

The New Jersey Supreme Court Holds Spill Act Contribution Claims Are Not Subject to a Statute of Limitations Defense

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MGKF Special Alert

In the landmark decision, *Morristown Associates v. Grant Oil Co.*, issued last week, the New Jersey Supreme Court finally resolved what many often wondered, “whether New Jersey’s general six-year statute of limitations applies to a private party contribution claim to recover cleanup costs under the state’s Spill Compensation and Control Act?” The answer from the Court is quite simple - a Spill Act contribution claim is **not** subject to any statute of limitations. Of course, the case has been under the watchful and undoubtedly anxious eye of not only the parties to the case, but many Spill Act contribution plaintiffs, potential defendants, New Jersey practitioners, the NJDEP and a host of interested amici parties preparing for the possibility that the Court would uphold the two lower court decisions – and fall in line with several federal cases that have held the general six-year statute of limitations applied to such claims. Such a result would certainly have had a greater impact than the current ruling, which maintains the status quo of how Spill Act contribution claims had historically been handled in state court, with the exception of the lower court rulings in the *Morristown Associates* case. In reaching its decision, the Court did not seem to struggle with the various and complex arguments presented by the parties in the case, but found support for its ruling in what it viewed as the plain language of the Spill Act, its legislative history and policy considerations.

Specifically, the Court noted that “while the contribution provision does not explicitly state that no statute of limitations applies, it does state that ‘[a] contribution defendant shall have only the defenses to liability available to parties pursuant to [N.J.S.A. 58:10-23.11.g (d)].’” The defenses set forth at N.J.S.A. 58:10-23.11.g (d) are limited to an act or omission caused solely by war, sabotage, or God, or a combination thereof, and do not include a statute of limitations defense. The Court thus concluded that by expressly listing which defenses are available to defendants, that there is “significant support for a conclusion that no statute of limitations applies” and that such a finding reflects legislative intent. On this point, the Court stated that although it does not find the language of the Spill Act to be ambiguous, its construction is “support[ed by] the longstanding view, expressed by the Legislature and adhered to by the courts, that the Spill Act is remedial legislation designed to cast a wide net over those responsible for hazardous substances and their discharge on the land and waters of this state.”

While the Court’s ruling certainly provides a sigh of relief to any contribution plaintiff that might otherwise be facing a potential statute of limitations defense, there is always a chance the New Jersey State Legislature will amend the Spill Act to incorporate a specific statute of limitations. Indeed, the Court invited the Legislature

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to correct it if the Court erred in its decision, stating that “[i]f the Legislature intended something other than what we perceive to be a broad approach to holding parties responsible for their role in polluting the land and waters of New Jersey, then legislative correction can fix any interpretive misunderstanding.” And, it is still important to fully consider the various implications of when a Spill Act contribution claim is pursued. Aside from potential future Legislative action, there are other factors to consider in deciding whether to pursue and defend contribution claims early in the remediation process, including: the preservation of evidence; less risk that potentially responsible parties, including additional third-parties, will no longer be viable or financially able to contribute to the cleanup; the potential for buy-in and agreement on the selected remedy; and the potential for reaching a resolution outside of costly litigation.

If you have questions about the Spill Act statute of limitations, please contact Nicole Moshang (484) 430-2324, Bruce Katcher (484) 430-2320 or Diana Silva (484) 430-2347.