

## Illinois Federal Court Denies Motion to Dismiss PRPs' Cost-Recovery Claim

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On May 12, 2010, the U.S. District Court for the Southern District of Illinois denied a motion to dismiss crossclaims for cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" and more commonly known as Superfund) in *United States v. Pharmacia Corp., No. 99-cv-63*.

Section 107(a) of CERCLA (42 U.S.C. 9607(a)), subjects certain persons or companies, known as potentially-responsible parties (or "PRPs"), to liability when there is a release or threatened release of hazardous substances. In general, PRPs are liable for (1) costs of removing or cleaning-up the hazardous substances incurred by the government, (2) other necessary costs of response incurred by any other person consistent with the national contingency plan, (3) damages to natural resources, and (4) costs of health assessments or health effects studies under certain circumstances.

Section 113(f) of CERCLA (42 U.S.C. 9613(f)) allows any person to seek contribution from any other PRP for costs paid to reimburse another party (such as the government). In theory, this means that each PRP will only be liable to pay its fair share (i.e., each PRP's liability will be based only on how much its conduct contributed to the release).

In *United States v. Pharmacia*, Pharmacia Corporation, Solutia, Inc. Cerro Flow Products, Inc., and ExxonMobil Oil Corporation were PRPs at [the Sauget Area One site](#), which is located in the Villages of Sauget and Cahokia, in St. Clair County, Illinois. The PRPs were sued by the federal government under Section 107 of CERCLA for the recovery of clean-up costs allegedly incurred by the government at the site. The PRPs filed a contribution claim under Section 113 of CERCLA against Rogers Cartage to allocate responsibility for costs that may have to be paid to the government. The federal government also sued Rogers Cartage under Sections 107 and 113, and the government ultimately lost at trial on those claims.

The PRPs also incurred their own costs while investigating and cleaning up contamination at the site, and filed a claim under Section 107 of CERCLA against Rogers Cartage to recover those costs. Rogers Cartage then filed a motion to dismiss that claim. The Court denied the motion to dismiss:

"Here, [the PRPs] expressly allege that the purpose of their Section 107(a) action is to recover response costs which were neither derivative of, nor co-extensive with the United States costs; in other words, expenses that are allegedly different from those sought by the United States in its trial against Rogers Cartage back in November 2003. Now, [the PRPs] are seeking to recover some of those response costs from Rogers Cartage who, they allege, owned portions of at least three sites within Sauget Area One, and operated a truck terminal and truck washing operation on

that property in the 1960's and 1970's. One of CERCLA's main purposes is to encourage private parties to assume the financial cleanup by allowing them to seek recovery from others. Thus, allowing [the PRPs'] Section 107(a) cost recovery action to proceed neither contravenes the Supreme Court's current interpretation of CERCLA, nor one of act's fundamental purposes."

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