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**NEW JERSEY SUPREME COURT FINDS THAT STATUTE OF  
LIMITATIONS IS NOT A DEFENSE UNDER THE  
NEW JERSEY SPILL COMPENSATION AND CONTROL ACT**

By: Sandra Calvert Nathans, Esq.

In a case that will have broad impacts to responsible parties who seek contribution under the New Jersey Spill Compensation and Control Act (the “Spill Act”), the New Jersey Supreme Court in Morristown Associates v. Grant Oil Co. reversed the Appellate Division’s decision and found that the general 6 year statute of limitations applicable to property damage claims does not apply to a private right of action under the Spill Act.

In 1979, the plaintiff purchased commercial property consisting of a strip mall with a number of tenants, one of which was a dry cleaner. The dry cleaner was heated by an oil furnace and an underground storage tank which was installed in or around 1977 to supply oil to the furnace. The dry cleaner was sold in 1985 and again in 1998. In August, 2003, an off-site monitoring well revealed fuel oil contamination. Through the course of an investigation, fuel oil was determined to have discharged into the environment through the vent and fill pipe which had deteriorated. A complaint was filed in 2006 and underwent a number of amended filings in 2007 and 2009. Defendants added to the litigation in 2009 filed motions for summary judgment alleging that the six year statute of limitations for injury to real property, N.J.S.A. 2A:14-1, applied to claims under the Spill Act thereby barring plaintiff’s claims. The trial court and the Appellate Division agreed with the defendants finding that the six year statute of limitations was applicable to Spill Act contribution claims subject to the discovery rule. The Appellate Division particularly found “[a]pplying a statute of limitations to a claim for private contribution under the Spill Act does not prevent a diligent plaintiff from recovering the costs of cleanup and remediation from other responsible parties, as plaintiff contends. It merely requires that a claimant file a timely action after it discovered or should have discovered the grounds for its claim.” To avoid the “harsh effects” of the statute of limitations, the Appellate Division found that the statute of limitation would not accrue until the contamination was discovered (aka “The Discovery Rule”).

In a case that created much interest and drew six amici brief filings, the Supreme Court unanimously reversed, finding that the plain language of the Spill Act did not include the statute of limitations among the limited defenses available under the statute. N.J.S.A. 58:10-23.11gd provides for defenses, other than the innocent landowner defense, stating “an act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.” In an amendment to the Spill

Act in 1991, the Spill Act allowed a right of action by a private party, who cleans up and removes a discharge of hazardous substance for cleanup costs against other responsible parties. N.J.S.A. 58:10-23.11f(a)(2)(a). Included in this section of the Spill Act is a limitation of responsible party defenses which were provided in N.J.S.A. 58:10-23.11gd - an act or omission caused solely by war, sabotage, or God, or a combination thereof.

The Supreme Court reasoned that neither section of the Spill Act concerning responsible parties' defenses set forth an applicable statute of limitations. In fact, the entire text of the Spill Act is silent concerning a statute of limitations. The Supreme Court determined that this silence indicated the Legislature's intent to omit any statute of limitations applicable to the Spill Act. The plain language of the Spill Act limits the liability defenses to an act or omission caused solely by war, sabotage, or God, or a combination thereof. If the Legislature intended to include a statute of limitations defense, it would have listed it among those limited defenses.

The Supreme Court upheld a contribution defendant's right to assert other defenses such as venue, service of process and subject matter jurisdiction which are firmly established by Court Rules and "are not subject to overriding legislation." Statutes of limitations, on the other hand, are products of the Legislature and once established, they are binding on the Courts. To apply a general property damage statute of limitations to responsible parties' contribution claims would only serve to frustrate the purpose for which the contribution right was created.

The impact of this decision will have broad effects on many industries. Now that there is no statute of limitations for Spill Act contribution claims, individual and commercial clients should reassess their internal procedures such as document retention policies as a result of this decision. For example, keeping copies of relevant documents, such as insurance policies, for an extended period of time may be far more compelling now after this decision. We also note that the absence of a statute of limitations does not mean that one should be relaxed about bringing claims timely. Among many practical and legal considerations that this case brings to the foreground include the risks of witnesses' memories fading or the loss of documents through the passage of time.

Should you have any questions concerning this case or any other environmental matter, you may contact one of the environmental law attorneys at Schenck, Price, Smith & King, LLP.

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<p><b>FLORHAM PARK</b> 220 Park Avenue PO Box 991 Florham Park, NJ 07932 Tel: 973-539-1000 <a href="http://www.spsk.com">www.spsk.com</a></p>	<p><b>PARAMUS</b> Country Club Plaza 115 West Century Road Suite 100 Paramus, NJ 07652 Tel: 201-262-1600</p>	<p><b>SPARTA</b> 351 Sparta Avenue Sparta, NJ 07871 Tel: 973-295-3670</p>	<p><b>NEW YORK</b> 116 West 23<sup>rd</sup> Street Suite 500 New York, NY 10011 Tel: 212-386-7628</p>
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