

NEWS RELEASES

PUBLISHED: MAY 25, 2021

Services

Appellate
Environmental
Litigation &
Alternative Dispute
Resolution
State Attorneys
General Practice

Professionals

JOSEPH S. DIEDRICH
MADISON:
608.258.7380
WASHINGTON:
202.378.2300
JOSEPH.DIEDRICH@
HUSCHBLACKWELL.COM

ERIC M. MCLEOD
MADISON:
608.234.6056
ERIC.MCLEOD@
HUSCHBLACKWELL.COM

KIRSTEN ATANASOFF
MADISON:
608.234.6024
KIRSTEN.ATANASOFF@
HUSCHBLACKWELL.COM

Guam Prevails in CERCLA Dispute before U.S. Supreme Court

HUSCH BLACKWELL-AUTHORED AMICUS FEATURED PROMINENTLY AT ORAL ARGUMENT

The Government of Guam secured a unanimous victory before the U.S. Supreme Court in its dispute with the federal government over financial responsibility for cleanup of a contaminated site on the island. Known as the Ordot Dump, the contaminated site was originally constructed by the U.S. Navy in the 1940s as a military waste site. Years after the U.S. Navy abandoned the site, the U.S. Environmental Protection Agency (EPA) sued Guam under the Clean Water Act. Guam entered into a consent decree with the EPA in 2004. An ongoing project to fully remediate the Ordot Dump is estimated to cost \$160 million.

In 2017, Guam sued the United States to recoup some of the costs associated with the cleanup effort. It sued under § 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), which allows responsible parties to pursue “cost recovery” from other responsible parties. After a federal district court allowed Guam’s claims to proceed, the D.C. Circuit reversed. It held that Guam could only bring suit under a different provision of CERCLA, § 113, which creates a “contribution” right for a responsible party that has “resolved its liability to the United States or a State for some or all of a response action ... in an administrative or judicially approved settlement.” In the D.C. Circuit’s view, the 2004 Clean Water Act settlement had triggered a § 113 claim. And because the three-year statute of limitations on a § 113 claim runs from the settlement date, Guam brought suit a decade too late.

At the U.S. Supreme Court, the question was whether a CERCLA § 113 claim based on a prior settlement requires that settlement to resolve a CERCLA-specific liability—or whether a settlement involving other federal or state environmental liability also qualifies. In a 9-0 ruling, the Court held that “CERCLA [§ 113] contribution requires resolution of a CERCLA-specific liability.” Because Guam’s 2004 Clean Water Act settlement resolved only Clean Water Act liability—and didn’t even mention CERCLA—it didn’t trigger a § 113 claim. The Court reversed and remanded, allowing Guam to proceed with its § 107 cost-recovery claim against the United States.

On behalf of the Commonwealth of the Northern Mariana Islands and a bipartisan coalition of 24 States plus the District of Columbia, Husch Blackwell filed an amicus brief supporting the Government of Guam in this closely-watched litigation. The brief was cited heavily at oral argument, and the Court’s opinion tracked the logic of the Husch Blackwell brief, which clarified how the D.C. Circuit’s reasoning could imperil future cooperation and settlement with federal and state environmental regulators.

In weighing the litigants’ arguments, the Court found that “[i]t would be rather odd to say that a party has ‘resolved its liability’ if that party remains vulnerable to a CERCLA suit.” Further, the Court made clear that, rather than the tortured approach to the text taken by the federal government, “the far simpler approach is to ask whether a settlement expressly discharged a CERCLA liability.” Similarly, the Court utilized a comprehensive view of CERCLA in parsing §113(f)’s provisions, finding that the federal government’s “effort to tear §113(f)(3)(B) away from its companions based on a negative implication falters in light of the other strong textual links among them.”

The Husch Blackwell team included Joseph Diedrich, David Lopez, Eric McLeod, Kirsten Atanasoff, and Jason Flower.