RAYMOND S. PAPPERMAN

counsel

SPECIALTY: Environmental Law

AREAS OF EMPHASIS

Environmental Compliance
Environmental Permitting
Environmental Counseling
Environmental Litigation
Alternative Dispute Resolution

EDUCATION

- J.D., Tulane University Law School, 1982
- B.A., Hobart College, 1977

RAYMOND S. PAPPERMAN concentrates his practice on all aspects of environmental law pertaining to both ongoing operations at commercial and industrial facilities, and the remediation and development of sites throughout New Jersey.

Mr. Papperman also has extensive experience in Alternative Dispute Resolution involving environmental, construction and land use disputes.

Prior to joining Sills Cummis, Mr. Papperman served as the Deputy Chief Advisor to the Commissioner of the New Jersey Department of Environmental Protection (DEP), the Director of DEP's Office of Dispute Resolution, and DEP's Ethics Liaison Officer. Most recently, he was the Policy Advisor to the Assistant Commissioner of DEP's Site Remediation and Waste Management Program.

Prior to his tenure at DEP, Mr. Papperman counseled clients in private practice for over 20 years.

Mr. Papperman is a frequent speaker and author on a host of environmental and real estate development topics.

Rankings and Recognition

- Martindale-Hubbell®* AV rating
- *The Best Lawyers in America*®* 2011-2013, Environmental Law, Environmental Litigation
- *New Jersey Super Lawyers*®* 2011-2013, Environmental Law

*For ranking methodologies, please see www.sillscummis.com/award-methodology.aspx.

Related Affiliations

- *Master/Executive Committee*, Stewart G. Pollock New Jersey American Environmental Inn of Court
- *Former Chair*, New Jersey State Bar Association, Environmental Law Section
- *Former Vice-Chair,* American Bar Association, Toxic Tort and Environmental Law Committee

Bar Admissions

- New Jersey, 1984
- U.S. District Court, District of New Jersey, 1984
- U.S. Court of Appeals, Third Circuit, 1990
- U.S. Supreme Court, 1990

LINDA TAYLOR

Ms. Taylor has been employed at the DEP for over 30 years. She is currently the head of the Office of Dispute Resolution. She is a State of NJ trained mediator and has been involved in over 400 mediations. She is also an Interest Based Negotiation instructor and has provided negotiation training for many of her colleagues.

Inn of court

Draft prepared by Tirza Wahrman

9.14.19

GLOSSARY OF TERMS

Municipal Solid Waste, more commonly known as trash or garbage, consists of everyday items people use and then throw away, such as product packaging, grass clippings, furniture, clothing, bottles, food scraps and papers.

The first federal legislation addressing solid waste management was the Solid Waste Disposal Act (SWDA) that created a national office of solid waste. By the mid 1970's, all states had some type of solid waste management regulations.

In 1976, Congress passed the **Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec. 6901 et seq.,** that dramatically expanded the federal government's role in managing waste disposal. RCRA divided waste streams into **hazardous** and **non-hazardous** categories, and directed the EPA to develop design and operate remediation plans based on how the waste streams were categorized.

New Jersey DEP administers the RCRA program in New Jersey. See, e.g., Strategic Envtl. Partners, LLC v. New Jersey DEP, 438 N.J. Super.125 (App. Div. 2014).

The **Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:1—23.11,** prohibits the discharge of hazardous substances.

In addition, **New Jersey's Site Remediation and Waste Management Act, N.J.S.A. 13:1E-125 et seq.,** as amended, establishes requirements and controls applicable to "legacy landfills" and closed sanitary landfill facilities that accept new materials after closure to, for example, close a landfill that has not been previously closed, regrade a landfill for proper drainage, or prepare the landfill surface for redevelopment.

A "legacy landfill" is defined as any site which closed before 1982 and contains material which would be defined as hazardous under RCRA, but received material before the law was enacted in 1976.

The imposition of **Joint and several liability** allows a plaintiff "to sue for and recover the full amount of recoverable from any (defendant)." Restatement (Third) of Torts, Apportionment of Liability, Sec. 10 (2000).

