

LIABILITY AND COMPLIANCE

ACHMM Review Course North Star Chapter

September 19, 2019

Joseph G. Maternowski, Esq.

HESSIAN & McKASY, P.A.

Minneapolis, MN

e-mail: jmaternowski@hessianmckasy.com

www.enviroattorney.net

(612) 746-5754

Basics of Legal Actions and Types of Actions

CIVIL CAUSE OF ACTION

- **Standing**
- **Ripeness**
- **Burden of proof in civil case: mere preponderance of the evidence**

Criminal Action

- **Prosecution**
- **Environmental crimes: knowing or intentional violations of statute or ordinance**
- **Burden of proof in criminal case: beyond a reasonable doubt**

Sources of Law



- **Common law**
- **Statutes: passed by Congress or State Legislatures**
- **Regulations**
- **Permits**

Jurisdictions



- **Federal**
- **State**
- **Local**

Traditional Common Law Tort Actions

- **Nuisance**
 - **Defendant's activity causes substantial unreasonable interference with the Plaintiff's use and enjoyment of property**
- **Public nuisances: affects the entire community**

Trespass



- **Uninvited party has invaded another person's property**

Negligence

- **Defendant owed a duty of care to plaintiff**
- **Defendant breached that duty of care**
- **Plaintiff's injury caused by the breach of duty**
- **Actual damages have been sustained by Plaintiff**

Defenses

- **Defendant had no duty of care to the Plaintiff**
- **Defendant was reasonable**

Other Defenses

- **Contributory negligence**
- **Comparative negligence**
- **Assumption of risk**

Standard of Care

- **Industry standards**
- **Governmental codes and regulations may establish a standard of care**

Strict Liability

- **Liability imposed without regard to fault or blame**
- **Ultra-hazardous activities**

Vicarious (Indirect Liability)

- **Respondent superior**
 - **Employer responsible for acts and omissions of their employee acting within the scope of employment**
- **Vicarious liability**
- **Partnership or joint venture**

Other Liability Theories

- **Common design**
- **Concert of action**
- **Enterprise liability**
- **Alternative liability**
- **Market share**

Procedural Technicalities

- **Statutes of limitations: legal claim must be filed by certain date, or Plaintiff loses right to file claim**
- **Tolling date**
- **Actual knowledge**
- **Exposure rule**
- **Manifestation rule**
- **Discovery rule**

Apportionment of Liability

- **Single defendant**
- **Multiple defendants**
- **Joint and several liability**
- **Do they have assets, insurance, ability to pay?**

Damages

- **Plaintiff seeks compensation**
- **Actual damages**
- **Future damages**
- **Pain and suffering**
- **Punitive damages**

Other Relief

- **Temporary restraining order**
- **Preliminary injunction**
- **Permanent injunction**

Insurance

Evolution of coverage and defenses

- **Comprehensive general liability policies**
- **Pollution exclusion clauses**
- **Absolute pollution exclusion**
- **Specialized pollution liability and cleanup coverage**

Statutory Environmental Liability

- **Federal environmental laws**
- **Clean Air Act**
- **Clean Water Act**
- **Resource Conservation and Recovery Act**
- **Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)**

Citizens Suits

- **Private attorney general**
- **Attorney's fees provisions**

RICO Forfeitures

- **Directed at legal enterprises**
- **Racketeering**
- **Mail fraud**
- **Wire fraud**

Criminal Liability

- **Knowing or intentional violations**
- **Loss of liberty/incarceration**
- **Penalties or fines**

Potential Defendants



- **Corporations**
- **Responsible corporate officers**