District Court Rejects CERCLA Contribution Protection Claim

The United States District Court for the Western District of Michigan has rejected a claim that a settlement agreement that addressed the liability of a governmental authority protects the individual members of that authority from contribution under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The South Macomb Disposal Authority (SMDA), a governmental authority comprised of five member cities (Centerline, Eastpointe, Roseville, St. Clair Shores, and Warren (collectively, the Cities)) owned and operated two landfills in Macomb Township, Michigan during the 1970s. In 1986, the Michigan Department of Environmental Quality (MDEQ) ordered the SMDA to clean up environmental contamination emanating from the landfills. In response to that order and a related lawsuit filed by Macomb Township residents against the SMDA, the authority sued its insurance carriers (collectively, the Insurers) seeking coverage for the contamination under its various policies. The Insurers then brought a lawsuit "in the name of the SMDA" against the Cities for contribution under Section 113 of CERCLA, claiming that the Cities were potentially liable parties (PRPs) under CERCLA as persons who generated, transported, and arranged for the disposal of the waste deposited at the landfills.

The Cities moved to dismiss the Insurers' lawsuit without a trial because, the Cities argued, a recent administrative settlement agreement between the SMDA, the Cities, and the State of Michigan precluded the Insurers contribution claims against the Cities. The settlement agreement expressly provided that "pursuant to Section 20129(5) of the [Natural Resources and Environmental Protection Act] and Section 9613(f)(2) of

[CERCLA], SMDA, and each of the member Cities shall not be liable for claims for contribution for the matters addressed in the Agreement . . . including but not limited to all past and future response costs incurred by SMDA with respect to [the landfills]."

Section 9613(f)(2) of CERCLA generally provides that "a PRP that has entered into a settlement with the United States or a State may not be held liable for contribution to another PRP who has elected not to settle its CERCLA liability." The court noted, however, that this contribution protection "does not provide a blanket exemption from further liability under CERCLA or state law." Rather, CERCLA's contribution protection extends only to "administrative or judicially approved settlements" and then only to the "matters addressed" in those settlements. The court found that, in this case, the Cities' liability as generators, transporters, and persons who arranged for the disposal of hazardous substances was *not* among the matters addressed in the settlement between the Cities and the State. Accordingly, the court denied the Cities' motion to dismiss.

First, the court noted that courts typically look at the following four factors in order to determine what matters are addressed in a settlement document: (1) the particular hazardous substances at issue in the agreement; (2) the location of the site in question; (3) the time frame covered by the settlement; and (4) the cost of the cleanup. The court also noted, however, that these factors are not exhaustive and that the settlement agreement must be examined as a whole in order to determine its scope. Moreover, the court stated that "extremely broad contribution protection should not be automatically extended beyond the bounds of the underlying suit to absolve the defendants of all possible liability." In this regard, the court found significant the fact that, at the time the Cities entered into the settlement agreement, the Cities had not faced

any threat of individual liability as arrangers, generators or transporters of waste in the lawsuit initiated by the Macomb Township residents. Further, the court found that, under the terms of the settlement agreement, the Cities "gave up nothing beyond what was already required of them as constituent members of the SMDA." As examples, the court noted that the Cities, "in their individual capacities, have assumed no cleanup responsibilities; nor . . . agreed to pay any monetary amount." Thus, the court found that the matters addressed in the settlement agreement were strictly limited to the Cities' obligations as constituent members of the SMDA and did not encompass the Cities individual liabilities under CERCLA. Therefore, the court held that the Insurers' claims for contribution against the Cities were not barred by Section 9613(f)(2) of CERCLA.

The court also expressed skepticism regarding whether the broad contribution protection clause contained in the settlement agreement "constitutes the type of settlement contemplated by Section 9613(f)(2)." The Cities and the State had entered into the settlement agreement without any hearings or public comment, and without any notice to the Insurers whatsoever. The court noted that "some courts have intimated that broad contribution protection provisions should not be upheld when entered into circumstances such as this" and that other courts have recognized that "due process concerns are magnified when a PRP seeks to use an administrative settlement to extinguish another PRP's contribution rights." Because the court had determined that the settlement agreement did not bar the Insurers' contribution claims, however, the court found it unnecessary to rule on this issue.

***American Special Risk Ins. Co. v. Centerline*,** Case No. 97-CV-72874-DT (W.D. Mich. Mar. 12, 2001)