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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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COOPER INDUSTRIES, INC. *v.* AVIALL SERVICES, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 02–1192. Argued October 6, 2004—Decided December 13, 2004

The enabling clause of §113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as added by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides that any person "may" seek contribution from any other person liable or potentially liable under CERCLA §107(a) "during or following any civil action" under CERCLA §106 (which authorizes the Federal Government to compel responsible parties to clean up contaminated areas, see *Key Tronic Corp.* v. *United States,* 511 U. S. 809, 814), or CERCLA §107(a) (which empowers the Government to recover its response costs from potentially responsible persons (PRPs)). Section 113(f)(1)'s saving clause provides: "Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under" §106 or §107. SARA also created a separate express right of contribution, §113(f)(3)(B), for "[a] person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement."

Cooper Industries, Inc., owned four Texas properties until 1981, when it sold them to Aviall Services, Inc. After operating those sites for several years, Aviall discovered that both it and Cooper had contaminated them when hazardous substances leaked into the ground and ground water. Aviall notified the State of the contamination, but neither the State nor the Federal Government took judicial or administrative measures to compel cleanup. Aviall cleaned up the properties under the State's supervision and sold them to a third party, but remains contractually responsible for $5 million or more in cleanup

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costs. Aviall filed this action against Cooper to recover such costs. The original complaint asserted, *inter alia*, a claim for cost recovery under §107(a) and a separate claim for contribution under §113(f)(1). Aviall later amended the complaint to, among other things, combine its two CERCLA claims into a single, joint claim that, pursuant to §113(f)(1), sought contribution from Cooper as a PRP under §107(a). Granting Cooper summary judgment, the District Court held that Aviall had abandoned its freestanding §107 claim, and that contribution under §113(f)(1) was unavailable because Aviall had not been sued under §106 or §107. The Fifth Circuit ultimately reversed, holding that §113(f)(1) allows a PRP to obtain contribution from other PRPs regardless of whether the PRP has been sued under §106 or §107. The court reasoned in part that "may" in §113(f)(1)'s enabling clause did not mean "may only."

Held: A private party who has not been sued under CERCLA §106 or §107(a) may not obtain contribution under §113(f)(1) from other liable parties. Pp. 6–12.

(a) Section 113(f)(1) does not authorize Aviall's suit. This Court disagrees with Aviall's argument that the word "may" in §113(f)(1)'s enabling clause should be read permissively, such that "during or following" a civil action is one, but not the exclusive, instance in which a person may seek contribution. First, the natural meaning of "may" in this context is that it authorizes certain contribution actions that satisfy the subsequent specified condition—*i.e.,* those that occur "during or following" a specified civil action—and no others. Second, reading §113(f)(1) to authorize contribution actions at any time, regardless of the existence of a §106 or §107(a) civil action, would render entirely superfluous the section's explicit "during or following" condition, as well as §113(f)(3)(B), which permits contribution actions after settlement. This Court is loath to allow such a reading. See, *e.g., Hibbs* v. *Winn,* 542 U. S. ___, ___. Congress would not have bothered to specify conditions under which a person may bring a contribution claim, and at the same time allowed contribution actions absent those conditions. Section §113(f)(1)'s saving clause does not change the Court's conclusion. That clause's sole function is to clarify that §113(f)(1) does nothing to "diminish" any cause(s) of action for contribution that may exist independently of §113(f)(1), thereby rebutting any presumption that the express right of contribution provided by the enabling clause is the exclusive contribution cause of action available to a PRP. The saving clause, however, does not itself establish a cause of action, nor expand §113(f)(1) to authorize contribution actions not brought "during or following" a §106 or §107(a) civil action, nor specify what causes of action for contribution, if any, exist outside §113(f)(1). Reading the clause to authorize §113(f)(1) contribution ac-

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tions not just "during or following" a civil action, but also before such an action, would again violate the settled rule that the Court must, if possible, construe a statute to give every word some operative effect. In light of provisions specifying two 3-year limitations periods for contribution actions beginning at the date of judgment, §113(g)(3)(A), and at the date of settlement, §113(g)(3)(B), the absence of any such provision for cases in which a judgment or settlement never occurs also supports the conclusion that, to assert a contribution claim under §113(f), a party must satisfy the conditions of either §113(f)(1) or §113(f)(3)(B). Given the clear meaning of CERCLA's text, there is no need to resolve the parties' dispute about CERCLA's purpose or to consult that purpose at all. See *Oncale* v. *Sundowner Offshore Services, Inc.,* 523 U. S. 75, 79. Because Aviall has never been subject to a civil action under §106 or §107(a), it has no §113(f)(1) claim. Pp. 6–9.

(b) The Court declines to address in the first instance Aviall's claim that it may recover costs under §107(a)(4)(B) even though it is a PRP. In view of the importance of the §107 issue, the question whether Aviall waived a freestanding §107 claim, and the absence of briefing and decisions by the courts below, this Court is not prepared to resolve the §107 question solely on the basis of dictum in *Key Tronic.* Pp. 9–11.

(c) In addition, the Court declines to decide whether Aviall has an implied right to contribution under §107. To the extent that Aviall chooses to frame its §107 claim on remand as an implied right of contribution (as opposed to a right of cost recovery), the Court notes that it has visited the subject before, see, *e.g., Texas Industries, Inc.* v. *Radcliff Materials, Inc.,* 451 U. S. 630, 638–647, and that, in enacting §113(f)(1), Congress explicitly recognized a particular set (claims "during or following" the specified civil actions) of the contribution rights previously implied by courts from provisions of CERCLA and the common law, cf. *Transamerica Mortgage Advisors, Inc.* v. *Lewis,* 444 U. S. 11, 19. Pp. 11–12.

312 F. 3d 677, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, J., joined.