoning contained in her December 11, 1998, Barberton opinion. Responding to PPG's argument that it was entitled to coverage for contamination in several "micro areas," the judge held that the spread of contamination to groundwater in the Chlor-Alkali area (Plant A) and the Chicot Aquifer did not "provide a new ground for coverage" or "constitute a separate loss."

The judge noted that mercury contamination had been detected in soil samples taken from the Chlor-Alkali area as early as 1977 and that chlorinated hydrocarbons were found in sand layers of the Chicot Aquifer in 1984 and 1985. In addition, the judge observed that PPG had conceded that it was "aware of the rest of the contamination in areas [it] designate[d] as 'macro' [*22] and 'micro' as of March, 1994," which predated the filing of the initial complaint by one year.

III.

In reviewing the grant or denial of a summary judgment motion, we apply the same standard applied by the motion judge to resolve the issues, without affording any special deference to the judge's interpretation of the law. [Balsamides v. Protameen Chems., Inc.](#), 160 N.J. 352, 372, 734 A.2d 721 (1999); [Manalapan Realty, L.P. v. Twp. Comm. of Manalapan](#), 140 N.J. 366, 378, 658 A.2d 1230 (1995); [Prudential Prop. & Cas. Ins. Co. v. Boylan](#), 307 N.J. Super. 162, 167, 704 A.2d 597 (App. Div.), certif. denied, 154 N.J. 608, 713 A.2d 499 (1998). We review the decision of the motion judge based solely on the evidential materials submitted on the summary judgment motion. [Bilotti v. Accurate Forming Corp.](#), 39 N.J. 184, 188, 188 A.2d 24 (1963); [Scott v. Salerno](#), 297 N.J. Super. 437, 447, 688 A.2d 614 (App. Div.), certif. denied, 149 N.J. 409, 694 A.2d 194 (1997).

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." [R. 4:46-2\(c\)](#).

We must decide

whether the **[*23]** competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. . . . If there exists a single unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a "genuine" issue of material fact for purposes of [Rule 4:46-2](#).

[\[Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540, 666 A.2d 146 \(1995\).\]](#)

Contract interpretation is a question of law, and insurance contracts are subject to well settled rules of construction. [Simonetti v. Selective Ins. Co.](#), 372 N.J. Super. 421, 428, 859 A.2d 694 (App. Div. 2004). The assertion of exceptions or exclusions is an affirmative defense and the insurer must bear the burden of proving it. [Carter-Wallace, Inc. v. Admiral Ins. Co.](#), 154 N.J. 312, 329, 712 A.2d 1116 (1998). This rule applies to the assertion of a suit-limitation provision. See [Warren v. Employers' Fire Ins. Co.](#), 53 N.J. 308, 311-12, 250 A.2d 578 (1969). If the defense is based on a statutory limitations period, the insurer has the burden of proving it. See [Dynasty Bldg. Corp. v. Ackerman](#), 376 N.J. Super. 280, 286, 870 A.2d 629 (App. Div. 2005). **[*24]** Thus, the insurers bear the burden of establishing, as a matter of law, that they are entitled to the dismissal of PPG's claims against them.

In New Jersey when a suit-limitation clause in an insurance policy is absent, the general six-year statute of limitations for bringing suit on a contract applies. [N.J.S.A. 2A:14-1](#). We have held that "[t]he general rule is that the statute of limitations applicable to contracts governs insurance actions as well. Thus, absent a provision in the insurance policy or an express statute to the contrary, the statute of limitations applicable to a suit on a policy of insurance is six years." [Crest-Foam Corp. v. Aetna Ins. Co.](#), 320 N.J. Super. 509, 517, 727 A.2d 1030 (App. Div. 1999) (citations and quotations omitted). We begin by assuming that our statute

of limitations applies because we find the issue of accrual dispositive on the undisputed facts before us.

PPG urges that "the limitation period begins to run on a coverage action when the insurer breaches the insurance contract." It argues that since defendants did not deny coverage before PPG commenced the action, the limitation period on PPG's cause of action had not begun to run when the action was filed. PPG alternatively **[*25]** argues that "even assuming the trigger date for the limitations period was modified by the [p]olicies," the trial court erred in construing the contractual suit-limitation provision to begin running upon the first evidence of contamination at the sites. PPG maintains that "even assuming the trigger date for the 'applicable statute' of limitations was modified from breach of the agreement to 'happening of the loss,'" the court should apply the "continuous trigger" rule, which means that the loss continued to happen until the progressive environmental damage ceased. PPG adds that "material questions of fact precluded summary judgment on when the loss happened."