Entities may be joint and several tortfeasors if they are liable to the same person for the same harm. Notably, they need not act at the same time or in any concerted way. Instead, the measure of joint and several liability is whether the tortfeasors' conduct produced an indivisible, single harm. Jointly and severally liable defendants are generally (and theoretically) entitled to recover from one another the percentage of damages attributable to the other party or parties' conduct.

Environmental damage claims are often very technical. This is especially true where the policyholder seeks coverage in the face of a "pollution exclusion." Some pollution exclusions are not absolute and may provide coverage for discharges that are "sudden and accidental." See, e.g., "Proving Sudden and Accidental Discharge Requires an Expert with a Reliable Methodology," National Law Review, September 14, 2019.

Comprehensive general liability (CGL) insurance is a broad policy that protects the organization from **liability** claims related to products coverage, completed operations coverage premise and operations coverage, and independent contractors coverage.

An occurrence policy covers claims made for injuries sustained during the life of an insurance policy, even if the claim is filed after the policy has been canceled. An **occurrence** is an event that can result in the filing of an insurance claim.

A **claims made** policy covers claims made against a party only while the policy is in effect. The downside of this policy is that coverage must be continued indefinitely to assure coverage for claims filed in the future for actions that occurred in the past. Essentially, once the policy has lapsed, the policyholder no longer has coverage.

Pollution liability insurance policies cover claims from third parties against bodily injury and property damage caused by hazardous waste materials released during a company's business operations. This insurance not only covers you while you are completing a job; it covers your "completed operations."

A good discussion of problems associated with historic or legacy landfills:

"The Contaminant Legacy from Historic Coastal Landfills and their Potential as Sources of Diffuse Pollution," Marine Pollution Bulletin, 2018, Vol. 128, pages 446-455; www.sciencedirect.com. Prior to modern environmental regulation, landfills in low-lying coastal environments were frequently constructed without leachate control, relying on natural attenuation within inter-tidal sediments to dilute and disperse contaminants reducing environmental impact.

Scenario 1 – Family Ties

In 2010, Ronald Strong's father, William, conveyed family property to Ronald. The property was located at 552 Easy Street, Rich City, New Jersey. The property had previously been owned and operated by William Strong as an automobile service station. Ronald was aware of this, as he had worked at the station pumping gas on and off through his teens and early 20s.

Property History

From 1921 to 2010, four prior owners of the property, including Ronald Strong's father, had either operated, or had leased the property to other operators of gas stations during their times of ownership of the property. The prior ownership of the property is as follows:

1. 1921-1936 – Alvin E. Smith and Matilda Smith, H/W
2. 1936-1955 – Big Top Oil, Inc., t/a Big Top Esso
3. 1955-1970 – Jobber Fuel Company (an unincorporated NJ business owned by Ralph Armstrong)
4. 1970-2010 – William Strong, t/a Bill's Neighborhood Service Station

Prior to 1926, the property had been farmland until it was subdivided by a local farmer. Most of the rest of the property remained farmland, but a quarter acre piece fronting on Easy Street was sold by the farmer to Alvin and Matilda Smith, who erected a small country general store on the site. As the population around the general store increased throughout the roaring twenties, Alvin decided to sell gasoline at the property as well. So, he installed a vacuum pump and an above ground storage tank, which was replaced by a new steel 250 gallon underground tank, at the urging of Alvin's fire insurance carrier, sometime in the early 1930s. As was the custom at the time, all gasoline sold by the Smiths was leaded in order to improve octane and overall performance.

