



Harleysville Insurance Company wins Environmental Coverage Case

Riker Danzig Scherer Hyland & Perretti LLP announced that its client, the Harleysville Insurance Companies, won an important environmental coverage case involving contamination at a retail gasoline station in Hunterdon County.

The plaintiff sought coverage for contamination caused by a one time gas leak that it claimed occurred in 1983. Using documentary evidence from the NJDEP and by engaging hydrogeologists to evaluate the aquifer and speed of the groundwater, Riker Danzig attorneys refuted the testimony of the station owners and operators as to the source and date of the release of gasoline, and presented evidence that the contamination occurred after 1986, when Harleysville would have no responsibility to supply coverage due to the absolute pollution exclusion. In addition, The Honorable Victor Ashrafi J.S.C. determined that, based on historical documents from the supplier as well as the competing opinions of scientific and industry experts, the plaintiff did not prove that the supplier used MTBE, a chemical used as an additive in its gasoline, prior to the time of the alleged 1983 leak, and therefore was unable to establish causation between the alleged 1983 incident and the subsequent MTBE contamination at the site.

Riker Danzig partner Lance Kalik, lead attorney for Harleysville, notes that the case is significant because, it demonstrates that courts will continue to require the policyholder to bear the burden of proof in proving an occurrence during the policy period, even in these historical discharge cases. This is particularly appropriate where, as in this case, the station owner did not inform the carrier of the claim until years after the alleged incident. The station owner's recollection of events may not carry the day for the policyholder when there is other evidence tending to dispute the source or nature of the discharge.

Attorney:

Lance J. Kalik

Practices:

