

CASE STUDY



Commonwealth of the Northern Mariana Islands

SAIPAN, MPOVERVIEW

The Commonwealth of the Northern Mariana Islands (CNMI) watched with great concern as another U.S. territory (Guam) fought the U.S. Government in court over financial responsibility for a hazardous waste site initially developed and operated by the U.S. Navy. After losing on appeal in the D.C. Circuit, Guam convinced the U.S. Supreme Court to hear its case. Fearing how negative precedent could affect other U.S. states and territories, CNMI's Attorney General approached Husch Blackwell to prepare an *amicus curiae* brief.

Challenges

There were three discrete challenges facing our client, CNMI, in charting a course forward. First, the legal substance of the D.C. Circuit opinion in Guam's case needed debunking. Guam had sued under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), arguing that the U.S. Government must pay a share of the cost to clean up a hazardous waste site developed and used by the U.S. Navy for many years. Guam and the U.S. Government, however, had previously entered a settlement under a different federal environmental law (the Clean Water Act) in 2004. In the D.C. Circuit's view, that settlement restricted Guam to suing under one specific section of CERLCA: § 113. Problematically for Guam, the statute of limitations had long expired on any § 113 claim.

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Guam, and the CNMI like it, believed the D.C. Circuit had misread both the statute and the settlement agreement.

The second challenge dovetailed from the first and formed the core of Husch Blackwell's amicus brief. A Supreme Court decision agreeing with the D.C. Circuit's interpretation would have led to three related consequences. First, it would have threatened to disincentivize prompt, thorough cleanup of contaminated sites. Second, it would have enabled the U.S. Government, by exploiting its dual role as environmental regulator and responsible party, to evade CERCLA liability and saddle individual states with a disproportionate financial burden. Third and most prominently, it would have raised serious federalism concerns. The D.C. Circuit's decision had opened the door for CERCLA to displace many unique aspects of state-level environmental laws. In sum, not only did the Court need to appreciate the errancy of the D.C. Circuit's logic, but it also needed to understand the great concern the decision occasioned across a broad cross-section of states and territories.

For a final challenge, the circumstances of the case and the representation presented a highly expedited timeline.

Solution

To address the challenges, Husch Blackwell quickly assembled a team of appellate specialists, state attorneys general practitioners, and environmental subject-matter experts. The team went to work on the D.C. Circuit's decision, drafting and ultimately filing an amicus brief that laid out a much more coherent understanding of CERCLA. Husch Blackwell's State Attorneys General practice team led an effort to build coalition of states and territories to sign on as amici. In a matter of days, the team assembled a large, diverse coalition that included the CNMI, the District of Columbia, and 24 states spanning the political and

geographical spectrum “from Massachusetts to Wyoming,” as Justice Neil Gorsuch would highlight at oral argument.

Result

On its own terms, Husch Blackwell’s brief was a resounding success. Such a varied group of amici bolstered the sound legal reasoning of the brief itself, indicating to the Justices that this issue was neither minor nor ideological and that the D.C. Circuit’s reasoning could imperil future cleanup efforts across the country. The brief and its arguments were cited heavily at oral argument by multiple Justices. In the media, the brief was praised as “extraordinary” and frequently discussed as an important aspect of the litigation.

More importantly, the Government of Guam secured a unanimous victory before the U.S. Supreme Court. The Court fully reversed the D.C. Circuit decision, with all nine Justices agreeing: “CERCLA [§ 113] contribution requires resolution of a CERCLA-specific liability.” Because Guam’s 2004 Clean Water Act settlement resolved only Clean Water Act liability—and didn’t even mention CERCLA—it didn’t trigger a § 113 claim, and no claim was untimely. The Court reversed and remanded, allowing Guam to proceed with its claim (under a more expansive section, CERCLA § 107) against the U.S. Government.

In a less than a month, our team had drafted a key brief and built a durable coalition, helping to secure to a major victory for U.S. states and territories. No doubt, Husch Blackwell’s amicus brief, which clarified how to interpret CERCLA and exposed serious flaws in contrary reasoning, played a role in securing that positive outcome.