In 1936, Alvin and Matilda sold the property to a newly formed New Jersey corporation called Big Top Oil, Inc. Big Top Oil had a single shareholder, Eric Floyd, who had originally worked for the Smiths and primarily handled the gas station part of their business. Big Top operated the property as is for several years but, in 1942, it decided to modernize after entering into what would be called today a franchise agreement with what was then known as Humble Oil Company.[1] Based on a loan from Humble, Big Top pulled out the single 250 gallon UST and replaced it with two steel 1,500 gallon USTs, one to hold regular leaded gas and the other to hold high octane (premium) leaded gas. These two tanks fed a single pump island with two pumps, one dispensing regular and the other dispensing high octane gasoline. Under the

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[1] Another company, Standard Oil of New Jersey, Inc. held a 50% ownership interest in Humble Oil from 1919 through 1959, when it acquired the remaining 50% of Humble. In 1973, Humble Oil merged with its parent to become Exxon Corporation.

agreement with Humble, Big Top was only allowed to sell gasoline that was purchased from Humble. It was also required to sell under the brand name "Esso". Humble's standard agreement also specified that Humble held title to the tanks until the construction loan was fully paid off, after which their ownership automatically reverted to Big Top. Finally, the agreement stated that Big Top and its successors and assigns must indemnify Humble for any and all claims brought against Humble that may arise from Big Top's ownership and operation at the site, but no mention of the issue of environmental contamination was mentioned in the agreement.

In 1950, Big Top decided to modernize the gas station even further. Obtaining a new loan from Humble, it removed the two 1,500 USTs and replaced them with four new 2,000 gallon steel USTs, two for regular and two for premium gas, again all leaded. In the agreement for this loan, Humble no longer claimed title to the newly installed tanks. Big Top also upgraded the pump island to add a second island and to install newer pumps. Big Top also built a new service station structure on the site, containing two bays and two lifts and a then state of the art automobile repair center. The building was heated by oil heat, for which a 200 gallon steel UST was also installed at the site to contain #2 heating oil. Finally, an underground 100 gallon steel "slop oil" tank was installed behind the building to hold a combination of things like used engine oil, used transmission fluid and brake oil, not to mention small quantities of solvents that were used for cleaning parts, freeing frozen brakes, etc. The "slop oil" tank was not pumped out on a regular basis and, over time, a number of instances of overflowing did occur. Big Top never removed the spilled oil. It just allowed it to slowly seep into the ground.

Eric Floyd died unexpectedly of a heart attack in 1955 and his family put the property up for sale. A man named Ralph Armstrong offered to buy the site "as is." Ultimately, he acquired title to the property under the name Jobber Fuel Company,[2] which was placed on the deed, but it turns out that no such company was ever incorporated. Therefore, there remains some question as to the nature of Ralph's ownership of the site, although it appears he may have owned the site individually. Ralph Armstrong's company sold gasoline under the brand name "Tiarra." Ralph was not himself a mechanic, but over the course of time he entered into leases with several mechanics to operate the gas and service station, including the right to service automobiles in the building. The lease terms obligated the lessees to pay a fixed rent to

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[2] A jobber is a company that sells gasoline acquired from a number of different purveyors or suppliers. It does not sell under a single brand name, like Exxon or Shell. As a result, most jobbers sell gasoline under their own brand name, although the quality and performance of the gasoline can vary from shipment to shipment depending on who manufactured the fuel, how old the gasoline is, whether it has been adulterated with any other substances, what additives does it contain, etc. Also, and for the same reasons, it is sometimes difficult to determine the exact origin of the gasoline sold by a jobber, including to detect the specific refinery or refineries in which the gasoline was manufactured. Every refinery adds different secondary ingredients to its gasoline, and those additives are claimed to be trade secrets. However, some experts purport to know the chemical additives of at least the major refiners and claim to be able to tell which gasoline was refined by which companies based on the chemical profile of the product.

Ralph for use of the building for which they could retain all of the proceeds of working on cars for themselves. The lease terms also required the tenants to pump gas under Ralph's Tiarra label, for which Ralph paid them a small royalty but pocketed most of the profits.

