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SEVENTH CIRCUIT HOLDS CORPORATE OFFICER PERSONALLY LIABLE FOR ENVIRONMENTAL CONTAMINATION

by Monica E. Edwards

In a recent Seventh Circuit case, *Browning-Ferris Industries of Illinois, Inc. vs. MIG Investments, Inc.* (May 30, 2001), the Court held that a corporate officer can be personally liable for his acts in his capacity as an operator and/or handler of hazardous waste for his company. This case involved a landfill placed on the Superfund National Priorities List. The landfill was operated by the plaintiff, defendant and affiliates of the defendant, including the corporate officer.

The court weighed various factors in determining whether personal liability could be imposed. It focused its test on the distinction between those acts of a corporate officer considered personal versus those acts of a corporate officer considered solely the acts of the corporation. The corporate officer held personally liable oversaw the day-to-day activities of handling the hazardous waste coming into the landfill site. This same corporate officer held himself out as the primary operator and handler of hazardous waste at the landfill and assumed responsibilities, including but not limited to the following:

- negotiation of contracts for disposal;
- testing and analysis of incoming waste;
- placement of waste at the landfill; and
- communicating with, and securing permits from, environmental agencies regarding the landfill.

Because the corporate officer crossed the line from simply directing the business to being an "operator", the court determined that he should be held personally liable. *Browning-Ferris* teaches that the "shield" provided to a corporate entities' officers is not always sufficient to preclude individual liability for contamination which may occur through an officer's personal acts as an operator under CERCLA.

This important case sets a precedent that personal liability may be sought where one crosses the fine line of being a director and becomes an "operator." Those familiar with CERCLA realize that joint and several liability is a crucial component of the CERCLA regulations. However, it has been rare in the past for individuals to seek or for courts to impose personal liability on corporate officers, directors and/or environmental managers because of their role as handlers and managers of environmental waste for an entity.

Certain measures can be taken to help minimize personal liability being imposed upon a corporate officer or other individuals responsible for handling waste. Such measures include insuring that all contracts are negotiated and executed by one with authority on behalf of an entity in his corporate capacity and not on behalf of the entity in his personal capacity. Conducting correspondence with governmental agencies through third party counsel and/or consultants may also help minimize an individual's exposure. A review of internal procedures and the roles of corporate officers or environmental managers may help assess those areas where one could be held personally liable.

- Kahn, Dees, Donovan & Kahn, LLP has substantial experience in advising our clients on environmental law and real estate matters. If you have concerns about the impact of this decision and wish to explore and employ procedures and policies for avoiding these risks, call us.

