

Guam Reaches Historic Settlement with United States for Ordot Dump Cleanup

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After seven years of hard-fought litigation and a successful trip to the U.S. Supreme Court, Kelley Drye is thrilled to congratulate Guam on its [historic settlement](#) with the United States. Pursuant to the terms of the consent decree, the United States will pay \$48.9 million to Guam for its share of the past costs spent in remediating and closing the Ordot Dump. The settlement is partial, with the parties still working on future costs, but represents a huge victory in the decades-long efforts to hold the United States accountable for the military's contamination on the island.

"This settlement is the culmination of many years of work and is a tremendous testament to the exceptional efforts of the Kelley Drye team," says [John Gilmour](#), lead counsel for Guam. "After years of litigation – and a unanimous victory at the Supreme Court – we are so proud to have secured a just result for Guam."

The United States military discarded waste, much of it toxic, including munitions and war debris, at the Ordot Dump. The dump was created by the U.S. military before World War II without any environmental safeguards. Interrupted only by the Japanese occupation of the island during WWII, the U.S. military owned and operated the dump from its inception until ownership was transferred to the newly-created Government of Guam in 1950. The US continued to use and control the dump for its use through the 1960s, and the Ordot Dump remained the sole municipal dump on the island until it was finally closed in 2011.

"It is an honor to represent Guam and its amazing people. Through years of working with the Government of Guam and its tireless public servants, we came to realize that this lawsuit was as much about respect and justice for the Chamorro people as it was about recouping the United States' fair share of the costs that Guam spent closing an environmental hazard and military legacy on island," says [Bill Jackson](#), co-chair of Kelley Drye's Environmental practice. "This is an incredibly rewarding and important step forward for Guam."

In 1983, Guam requested that the U.S. Environmental Protection Agency (EPA) designate the Ordot Dump as a Superfund Site under the Comprehensive Environmental Response Compensation Liability Act (CERCLA). As part of the EPA's investigation, it noted that the two primarily responsible parties were Guam and the United States. Despite such findings, the EPA took no remedial action regarding the dump. Thereafter, in 2004, the United States forced Guam to close and clean up the Ordot Dump, as well as open a new landfill, at Guam's sole expense. The United States sued Guam only under the Clean Water Act (CWA) (under which the United States is immune), instead of under CERCLA (under which the United States would also be liable for the cleanup), forcing Guam to foot the entire bill.

Due to the inherent unfairness of the situation, in 2017, the Kelley Drye team of John Gilmour and Bill

Jackson brought suit against the United States on behalf of Guam to recover the fair share of costs attributable to the United States' for the Ordot Dump. Recognizing a split in the federal appellate courts on a statute of limitations issue under CERCLA, the Kelley Drye team attacked the United States' primary limitations defense, which in 2021 resulted in a [unanimous Supreme Court](#) decision in Guam's favor reversing an earlier D.C. Circuit Court of Appeals decision. The 2021 Supreme Court decision resolved the split in the federal appellate courts and affirmed Kelley Drye's position that only settlements that expressly resolve CERCLA liability can trigger a CERCLA contribution action, thus starting the clock on the statute of limitations period.

Upon return to the federal District Court in D.C., the parties engaged in several months of discovery and expert work before resolving the case in months-long mediation and negotiations.

The case is styled *Government of Guam v. United States*, No. 1:17-cv-02487-JMC and the consent decree can be found [here](#).

The Supreme Court case is styled *Territory of Guam v. United States*, No. 20-382; Argued April 26, 2021—Decided May 24, 2021. Relevant published opinions can be found here: *Gov't of Guam v. United States*, 341 F. Supp. 3d 74 (D.D.C. 2018), *rev'd and remanded*, 950 F.3d 104 (D.C. Cir. 2020), *rev'd and remanded sub nom. Territory of Guam v. United States*, No. 20-382, 593 U.S. ___, 141 S. Ct. 1608, 2021 WL 2044537 (U.S. May 24, 2021).

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