In 1970, William Strong purchased the property from Ralph Armstrong, as well as Ralph's business, and continued to operate the site in the same manner as Ralph had previously done. Upon advice of his accountant, William took title to the property in his own name, because the accountant told him that he could maximize tax deductions by owning it individually instead of through a corporation. Neither the accountant nor his lawyer advised William of any potential environmental risk in owning a gas station individually, and no one advised him that taking title to the property as a corporation might be a better idea for liability avoidance reasons. However, in 1998, a lawyer did counsel him to switch ownership to a limited liability corporation and, so, he formed a new LLC called Tiarra, LLC at that time and transferred ownership of the site to that entity.

William sold gasoline under the Tiarra label for the entirety of his ownership of the property. He purchased the gasoline from the same jobber suppliers as his predecessor had used. In the same year that William acquired the property, 1970, the USEPA was created by Congress. Almost immediately after its inception, the USEPA began working to reduce lead emissions, and it issued its first lead reduction standards in 1973, which called for a gradual phasedown of lead in gasoline to one tenth of a gram per gallon by 1986. However, many of the sources of gasoline that William continued to use after 1986 may or may not have still contained some lead in the product due to having been manufactured outside of the United States, because the gasoline was old, or because the gasoline came from less reliable domestic refineries that ignored the USEPA's directives on the use of lead in gasoline.

In 1974, concerned about the possible loss of inventory from the steel tanks that had been originally installed nearly 25 years earlier, William decided to have the old gasoline tanks replaced with identically sized, new steel tanks. He hired a construction company to pull out the old tanks and install new tanks while he temporarily shut down the business and took his family on an extended long trip to Europe. He told the foreman of the construction company that he would not be reachable during his trip and asked the foreman to "use his discretion" in case any issues or problems were encountered. He also gave the foreman a $1,000 "under the table" bonus which he told the foreman was to make sure everything went "smoothly" while he was away. He said to the foreman: "This is just between you and me. I see no reason to tell your employer that I gave you this money, do you?" When he returned from vacation to find that the new tanks had been installed and other property upgrades were fully completed, William asked the foreman if any issues had been encountered. The foreman replied that he had "made sure" no problems came up by having the tanks removed on a Saturday,

when the local fire inspector was away for the weekend at the shore,[3] although he did mention "smelling some gas" and seeing a "slight sheen" on top of the groundwater in one of the excavation pits, which he just covered over with pea gravel before the new tanks were installed without notifying anybody. The foreman also advised that it was necessary to give the fire inspector $100 from the bonus money to obtain the inspector's back dated signature on the necessary paperwork. William thanked the foreman for his assistance and reimbursed him an additional $100.

At the same time that the above occurred, William's construction company also removed the old 200 gallon #2 heating oil UST. However, this tank was not replaced because heating for the building was also switched from oil heat to natural gas at that time. While this tank was removed, the foreman decided to leave the 100 gallon slop oil UST in the ground, as he reasoned it might be necessary in the future when automobiles might still be repaired at the site.

After reconstruction of the site, William continued to enter into leases, similar to those that Ralph had used, with mechanics who actually ran the service station and also pumped gas for customers. However, in the mid 1980s, William decided to stop entering into such leases or to use the building on the site for automotive repairs. Instead, he converted the building into a small retail store, similar to a 7-Eleven. He had a small office built in a back room from the retail space, which he used to run the business. Thereafter, he directly hired people to run the gas station and the retail store for him. He periodically noticed some minor inventory loss with the gasoline from time to time, but he assumed that the reason was probably because of occasional employee theft of the gasoline. The thought never occurred to him that the loss of inventory might be due to other reasons, including problems with the newly installed tanks, their piping, or other reasons, as he was "certain" that the construction company foreman would have done a good job installing the new tanks in 1974 because of the $1,000 bonus.

In 1993, William decided that he needed to clean out the small office next to the retail space because it was accumulating a lot of old documents that he believed were no longer needed and were just taking up space. These included a bunch of old documents dating back many years, including numerous documents that had been left on the site by his predecessors. The documents consisted of such diverse things as old leases, old inventory records, and other operating documents for the various businesses that had existed at the site, as well as old insurance policies some of which dated back as far as the 1940s. William, ever the pack rat, decided to hold onto these old insurance policies and other documents because he reasoned, "You never know when such things might become important."

