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## Superfund Year in Review: News for Insurance, Real Estate and Clean-Up Sectors

### Environmental Law Client Alert

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Federal courts placed a premium on up-to-date legal work in their 2011 Superfund decisions, as decisions turned increasingly on careful compliance with the latest pleading requirements and closer readings of the statutory language. By the same token, parties seeking to attack government settlements or government supervised clean-ups face even bigger obstacles than before, underlining the importance of cooperation with environmental authorities in addressing contaminated property issues. And the work on the BP Deepwater Horizon cleanup has resulted in a new approach to natural resource damages, which may serve as a model of how to start restoration work even before all the assessments have been finished.

Anyone working in the insurance, real estate or financing businesses, as well as those responsible for environmental cleanup work, should check the authoritative ABA review of the Superfund and natural resource damage developments in 2011. Our partner, Russ Randle, recently wrote the American Bar Association's *Year in Review* Article about Superfund and Natural Resource Damages, which appeared in May, 2012. These decisions include:

- Cases limiting superfund recoveries where a party had obtained insurance payments.
- A Circuit split as to whether tenants under long-term leases can be "owners" of property for superfund liability purposes.
- Cases dismissing CERCLA claims *at the pleading stage* where the plaintiff could not articulate a sufficient control by the defendant over the hazardous substances and their disposal to impose superfund liability.
- Cases rejecting divisibility defenses to joint and several liability (pay to cleanup the whole site), despite invocation of the Supreme Court's 2007 *Burlington Northern* decision.

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