
Case Name and Number: *Guam v. United States*, No. 20-382

Introduction: The Supreme Court held that Guam can proceed with a \$160 million lawsuit against the United States to recover pollution costs at a landfill. The decision provides guidance to owners and polluters of Superfund sites on the types of lawsuits that can be brought seeking cleanup costs.

Background: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, is the major federal statute for cleanup of contaminated sites. Under CERCLA, a person who incurs cleanup costs at a site can bring a “cost-recovery” action against the polluter, and a polluter can bring a “contribution” action seeking to split the bill among multiple polluters. Under Section 113(f)(3)(B) of CERCLA, a contribution action is available to a “person who has resolved its liability to the United States or a State” in a settlement. 42 U.S.C. § 9613(f)(3)(B).

Guam and the United States are in a long-running dispute over a Superfund site on Guam. The Navy constructed a landfill at the site in the 1940s, and then allegedly deposited toxic waste there for several decades. The United States then ceded control of the site to Guam, which used the site as a landfill. The United States sued Guam under the Clean Water Act, arguing that Guam failed to follow the Environmental Protection Agency’s directions about remediating the site. In 2004, Guam and the United States entered into a consent decree that settled those claims. Then in 2017, Guam sued the United States under CERCLA for \$160 million, bringing cost-recovery and contribution claims, on the ground that the Navy caused the issues at the site in the first place. The D.C. Circuit held (among other things) that the prior Clean Water Act settlement could be the basis for a contribution action under Section 113(f)(3)(B).

Issue: Whether a person who has entered into a non-CERCLA settlement (here, the Clean Water Act settlement) can bring a contribution claim under CERCLA Section 113(f)(3)(B).

Court’s Holding: In an opinion authored by Justice Thomas, the Supreme Court held 9-0 that Guam cannot bring a contribution claim because a non-CERCLA settlement does not count as a settlement for purposes of Section 113(f)(3)(B). As a result, on remand, Guam can pursue only its cost-recovery claim.

The Court’s analysis focused on the “totality” of Section 113(f). It reasoned that Section 113(f) is concerned only with the distribution of CERCLA liability, because it discusses settlement of a “response action,” which is a familiar CERCLA phrase, and because a federal contribution action is almost always a statute-specific right.

Read the opinion [here](#).