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[3] During this time period, the NJDEP did not routinely inspect or requiring the reporting of tank pulls, or spills and discharges generally. Instead, it relied mainly on local officials – often fire inspectors – to monitor the integrity of the process.

The 2010 Transfer From William To Ronald

Operation of the site continued as above throughout the remainder of the 1980s, through the 1990s, and up through the 2000s. In 2009, William and Ronald Strong began discussing William's desire to retire and the possibility of conveying the property to Ronald while William was still alive. These discussions eventually resulted in the 2010 transfer.

Although the 2010 transfer between Ronald Strong and his father was essentially a gift, to avoid estate and gift taxes Ronald's father suggested that he and Ronald should enter into a promissory note, which they did, although no mortgage was ever taken back by William on the property. Ronald hired a young lawyer friend who was just starting out, Norman Patsy, to prepare the deed and the note, but Ronald and his father never asked Norman for any advice about the transaction itself – especially environmental advice – and Norman never volunteered any such advice. Norman only charged $500 for his full services in the transaction. Although Norman represented both William and Ronald in the same transaction, he never revealed to either that he might have a conflict of interest, nor did he obtain a waiver for that conflict from either the father or the son. Norman never prepared a contract of sale, but he did prepare the promissory note. Also, no title company was involved in the transaction. Instead, Norman handled the deed preparation and recording by himself. Despite the above, at Norman's advice, an LLC was formed by Ronald at the last minute to take title to the property. But when Ronald asked Norman if it would not be better to take title in his own name as his father had done before for tax depreciation reasons, Norman acquiesced and merely told Ronald, "Just do what you want. I never was very good in tax in law school anyway." Therefore, even though the LLC had been formed, it did not immediately take title to the property. However, six months later, Ronald talked with his accountant who advised him that, due to changes in the tax code, it was no longer as advantageous as it once was to hold title to property individually for depreciation purposes. The accountant also told Ronald that, for liability reasons, it might be better to hold title to the property through an LLC because, he said, "It was, after all, a gas station and you never know." Acting on the accountant's advice, Ronald contacted Norman shortly thereafter and Norman prepared for Ronald a quitclaim deed from Ronald to his LLC, which was duly recorded a few days later. Ronald named the company Hope Springs Eternal, LLC. Over time, Ronald only made two payments on the note after which he ceased making any further payments to his father, and William never pressed him for more payments. Ronald's LLC was never added to the note as an additional party.

At the time of the transfer, Ronald never performed, and no one ever advised him to perform, any environmental testing or other analysis or review of the property for the potential for environmental concerns or issues before accepting title to the property. Ronald reasoned that, because he already knew everything there is to know about the property through his father's prior ownership and his own working on the site in the past, it would just be a wasted expense to carry out any due diligence.

Discovery Of Contamination And Remediation

After acquisition, in 2013, Ronald decided to upgrade the property by converting it from a 7-Eleven into a Starbucks coffee shop. To that end, Ronald obtained site plan approval for a new use from Rich City and also obtained a franchise from Starbucks to run such a business at the location. Following those approvals, Ronald obtained permits from the municipality to demolish the existing structure and remove the USTs, underground pipes, and other fixtures on the property to get the site ready for reconstruction.

However, during excavation, which occurred in 2014, Ronald's construction company found unmistakable evidence of substantial underground contamination on the property. Upon opening up the excavation hole, the smell of gasoline permeated the entire site, and there was a significant sheen on top of the groundwater everywhere on the site, which had been reached a mere 9 feet below the ground surface. Also, all of the soil in the area of the pulled gasoline tanks was significantly discolored, and the former USTs themselves were severely rusted with small, but nevertheless quite visible, holes in many places. There was also rust and many visible holes in much of the underground piping that had conveyed gasoline from the tanks to the pumps.

