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PCE/Common Law Damage Claim: New Jersey Supreme Court Addresses Timelines of Environmental Tort Action

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The New Jersey Supreme Court ("Court") affirmed a trial court's summary judgment dismissal of a personal injury case against Cranford Township. See *Elazar v. Macrietta Cleaners, Inc.*, 2016 WL 3600201 (N.J. Super. Ct. App. Div. July 6, 2016).

The Court addressed whether the allegedly injured parties in these circumstances (were structure's occupants aware of effects of vapors from adjacent property's buried tank) had sufficient notice of potential tort claim to initiate running of claims period.

Plaintiffs, Edan and Edna Ben Elazar alleged they suffered various medical injuries, including asthma and other respiratory symptoms, as a result of chemical vapors that infiltrated their electronic repair shop, which they had operated since 1988.

The chemicals allegedly originated from leaking underground storage tanks ("USTs"). The USTs had been owned by a dry cleaner next to plaintiffs' shop. They were buried on adjoining municipal land in 1946 with the Township's permission.

The USTs were removed in 1998 at which time contamination was discovered. The New Jersey Department of Environmental Protection ("NJDEP") began cleanup activities.

In January 2011, an environmental consultant, Viridian, wrote to Cranford Township, with a copy sent to the Elazars, reporting that indoor air pollution at their shop posed a health threat. The shop contained 57 ug/m³ of tetrachlorethene ("PCE"), above the allowable 30 ug/m³ threshold. This threshold, when exceeded, was deemed to potentially pose a "long-term health risk."

Viridian wrote a second time in March 2011, this time directly to the Elazars, emphasizing again the presence of harmful chemical vapors. The environmental consultant:

1. installed a device in the shop's basement to prevent and reduce long term health hazards;
2. recommended a stronger air stripping system; and
3. invited the Elazars to call for more information.

Edna Elazar was stated to be able to read English only "so-so." She relied on her husband and son to read to her. However, the Elazars admitted that they understood the importance of the letters. They also

indicated a long suspicion chemical vapors from the adjoining dry cleaner may have been a cause of their respiratory illnesses over the years.

The Elazars filed notice of their tort claim in September 2012.

New Jersey law requires that a notice of a tort claim be filed against a public entity (such as Cranford Township) within ninety days after the claim accrues. In this instance, in the toxic tort context, accrual occurs when a plaintiff discovered, or should have discovered, “that the physical condition of which he complains [is] causally related to his exposure to chemicals.” Whether a plaintiff was aware of the identity of the tortfeasors or appreciates the nature or extent of the injury is not relevant.

The trial court held that by March 2011, at the latest, plaintiffs were aware that the indoor air pollution from the cleaners posed a health risk to them. Because plaintiffs failed to file their notice of claim within ninety days of receipt of the March 2011 letter, their claim was barred.

Plaintiffs also contended that dismissal of their complaint should be set aside to avoid “a manifest injustice.” The Court rejected this argument. It reasoned that plaintiffs did not cite sufficient facts or caselaw to support an injustice argument.

The Court affirmed the dismissal of the Complaint.

[A copy of the decision can be downloaded here.](#)