CERCLA
MASTER CLASS ON COMPLEX ENVIRONMENTAL LIABILITY RESOLUTION:
STATE OF THE ART STRATEGIES FROM SUPERFUND TO BROWNFIELDS
JUNE 12, 2019
THE RITZ-CARLTON
ATLANTA, GA
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MASTER CLASS ON COMPLEX ENVIRONMENTAL LIABILITY RESOLUTION:
State of the Art Strategies from Superfund to Brownfields

June 12, 2019 • The Ritz-Carlton
Atlanta, GA

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### June 11, 2019

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### June 12, 2019

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Wednesday, June 12, 2019

8:00 A.M. - 8:15 A.M.
Welcome and Announcements

8:15 A.M. - 10:15 A.M.
The Allocators Speak on Allocation and Mediation

Given the high stakes and complicated technical issues involved, the vast majority of multiparty Superfund enforcement actions and contribution cases are resolved through a very specialized alternative dispute resolution process. In this session, a distinguished panel of Superfund allocators will discuss their individual approaches to allocation and mediation. Attendees will gain deep insight regarding allocator preferences on topics including the preferred structure of the allocation and mediation process, drafting effective position papers and technical reports, application of the Gore and other allocation factors, and “working the room” when the parties finally come together for the mediation phase.

Panelists
John Barkett, Shook Hardy & Bacon LLP, Miami, FL
David Batson, AlterEcho, Chantilly, VA
William Hengemihle, FTI Consulting, Wayne, PA
Matthew Low, Matt Low & Associates LLC, Washington, DC
Kathleen Whitby, Spencer Fane LLP, St. Louis, MO

10:30 A.M. - 11:45 A.M.
Federal vs. State Liability Protections and Due Care Obligations During Property Acquisitions: How “Certain” is Certain?

Not all “Innocent Landowner” and related defenses offer harbors that are equally “safe.” CERCLA establishes a liability protection framework under federal law for new purchasers (and now lessees) of environmentally impaired property. However, what happens when state law addresses liability differently? Many states have liability protections that vary from the CERCLA framework (some significantly), especially in the way that state laws treat defenses and continuing or “due care” obligations. This panel will discuss the nuances of federal All Appropriate Inquiries (AAI) and “reasonable steps,” and their state law counterparts, particularly in states that have no Bona Fide Prospective Purchaser Defense for purchasers of property with known contamination. At a time in which EPA may be more willing to defer CERCLA-eligible sites to state programs, this panel will address strategic choices to be made in deciding which program to pursue, “cracks” in the available defenses, and the extent to which any AAI/reasonable steps regime actually offers “certainty” in its protections. Attendees will learn necessary information to serve clients in multiple states.

Panelists
William Ford, Lathrop Gage, Kansas City, MO
Charlie Howland, Curtis, Mallet-Prevost, Colt & Mosle, LLP, New York, NY
Mary Mendoza, Haynes & Boone, Austin, TX
James Witkin, Linowes and Blocher LLP, Bethesda, MD

11:45 A.M. – 12:45 P.M.
Luncheon and Keynote Speaker
Peter Wright, Special Counsel to the Administrator, U.S. Environmental Protection Agency, Washington, DC

12:45 P.M. - 2:00 P.M.
Brownfields Deals with Impact: Case Studies on Structuring the Best Brownfields Transactions

Brownfields deals come in many shapes, sizes, and locations. Sophisticated developers and their counsel understand the multifaceted strategies necessary to craft transactions to meet the goals of a deal, including minimizing remediation costs, maximizing economic impact, resolving thorny liability issues, or creating an exit strategy for real assets in bankruptcy. Drawing on experience gained from real transactions, this panel will illustrate to attendees how to dissect large, medium, and small brownfields deals and discuss common elements and challenges, highlight replicable best practices and summarize lessons learned.