Initially, we reject PPG's contention that the statute of limitations had not yet begun to run when the complaint was filed on March 7, 1995. In support of this argument PPG relies on [Crest-Foam, supra, 320 N.J. Super. at 517-20](#), which recognizes that the statute of limitations begins to run from the date the insurer breaches the contract. It also cites [Federal Insurance Co. v. Purex Industries, Inc., 972 F. Supp. 872, 880 \(D.N.J. 1997\)](#), for the proposition that the policyholder's cause of action accrues when the claim is denied **[*26]** by the insurer. Neither of these cases addressed a suit-limitations provision modifying the date of accrual under applicable statutes of limitations.

In *Crest-Foam* the indemnity insurance policies all contained a "no action" clause precluding suit on the policy "until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company." [Crest-Foam, supra, 320 N.J. Super. at 515](#). The insurer argued that the claim accrued years earlier when the insured entered into an ACO with the New Jersey Department of Environmental Protection (NJDEP). [Id. at 517](#). We held that the insurer was barred from asserting a statute of limitations defense due to the no-action clause. **3** [Id. at 519](#).

In *Federal Insurance Co.* the insurer on an indemnity policy also argued that the cause of action **[*27]** was barred because it accrued when the insured executed an ACO with the NJDEP. [Fed. Ins. Co., supra, 972 F. Supp. at 879](#). The insured, Purex Industries, Inc., argued that its cause of action had not yet accrued because it had not expended all the monies required to comply with the ACO. *Ibid.* The court held:

The insurers' claim that the liability of Purex was finally determined by the signing of the ACO is unpersuasive. The ACO merely required testing of environmental conditions and remediation of contamination that might be discovered. In other words, liability was not finally determined at this point because any liability was contingent upon the discovery of contamination.

[\[Id. at 880.\]](#)

Here, unlike [Crest-Foam](#) and [Federal Insurance](#), we are presented with a first-party claim on an all-risk policy, not an indemnity policy, with a suit-limitation provision that clearly states that accrual of a cause of action occurs "on the happening of the loss." The validity of suit-limitation clauses in insurance policies has long been recognized in this state. [4](#)

[📄](#) In [Weinroth v. New Jersey Mfrs. Ass'n Fire Ins. Co., 117 N.J.L. 436, 438, 189 A. 73 \(E. & A. 1937\)](#), the trial court refused to enforce a ninety-day [\[*28\]](#) suit-limitation clause in an insurance policy, holding that it was in conflict with the six-year statute of limitations. The clause provided:

"No suit or action against the company on this policy shall be brought unless instituted within ninety days after disavowal in writing by the company of liability to the assured for the relief claimed in such action or suit; but if any provision of this paragraph is in conflict with the statutes of any state within which action on this policy is instituted, the conditions of this paragraph shall be inoperative in so far as in conflict with such statute."

[\[Ibid.\]](#)

In reversing, the Court of Errors and Appeals held that the suit-limitation clause was not in conflict with the statute of limitations:

The act in question . . . provides that "all actions . . . shall be commenced and sued within six years next after the cause of such actions shall have accrued, and not after." *In determining [\[*29\]](#) whether any provision of an insurance contract conflicts with the general laws of this state, the test should be whether the terms provide for, or permit, that which the statute forbids and prohibits.* We are unable to observe any conflict, as the statute provides, in effect, that no suit can be instituted after six years, but does not make it unlawful for parties to agree by contract that the limitation shall be for a lesser period. The courts in this state have held on many occasions that a clause in an insurance policy limiting the time within which suit must be instituted is enforceable.

[\[Ibid.\]](#) (emphasis added).

Accord [Eagle Fire Prot. Corp. v. First Indem. of Am. Ins. Co., 145 N.J. 345, 354-55, 678 A.2d 699 \(1996\)](#) (quoting *Weinroth* and holding that a one-year time-limitation provision in a surety bond was "reasonable and enforceable").

In [Peloso v. Hartford Fire Insurance Co., 56 N.J. 514, 517, 519-21, 267 A.2d 498 \(1970\)](#), our Supreme Court found a suit-limitation provision, which read "twelve months next after inception of the loss," to be clear and unambiguous. It held that the limitation period was to be calculated from "the date of the fire or other casualty insured against," not from denial of coverage. [\[*30\]](#) [Id. at 519-21](#). We are satisfied that the accrual clause in the policies before us is not in conflict with New Jersey's statute of limitations because nothing in [N.J.S.A. 2A:14-1](#) makes it unlawful for the parties to agree to a trigger date different from

denial of coverage. See [Weinroth, supra, 117 N.J.L. at 438](#). As a consequence, the trigger date for the application of [N.J.S.A. 2A:14-1](#) here was modified by the policy to the happening of the loss.

