

## New Jersey Supreme Court Rules Spill Act Contribution Claims Not Subject to Statute of Limitations

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In a much anticipated decision announced on January 26, 2015, the New Jersey Supreme Court held that the six-year statute of limitations that applies generally to property damage tort claims does not apply to claims for contribution under the New Jersey Spill Compensation and Control Act (“Spill Act”). The decision overturned the lower court decision in *Morristown Associates vs. Grant Oil Company* which had relied on the six year tort limitations period and the “discovery rule” to bar a contribution claim under the Spill Act. The lower court decision had been the first New Jersey state court decisions in the 35-year history of contribution claims under the Spill Act to hold that any statute of limitations applied to such claims.

As reported in our prior **Client Alerts** on the previous proceeding in the case, a shopping center owner learned from a neighbor in 2003 that groundwater contamination found on the neighbor’s property may have emanated from the shopping center. A follow-up investigation identified the source as an underground storage tank maintained by one of the shopping center tenants, which appeared to have leaked 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. The trial court dismissed the Spill Act claim concluding that both New Jersey’s general six year limitations period and a court developed principle called the “discovery rule” apply to Spill Act contribution claims. The lower courts found that the shopping center owner should have “discovered” the potential Spill Act Claim in 1998 by conducting an investigation when it learned of an unrelated leaking underground storage tank at the shopping center. Applying the discovery rule, the lower courts found that the six-year limitations period began to run in 1998, instead of 2003, and therefore was time-barred.

In reversing the lower court’s decision, the New Jersey Supreme Court noted language in the Spill Act that limited liability defenses to those enumerated in the statute. Since the legislature had spoken on the type of defenses that should be available and failed to include a limitations period on contribution claims, the Supreme Court inferred a legislative intent that no limitations period should be imposed. The Supreme Court found its inference confirmed by the legislative history in which the legislature showed a specific legislative intent to eliminate all otherwise available defenses to the Spill Act’s strict liability except those enumerated in the statute when it enacted amendments to the law in 1979.

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In addition, the Supreme Court concluded that application of the six-year statute of limitations and discovery rule would frustrate the remedial purpose of the act by hampering the imposition of contribution liability on culpable dischargers. Finally, the Supreme Court observed that there has been a decades-long understanding in the State, in which the legislature acquiesced, that no limitations period restricts Spill Act contribution claims. If the legislature intends something other than what the Court has interpreted, it can amend the Spill Act to provide for a suitable limitations period.

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