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## New Jersey Appellate Division Applies Six-Year Statute Of Limitation To Spill Act Contribution Claims

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**In an opinion issued on August 23, 2013, the Appellate Division of the Superior Court of New Jersey appears to have settled a long-outstanding and important question of law concerning the applicability of a statute of limitation to private contribution actions brought pursuant to the New Jersey Spill Compensation and Control Act (“Spill Act”).**

In *Morristown Associates v. Grant Oil, et al.* (Docket No. A-0313-11T3), plaintiff alleged that the defendants were liable for environmental contamination resulting from leaking fill pipes that served an underground storage tank (“UST”) at its property. The defendants had allegedly delivered heating oil to the property between 1988 and 2003. Plaintiff filed its complaint on July 31, 2006 seeking recovery in contribution under the Spill Act from the defendants for costs incurred in cleaning up the contamination. The defendants argued that a six-year limitations period should apply to the Spill Act contribution claims. The trial court agreed and granted certain of the defendants’ motions for summary judgment, holding that any contamination events that occurred earlier than six years before the filing of the complaint were time barred. The plaintiff appealed the trial court’s decision.

The applicability of a statute of limitation to Spill Act contribution claims has been a hotly-debated issue since the statute does not provide for a limitations period for such claims. In 1999, the Appellate Division issued an unpublished decision in *Mason v. Mobil Oil Corp.*, which held

that there was no statute of limitation applicable to Spill Act contribution claims. However, federal courts in New Jersey issued decisions in 2005 and 2009 that held that New Jersey’s six-year statute of limitation for trespass and tortious injury to real property should apply to Spill Act contribution claims.

In *Morristown Associates*, the Appellate Division rejected its previous unpublished decision in *Mason* and adopted the reasoning of the federal courts, upholding the trial court’s decision that a six-year limitations period should apply to Spill Act contribution claims. In so holding, the Appellate Division further noted that the so-called “discovery rule” applies to toll the limitations period, stating that “[a]pplying a statute of limitations to a claim for private contribution under the Spill Act does not prevent a diligent plaintiff from recovering the costs of cleanup and remediation from other responsible parties...,” but rather “...merely requires that a claimant file a timely action after it discovered or should have discovered the grounds for its claim.” With respect to the plaintiff’s claims, the Appellate Division upheld the trial court’s decision that the six-year limitations period should not be tolled since the plaintiff was under a duty to investigate the UST once it became aware of potential contamination at its property.

The Appellate Division’s decision in *Morristown Associates* has been approved for publication and represents an important development in Spill Act jurisprudence that must be evaluated by any party

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that is considering filing a Spill Act contribution claim. The decision is equally important for Spill Act contribution defendants in that it provides much-needed certainty concerning the availability of a statute of limitations defense.

For more information about the *Morristown Associates* decision or to discuss related issues concerning prosecuting or defending Spill Act claims, please contact David Schneider, D.J. Camerson, Karen Murphy, or Keith McManus. ■

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