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INDIVIDUAL OWNER HELD PERSONALLY LIABLE FOR ENVIRONMENTAL REMEDATION COSTS DESPITE CORPORATE ENTITY

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Business owners and those who buy real estate in corporate forms like LLCs and corporations to shield them from individual personal liability for environmental cleanup costs must proceed with caution. New Jersey is under severe pressures to insure contaminated property is remediated, especially in environmental justice areas, without using taxpayer money. Thus, the New Jersey Department of Environmental Protection (“NJDEP”) will pursue anyone even remotely connected to the contamination, even if that means suing individual members or officers of entities it views as potentially responsible. Earlier this Spring, the New Jersey Superior Court entered judgment against both business entities, and their individual owner, for investigation, remediation and removal costs, penalties, fees and more. The lesson here is that setting up a corporate entity alone does not necessarily insulate an individual owner from personal liability for environmental obligations. Corporate formalities, responses to environmental violations, how one conducts business, and many other factors matter greatly, and business owners should consult business and legal professionals to review whether they are doing all they can to avoid a similar result.

One of the latest cases, *New Jersey Department of Environmental Protection v. Little Mason Properties, LLC, Irfan Hassan, et al.*, is just one example. The genesis of this case was a report received by the NJDEP that gasoline had leaked from underground storage tanks (“UST’s”) at a Newark gas station, allegedly owned and operated by LLC’s owned by individual Irfan Hassan, causing visible contamination at the property. The NJDEP thereafter sent warning letters and levied certain financial penalties against Mr. Hassan and his companies which were not resolved. As a result, the NJDEP filed this litigation in 2020, asserting claims under the Spill Act, the Water Pollution Control Act, and other legal claims against both the entities and Mr. Hassan, personally. Ultimately, the Court entered judgment against the entities and Mr. Hassan, individually, earlier this Spring, requiring Mr. Hassan and his companies to remediate the property and pay financial penalties. In early May 2024, the NJDEP filed a motion in Court to enforce the judgment and sought payment of even further financial penalties and sanctions.

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In other cases, NJDEP doesn't just pursue the current owners of the property but will look back in the chain of title and operational histories and pursue past business entities and individual members and officers which previously owned or operated at a particular property.

While one of the advantages of setting up an LLC or a corporation are the protections from individual liability that they may afford, those protections are not bulletproof or absolute. As the foregoing case makes clear, a number of factors can erode or outright eliminate these protections if a business owner is not careful and does not comply with required formalities. The prudent business owner will proactively seek legal counsel to assess compliance with corporate and environmental regulations, and diligently address any legal obligations flowing therefrom. This is necessary to defend their business and individual interests if an action is brought. Should you have any questions or seek guidance, please reach out to Heidi S. Minuskin, Esq. at HSM@spsk.com, or Jonathan F. Donath, Esq. at JFD@spsk.com.

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