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## ***SPECIAL ALERT*** APRIL 17, 2009

### **Appellate Division Resolves Allocation Issues Concerning Contaminated Properties With Multiple Owners**

In a precedent-setting case handled by Ric Gallin, the Appellate Division resolved an ongoing dispute among various New Jersey carriers concerning the proper allocation method in environmental claims in which the property is owned by more than one party throughout the duration of the spill.

It was our position that in such environmental contamination cases, the responsibility of each party is determined by principles established under Spill Act, whereby each party's share is presented to its carriers for an Owens-Illinois continuous trigger allocation. Under Owens-Illinois, all insurance policies on a contaminated property are subject to a continuous trigger allocation, regardless of whether the insured is an individual.

Other carriers and their attorneys, however, took the position that individual defendants should not be considered for purposes of allocation. Those carriers would argue, for example, that in the case of a property with a six year spill which was owned for five years by an individual who had five \$100,000 policies, and was owned in the sixth year by a different individual with one \$500,000 policy, the loss should be split 50/50 between owners since the original and subsequent individual owners each had total coverage of \$500,000. In contrast, we argued that an individual's choice of insurance coverage is irrelevant in terms of Spill Act exposure and instead, the individual who owned the property for the longer time period (depending on the other equities) should bear greater responsibility, regardless of the amount of insurance coverage available.

The Appellate Division agreed in Friday's published decision in the matter of Franklin Mutual Insurance Company v. Metropolitan Property & Casualty Insurance Company. Citing directly to our Brief, the Appellate Division ruled that Owens-Illinois does not create an allocation scheme among different tortfeasors who are responsible for an environmental tort or a Spill Act claim, but instead provides:

[A] method of allocation of responsibility between carriers of a duty to defend and indemnify in those situations where an individual insured had more than one insurance carrier over the triggered period of time....Each individual defendant's share of responsibility would be assessed and then for each individual defendant's responsibility an Owens-Illinois allocation would be made to figure out how the carriers would divvy up their own insured's share of responsibility.

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The Appellate Division relied in part on another of Ric's cases, Quincy Mutual v. Borough of Bellmawr, 172 N.J. 409 (2002), which also dealt with the continuous trigger issue. Should you have any questions concerning this case or any of your environmental issues, please contact our Environmental Team headed by Joel Werbel.