

Sole Shareholder Of Company That Owns Contaminated Property Can Be Held Liable Under CERCLA As Current Operator

Posted at 9:17 AM on June 8, 2011 by Gerard M. Giordano

In the case of *Litgo v. Martin*, 2011 WL 65933 (D.N.J. Jan. 7, 2011) the federal District Court of New Jersey held that a shareholder of a single-purpose entity that owns a contaminated facility is liable as a current operator under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9601 et al. ("CERCLA"). In 1983, the New Jersey Department of Environmental Protection ("NJDEP") was ordered to clean up a property located in Newark, New Jersey. NJDEP removed drums of hazardous waste from the Newark site and stored them at a warehouse located at 40 Haynes Road, Somerville, New Jersey (the "Site"). The warehouse at the Site was determined to be contaminated with hazardous substances.

While the remediation at this Site was being conducted by NJDEP, plaintiff Sheldon Goldstein entered into negotiations with the current owner of the Site. On August 6, 1985, the current owner of this Site entered into an agreement to sell the Site to plaintiff Goldstein. Subsequently a dispute broke out over the sale of the Site and the Court ultimately ordered the plaintiff Goldstein to take title to the Site. On February 14, 1990, plaintiff Goldstein took title to the Site and

pursuant to the contract of sale assumed the obligations to clean up the Site. On April 14, 1990, plaintiff Goldstein transferred the Site to plaintiff Litgo New Jersey, Inc.

In 2006, plaintiffs filed suit against NJDEP alleging that the State failed to properly remediate the Site. Plaintiffs' suit was under various claims including CERCLA. The NJDEP filed a counterclaim. At trial, the District Court found that plaintiff Goldstein, as a shareholder in Litgo, the current owner of the Site, was liable under CERCLA as a current operator. On a motion for reconsideration, the Court upheld the trial Court's determination regarding plaintiff Goldstein's liability as an operator.

The plaintiffs argued that Goldstein's involvement with the cleanup of this Site was insufficient to impose liability on Goldstein as a current operator under CERCLA. The Court addressing this issue explained that under CERCLA, past owners and operators are liable only to the extent that a discharge of hazardous substances occurred at the Site during their ownership or operations. However, current owners and operators are liable under CERCLA regardless of whether hazardous substances were discharged at the Site during their ownership or at the time they operated at a site. The Court observed that the parties do not dispute that Litgo, as a current owner of the Site, is liable under CERCLA. The Court, however, dismissed the plaintiffs' argument that Goldstein could not be held liable as a current operator. The Court, distinguishing the cases relied upon by the Plaintiffs, concluded that because of his involvement with this Site, the plaintiff Goldstein could be liable as a current operator. The Court specifically noted the following:

Plaintiffs have been involved with the property for two decades and were responsible for environmental compliance decisions and decisions not to proceed with the remediation. ... We believed the decision to delay remediation may have increased the threat to the environment and public

health. ... Given these considerations, the Court is not persuaded that it should reconsider its decision as to Goldstein's liability.

The instructive value of this case is that sole shareholders of single entity companies can be held liable under CERCLA to cleanup contamination for which its company is responsible. Factors that will be used in determining whether a shareholder should be held liable is the actual control the shareholder has over the day to day operations of the company causing the contamination. By being proactive and ensuring compliance with environmental laws can a sole shareholder minimize exposure to liability for environmental contamination.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (201) 489-3000

900 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 752-8000

500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Phone: (302) 652-3131

300 East Lombard Street Suite 2000
Baltimore, MD 21202
Phone: (410) 230-0660

301 Commerce Street
Suite 1700
Fort Worth, TX 76102
Phone: (817) 810-5250