

# Supreme Court Delivers Unanimous Decision in Favor of Guam in Kelley Drye's CERCLA Case

May 24, 2021

This morning, Justice Clarence Thomas delivered a unanimous decision for the Supreme Court of the United States in the case of *Territory of Guam v The United States*, brought on behalf of Guam by Kelley Drye and Warren LLP. The Court found in favor of Guam, reversing a D.C. Circuit Court of Appeals decision.

For nearly half a century, the United States military discarded toxic waste, including munitions, at the Ordot Dump, which was created by the U.S. military before World War II without any environmental safeguards. The dump was owned and operated by the U.S. military before it was transferred to the newly-created Government of Guam in 1950.

In 2004, the United States forced Guam to close and clean up the Ordot Dump, as well as open a new landfill. The United States sued Guam under the Clean Water Act (CWA) (under which the United States retains its sovereign immunity) instead of the Comprehensive Environmental Response Compensation Liability Act (CERCLA), under which the United States has waived its sovereign immunity and would be a responsible party for the cleanup, forcing Guam to foot the entire bill. The clean-up and relocation project has cost Guam more than \$160 million—an amount equivalent to one trillion dollars when extrapolated from Guam's annual budget and compared to the United States' annual budget.

Due to Kelley Drye's reputation as having one of the most sophisticated and successful environmental and natural resource damages litigation practices in the country, Guam retained Kelley Drye to bring an action against the United States to recover a portion of the costs of closing, remediating, and relocating the Ordot Dump. The Kelley Drye team of [John Gilmour](#) and [Bill Jackson](#) brought suit against the United States pursuant to CERCLA in 2017, seeking to hold the United States accountable for its share of the cleanup, closure, and relocation costs.

Recognizing that several significant legal questions relating to the CERCLA statute of limitations that have split the Circuit Courts of Appeal permeated the case, Kelley Drye and Guam drafted the operative Complaint to invite a motion to dismiss on these significant legal issues. The United States filed a motion to dismiss on these statute of limitations issues which Guam successfully defeated at the U.S. District Court for the District of Columbia as detailed in an opinion by Judge Ketanji Brown Jackson. The United States sought interlocutory appeal and the District Court's decision was overturned by the D.C. Circuit Court of Appeals. After the D.C. Circuit's decision, Kelley Drye partnered with the Latham & Watkins Supreme Court practice in seeking certiorari from the U.S. Supreme Court.

In today's decision, the Court held that "remedial measures that a party takes under another

environmental statute might resemble steps taken in a formal CERCLA 'response action.' But relying on that functional overlap to reinterpret the phrase 'resolved its liability . . . for some or all of a response action' to mean 'settled an environmental liability that might have been actionable under CERCLA' would stretch the statute beyond Congress' actual language." Justice Thomas concluded that, "The most natural reading of §113(f)(3)(B) is that a party may seek contribution under CERCLA only after settling a CERCLA-specific liability. We thus reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion."

"We are thrilled that the Supreme Court agreed with our position that CERCLA's text means what it says, confirming that only settlements resolving CERCLA liability can trigger a CERCLA contribution action," said John Gilmour. "In addition to allowing Guam's case against the United States for its fair share of the contamination of the Ordot Dump to proceed, this decision provides much needed clarity on this important legal issue in environmental litigation."

The Court's Opinion is available [here](#).