



## Supreme Court Holds That Only Superfund-Specific Settlements Can Trigger Contribution Under CERCLA Section 113(f)(3)(B)

***Guam v. United States*, No. 20-382**

Decided May 24, 2021

Yesterday, the Supreme Court held 9-0 that only the resolution of CERCLA-specific liability could give rise to a contribution claim under the Superfund statute. The Court's decision revives Guam's cost recovery action against the U.S. Navy for the cleanup of hazardous waste on the island.

### Background:

Section 113(f)(3)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) allows a party to seek contribution from other responsible parties for costs incurred in cleaning up a contaminated site. The provision states that “[a] person who has resolved its liability to the United States ... in an administrative or judicially approved settlement” may bring a contribution claim for some or all of the costs of a “response action” under that settlement, no later than three years after the settlement is entered. 42 U.S.C. § 9613(f)(3)(B).

Guam sued the United States to recover response costs it spent remediating the Ordot Dump, a landfill containing hazardous waste formerly used by the U.S. Navy. The D.C. Circuit agreed with the United States that Guam's suit was time-barred under Section 113(f)(3)(B)'s three-year statute of limitations, since Guam's cleanup around the Ordot Dump was part of its obligations under a 2004 consent decree for Clean Water Act violations. The court reasoned that, although the consent decree did not involve any CERCLA claims and resolved liability only under the Clean Water Act, it still gave rise to, and started the clock for, a contribution claim within the meaning of Section 113(f)(3)(B), which expired in 2007.

*“The most natural reading of [CERCLA] § 113(f)(3)(B) is that a party may seek contribution under CERCLA only after settling a CERCLA-specific liability.”*

Justice Thomas,  
writing for the Court

Gibson Dunn Named  
**Appellate Firm of the Year**



GIBSON DUNN & CRUTCHER  
2021

## Issue:

Whether a non-CERCLA settlement can give rise to a contribution action under Section 113(f)(3)(B).



## Court's Holding:

No. A settlement must resolve a CERCLA liability to trigger Section 113(f)(3)(B)'s contribution right.

## What It Means:

- Focusing on the statutory text and “interlocking” structure of Section 113(f), the Court explained that the contribution provision is “best understood only with reference to the CERCLA regime.” Slip op. at 5–6. The Court noted that Section 113(f)(3)(B)'s use of the CERCLA-specific term “‘response action,’ express cross-reference to another CERCLA provision, and placement in the statutory scheme” make clear that the provision is not a “free-roving contribution right,” but instead “is concerned only with the distribution of CERCLA liability.” *Id.* at 4, 5, 8.
  - As the Court itself recognized, its decision “provid[es] clarity” on when a settlement gives rise to a Section 113(f)(3)(B) contribution right. *Id.* at 8 n.4. “Rather than requiring parties ... to estimate whether a prior settlement was close enough to CERCLA” that it might trigger contribution, the new, “far simpler approach” asks only “whether the settlement expressly discharged a CERCLA liability.” *Id.* at 8.
  - Because the Court held that the 2004 consent decree did not give rise to a Section 113(f)(3)(B) contribution claim, it found unnecessary to decide whether parties possessing such a claim are prohibited from proceeding under CERCLA Section 107(a) instead. That provision, like Section 113(f), allows a person to recoup some or all of its cleanup costs from other responsible parties, but provides for a more forgiving limitations period—six years after the cleanup effort begins, rather than three years after the qualifying settlement is entered. For its part, the D.C. Circuit concluded that “if a party *can* assert a contribution claim under § 113(f), it *cannot* assert a cost-recovery claim under § 107(a).” *Id.* at 3. The Court declined to reach this question.
  - The Court’s decision will allow Guam to proceed with its suit against the Navy for the recovery of cleanup costs associated with the Ordot Dump under Section 107(a), a separate CERCLA provision that permits a person to recoup cleanup costs from other responsible parties within six years after the cleanup begins.
-

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

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

### **Appellate and Constitutional Law Practice**

Allyson N. Ho  
+1 214.698.3233  
aho@gibsondunn.com

Mark A. Perry  
+1 202.887.3667  
mperry@gibsondunn.com

Lucas C. Townsend  
+1 202.887.3731  
ltownsend@gibsondunn.com

Bradley J. Hamburger  
+1 213.229.7658  
bhamburger@gibsondunn.com

### **Related Practice: Environmental Litigation and Mass Tort**

Daniel W. Nelson  
+1 202.887.3687  
dnelson@gibsondunn.com

Stacie B. Fletcher  
+1 202.887.3627  
sfletcher@gibsondunn.com

David Fotouhi  
+1 202.955.8502  
dfotouhi@gibsondunn.com

© 2021 Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.

If you would prefer NOT to receive future e-mail alerts from the firm, please reply to this email with the word "UNSUBSCRIBE" in the subject line. Thank you.

Please visit our website at [www.gibsondunn.com](http://www.gibsondunn.com). | Legal Notice, Please Read.