

Justices Revive Guam's \$160M Landfill Suit

By Juan Carlos Rodriguez

Law360 (May 24, 2021, 10:50 AM EDT) -- The U.S. Supreme Court on Monday revived Guam's \$160 million lawsuit against the Navy over pollution costs at a landfill on the island.

In a unanimous decision, the justices overturned the D.C. Circuit's conclusion that Guam's 2017 claims under the Comprehensive Environmental Response, Compensation and Liability Act were barred because of a 2004 settlement with the federal government under the Clean Water Act.

The court said because the previous settlement resolved claims under a different statute, Guam isn't barred from seeking money from the federal government under CERCLA.

"We hold that CERCLA contribution requires resolution of a CERCLA-specific liability," Justice Clarence Thomas wrote for the court.

The dispute arises from waste that accumulated at a site on Guam for a decade starting before World War II. During that time, the Navy dumped municipal and military waste, including Agent Orange and DDT, at the Ordot Dump on the island, according to court filings. Guam later used the dump as a municipal landfill, and the federal government argued the island never implemented remotely satisfactory environmental safeguards.

In 2004, Guam entered into a consent decree with the federal government under the Clean Water Act, agreeing to place a cover on the dump to stop pollution discharges.

Guam then sued the Navy in 2017 under CERCLA to try and force the military branch to cover all, or at least part of the \$160 million tab for cleanup efforts, but the federal government argued — and the D.C. Circuit agreed — that the 2004 settlement triggered a three-year limit on a CERCLA claim.

But the justices said the settlement doesn't qualify as a resolution that would trigger the statute of limitations, because that can only happen if the resolution takes care of CERCLA claims. Claims under other environmental laws don't count, they said.

They focused on the D.C. Circuit's finding that Guam's 2004 settlement gave rise to a Section 113(f) "contribution claim," which allows parties that have resolved their liability to the federal government to attempt to recover costs from another responsible party. The D.C. Circuit read the law too broadly and departed from Congress' intent by interpreting the provision to include things like Clean Water Act settlements, according to the high court's opinion.

"That this subsection centers on and is entitled 'contribution' is the first clue that it is concerned only with the distribution of CERCLA liability," Justice Thomas wrote. "A contribution suit does not exist in a vacuum, but rather is a tool for apportioning the burdens of a predicate 'common liability' among the responsible parties."

And the best place to find the "threshold liability" in CERCLA itself, the justices said, not outside it.

They added that interpreting the provision as only referring to CERCLA claims is consistent with the legal principle that, "a federal contribution action is virtually always a creature of a specific statutory regime."

The justices said that accepting the government's position that because remedial actions taken under a law other than CERCLA resemble ones taken under CERCLA, that's a reason to interpret Section 113(f) as including other laws stretches Congress' intent too far.

Latham & Watkins LLP partner Gregory Garre, who represents Guam, praised the high court's decision.

"We are thrilled with the court's decision in favor of Guam today, which paves the way for the United States to pay its fair share for the cleanup of the Ordot Dump," Garre said in a statement Monday.

The U.S. Department of Justice declined to comment Monday.

Guam is represented by Gregory G. Garre, Roman Martinez, Blake E. Stafford, Brent T. Murphy and Soren J. Schmidt of Latham & Watkins LLP, Bezalel Stern, John D.S. Gilmour, William J. Jackson and Fabio C. Dworschak of Kelley Drye & Warren LLP, and James L. Canto II of the Guam Attorney General's Office.

The government is represented by Vivek Suri, Elizabeth B. Prelogar, Jean E. Williams, Malcolm L. Stewart, Jennifer Scheller Neumann, Evelyn Ying and Rachel Heron of the U.S. Department of Justice.

The case is Government of Guam v. U.S., case number 20-382, in the U.S. Supreme Court.

--Additional reporting by Morgan Conley. Editing by Alyssa Miller.