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New Jersey Supreme Court to Decide Whether Spill Act is Subject to Statute of Limitations

Daniel L. Schmutter and Daniel Flynn

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On November 13, 2013, the New Jersey Supreme Court announced that it will review a significant decision by the Appellate Division in *Morristown Associates vs. Grant Oil Company*, in which the Court held that the general six-year statute of limitations applies to claims for contribution under the New Jersey Spill Compensation and Control Act (Spill Act). As part of its review, if the Court agrees that the six-year statute of limitations applies, it will also consider the Appellate Division's decision to apply the "discovery rule" to determine when the six-year limitations period begins. Prior to the August 2013 Appellate ruling in *Morristown Associates*, no New Jersey court had held, in a reported decision, that any statute of limitations applies to the Spill Act.

As reported in our **Client Alert** on the decision, the owner of a shopping center was notified by a neighbor in 2003 that groundwater monitoring wells on the neighbor's property had detected contamination coming from the shopping center. The follow-up investigation found an underground storage tank, owned by a tenant, which was estimated to have been leaking from 1988 until its removal in 2003. The shopping center owner filed a Spill Act claim against the tenant and its oil suppliers in 2006. Although the Spill Act itself contains no explicit statute of limitations, the defendants sought dismissal of the lawsuit, arguing that Spill Act claims are subject to New Jersey's general six-year statute of limitations and that the suit was brought beyond the six-year period.

The trial court and the Appellate Division both held that New Jersey's general six-year statute of limitations applies to claims brought under the Spill Act. Application of the six-year period would not have hindered the plaintiff's recovery if the limitations period began to run on the date that the owner actually discovered the contamination. However, the trial court applied what is known as the "discovery rule." The trial court found, and the Appellate Division agreed, that the limitations period began to run in 1998, when the owner learned about an unrelated leaking underground storage tank on the shopping center property. According to the courts, this discovery put the shopping center on notice that there could be other underground storage tanks. If the owner had investigated, it would have found the tank contaminating the neighbor's property. Relying upon the discovery rule, the Appellate Division found that the claim had not been timely filed to recover for leaks occurring prior to 1998. The shopping center could only recover for the cost of addressing leaks occurring within six years of 2006, when the litigation was commenced.

In accepting the appeal, the New Jersey Supreme Court faces both practical and legal considerations. Applying the six-year statute of limitations in this way may require commencement of litigation before any significant money has been spent on remediation, or even before a potential plaintiff is aware of whether the cost of a clean-up is significant enough to justify the substantial expense of litigation. In contrast, the limitations periods under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the federal counterpart to the Spill Act, does not begin to run until substantial remediation has been completed.

If you have any questions regarding the issues discussed in this Alert, please contact the authors, **Daniel L. Schmutter** and **Daniel Flynn.**