Aside from the above, the excavators also found evidence of the highly rusted and very leaky remnants of an old 100 gallon steel waste oil tank behind the building. The tank still contained some liquid, which was black in color and was very viscous and putrid smelling, unlike old gasoline which generally still retains a sweet odor despite its age. Later testing of the contents of the tank and the soil around it revealed that it contained old engine oil, transmission and brake fluid, and fairly high levels of both TCE and PCE, which are industrial solvents.

Upon discovery of the above contamination, and at the contractor's suggestion, the NJDEP's hotline was called by Ronald to report what was found, and a case number was issued by the NJDEP and given to Ronald's LLC. The LLC was also advised that it needed to hire an LSRP to carry out a remediation.

Ronald eventually spent over $1.4 million on remediation expenses at the site, including substantial dollars spent on also addressing contamination that had spread to adjacent properties. The LSRP issued his RAO for the complete site in June of 2018, following NJDEP's issuance of both soils and groundwater RAPs. The soils remedy consisted principally of removal of all hot spots of soils contamination down to restricted use levels for the subject contaminants, followed by installation of a concrete and asphalt cap over the entirety of the property, also using the Starbucks building footprint as part of the cap. An NJDEP compliant deed notice was also recorded for the soils contamination left on the site. As for groundwater contamination, following an initial phase of pumping and treating the groundwater and then further remediating using technologies like epsom salts infusion and the like.

Interestingly, sampling of both the soil and contaminated groundwater beneath the site revealed higher levels of lead in both media than would be normal or expected based on background lead levels in Rich City. The LSRP attributed this to the fact that at least some of the contamination resulted from spills and discharges that had occurred long ago on the property before unleaded gasoline was required. Additionally, MTBE, a gasoline additive that was widely used as an oxygenate from between 1979 and the early 2000's until it was generally replaced by ethanol, was also found in the ground and groundwater at the site.

Cost Recovery Claim

In 2017, before the remediation was even completed, Ronald Strong and Hope Springs Eternal LLC filed a cost recovery claim in the Superior Court of New Jersey against the following individuals and entities to seek recovery of the $1.4 million that they spent on remediating the site to date, plus declaratory relief to cover anticipated future costs:

1). The putative heirs to the Estates of Alvin and Matilda Smith, who have not, to date, answered the complaint.

2). The putative heirs to the Estate of Eric Floyd, who have also not, to date, answered the complaint.

3). Big Top Oil, Inc., which has also not answered the complaint to date, but is listed in the corporate records of the New Jersey State Treasurer as an active corporation through 1978, when it failed to pay taxes or file an annual report. The company has never formally dissolved and, therefore, qualifies as a so-called "zombie" corporation.

4). The alleged successors to several insurance companies who formerly insured Big Top Oil, Inc. from the 1940s through 1955, which old policies were discovered by William Strong in 1993 and were held onto by him thereafter. The totality of such coverage, if the claims are successful, could be as much as $600,000 in coverage. All of these defending carriers have denied coverage, as well as denying their responsibility as alleged successors to the original insurance policies based on various theories.

5). ExxonMobil Corporation, as the alleged successor to Humble Oil Company and Exxon Corporation. While admitting that it is the successor to Humble Oil Company and Exxon Corporation, ExxonMobil has denied all liability based on various theories. It also specifically denies that the plaintiffs have standing to enforce the 1942 loan agreement between Humble Oil Company and Big Top Oil, Inc., whereby Humble claimed title to the USTs then on the property or, in the alternative, *ExxonMobil alleges*

that there is no evidence the USTs did in fact leak when they were under the ownership of Humble Oil.

6). Ralph Armstrong, who is now an 89 year old man with dementia and no known heirs who is living in a nursing home in Boca Raton, Florida. Reportedly, Mr. Armstrong has over $2.5 million in an inter vivos trust that he established for himself to pay for his long term care. However, there is a reversionary clause in the trust providing that the balance of any money in the trust at his death will revert to his estate and is not for the benefit of the nursing home if he dies before the trust assets are fully depleted. His nursing home expenses are approximately $200,000 per year. Although Ralph's doctors obviously cannot say exactly how much time he has left, other geriatric physicians that Ronald Strong have consulted have told him that a person in Ralph's condition, with Alzheimer's disease, probably has no more than 3 to 7 years to live.

