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## US Supreme Court Issues CERCLA Ruling

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On May 4, 2009, the United States Supreme Court issued its opinion in the Burlington Northern and Shell Oil (consolidated) cases involving the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Case No. 07-1601. In Burlington Northern, the United States Supreme Court addressed the issue of “apportionment” under the statute and also addressed whether Shell Oil Company was “arranging for the disposal” of a hazardous substance in a product sold to an agricultural chemical distributor.

In a victory for companies which ship products that contain hazardous substances, the US Supreme Court clarified the standards by which a party becomes an arranger under Section 107(a)(3). In particular, the Court held “arrange” implies action directed to a specific purpose. Thus, under Section 9607 (a)(3)’s plain language, an entity may qualify as an arranger when it takes intentional steps to dispose of a hazardous substance.

Surprisingly, the US Supreme Court held that Shell Oil is not an arranger under Section 107(a)(3) despite the fact that Shell was aware that minor, accidental spills occurred during the transfer of a Shell product to the distributor. This ruling will restrict “arranger/generator” liability.

In addition, the US Supreme Court upheld the District Court’s detailed findings regarding apportionment of CERCLA responsibility. The US Supreme Court adopted a “reasonable” standard by upholding the District Court’s apportionment because the record “reasonably supported the apportionment of liability”. The Court also held that the orphan share liability (over 90%) was not apportioned to the PRPs, but remained with the government. Essentially, the US Supreme Court provided some latitude to District Courts to apportion liability under CERCLA Statute.

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