

New Jersey District Court Leaves Plaintiff Without Course of Relief Under CERCLA

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The U.S. District Court for the District of New Jersey recently handed down a decision that may be troubling for parties seeking to recover environmental cleanup costs under the Comprehensive Environmental Responsive Compensation and Liability Act. The author of this article discusses the decision.

In *Stahl v. Bauer Auto, Inc.*,¹ the U.S. District Court for the District of New Jersey handed down a decision that may be troubling for parties seeking to recover environmental cleanup costs under the Comprehensive Environmental Responsive Compensation and Liability Act (“CERCLA”).

Background

By way of background, CERCLA generally provides a private cause of action to plaintiffs in two circumstances.

The first falls under Section 107(a),² which allows a plaintiff to seek recovery of response costs that it has incurred from other potentially responsible parties.

The second falls under Section 113(f),³ which allows a plaintiff that is or was the defendant of a cost recovery claim, or that has resolved its liability with the Environmental Protection Agency (“EPA”) under a judicially

approved settlement, to seek contribution from other potentially responsible parties.

Generally, a party that has incurred or will incur costs under CERCLA falls under one or both of these two categories. However, the district court in *Stahl* held that there is at least one scenario where a plaintiff does not fall into either of these two categories and therefore has no claim under CERCLA.

The Factual History

The factual history in the *Stahl* matter is long and complex. In short, the underlying environmental cleanup was at a property in Chatham, New Jersey. The plaintiffs owned a company called National Manufacturing Company (“NMC”), which owned the property (the “NMC Property”). The plaintiffs entered into a Stock Purchase Agreement (“SPA”) with a third party, Waverly Partners, for the sale of all outstanding shares of NMC. The SPA included an

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indemnification whereby the plaintiffs agreed to indemnify NMC for all costs NMC incurred to remediate the site for contamination existing at the site as of the closing. A supplemental agreement to the SPA placed the legal obligation for the cleanup of the site on NMC, which would be the surviving entity after closing.

After the closing, various disputes arose between the plaintiffs and NMC regarding the environmental contamination and remediation of the NMC Property. The plaintiffs eventually filed a lawsuit against NMC and NMC responded with a counterclaim under the SPA. NMC did not assert any claims against the Stahls under CERCLA. The parties settled the lawsuit by submitting their claims to binding arbitration and an arbitration panel issued a final arbitration award in May 2005. In accordance with the arbitration award, the plaintiffs reimbursed NMC for the costs of the investigation and remediation.

The Present Case

In the present case, the defendants own and operate the adjacent property (the “Bauer Property”). The plaintiffs alleged that the Bauer Property was the source of certain contamination detected on the NMC Property and sought damages for the monies reimbursed to NMC in the district court under CERCLA Section 107 and 113, the New Jersey Spill Compensation and Control Act (“Spill Act”),⁴ and under various common law claims.

On summary judgment, the district court dismissed the CERCLA claims, and dismissed without prejudice the state law claims, which would still allow plaintiffs to pursue damages under those claims in state court. The court easily disposed of the Section 113 claims

because the plaintiffs had never been sued under CERCLA and had not resolved its CERCLA liability with EPA under a judicially approved settlement. The court also noted that the plaintiffs failed to oppose the defendants’ summary judgment motion as to the Section 113 claim and therefore the court deemed that the plaintiffs had abandoned the claim.

As to the Section 107 claim, relying on the U.S. Supreme Court’s decision in *U.S. v. Atlantic Research Corporation*,⁵ the district court emphasizes that relief under Section 107 is only available to a plaintiff that has “incurred” its own response costs in cleaning up a site. Thus, a party that pays to satisfy a settlement agreement or judgment against it does not incur its own response costs and is not entitled to relief under Section 107.

The plaintiffs admitted that they did not conduct the environmental investigation and remediation at the NMC Property. Instead, NMC conducted this work and incurred the response costs. The plaintiffs reimbursed NMC for those response costs in accordance with the arbitration award. Therefore, the plaintiffs did not incur response costs and were not entitled to relief under Section 107.

In coming to this conclusion, the district court distinguishes the U.S. Court of Appeals for the Third Circuit opinion in *Agere Systems Inc. v. Advanced Environmental Corporation*.⁶ In that case, two plaintiffs brought Section 107 cost recovery claims and the defendant argued on appeal that those plaintiffs had paid money only to satisfy a settlement agreement with other plaintiffs that had entered into consent decrees with the U.S. Environmental Protection Agency (“USEPA”) fund and perform remedial work at the subject site.

The Third Circuit disagreed with that argument because it did not view the Supreme Court in *Atlantic Research* as having intended to “deprive the word ‘incurred’ of its ordinary meaning.” The court further reasoned that the plaintiffs had “put their money in the pot right along with the money from the signers of the consent decrees.” However, the district court in *Stahl* focused on the fact that the Third Circuit in *Agere* distinguished that case from *Atlantic Research* because the Supreme Court’s “statements [in *Atlantic Research*] were not made in the context of payments made for on-going work.” This was dissimilar to the facts presented in *Stahl*, where the payments were reimbursements to the party conducting the on-going work.

The Supreme Court in *Atlantic Research* did not address a situation like *Stahl*, where the party fits neither under Section 107 nor Section 113. However, the underlying decision⁷ of the U.S. Court of Appeals for the Eighth Circuit anticipated such a situation and concluded that the broad language of Section 107 supported an implied right of contribution.

In *Atlantic Research*, the Supreme Court noted the Eighth’s Circuit’s alternative holding in a footnote, but did not reach the issue. The *Stahl* court did not address the issue. As a result, the Stahls were unable to maintain a

CERCLA claim and could only pursue available state court claims.

Conclusion

Although the *Stahl* case is an unpublished district court decision, it demonstrates that any party subject to potential environmental liability under CERCLA must be mindful of how and when it pays any costs to resolve that liability.

A potentially responsible party cannot assume that the oft described “overlapping” recovery provisions of Section 107 and 113 will provide an equitable resolution of a recovery or contribution claim against a third party.

Instead, the courts may impose a strict interpretation of the relief that is available under the statute and this can leave a plaintiff with no course of relief under CERCLA.

NOTES:

¹ <https://casetext.com/case/stahl-v-bauer-auto-inc>.

² <https://www.law.cornell.edu/uscode/text/42/9607>.

³ <https://www.law.cornell.edu/uscode/text/42/9613>.

⁴ https://www.nj.gov/dep/srp/regs/statutes/spill_act.pdf.

⁵ <https://casetext.com/case/us-v-atlantic-research-corporation>.

⁶ <https://casetext.com/case/agere-systems-v-advanced-environmental-tech>.

⁷ <https://caselaw.findlaw.com/us-8th-circuit/1252611.html>.

