

NJ High Court Lays Down The Law On Spill Suit Limits

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The New Jersey Supreme Court has held that no limitations period applies to claims for contribution under the state's Spill Compensation and Control Act, reversing a 2013 decision of the Appellate Division that had established a six-year statute of limitations for such claims. In so doing, the New Jersey Supreme Court restored what it called "a decades-long understanding" that no limitations period applies.

The appeal in *Morristown Associates v. Grant Oil Company* arose from the New Jersey Legislature's apparent silence on whether a statute of limitations defense is available in Spill Act contribution claims. New Jersey litigants had interpreted that silence in light of a 1994 Appellate Division case, *Pitney Bowes Inc. v. Baker Industries Inc.*, which held that the 10-year statute of repose found at N.J.S.A. 2A:14-1.1 did not bar such claims. Language in the case suggested that the Spill Act did not permit any defense based on the passage of time, and a later unpublished decision of the Appellate Division applied the reasoning of *Pitney Bowes* to deny a statute of limitations defense to a Spill Act contribution claim. Departing from this generally accepted rule, the lower courts in *Morristown Associates* applied the six-year limitations period of N.J.S.A. 2A:141, a general statute applicable to actions for injuries to property and not found within the Spill Act, to bar the plaintiff from pursuing those of its contribution claims arising from events occurring outside that period.

In *Morristown Associates*, the plaintiff-owned property that it leased to a dry cleaning business. Fuel oil had discharged to the environment from holes in pipes leading to an underground storage tank at the property. Though a leak from a tank at a nearby supermarket was discovered in 1999, the leaks at issue were not actually discovered until a monitoring well detected contamination in August 2003. The plaintiff took steps to remediate the contamination, and on July 31, 2006, filed a complaint seeking contribution under the Spill Act for its costs from one of the companies that had delivered oil to the property. Various other oil-delivery companies and the dry cleaning business' current and former owners were subsequently named as additional defendants and third-party defendants. The trial court applied the general six-year statute of limitations to the plaintiff's contribution claims. Further, it refused to toll that period under the discovery rule of the 1973 New Jersey Supreme Court decision in *Lopez v. Swyer*, ruling that the plaintiff should have discovered the basis for its claims no later than the 1999 discovery of the leak from the supermarket's tank. The court granted the defendants' and third-party defendants' motions



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for summary judgment as to claims for damages arising from oil deliveries outside the six-year period.

In affirming, the Appellate Division acknowledged that Pitney Bowes had declined to bar some Spill Act contribution claims, but held it not to be controlling, stating that its reasoning regarding a statute of repose did not apply to statutes of limitation. The court cited case law that had found general statutes of limitation applicable when a particular statute provided no specific limitations period. It also noted that federal courts had applied the six-year limitations period of N.J.S.A. 2A:141 in Spill Act cases, and that contribution actions under the analogous federal Comprehensive Environmental Response, Compensation, and Liability Act were themselves subject to a limitations period.

The New Jersey Supreme Court granted certification. It also entertained briefing by no fewer than 12 amici in six groups, including the New Jersey Department of Environmental Protection and State Bar Association, all urging reversal of the lower court's decisions. Plaintiff and amici argued that the New Jersey Legislature had not intended to include a limitations period and also advanced various policy arguments, including that reading such a period into the statute would undermine the Spill Act's goals of speedy remediation and allocation of cleanup costs to parties responsible for contamination. The defendants and third parties responded by stressing the absence from the Spill Act of an express prohibition of any limitations period for contribution claims, and argued that the six-year period must apply where the Spill Act is silent.

The New Jersey Supreme Court explained that its role in the controversy was to identify and give effect to the New Jersey Legislature's intent. To that end, it closely analyzed the Spill Act's language and legislative history. The New Jersey Supreme Court declined to call the Spill Act silent on a limitations defense to contribution claims. Rather, it noted that N.J.S.A. 58:10-23.11f(a)(2)(a) allows contribution defendants only those defenses found in N.J.S.A. 58:10-23.11g(d), and that these do not include a limitations period. The New Jersey Supreme Court declined to hold that this reasoning barred other procedural defenses, such as challenges to service of process or subject matter jurisdiction, as these are provided under court rules promulgated by the state high court. It also noted that the 1979 amendments had deleted a provision giving defendants "any defense authorized by common or statutory law." It further rejected the lower court's comparison to CERCLA, observing that that statute contains an explicit limitations period — something the New Jersey Legislature would have known when it declined to insert a similar provision into the Spill Act.

The New Jersey Supreme Court's holding also undermined the lower court's decision to implicate the discovery rule of Lopez. In attempting to fix a date for the running of the limitations period, the lower courts had focused on when the plaintiff should have first known about the contamination. But in holding that no limitations period applied, the New Jersey Supreme Court declined to "interpose in these factually complex cases a new requirement to determine when one knew of a discharge" in order to preserve a contribution claim.

With this decision once and for all rejecting a limitations period for Spill Act contribution claims, litigants can now approach the issue with certainty. Even the federal courts, which had applied the six-year limitations period to contribution claims, are now bound by this interpretation of a New Jersey statute by the New Jersey Supreme Court. Claimants may now fully engage in the often lengthy process of investigating and remediating contaminated sites and identifying other responsible parties before initiating contribution litigation, and need not race to the courthouse to beat a statute of limitations deadline. Contribution defendants can be equally certain that they no longer have a defense to Spill Act liability based on the passage of time.

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