We are also not persuaded that we should apply the continuous-trigger rule, as urged by PPG, relying on [Carter-Wallace, supra](#), and [Owens-Illinois, Inc. v. United Insurance Co., 138 N.J. 437, 650 A.2d 974 \(1994\)](#). As applied here, the continuous-trigger rule would mean that the loss continues to happen until the progressive environmental damage ceases. However, as we held in [Winding Hills Condominium Ass'n, Inc. v. North American Specialty Insurance Co., 332 N.J. Super. 85, 752 A.2d 837 \(App. Div. 2000\)](#), the continuous-trigger rule applies to third-party claims and does not apply to first-party claims.

In *Winding Hills* the plaintiff condominium association obtained first-party insurance from six carriers for an average of roughly one-year periods between January 1986 and [\[*31\]](#) May 1992. [Id. at 88](#). Policies of two carriers required suit to be brought within two years following the occurrence of the loss and the policies of the other four companies had a similar one-year limitation. *Ibid.* The insured buildings were constructed between 1969 and 1974. [Id. at 90](#).

Winding Hills became aware of structural deficiencies in two of its buildings and the causes of these problems between November 1989 and January 1991. [Id. at 88](#). It filed a declaratory judgment action against its insurers in February 1993. [Id. at 89](#). The trial court granted summary judgment in favor of all insurers except for a company whose policy had been in effect between May 1990 and May 1992. [Id. at 88-89](#).

We accepted the trial court's finding that January 1991 was the first date Winding Hills had knowledge of the loss. [Id. at 89](#). Rejecting plaintiff's argument that it was "not the manifest trigger but rather the continuous loss trigger that should have been applied," [id. at 90](#), we discussed the New Jersey cases that had adopted the continuous-trigger approach for third-party toxic-tort and environmental-pollution claims. [Id. at 91-92](#). We further wrote:

No court in this state has, however, applied [\[*32\]](#) the continuous-trigger rule rather than the manifest-trigger rule in first-party property damage claims, and that, of course, is the basic issue before us. We conclude that the manifest-trigger rule remains appropriate in first-party property damage claims for a variety of reasons. First, unlike the situation obtaining in liability coverage, there are no public rights to be concerned about and no right of the public to redress. The interests involved are solely between the insured and the insurer, and, again unlike the situation in liability coverage, the insured has the ability to assure his full protection against his finite potential financial loss simply by obtaining, in each policy year, coverage for the full actual cash value of his property. Thus, his loss because of damage to the property can be fully compensated for whenever the loss becomes manifest even if it results from a latent progressive condition.

[\[Id. at 92.\]](#)

Our ruling in [Winding Hills](#) disposes of PPG's argument that the continuous-loss trigger should apply here.

PPG makes two additional arguments with respect to the time bar before us. First, PPG argues that "happening of the loss" is ambiguous and should be construed **[*33]** to mean "the release, accumulation, migration, or degradation of soil or groundwater," which it claims occurred on and after March 7, 1989. Second, PPG contends that the discovery rule should apply to the suit-limitation provision in the policies.

We do not find the term "happening of the loss" to be at all ambiguous. [Peloso, supra, 56 N.J. at 518-19](#) (finding the phrase "inception of the loss" unambiguous). It means the date when contamination first began. Even if the phrase has the meaning urged by PPG, its claims would nonetheless be barred because by March 7, 1989, the policies had all lapsed. [Winding Hills, 332 N.J. Super. at 93](#) ("Since plaintiff's loss was manifested in January 1991, its insurers whose policy terms had expired prior to that date have no coverage obligation.").

The same result was reached in [United Technologies Automotive Systems, Inc. v. Affiliated FM Insurance Co., 725 N.E.2d 871 \(Ind. Ct. App.\), transfer denied, 735 N.E.2d 238 \(Ind. 2000\)](#), an environmental loss case. The plaintiff urged "that the phrase 'happening of the loss' is ambiguous in the context of progressive environmental loss cases and should have been construed in favor of coverage to mean 'after **[*34]** the completion of the loss,' that is, when the environmental contamination was stopped by remediation." [Id. at 874](#). The action was dismissed on summary judgment. [Id. at 873](#). The appellate court affirmed the dismissal on the ground that the policy had long expired:

"It is a time-honored principle that the insurer's obligation to pay is contingent on a covered loss occurring during the policy period." *7 Couch on Insurance 3d*, § 102:2 at 102-9 (1997). The time period covered by a policy is a basic element of determining the risk covered by the policy. *Id.*, § 102:1 at 102-5. . . .

