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Supreme Court Narrows Triggers for CERCLA Contribution Actions

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In a unanimous decision authored by Justice Thomas, the Supreme Court of the United States ruled in the case of *Guam v. United States*, No. 20-382, 593 U.S. __ (2021), that a party must resolve "CERCLA-specific liability" in order to trigger contribution rights under § 113(f)(3)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

The question before the Court was whether a settlement between Guam and the United States that resolved claims under the Clean Water Act could be the basis for a contribution claim under § 113(f)(3)(B) of CERCLA. In this case, Guam and the US EPA had entered into a Consent Decree following a Clean Water Act lawsuit, settling the United States' Clean Water Act claims against Guam and requiring Guam take actions to close and cover a dump site. Thirteen years later Guam sued the United States under CERCLA for cost recovery and contribution, claiming the United States' earlier use of the dump site exposed it to liability. The district court, in a ruling affirmed by the court of appeals, ruled that Guam had a contribution claim at one point, based on its Clean Water Act Consent Decree because that Decree required remedial measures and provided a conditional release, which sufficiently resolved Guam's liability for the dump site and triggered a CERCLA contribution claim under § 113(f)(3)(B). However, the Decree also triggered the three-year statute of limitations, which had expired, leaving Guam without any viable claims.

The Supreme Court reversed the lower courts, rejecting the notion that the Clean Water Act Consent Decree was sufficiently similar to a CERCLA settlement to trigger contribution liability. The Court focused on a textual analysis of the statute, which states in relevant part that:

> 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 may seek contribution from any person who is not party to a [qualifying] settlement.

42 U.S.C. § 9613(f)(3)(B).

Of particular note to the Court was the reference in § 113(f)(3)(B) to "response action", which is a term of art in CERCLA, and appears throughout the Act. The Court reasoned that this language "is best 'understood only with reference' to the CERCLA regime." *Guam*, slip op. at 6, *quoting United*

States v. Atlantic Research Corp., 551 U. S. 128, 135 (2007). Thus, according to the Court's reasoning, to resolve liability for a "response action," a party must engage in a CERCLA-specific settlement, not "settle an environmental liability that might have been actionable under CERCLA." *Id.* at 7.

In conclusion, the Court held that "[t]he most natural reading of §113(f)(3)(B) is that a party may seek contribution under CERCLA only after settling a CERCLA-specific liability." *Id.* at 9.

Like most major CERCLA decisions, the Court's ruling answers one question but raises many more. We can expect future litigation on the precise bounds of how specific a settlement need be to qualify as "CERCLA-specific" under the Court's holding. There will also likely be litigation regarding how this ruling may apply to other provision of CERCLA beyond §113(f)(3)(B). As always, the Corporate Environmental Lawyer Blog will be monitoring these important developments and reporting on what you need to know.

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