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News Alert

Despite Sophisticated Acquisition Contract, Allocation of CERCLA Liability Unclear

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An April 11, 2019 decision by the U.S. District Court for the District of Montana illustrates the challenges of contracting away CERCLA liability even when contractual negotiations occur between sophisticated parties. *Columbia Falls Aluminum Co., LLC v. Atlantic Richfield Co.* (D. Mont. April 11, 2019) (Op. & Order re Mot. for Jdgmt. on the Pleadings). In the decision, the court denied Atlantic Richfield Co.'s (Arco's) motion for judgment on the pleadings seeking to confirm that Arco did not have CERCLA liability in connection with an aluminum smelting operation pursuant to a nearly 80-page agreement between Arco and Columbia Falls Aluminum Co., LLC (CFAC). CFAC acquired the facility from Arco in 1985. CFAC is seeking both cost recovery and contribution from Arco after incurring about $7 million in investigation and feasibility study costs under a 2015 administrative order on consent with EPA.

In denying Arco's motion, the court concluded that Arco's indemnification obligations did not exclude liabilities premised on "pre-closing releases of hazardous substances" even though no response costs were incurred until 2013, nearly three decades after the facility changed hands. Under the agreement, Arco's indemnification obligations expired in 1990, which, Arco argued, shifted all indemnification obligations to CFAC. However, without more factual development, the court determined that it could not resolve whether CFAC's cross-indemnification obligations, which were limited to "liabilities arising out of … 'the operation of the Smelter Business after the Closing Date,'" encompassed Arco's CERCLA liability at the site.

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