. . . [E]ven if the "happening of the loss" had occurred on the latest possible date of coverage (i.e., December 1, 1974), claims brought by UTAS on May 21, 1998 would be barred. Specifically, had the trial court applied a twenty-year general statute of limitations, UTAS's environmental loss would have had to occur no earlier than May 21, 1978. If the trial court were to apply the twelve-month limitation, the loss would have had to occur no earlier than May 21, 1997. Regardless of which limitation period is used, UTAS's insurance policy with Affiliated FM and the suit limitation provision contained therein had **[*35]** long expired by the time UTAS filed suit.

[\[Id. at 874-75](#) (footnote omitted).]

Thus, if PPG were to prevail in its argument that the losses occurred on or after March 7, 1989, then the insurers would have no coverage obligation because the last of the policies at issue here expired on July 1, 1982.

Last, we address PPG's argument that the policy language should be interpreted to provide that suit should be brought within six years of the discovery of the loss. Because we have rejected PPG's contention that "happening of the loss" is ambiguous, this argument has no merit in that the contamination at each site was discovered before 1989. With respect to Barberton, the judge found from PPG's own records as follows:

PPG was aware of contamination at the Barberton site prior to March 1989. This holding is based upon the following undisputed facts: (1) PPG made a practice of dumping processed waste in the lime lakes at Barberton from as far back as the early 1900s; (2) environmental consultants, hired by PPG, reported soil and groundwater contamination in the early to mid 1980s; (3) these same consultants detected the continued migration of contaminants into the groundwater beneath the site; **[*36]** (4) PPG's Corporate Director acknowledged in 1988 that the costs associated with the remediation of the Barberton site would likely be in the multimillion dollar range; (5) during 1987 and 1988 PPG set aside substantial sums of money to cover contamination treatment and remedial investigation activities; [and] (6) a 1988 environmental audit of the Barberton site confirmed that there was subterranean contamination

As to PPG's knowledge of contamination at Lake Charles, the judge found from PPG's own records as follows:

In 1977 the EPA took soil samples from [the Chlor-Alkali] area which revealed high concentrations of mercury. . . .

. . . .

. . . In March 1984 chlorinated hydro-carbons were detected in trace amounts in the 500-foot sand layer [of the Chicot Aquifer]. In 1985, the same contamination was discovered in the 200-foot sand layer. Monitoring wells were installed and in April 1985 a remediation/abatement plan was received by PPG from the KEDA.

Thus, the record reflects that PPG was fully aware well before March 7, 1989, that it had substantial environmental contamination problems at both Barberton and Lake Charles. Accordingly, we reject PPG's contention that there are **[*37]** material questions of fact that precluded summary judgment as to when the loss happened.

After carefully reviewing the record in the light of the written and oral arguments advanced by the parties, we conclude that the remaining issues presented by plaintiff are either moot or without sufficient merit to warrant extensive discussion in this opinion. [R. 2:11-3\(e\)\(1\)\(A\)](#) and (E).

Affirmed.

Footnotes

- **17**

PPG concedes that if we affirm the first two orders, the issue of later notice will be moot.

- **27**

An earlier version of the suit-limitation clause, contained in policies in effect from 1963 to 1965 (the 1963 clause), provided:

No suit, action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the Assured of the occurrence which gives rise to the claim. Provided, however, that if by the laws of the State within which this policy is issued such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by **[*8]** the laws of such State to be fixed herein.

- **37**

With a general liability policy, accrual occurs when "liability attaches," whereas with an indemnity policy, "the insured must have suffered an actual money loss before the insurer is liable." [*Bernstein v. Palmer Chevrolet & Oldsmobile, Inc.*, 86 N.J. Super. 117, 122, 206 A.2d 176 \(App. Div. 1965\)](#).

- **47**

Plaintiff does not suggest that the laws of Pennsylvania, Ohio or Louisiana apply to the construction of the suit-limitation clause in this case. The trial court applied New Jersey law noting that "[the] law in all three relevant jurisdictions is virtually identical."