Panelists
Todd Davis, Hemisphere Brownfield Group LLC, Bedford, OH
Amy L. Edwards, Holland & Knight LLP, Washington, DC
Bryan Keyt, Bryan Cave Leighton Paisner LLP, Chicago, IL
Anne Viner, Corporate Law Partners, Chicago, IL

2:15 P.M. - 3:30 P.M.
Laying a Solid Foundation for Brownfields Projects: A Fresh Look at Financing and Transferring Environmental Risk

With investors and lenders undertaking more systematic reviews of environmental liabilities associated with brownfields projects, the ability to transfer, mitigate and finance those liabilities is key to the ability to attract debt and equity. Applying real-world examples of complex brownfields deals, a panel of seasoned transactional environmental specialists will discuss new tools for driving deals forward, the current status of some well-established tools, and how these tools interrelate.
Wednesday, continued...

Attendees will learn about mechanisms including:

- Transfer of risk to a third-party environmental insurer and an update of key coverage terms;
- Contractual risk transfer to the buyer and risk retention by the seller;
- Contractual risk transfer to a third-party consultant (and the current state of guaranteed fixed-price remediation contracts);
- Voluntary cleanup programs and resulting liability protections (if any);
- Publicly available grants, loans, or other financing for investigation and remediation;
- Landowner liability protections under CERCLA; and
- Environmental escrows and remediation trusts (including trusts established pursuant to Internal Revenue Code §468B).

Panelists

Pamela Elkow, Carmody Torrance Sandak & Hennessey, LLP, Stamford, CT
Irving Jones, Balch & Bingham LLP, Birmingham, AL
Grant Nichols, Senior Vice President, JLT Specialty USA, Philadelphia, PA
Curtis Toll, Greenberg Traurig LLP, Philadelphia, PA

3:45 P.M. - 5:00 P.M.
Perspectives on Reform

In May 2017, EPA launched its Superfund Task Force. In March 2018, Congress amended CERCLA with the Brownfields Utilization Investment and Local Development (BUILD) Act. Both efforts were meant to reform CERCLA and to improve incentives for public and private entities to invest in contaminated properties. EPA, in addition to other initiatives, revised its stance on when it would consider prospective purchaser agreements and began efforts to revise its “Common Elements” guidance document. Congress extended the Bona Fide Prospective Purchaser (BFPP) “safe harbor” to prospective lessees, made changes to the state and local government liability provisions of CERCLA, and expanded EPA’s brownfields grant authorities.

So, has anything changed? Is the market for environmentally impaired properties any better for these efforts? What additional reforms are needed to reduce barriers to brownfields and contaminated property revitalization?

Panelists

Cyndy Mackey, Director, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency, Washington, DC
Ilene Munk, Foley & Mansfield, Portland, OR
Len Racioppi, Global Area Manager, ExxonMobil, Houston, TX
D. Evan van Hook, Corporate Vice President for Health, Safety, Environment, Product Stewardship and Sustainability, Honeywell, Morris Plains, NJ

A panel of EPA and private sector experts will discuss recent reforms to EPA’s Superfund and Brownfields programs, including changes to EPA’s enforcement discretion policies. Panelists will consider the value of such reforms and their impacts (if any) on moving more contaminated properties toward revitalization. Attendees will be encouraged to share their knowledge and experience. Panelists and attendees may offer their insights regarding additional reforms that may lead to increased incentives for the revitalization of contaminated properties.
MASTER CLASS ON COMPLEX ENVIRONMENTAL LIABILITY RESOLUTION: State of the Art Strategies from Superfund to Brownfields

June 12, 2019    Atlanta, GA

MASTER CLASS ON COMPLEX ENVIRONMENTAL LIABILITY RESOLUTION: State of the Art Strategies from Superfund to Brownfields will take place at The Ritz-Carlton, Atlanta, 181 Peachtree Street NE, Atlanta, GA 30303.

A block of rooms has been reserved at the discounted rate of $189 plus tax for single/double rooms. A limited number of government rate rooms are also available for $148 plus tax (or the current government rate). A valid government ID will be required upon check in.