7). Various insurance companies who issued comprehensive general liability insurance policies on a claims made basis to William Strong personally from between 1970 and 1985, following which the policies added the so-called absolute pollution exclusion to all such policies starting in 1986. In addition to denying that Ralph Strong or Hope Springs Eternal LLC have standing to sue under those policies, the carriers also allege that neither plaintiff is, in fact, an "insured" under the policies, nor are the plaintiffs proper third party claimants within the contemplation of the policies. Further, even if the plaintiffs were to prevail against these carriers, William Strong was never willing to pay for much coverage and, thus, the policies were each limited to the face amount of $30,000, with a $3,000 deductible (or self insured retention) per policy.

8). Norman Patsy, Esq., based on various alleged malpractice claims. Unfortunately, Norman did not have malpractice insurance at the time he performed the legal work for William and Ronald Strong.

In addition to the above, two of the defendants – ExxonMobil and the guardian ad litem for Ralph Armstrong – have brought third party claims against William Strong. Also, all of the answering defendants – including Norman Patsy – have brought counterclaims generally alleging but under different legal theories that Ronald Strong also bears liability for the contamination on the property as to which they are entitled to reductions in their own proven liability, if any, in the amount of Ronald's own personal liability.

Mediation

At the suggestion of the case management judge that the complexity of the litigation in relation to the damages would probably benefit from alternative dispute resolution, all parties have agreed to refer the matter to private mediation.

Although the 2010 transfer between Ronald Strong and his father was essentially a gift, to avoid estate and gift taxes Ronald's father suggested that he and Ronald should enter into a promissory note, which they did, although no mortgage was ever taken back by William on the property. Ronald hired a young lawyer friend who was just starting out, Norman Patsy, to prepare the deed and the note, but Ronald and his father never asked Norman for any advice about the transaction itself – especially environmental advice – and Norman never volunteered any such advice. Norman only charged $500 for his full services in the transaction. Although Norman represented both William and Ronald in the same transaction, he never revealed to either that he might have a conflict of interest, nor did he obtain a waiver for that conflict from either the father or the son. Norman never prepared a contract of sale, but he did prepare the promissory note. Also, no title company was involved in the transaction. Instead, Norman handled the deed preparation and recording by himself. Despite the above, at Norman's advice, an LLC was formed by Ronald at the last minute to take title to the property. But when Ronald asked Norman if it would not be better to take title in his own name as his father had done before for tax depreciation reasons, Norman acquiesced and merely told Ronald, "Just do what you want. I never was very good in tax in law school anyway." Therefore, even though the LLC had been formed, it did not immediately take title to the property. However, six months later, Ronald talked with his accountant who advised him that, due to changes in the tax code, it was no longer as advantageous as it once was to hold title to property individually for depreciation purposes. The accountant also told Ronald that, for liability reasons, it might be better to hold title to the property through an LLC because, he said, "It was, after all, a gas station and you never know." Acting on the accountant's advice, Ronald contacted Norman shortly thereafter and Norman prepared for Ronald a quitclaim deed from Ronald to his LLC, which was duly recorded a few days later. Ronald named the company Hope Springs Eternal, LLC. Over time, Ronald only made two payments on the note after which he ceased making any further payments to his father, and William never pressed him for more payments. Ronald's LLC was never added to the note as an additional party.

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that neither plaintiff is, in fact, an "insured" under the policies, nor are the plaintiffs proper third party claimants within the contemplation of the policies. Further, even if the plaintiffs were to prevail against these carriers, William Strong was never willing to pay for much coverage and, thus, the policies were each limited to the face amount of $30,000, with a $3,000 deductible (or self-insured retention) per policy.

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Ralph Armstrong's guardian wants to preserve Ralph's assets for his health care but he is willing to contribute no more than 1 million dollars to get rid of the claim..

