

Hot Topics 2010: CERCLA, RCRA and Vapor Intrusion

Lawrence Schnapf

Schnapf LLC

55 E.87th Street, Ste. 8B

New York, NY 10128

212-756-2205

Larry@SchnapfLaw.com

www.SchnapfLaw.com

FRCP 12(b)(6) Motion Standard

- Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009)
- Bell Atlantic Corp v. Twombly, 550 U.S. 544 (2007)

CERCLA Divisibility

- U.S. v BNSF, 129 S.Ct. 1870 (2009)
- Evansville Greenway and Remediation Trust v. Southern Indiana Gas, 661 F.Supp. 2d 989 (S.D. Ind. 2009)
- Appleton Papers v. Whiting Paper, 2009 WL 3931036 (E.D. Wisc. 11/18/09)



CERCLA “Arranger”

- Frontier v Barrett Paving, 691 F.Supp. 2d 100 (D.Me. 2009)
- Hinds Investments v. Team Enterprises, 2010 U.S. Dist. LEXIS 23395 (E.D. Ca. 3/12/10)
- U.S. v. GE, No. 06-CV-00354 (D.N.H.)

Aviall Progeny

- Niagara Mohawk Power Corp. v. Chevron USA, 596 F.3d 112 (2nd Cir. 2010)
- Agere Systems, Inc v. Advanced Environmental Technology Corp, 2010 WL 1427582 (3rd Cir. 4/12/10)
- Chitayat v. Vanderbilt Associates, 2010 U.S. Dist. LEXIS 26745 (E.D.N.Y. 3/22/10)

RCRA

- U.S. v. Apex, 579 F.3d. 734 (7th Cir. 2009)
- Interfaith Community Org. v. PPG Industries, 2010 U.S. Dist. LEXIS 29622 (D.NJ. 3/26/10)

CERCLA Owner/Operator

- *United States v. Saporito*, 2010 U.S.Lexis 11033, 2/9/10)
- *Scarlett & Associates, Inc. v. Briarcliff Center Partners, L.L.C.*, 2009 WL 3151089 (N.D. Ga. 9/ 30/09)
- *La Plata County Board v. Brown Group Retail, Inc.* 598 F. Supp. 2d 1185 (D. Colo. 2009)
- *Adobe Lumber, Inc. v. Hellman* , 2009 WL 2913415 (E.D.Cal. 9/8/09)
- *Bonnieview Homeowners vs. Woodmont Builders*, 2009 WL 2999355 (D.N.J. 9/22/09)

Malpractice

- International Electron Devices (USA) LLC retained Menter Rudin & Trivelpiece
- Hawaii Motorsports Investment v Clayton Group
- Lowe's Home Centers Inc. v. Tetra Tech Inc. et al., No. 10-00067 (D.N.H)

Other Notable Developments

- Allen v Dackman, 2010 Md. LEXIS 82 (Md. 3/22/10)
- Sales v. Keoughtan Housing Company, No. 090143 (2/25/10 Va. Sup. Ct)
- Drywall
- LBP Renovation Rule
- Construction Site Stormwater Rule

Liability for Vapor Intrusion

- CERCLA (RI, RD/RA, 5-YR Reviews)
- RCRA Corrective Action (EI/HE)
- UST
- State Remedial Programs
- Common Law
- Disclosure Laws

Notable VI Litigation

- Antolovich v. Brown Group Retail, Inc. (2000 Co)
- Ball v. Bayard Pump & Tank Co. (PA 2007)
- Defense Logistics Agency v. Pa (EHB 2001)
- New York State v. Exxon (2007)
- Nnadili v. Chevron (DC 2006)

Notable Litigation Cont'd

- U.S. v. Apex (7th Cir 8/25/09)
- Grace Christian Fellowship v. KJG Investments (E.D. WI. 08/07/09)
- West Coast Home Builders v. Aventis Cropscience (N.D. Ca. 8/21/09)
- Rochester Technology Park (NY VCA)

OFF-SITE MIGRATION

- Driving Listing and Re-opening Decisions
- Leading Cause of Litigation

OFF-SITE MIGRATION- Regulatory

- McAdoo Associates Site
- York County Solid Waste and Refuse Authority Landfill
- Behr Dayton Ohio

Off-Site Litigation

- Spear v. Chrysler LLC
- First Property Group, Ltd v. Behr Dayton Thermal Products LLC
- Martin v. Behr Dayton Thermal Products LLC
- Sher v. Raytheon

Environmental Quality Review Litigation

- Citizens for Upholding Zoning Regs v. City of Palo Alto
- Bronx Committee for Toxic Free Schools v. NYSCA

Primary Jurisdiction

- Sher v. Raytheon
- Spear v. Chrysler

Lease Liability

- Doherty v. Karten (NY)(reservation of re-entry)

CERCLA

- Exclusion for Releases:
 - Exposures to persons solely in workplace
 - for claims asserted against employer (workers compensation?)
- Facility- where hazardous substances come to rest
- Unilateral Administrative Orders
- Cost Recovery

CERCLA Continued

- Owner of Property
 - Equipment/Vessels
 - stormwater and sewer lines
- Operators-
 - tenants
- Generators-
 - franchisors/equipment manufacturers

CERCLA Continued

- Third Party Defense
 - Due Care Element
 - Precautionary Element
- ILO, BFPP and CPO
 - appropriate care

RCRA

- Corrective Action 3004 (u) and (v)
- Closure (TSDF and Generator)
- Section 3013 AO
- Section 7002
- Section 7003
- Section 3008(h)
- Sub-title I (USTs)

State Common Law

- Nuisance
- Trespass
- Strict Liability
- PI/PD
- Professional Malpractice
- Negligent Misrepresentation
- Breach of Contract (Lease, Sale)