

NEWS RELEASES

PUBLISHED: MARCH 2, 2021

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Husch Blackwell Authors Key Amicus Brief in CERCLA Case Before the U.S. Supreme Court

HIGH COURT WILL ADDRESS QUESTIONS OF SUPERFUND LIABILITY

On behalf of the Commonwealth of the Northern Mariana Islands and a bipartisan coalition of 24 States plus the District of Columbia, Husch Blackwell filed an amicus brief supporting the Government of Guam in its closely-watched U.S. Supreme Court litigation against the U.S. government concerning clean-up efforts at a contaminated site that was developed, used, and maintained for decades by the U.S. Navy.

Years after the U.S. Navy abandoned the site, the U.S. Environmental Protection Agency (EPA) sued Guam under the Clean Water Act, alleging that the site had polluted U.S. territorial waters. Guam entered into a consent decree with EPA in 2004, and the resulting remediation project for the site is estimated to cost \$160 million—a staggering figure by any measure, but especially for the people of the small island of Guam.

The Government of Guam filed a lawsuit against the United States seeking to recover costs associated with the site's remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which allows for the recovery of remediation costs from responsible parties. A U.S. District Court allowed the cost recovery claim to proceed; however, in February 2020, the D.C. Circuit held that the lawsuit presented a contribution claim that was time-barred by CERCLA's statute of limitations. Guam sought a writ of certiorari from the U.S. Supreme Court, which was granted in early January 2021.

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The Husch Blackwell-authored brief advocates for Guam’s position in the matter, from the perspective of the interests of States and territories. In particular, the brief argues that the D.C. Circuit’s decision is at odds with States’ interests because (1) it discourages cooperation and settlement with federal and State environmental regulators; (2) it allows the United States to evade liability for contamination it is responsible for, leaving individual States and their residents with a disproportionate financial burden; and (3) it undermines principles of federalism by threatening to override State-law policy choices regarding how to address environmental cleanup and division of financial responsibility.

Edward Manibusan, Attorney General for the Commonwealth of the Northern Mariana Islands, commented that “Our office sees the issues in this case as significant to all states and territories and was excited for the opportunity to take the lead in coordinating this effort to support the Government of Guam.”

A ruling in the case is expected by the end of the Supreme Court’s current term in summer 2021.

The Husch Blackwell team included Joseph Diedrich, David Lopez, Eric McLeod, Kirsten Atanasoff, and Jason Flower.