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**NEW JERSEY SUPREME COURT RULES THAT SPILL ACT CONTRIBUTION CLAIMS ARE NOT
SUBJECT TO A STATUTE OF LIMITATIONS**

On January 26, 2015, the New Jersey Supreme Court reversed the Appellate Division's decision in Morristown Associates v. Grant Oil, et al., which affirmed dismissal of Plaintiff's Spill Act contribution claim pursuant to the six-year statute of limitations contained in N.J.S.A. 2A:14-1. (A-38-13)(073248). In doing so, the Court ruled that Spill Act contribution claims are not subject to any statute of limitation. Below is a brief summary and commentary of the Court's opinion.

FACTUAL BACKGROUND

The pertinent facts of Morristown Associates are as follows: in 1979, Morristown Associates purchased commercial property located at 30 Lafayette Avenue in Morristown, New Jersey. The property contained a strip mall known as Morristown Plaza. Within the strip mall, there were various tenants, including a dry cleaner (Plaza Cleaners) which was operated by Robert Herring. Prior to commencing operations, and before Morristown Associates purchased the property, Herring installed an underground storage tank (UST) below the concrete floor in the rear room. Vent and fill lines for the UST protruded from an exterior wall of the building into an alleyway. In 1985, Herring sold his dry cleaning business to Edward and Amy Hsi. The Hsis owned the business until 1998 and sold it to the current owner, Byung Lee.

At some point in 1993, Morristown Associates hired Giorgio Engineering to perform an environmental audit of the property in preparation to refinance the mortgage. Giorgio reported that there were no UST's on site. Later, in 1999, a UST at the Shoprite tenant's leasehold was found to be leaking. The Shoprite UST was removed under the supervision of Morristown's property manager, Ekstein Management.

In 2003, a monitoring well installed near Plaza Cleaners revealed the presence of fuel oil contamination. Morristown Associates was informed that the UST used by Plaza Cleaners might be the source. A subsequent investigation revealed that while the UST was intact, the vent and fill lines were severely corroded. Morristown Associates commenced the cleanup and filed a complaint seeking contribution from several defendants on July 31, 2006.

TRIAL COURT'S RULING

Ultimately, at some point in the litigation, various defendants moved for summary judgment and argued that the six-year statute of limitations found within N.J.S.A. 2A:14-1 applied to Plaintiff's Spill Act contribution claim. The trial court held a Lopez hearing and determined that Plaintiff did not get the benefit of the discovery rule because it should have discovered its claims when Shoprite's leaking UST was found in 1999.

PLAINTIFF'S APPEAL

On appeal, Plaintiff challenged, among other rulings, the trial court's application of the six-year statute of limitations found within N.J.S.A. 2A:14-1. The Appellate Division affirmed. In its opinion, the Appellate Division acknowledged Pitney Bowes, Inc. v. Baker Industries, Inc., which failed to recognize the statute of repose as a defense to a Spill Act contribution claim, but found it not controlling. 277 N.J. Super. 484 (App. Div. 1994). Additionally, the Appellate Division noted that statutes of repose and statutes of limitations were different. In its analysis, the Appellate Division cited New Jersey Supreme Court precedent that found general statutes of limitation applicable when particular statutes did not set forth a specific limitation period. See Montells v. Haynes, 133 N.J. 282 (1993). Additionally, the Appellate Division cited several decisions of the New Jersey district court which held the six-year statute of limitations contained in N.J.S.A. 2A:14-1 applied to Spill Act contribution claims.

PETITION FOR CERTIFICATION

After its appeal was denied, Plaintiff petitioned for Certification on the statute of limitations issue. In support of its argument that Spill Act contribution claims were not subject to a statute of limitations, Plaintiff pointed out that the Spill Act itself had no limitations period and that there was no hard and fast rule which required the imposition of a statute of limitations when a statute was otherwise silent. Moreover, Plaintiff noted that the contribution provision of the Spill Act, N.J.S.A. 58:10-23.11f.a.(2)(a) expressly provides that the only defenses available to a defendant in a contribution action are those contained in N.J.S.A. 58:10-23.11g(d)(ie., acts of god, war or terrorism or a combination thereof).

Additionally, Plaintiff argued that the Legislature failed to include a statute of limitations when it amended the Spill Act in 1991 to permit contribution claims, while other claims under the Act were subject to an express limitations period. Specifically, Plaintiff referenced N.J.S.A. 58:10-23.11k which requires all claims against the Spill Fund to be brought within one year. Accordingly, Plaintiff argued that specific inclusion of a limitations period in one section of the statute and exclusion in another expressed a legislative intent to not subject contribution claims to a limitations period. Additionally, Plaintiff cited to unpublished opinions from the Appellate Division which failed to apply a limitations period to a contribution claim and noted that the Legislature's failure to amend the Spill Act to include a statute of limitations period within the contribution provision was Legislative acquiescence.

Plaintiff further argued that from a policy perspective, a six-year statute of limitations period would not encourage speedy remediation of contribution claims because remediation can take long periods of time. Finally, Plaintiff argued that the Spill Act should be liberally construed to affect its purpose.

The Defendants opposed Plaintiff's Petition for Certification and argued that the six-year statute of limitations found with 2A:14-1 applied to Spill Act contribution claims. Relying on Montells, Defendants argued that the Court should apply the limitations period for actions seeking comparable relief at common law and that the focus should be on the injury, not the legal theory alleged. Further, because the injury alleged was to real property, the Defendants asserted that N.J.S.A. 2A:14-1 applied.

