FLASTER GREENBERG
Attorneys at Law | A Professional Corporation

New Jersey Supreme Court Rules that Statute of Limitations Does Not Apply to Spill Act Suits

Legal Alert

February 4, 2015

Marty M. Judge, Mitchell H. Kizner

The New Jersey Supreme Court issued a major ruling last week in *Morristown Associates v. Grant Oil Co., ___ N.J. ___* (Docket No. A-38-13, decided January 26, 2015) clarifying the deadline for when persons who clean up contaminated property that has been polluted by someone else may bring claims for reimbursement of cleanup costs against the actual polluters. In so doing, the Court reversed a 2013 lower court decision that had held New Jersey's general six (6) year statute of limitations (SOL) for bringing property damage claims is applicable to such actions.

These kinds of suits are called Spill Act contribution claims and they have been authorized by New Jersey's Spill Compensation and Control Act since 1991. However, no SOL for bringing such claims is set forth in the Spill Act, leading many practitioners to believe, prior to 2013, that this meant there was no SOL for Spill Act contribution claims at all.

This belief was reinforced by two 1990s Appellate Division cases, one reported and one not, that had both found no SOL for commencement of Spill Act contribution actions. However, the reported case, while precedential, did not actually deal with the six (6) year SOL but addressed a somewhat different law – New Jersey's ten (10) year statute of repose for claims relating to the development or improvement of property. The other case did hold expressly that the six (6) year SOL was not applicable to Spill Act contribution claims, but it was unreported and therefore lacked binding or precedential authority. Complicating the matter further, there have also been several federal court decisions finding New Jersey's six (6) year SOL applicable to Spill Act contribution claims although, because those cases are federal decisions, they are not binding on New Jersey state courts. Meanwhile, the New Jersey Supreme Court had never addressed the issue.

In 2013, the Appellate Division held in a reported decision in *Morristown Associates v. Grant Oil Co.*, 432 N.J. Super. 287 (App. Div. 2013), that New Jersey's general six (6) year SOL for bringing property damage claims applies to Spill Act contribution claims. It held that the claimant's request for reimbursement of cleanup costs against a party allegedly responsible for causing the contamination required dismissal because the plaintiff either knew or should have known of the presence of contamination on the property more than six (6) years before the claim was actually filed, regardless of when the claimant may have actually spent the money to clean up that contamination. In so holding, it overruled the unreported Appellate Division case from the 1990s that had decided to the contrary, and it distinguished the other 1990s case that had held New Jersey's ten (10) year statute of repose for improvements to property is not applicable to Spill Act contribution claims.

In reversing the Appellate Division's 2013 decision, the Supreme Court held, in essence, that the Spill Act's failure to delineate any SOL for contribution claims means that there is no such limitation on the commencement of such actions. The Supreme Court was not persuaded by the fact that New Jersey's general six (6) year SOL for property damage claims is intended to be a catch all provision, as it noted that the Legislature had never sought to amend the Spill Act in the several decades after the above-described cases first held there is no SOL for Spill Act contribution claims in the 1990s. The Supreme Court felt this

confirmed the legislative intent agreeing with this conclusion.

The Supreme Court's clarification of the law in this important area will have widespread significance for anybody who owns or is otherwise cleaning up contaminated property in New Jersey, for those responsible for causing such contamination, and for others who are involved in the cleanup process. In this last respect, the opinion is particularly important to attorneys and environmental consultants who have been advising their clients for approximately two decades that there likely is no statute of limitations under the Spill Act. Had the Supreme Court allowed the Appellate Division's opinion in Morristown Associates to stand, it could have led to claims against professionals who may previously have advised clients there is no need to be concerned about filing deadlines for Spill Act contribution cases. Those issues have now been avoided.

To learn more about how this may affect you or your business, we invite you to contact Marty M. Judge, Mitchell H. Kizner, or any member of Flaster Greenberg's Environmental Law Practice Group.

ATTORNEYS MENTIONED

Marty Judge

Mitchell Kizner