The deadline for room reservations at the discounted rate is Monday, May 20, 2019 at 5:00 p.m. (CST). To book at our contracted rate, call the hotel directly at (800) 241-3333 or (404) 659-0400 and mention the ABA Section of Environment, Energy, and Resources 2019 Region 4 and Superfund Conference or book online at http://www.ritzcarlton.com/en/hotels/georgia/atlanta and enter the code “EEREERA” or the code “EEREERK” for government employees.

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<tr>
<td>Section Member</td>
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<td>ABA Member</td>
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<tr>
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<td>Gov’t, Public Interest, Academic</td>
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<tr>
<td>Law Student</td>
<td>$50</td>
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<tr>
<td>Add on Region 4 Conference</td>
<td>$250</td>
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The registration fee includes tuition and online course materials developed especially for this conference. In addition, your fee covers Wednesday’s continental breakfast, breaks, and lunch.
**Key Environmental Issues in U.S. Environmental Protection Agency Region 4**

The Section’s Key Environmental Issues in U.S. Environmental Protection Agency Region 4 will take place on June 11, 2019, in Atlanta prior to the Master Class on Complex Environmental Liability Resolution. A special discounted rate is available for attendees of both conferences. Make sure to add on the Key Environmental Issues in U.S. Environmental Protection Agency Region 4 during the online registration process. For more information visit ambar.org/region4.

**Cancellation Policy**

Registrants who are unable to attend the conference will receive a refund less a $50 administrative fee if written notice of cancellation is received by Monday, May 20, 2019. No refunds will be granted after this date. Cancellations may be emailed to environ@americanbar.org or faxed to (312) 988–5572, attn.: Associate Director. Registration fees are not transferable to other Section or ABA programs. Substitutions for the program are acceptable. The ABA reserves the right to cancel any program and assumes no responsibility for personal expense.

**Law Student Scholarship Opportunity**

A limited number of scholarships are available to law students interested in attending the entire conference and helping ensure our conference runs smoothly. To be considered, you must be a member of the ABA Section of Environment, Energy, and Resources. Your application and resume must be submitted by Sunday, May 19, 2019, to be considered. This scholarship does not include lodging or transportation. To apply, complete the application by visiting bit.ly/AtlantaLawStudentScholar.

**Tuition Assistance**

A limited number of registration fee waivers are available for government employees, public interest lawyers employed with nonprofit organizations, and academics. For programs with tuition costs over $500, qualifying lawyers will receive at least a 50 percent reduction in the course fee(s). To apply, complete the online application by visiting bit.ly/MasterclassTuition by Sunday, May 19, 2019.

**Conference Course Materials**

Course materials and related background information will be provided to attendees online prior to the conference. You may wish to bring a device to view the materials onsite; complimentary Wi-Fi access will be available.

**CLE Credit**

The ABA will seek 7 hours of CLE credit in 60-minute states, and 8.4 hours of CLE credit for this program in 50-minute states. Credit hours are estimated and are subject to each state’s approval and credit rounding rules. Please visit the program website at ambar.org/cercla for program CLE details or visit www.americanbar.org/mcle for general information on CLE at the ABA.

**Dress**

Section conferences are business casual. Suggested dress includes slacks, skirts, polo-type shirts or blouses, sweaters, and comfortable shoes. The hotel will be cool, so please pack a jacket or sweater.

**Dietary Restrictions**

If you have any dietary restrictions, please indicate so during registration or by email environ@americanbar.org by Monday, May 20, 2019, so that your needs are noted.

**Americans with Disabilities Act**

If any special arrangements are required for a person with a disability to attend this conference, please call Allison Read at (312) 988–5641 by Monday, May 20, 2019.

Questions? Contact environ@americanbar.org with all program related questions.
SAVE THE DATE

2019
27TH FALL CONFERENCE

September 11-14, 2019
The Westin Copley Place
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