

## Jaeckle Fleischmann Environmental Attorneys Recover Additional \$5 Million for Solvent Chemical Corporation

*Jaeckle Fleischmann's Environmental attorney team of Dennis Harkawik and Charles Grieco have successfully recovered additional cleanup costs from responsible parties under the federal Superfund law for a site formerly owned by its client, Solvent Chemical Company, Inc. (Solvent) located in Niagara Falls, New York.*

The court adopted Solvent's position in its entirety in a federal Western District of New York decision issued on May 16, 2012. The recent recovery adds \$5 million to the amount recovered, which now totals nearly \$10 million in cleanup costs that Harkawik and Grieco have recovered from a large pool of responsible parties on behalf of Solvent. Importantly, the May 16th decision also shifts approximately 70% of all future cleanup costs to two remaining defendants who are yet to settle. (Prior to the decision, Solvent was responsible for nearly 100% of the cleanup costs.) **The state-approved cleanup agreement covering the pumping and treatment of contaminated groundwater at the Niagara Falls site will continue to operate for many years, and the shift in future cleanup liability is projected to save Solvent millions of dollars.**

The Western District of New York court's May 16, 2012 decision followed Grieco and Harkawik's successful appeal before the Second Circuit Court of Appeals at the end of 2011. The team's successful appeal on behalf of Solvent was based on the outcome of the Western District court's 2010 trial decision. Critical components of the appeal were:

- (1) whether Solvent could recover future costs from DuPont and Olin, since these two parties were found by the court to be liable parties for significant portions of the contamination at the Solvent site, and
- (2) whether DuPont and Olin should be liable for a higher percentage of costs related to one portion of the Solvent site, known as the "Hot Spot," based on the court's own findings of fact at trial.

The Second Circuit agreed with Solvent on both issues and returned the case to the District Court. The May 16, 2012 decision by the District Court determines that the two non-settling defendants are responsible for over 99% of costs related to the Hot Spot, and that they will be responsible for approximately 70% of all future costs overall. Future costs will be allocated every 6 months, based on groundwater data collected twice a year by Solvent.

In the course of Solvent's Western District of New York litigation, the Jaeckle environmental team has addressed multifaceted federal Superfund issues such as when future remediation

costs may be recovered, what constitutes a equitable allocation of remediation costs among responsible parties that include site operators, waste suppliers and neighboring facility owners whose contamination has migrated to the site, when a chemical substance constitutes a product or a waste and what is the liability of parent and predecessor companies. This particular litigation has also involved the use of extensive expert testimony regarding groundwater migration in a complex fractured bedrock environment and in relation to air dispersion of emissions.

Harkawik and Grieco have successfully navigated the Solvent litigation case throughout a time period when federal Superfund laws changed, often dramatically, as a result of multiple appellate and U.S. Supreme Court decisions. One defendant in the case is currently seeking reconsideration of the Court's May 16, 2012 decision and further appeals are possible.

***For more information regarding the Firm's environmental practice group and superfund litigation experience, please contact Dennis Harkawik at 716.843.3848 or [dharkawik@jaeckle.com](mailto:dharkawik@jaeckle.com) or Charles Grieco at 716.843.3844 or [cgrieco@jaeckle.com](mailto:cgrieco@jaeckle.com).***

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