

## **No End in Sight for Parties Subject to Contribution Claims**

March 12, 2015

The New Jersey Supreme Court has unanimously held that private claims for contribution made pursuant to the New Jersey Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11f(a)(2)(a) are not subject to the general six-year statute of limitations contained in N.J.S.A. 2A:14-1.

*Morristown Assoc. v. Grant Oil Co.*, (A-38-13) (073248) (January 26, 2015). This decision leaves the door open for contribution plaintiffs to file suit against all parties who may have contributed to contamination, regardless of how long ago their contribution occurred.

In *Morristown Associates*, the owner of a multi-tenant shopping center in Morristown, New Jersey leased property to a dry cleaning business, which had an underground storage tank (“UST”) to store fuel oil for its boiler. Around 1988, deterioration of the UST caused fuel oil to leak into the soil and groundwater. The leak, however, was not discovered until 2003 when a monitoring well near the UST revealed the contamination. *Id.* at 7.

Following the discovery of the contamination, plaintiff, the owner of the shopping center, began to remediate the property and later brought claims for contribution against the owner of the dry cleaning business, as well as the oil companies who provided fuel oil for the UST. *Id.* at 7. Under the Spill Act, a party who cleans up contamination has a right of contribution against other responsible parties. N.J.S.A. 58:10-23.11f(a)(2)(a). The purpose of a contribution claim is to help ensure that parties do not pay more than their fair share of cleanup costs, especially when they are only responsible for a small portion of a site’s overall contamination.

Despite the absence of a specific limitation period in the Spill Act, the trial court ultimately applied the general six-year statute of limitations for injury to real property to the private claims for contribution, and found that the owner’s claims were time-barred. *Id.* at 9; see N.J.S.A. 2A:14-1. On appeal, the Appellate Division affirmed the trial court’s ruling, relying in part on prior precedent that general statute of limitations are “applicable when particular statutes did not set forth a specific limitation period.” *Id.* at 10-11.

The New Jersey Supreme Court reversed the lower courts and held that contribution claims under the Spill Act are not bound by the general six-year statute of limitations. The Supreme Court focused on the plain language of the Spill Act, which limits defendants to only those enumerated defenses to liability: “an act or omission caused solely by war, sabotage, or God, or a combination thereof.” *Id.* at 30 (“[A] statute of limitations defense is not included.”).<sup>1</sup>

For potentially responsible parties, this decision confirms that no matter how much time passes, a party can be subject to a contribution claim.

If you are involved in the cleanup of a contaminated site with multiple potential responsible parties and have questions regarding a contribution claim, please contact Heidi Minuskin, Deborah Kelly or Michelle Murphy.

<sup>1</sup>While the trial court found, in the context of evaluating the applicability of the discovery rule, that a

property owner has an affirmative obligation to investigate its property for all potential areas of concern when they are put on reasonable notice, the Supreme Court did not address this issue. The timing of when contamination is discovered is now moot since there is no statute of limitations for contribution claims.