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Undefined Contractual Language Leads to Years of Litigation Over Environmental Liabilities

MAY 6, 2021

By *Andrew Cooper and Robert Conrad*

What is a claim for environmental liability and when should it be brought? The answers to these questions can become very expensive as evidenced by a recent Seventh Circuit Court of Appeals ruling.

When Wisconsin Central LTD railroad purchased various assets from Soo Line railroad in 1987, the Asset Purchase Agreement ("APA") provided that Soo Line would retain liability and indemnify Wisconsin Central for "all claims for environmental matters relating to ownership of the Assets or the operation of" the acquisition within ten years of closing. If a claim arose beyond that period, responsibility flipped – it became Wisconsin Central's obligation to indemnify Soo Line, instead.

Not long after that deal closed, the Wisconsin Department of Natural Resources ("WDNR") found contamination in a public recreational area that had been a railroad right-of-way. WDNR identified Northern States Power Company (but neither Soo Line nor Wisconsin Central) as the potentially responsible party ("PRP"). Thus, began a years-long battle between Northern States and Wisconsin Central over which party had (more) liability for the contamination. Throughout this conflict, Wisconsin Central diligently kept Soo Line informed, including holding meetings with in-house counsel. When there was still no resolution just nine months *before* the end of the (ten year) claim period, Wisconsin Central formally sought indemnification from Soo Line under the terms of the APA. Soo Line rejected that demand, and nearly *another* fifteen years passed before the Environmental Protection Agency ("EPA") issued a formal notice that Wisconsin Central, Soo Line, Northern States, and others were all PRPs.

Following a decision in the U.S. District Court below holding it responsible, Wisconsin Central appealed to the Seventh Circuit. In *Wisconsin Cent. Ltd. v. Soo Line R.R. Co., 993 F.3d 503 (7th Cir. 2021)*, the Court concluded that there had been no claim until the EPA issued that formal notice – years after the contractual claim period had expired. The Court posited that Northern States may have negotiated, lobbied, threatened, and even "bellowed at the top of its lungs," but it "did not assert any right to relief, nor make any demands for relief, against either railroad during the claim period." In fact, Northern States believed that it had no private right of action available to it; instead, it was pleading with WDNR to bring a claim against the railroads.

The Court also asserted that Wisconsin Central had negotiated the terms of the APA to protect its own "lenders from having their interests subordinated to the environmental claims."

> Wisconsin Central enjoyed the benefit of its bargain – the financing of its purchase of Soo Line's assets and security from environmental claims for ten years. But it came with a price – the assumption of liability for all further environmental claims relating to its purchase, even those that are the fault of Soo Line and its predecessors. This … environmental contamination matter is such a claim.

The implications of the 7th Circuit's findings are of consequence to anyone holding potentially contaminated property. Although the parties in this case may have negotiated the terms of the APA, one critical term that the document did *not* define was "claim." Instead, the Seventh Circuit looked to other case law – primarily involving insurance claims – to define that term for the parties. Moreover, the many *discussions* about liability did not amount to a legal *assertion* (or "claim") of liability. Ultimately, the Seventh Circuit agreed "with the district court's holding that Wisconsin Central is responsible for the entirety of the railroads' settlement with the EPA," a sum in the millions.

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