Elizabeth (Ellie) Rudolf

Associate
801.799.5730
Salt Lake City
earudolf@hollandhart.com

Kevin Murray

Partner
801.799.5919
Salt Lake City
krmurray@hollandhart.com

SCOTUS Seeks to Clarify Contribution Claims under CERCLA

Publication — 06/02/2021

Last week, in its unanimous decision *Guam v. United States*, No. 20-382, the United States Supreme Court attempted to clarify a statutory question regarding the right to seek contribution that has been a source of uncertainty among courts, practitioners, and responsible parties for years.

The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") holds responsible parties jointly and severally liable for the release of hazardous substances. To compensate responsible parties who pay beyond their fair share for the cleanup of hazardous substances, Section 113(f)(3)(B) of CERCLA provides a responsible party who has "resolved its liability to the United States or a State for some or all of a response action . . . in an administrative or judicially approved settlement" a right to "seek contribution from any person" who has not similarly resolved its liability.

Lower courts have grappled with what constitutes a resolution of liability for a response action. Some have found that settlements entered into under other statutes, including the Clean Water Act ("CWA") and the Resource Conservation and Recovery Act ("RCRA"), could resolve liability within the meaning of Section 113 and thus grant a right to seek contribution under CERCLA.

In *Guam v. United States*, SCOTUS reversed the D.C. Circuit decision finding that a contribution claim was triggered (and consequently a statute of limitations had run) when the Plaintiff Guam entered into a settlement with EPA pursuant to the CWA. Applying a no-nonsense approach, SCOTUS concluded that "[t]he most natural reading of §113(f)(3)(B) is that a party may seek contribution under CERCLA *only after settling a CERCLA-specific liability, as opposed to resolving environmental liability under some other law.*"

With this decision, a RCRA or CWA settlement will likely not trigger a right to contribution under Section 113(f) of CERCLA (at least without an express resolution of CERCLA liability as well). However, it remains uncertain what language (particularly in a state settlement) will be sufficient to settle "a CERCLA-specific liability." Special care and consideration should be taken to use explicit language that the agreement settles a CERCLA-specific liability.