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Legal Updates

Supreme Court Upholds Private Right of Action Under CERCLA

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A unanimous Supreme Court has removed any doubt about a private party's right to sue for environmental response costs under the federal Superfund. In *U.S. v. Atlantic Research Corporation*, Case No. 06-562, the Court addressed the question left open by its prior decision in the well-known case of *Cooper v. Aviall Services, Inc.*, 543 U.S. 157, regarding whether a potentially responsible party ('PRP') may sue another under the Comprehensive Environmental Response, Compensation and Liability Act ('CERCLA'), otherwise known as the Superfund. The *Atlantic Research* Court answered the question 'yes,' holding that the plain meaning of CERCLA Section 107(a)(4)(B) provides for such a cause of action.

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Until the *Cooper* decision, the courts had generally held that both the federal and state governments, and private parties, had a federal court cause of action under CERCLA to sue other PRPs for recovery of environmental response costs. The *Cooper* decision held that a right for contribution existed only *after* a private party, who was a PRP, was itself sued under CERCLA, citing the language of CERCLA Section 113(f). Nevertheless, the majority of courts continued to hold that there was a second pathway, implied under Section 107(a)(4)(B), for private parties to seek recovery of those costs. The *Atlantic Research Court* agreed and has essentially restored the former understanding of private party litigation under CERCLA.

The Court further explained that, while the Section 107(a) direct right of action and the Section 113(f) action for contribution are sometimes overlapping, they are not inconsistent with each other. A Section 107 action is subject to a six-year statute of limitations. Moreover, while Section 107(a) otherwise provides for joint and several liability, a defendant may file a counterclaim against a plaintiff who is also a PRP, to ensure an equitable allocation of response costs among the parties. This is a logical and fair result.

One unusual aspect of the ruling is to recognize that a party that has settled its CERCLA liability under Section 113(f) may not have a statutory bar to a further CERCLA Section 107 action. The Court believes that such additional claims will not discourage settlement because the subsequent CERCLA equitable proceedings will likely protect the settling party from further liability. However, this aspect of the *Atlantic Research* opinion is the most open-ended and future developments should be anticipated regarding the finality of CERCLA settlements as the lower courts apply the rules set forth by the Court.