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Confidential Facts – Insurance Company

The alleged successors to several insurance companies who formerly insured Big Top Oil, Inc. from the 1940s through 1955, which old policies were discovered by William Strong in 1993 and were held onto by him thereafter. The totality of such coverage, if the claims are successful, could be as much as $600,000 in coverage. All these defending carriers have denied coverage, as well as denying their responsibility as alleged successors to the original insurance policies based on various theories.

The insurance policies were on per occurrence basis. The insurance companies' position is they will not pay out on the policies until they are given proof that the contaminant was occurred during Big Top Oil's ownership.

In 1936, Alvin and Matilda sold the property to a newly formed New Jersey corporation called Big Top Oil, Inc. Big Top Oil had a single shareholder, Eric Floyd, who had originally worked for the Smiths and primarily handled the gas station part of their business. Big Top operated the property as is for several years.

In 1950, Big Top decided to modernize the gas station even further. Obtaining a new loan from Humble, it removed the two 1,500 USTs and replaced them with four new 2,000-gallon steel USTs, two for regular and two for premium gas, again all leaded. In the agreement for this loan, Humble no longer claimed title to the newly installed tanks. Big Top also upgraded the pump island to add a second island and to install newer pumps. Big Top also built a new service station structure on the site, containing two bays and two lifts and a then state of the art automobile repair center. The building was heated by oil heat, for which a 200-gallon steel UST was also installed at the site to contain #2 heating oil. Finally, an underground 100 gallon steel "slop oil" tank was installed behind the building to hold a combination of things like used engine oil, used transmission fluid and brake oil, not to mention small quantities of solvents that were used for cleaning parts, freeing frozen brakes, etc. The "slop oil" tank was not pumped out on a regular basis and, over time, a few instances of overflowing did occur. Big Top never removed the spilled oil. It just allowed it to slowly seep into the ground.

Big Top Oil, Inc., which has also not answered the complaint to date, but is listed in the corporate records of the New Jersey State Treasurer as an active corporation through 1978, when it failed to pay taxes or file an annual report. The company has never formally dissolved and, therefore, qualifies as a so-called "zombie" corporation.

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Confidential Facts – Alvin E. Smith and Matilda Smith

Prior to 1926, the property had been farmland until it was subdivided by a local farmer. Most of the rest of the property remained farmland, but a quarter acre piece fronting on Easy Street was sold by the farmer to Alvin and Matilda Smith, who erected a small country general store on the site. As the population around the general store increased throughout the roaring twenties, Alvin decided to sell gasoline at the property as well. So, he installed a vacuum pump and an above ground storage tank, which was replaced by a new steel 250-gallon underground tank, at the urging of Alvin's fire insurance carrier, sometime in the early 1930s. As was the custom at the time, all gasoline sold by the Smiths was leaded in order to improve octane and overall performance.

In 1955, both Alvin E. Smith and Matilda Smith passed away in a tragic car accident.

The putative heirs to the Estates of Alvin and Matilda Smith have not answered the complaint to date. The heirs of the Estates of Alvin and Matilda have spent most of the inheritance from the Estate. The heirs argue the tanks that Alvin and Matilda installed were new and there is no proof that the tanks leaked during the Smith's ownership.

The heirs reviewed old documents of Alvin and Matilda Smith and found a general liability policy for 100,000 dollars. This is policy was an occurrence policy. This is maximum that the heirs are willing to pay.

DEP Hypothetical – Confidential Facts

DEP received the report about the contamination at the property. The DEP received reports from park visitors of a green and brown sheen in a creek running through the park. The park's visitors also reported a putrid smell that caused the DEP to close the park until the site was remediated. The DEP lost $400,000 in park revenue because of the park closure for these concerns. Also, several wildlife habitats were destroyed. A wetland was disturbed during the remediation. DEP seeks restoration of the wetland and filed a $1,000,000 natural damage claim against Ronald Strong. DEP wants immediate restoration of the wetland and hopes to recover at least $750,000 in the settlement.