Defendants further argued that the Legislature was aware of this general limitations period when it enacted the Spill Act and that its failure to expressly prohibit a statute of limitations supported the application of the limitations period contained in N.J.S.A. 2A:14-1. As additional support, the Defendants cited numerous decisions from the federal district court of New Jersey that applied the limitations period found with N.J.S.A. 2A:14-1 to Spill Act contribution claims. See Reichhold Inc. v. U.S. Metals Ref. Co., 655 F. Supp. 2d 400 (D.N.J. 2009); Kemp Indus. Inc. v. Safety Light Corp., 1994 U.S. Dist. LEXIS 21466.

Additionally, the Defendants argued that Plaintiff misread N.J.S.A. 58L10-23.11g(d)'s limitation of available defenses. Specifically, Defendants argued that Plaintiff failed to recognize that the defenses contained within this section of the Spill Act only applied to owners or operators of major facilities or vessels. Moreover, the Defendants further argued that the Spill Act's list of defenses should not be read to exclude all other defenses because a defendant presumably maintains other unlisted procedural defenses.

Defendants further argued that Plaintiff's reliance on Pitney Bowes and other non-precedential case law was misplaced and noted that Pitney Bowes dealt with a statute of repose and not one of limitations. Finally, Defendants argued that imposing a limitations period would encourage the prompt investigation and prosecution of contribution claims.

THE COURT'S DECISION

After reviewing the matter, the New Jersey Supreme Court reversed the Appellate Division. Because the Court was asked to interpret the Spill Act, it looked to the Legislature's intent. In doing so, it looked to the entire scheme of the Spill Act and looked at the statutory language with common sense. With that in mind, the Court noted that there was no express limitations period within the Spill Act that was applicable to contribution claims or nothing that stated a limitations period was not applicable. However, the Court recognized that the contribution provision expressly states that, "[a] contribution defendant shall have only the defenses to liability available to parties pursuant to N.J.S.A. 58:10-23.11f.a(2)(a)" and that this language strongly supported the conclusion that no statute of limitations applied to Spill Act contribution claims.

Further, in considering whether to apply a default statute of limitations to an otherwise silent statute, the Court noted that the Defendants were incorrect. Specifically, the Court noted that available Spill Act contribution claim defenses were expressly limited to those set forth in N.J.S.A. 58:10-23.11g(d), which did not include a statute of limitations defense. Thus, the reasoning of Montells did not apply.

The Court also dismissed the Defendants' argument related to the categories of persons subject to the defenses contained in N.J.S.A. 58:10-23.11g(d). Specifically, the Court noted that the contribution provision limited the defenses available to contribution defendants to those set forth in N.J.S.A. 58:10-23.11g(d). Additionally, the Court rejected the Defendants' argument that limiting contribution defendants to the defenses set forth in N.J.S.A. 58:10-23.11g(d) would prevent other unlisted defenses such as challenges to venue, service of process and subject matter jurisdiction. The Court noted that those defenses were established by the court rules under the jurisdiction of the Supreme Court and were not subject to overriding legislation.

In summation, the Court noted that the plain text of the Spill Act supported its decision. It also noted that the Spill Act was remedial legislation designed to cast a wide net over responsible parties and that the legislature could not have intended to permit its imposition of contribution liability on culpable dischargers to be frustrated by the imposition of a general statute of limitations. The Court then went

out of its way to explain how the Legislature's intent was not to limit Spill Act claims by citing to the removal of other common law and statutory defenses from the liability section of the Act. Finally, the Court invited the Legislature to amend the Spill Act if it disagreed with it.

CONCLUSION

Ultimately, the Court's decision was fairly unremarkable. Rather than address the pros and cons of applying a limitations period to Spill Act contribution claims, the Court found that the plain language of the statute was clear and was further supported by the Legislative history. While it came to a decision, the Court punted to the Legislature. In doing so, it ignored and contradicted its recent decision in NJDEP v. Dimant, in which the Court found that the dry cleaner defendant was a discharger subject to Spill Act liability but affirmed the dismissal of the claim against it under a theory of laches, a defense which is not set forth in our Rules of Court. 212 N.J. 153 (2012). Undoubtedly, this conflict in the law will have to be resolved.

Additionally, although the Court seemed to adopt the public policy argument raised by Plaintiff, it failed to consider that liability and damages can be bifurcated in a Spill Act contribution claim and that a contribution plaintiff could file a claim before remediation was complete and damages were fixed. See Magic Petroleum v. Exxon Mobil, 218 N.J. 390 (2014). In all likelihood, applying a statute of limitations to Spill Act contribution claims would motivate contribution claimants to expeditiously bring their claims, which would assist in the timely remediation of contaminated sites. In this regard, it should be noted that if the Court were to have applied a statute of limitations to Spill Act contribution claims, contribution plaintiffs would have had the benefit of the discovery rule.¹ Unfortunately, pursuant to the Court's holding in Morristown Associates, contribution Plaintiffs will be able to wait an infinite amount of time to bring their claims, during which valuable witnesses and documents can be lost to the detriment of defendants. In the end, applying a statute of limitations to Spill Act contribution claims would provide a fair balance between the harsh joint and several liability the Act imposes and the ability of contribution defendants to defend Spill Act contribution claims. Hopefully, the Legislature weighs in on this issue and has the final word. In the interim, those defending Spill Act claims will have to assert their "defenses" (ie. laches) as equitable factors as part of the allocation process.

¹ The reasoning of Pitney Bowes can be squared with the application of a statute of limitations to Spill Act contribution claims because the statute of repose would prevent a claim from being brought against a contribution defendant after ten years while the statute of limitations would be subject to the discovery rule.