Sole Shareholder of Dry Cleaning Business Found Liable For Environmental Contamination Under New Jersey Spill Act

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In an April 20, 2018 decision in the matter *Morris Plains Holding VF, LLC v. Milano French Cleaners, Inc.*, the Appellate Division of the New Jersey Superior Court upheld the imposition of liability under the New Jersey Spill Compensation and Control Act on the sole shareholder of a dry cleaning business.

The business leased space in a shopping center commencing in 1987. In 1999, contamination with dry cleaning chemicals was discovered on the property. In July 2012, after failing to complete the remediation of the property, the dry cleaning business closed and filed for bankruptcy protection. The plaintiff assumed the cleanup and filed suit against the dry cleaning business and its sole shareholder. Following a four-day nonjury trial, the trial judge held the sole shareholder liable under the Spill Act as a person "in any way responsible" for a discharge of hazardous substances. The shareholder was declared liable for all investigatory, cleanup and removal costs and expenses incurred or to be incurred in the future, as well as natural resources damages, associated with remediating the property.

The Appellate Division affirmed the trial judge's determination that a "smoking gun witness" was not necessary to establish a sufficient nexus between the dry cleaning operations and the contamination in light of the credible supporting evidence adduced at trial. The Appellate Division also rejected the sole shareholder's argument that the trial judge erred in disregarding the "corporate veil." The Court found that the evidence firmly established the sole shareholder was " 'everything' vis-à-vis this business: its sole shareholder, the operator of the business, the person responsible for overseeing and handling the [dry cleaning chemicals] used, and the person charged with ensuring legal and regulatory

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compliance." The Court reasoned that the trial judge's determination was consistent with the legislative intent to "expand the scope of liability without regard for corporate veils and the like" on persons "in any way responsible." It was "quite clear" to the Court that the legislature did not intend to allow a shareholder of a close corporation to contaminate property, file for bankruptcy and "walk away from the problem."

The liberal interpretation in favor of broadly imposing liability is not surprising in light of prior Spill Act decisions. Nevertheless, there are only a handful of cases that have upheld disregarding the "corporate veil." The decision is likely to embolden environmental cost recovery plaintiffs and should sound alarm bells for owners of small businesses faced with potential environmental liability. The case also leaves open the question of how far a court may go to extend individual liability in situations where a company is subject to strict liability based on "status" but was not "actively" responsible for environmental contamination.

If you have any question regarding the issues presented in this Alert regarding liability under the Spill Act, please contact the author, **David A. Roth**.