another teenager. The trial court dismissed the parent's action, holding the school did not have a duty to the parent to communicate the information. The court of appeals reversed the lower court's decision.

The court initially noted that courts have recognized a duty to come to the aid of a suicidal person in two situations. First, a duty may exist if the person is under the custody of another. Second, a duty may exist if there is a special confidential relationship between the parties as in that of a patient and her therapist.

Though neither of these situations was exactly presented to the court, it nonetheless found that some special circumstances might justify a duty. First, the case involved the protection of an adolescent. Second, the action complained of the school's failure to communicate an emergency to the parent. Third, the school stood in a parent-like relationship with the child. Finally, the relationship between the child and the school counselor was similar to that of patient and therapist. Based on these special circumstances, the court went on to discuss the general test of duty to determine whether an obligation extended from the school to the child or parent to provide a warning.

The general test for establishing a duty considers several factors including the foreseeability of the danger, its gravity, the relationship of the duty to the harm, the burden on the defendant if a duty is recognized, and the availability of insurance to cover the loss. On each of these factors the court found in favor of the parent. First, the court found that the child's action was foreseeable since she made statements that she was considering suicide. Her denial to the counselor did not break that relationship because counselors were advised that a student was likely to deny suicidal intentions to them but not to their peers. Second, the court found that the harm was grave and the state, through a legislative enactment, had made suicide prevention a significant public policy goal. Third, the court found that the causal relationship between the breach of a duty and the death was strong and was not mitigated by the intentional act of the child. Simply put, the act of the child was not an independent cause of her death. Fourth, the court felt that there was a moral obligation to come to the aid of the child as evidenced by legislative enactments to promote programs to prevent teenage suicide. Finally, both the school and the counselors had insurance coverage and the duty to warn the parent presented them with very little burden compared to the harm that might occur. On balance, then, the court held that the complaint presented sufficient facts to raise a duty on the part of the school and its counselors to warn the parent.

CGL Coverage of CERCLA Response Costs

Independent Petrochemical Corp. v. Aetna Casualty and Surety Co., 944 F.2d 940 (D.C. Cir. 1991).

In an unusual break with another circuit court in its interpretation of an insurance contract affecting the coverage for an identical incident, the

Circuit Court of Appeals for the District of Columbia concluded that the provision for coverage of damages in the standard comprehensive general liability policy included the payment for hazardous waste cleanups. Independent became liable for $96 million for the cost of cleaning up dioxin-laced oil. Several of its insurers sued to prevent payment and relied on an Eighth Circuit case, *Continental Insurance Co. v. Northern Pharmaceutical and Chemical Co.*, (*NEPACCO*), that held that environmental clean up costs were not damages. The district court, deferring to the prior decision, held that the insurer did not need to provide coverage. The court of appeals, claiming that the Eighth Circuit had misread Missouri law, reversed.

Under federal rules covering the applicable law for deciding a case, federal courts are bound by the decisions of the state courts in which the action is governed. In this case, the applicable law was that of Missouri. That state's highest court, however, had not issued a decision concerning the coverage of cleanup costs under comprehensive general liability policies. In *NEPACCO*, the Eighth Circuit anticipated that the state courts would interpret the term damages contained in the policy to exclude cleanup costs since its technical meaning did not extend to equitable recoveries of money. The Court of Appeals for the District of Columbia, however, concluded that interpretation violated some basic rules of construction applied by the Missouri courts and refused to defer to the Eighth Circuit's interpretation.

Under Missouri law, the courts interpret insurance contracts in light of the ordinary meaning of their terms. If the technical meaning of the term conflicts with the ordinary meaning, the ordinary meaning will control unless a party provides additional evidence to the court that the technical meaning is what the parties intended. In the case of the term damages, the ordinary meaning encompassed all financial liabilities one is obligated to pay as a result of another's loss. Under this definition , cleanup costs were damages.

The court then rejected two arguments that are raised commonly in these cases. First, the insurer argued that the statute creating liability defined damages differently from cleanup costs. The court responded that other sections treated cleanup costs as part of the damages caused by the waste. Second, the insurer argued that the court's definition of damages would result in making it liable for any cost incurred by the insured including penalties. The court also rejected that argument, noting that the common definition of damages did not encompass penalties or other forms of financial punishment.

AIDS Limitation Does Not Violate ERISA

McGann v. H&H Music Co., 946 F.2d 401 (5th Cir. 1991).

A change in an employee welfare benefit plan to limit coverage for acquired immune deficiency syndrome (AIDS) after an employee is diagnosed with the disease is not a discriminatory act under Employee