CARLTON FIELDS

ATTORNEYS AT LAW

REPRESENTATIVE SUPERFUND LITIGATION

- The Firm has been involved in a number of cases covering several of the major Superfund/CERCLA sites here in Florida. Two of those, in the Pensacola and Miami area, involved litigation and claims both by governmental agencies and by private parties. The Pensacola litigation was resolved as to our client, a major lender, through mediation and a resulting nominal payment by the bank involved. The Miami proceedings were also the subject of state court litigation and appeal, when one of the PRPs attempted (in what might be termed a "reverse" quiet title action) to claim that it did not own a piece of contaminated land. In the Miami case, the principal defenses asserted the unconstitutionality of CERCLA as it was sought to be applied against our (landlord) client. The District Judge denied a motion to dismiss predicated on that basis, but acknowledged in her order that factual discovery could certainly provide a basis to renew these arguments at the summary judgment stage. Following some significant changes to the Department of Justice positions, a settlement was reached and a consent decree entered by the Court. We are now representing the same defendants in cost recovery litigation brought by one of the other potentially responsible parties at the site.

- In a third CERCLA matter, the Peak Oil Waste Oil Recycling Site here in Tampa, the Firm has been involved for more than a decade. Members of the Firm have served as an Officer of the Steering Committee and Chair of the Technical Committee, and handled the allocation process and negotiation of de minimis settlements between hundreds of PRPs and the EPA, leading to the establishment of a trust fund in excess of several million dollars, the completion of the assessment the site, negotiation and lodging of a consent decree and implementation of remediation at the site.

- At another Superfund site, the Firm defended a client that was sued for CERCLA cost recovery by the Department of Justice and EPA, after 15 years of ongoing negotiation with both EPA and the Florida Department of Environmental Protection ("DEP"). Our client in that case, a drum reconditioning facility, was sued by the Department of Justice for past and future response costs at the site. After two years of aggressive litigation defense, followed by intensive mediation, a settlement consent decree was approved by the Federal Court involved. Under the terms of the decree, the United States recovered in excess of $3 million, being paid by the client's insurance carrier, and the client is undertaking the remediation required by EPA.

- In other cases, we have represented or are now representing clients with respect to private party CERCLA claims and analogous actions under Florida statutory law. In one instance, now completed, we represented a university that, for a period of time, through the bequest of an alumnus held stock in the company that allegedly cause a creosote contamination problem near Jacksonville. In a case of first impression, the U. S. District Court for the Middle District of Florida held on summary judgment that our client was not liable under CERCLA as an owner or operator of the site by virtue of its acts or capacity as the "parent corporation" of the site owner. The Eleventh Circuit affirmed the decision, and the opinion of the Eleventh Circuit now represents the controlling law in this Circuit, a position rejecting the view that a parent entity, or corporate officers or directors, can be held liable in a CERCLA action because of their apparent capacity to control a company's environmental procedures. The decisions are reported at 776 F. Supp. 1542 (M.D. Fla. 1991) and 996 F.2d 1107 (11th Cir. 1993).

- In another instance, involving an out of state CERCLA site, but a Florida defendant, Carlton Fields confronted the issue of whether the Federal CERCLA statute would pre-empt time limits for filing probate claims which would otherwise be applicable under the Florida Probate Code. The Federal District Judge in Kansas City, Missouri, held that the federal law would take precedence over the Florida Code. The Martin County Probate judge differed with that interpretation, and his decision was affirmed by the District Court of Appeal. Because of the conflict in these rulings, coupled with the potential application of innovative technologies for site remediation, the issues related to the Florida probate claims has been settled after negotiations by the counsel directly involved in the Missouri litigation. The Florida District Court of Appeal decision is reported at 764 So. 2d 24 (4th DCA, Fla. 1999).