

Remet Not Liable For Canal Cleanup, NY High Court Says

By **Daniel Langhorne**

Law360, New York (October 21, 2015, 11:25 PM ET) -- The New York high court on Thursday unanimously agreed that a letter sent by state environmental officials to Remet Corp. regarding the cleanup of its polluted property on the Erie Canal required it to invoke an indemnifying sale agreement signed by the company's deceased former owner.

The state high court ruling Thursday indemnifies any past or future expenses incurred by the New York's Department of Environmental Protection's cleanup of the Frankfort, New York property, which is estimated to cost up to \$12.5 million.

"We conclude that the particular language of the letter at issue threatened imminent adverse legal consequences and was, therefore, sufficiently coercive as to 'require' action under the meaning of the indemnification clause," the decision said.

Tuesday's decision was a win for the casting company in its effort to assert indemnification for the costs of the environmental cleanup.

In June, the court agreed to address the question of whether the estate of James R. Pyne, the deceased former owner of Remet Corp., must indemnify the industrial casting company's current owners for environmental damage along a section of the canal.

The Fourth Department rejected a trial court's ruling in favor of plaintiffs seeking indemnification, finding they merely were informed of potential liability by the state Department of Environmental Conservation. The sale agreement calls for indemnification only from losses that arise out of action the current owners are "required to take," the midlevel appellate court said, granting summary judgment to the estate.

But the plaintiffs, arguing for the top court to take up the case, said letting Pyne's estate off the hook would "have an effect far beyond this case, as it impacts the responsibilities and liabilities of thousands of parties across New York State."

The contract contains "broad definitions" about liability, they argued, adding that a narrow construction of the estate's liability could preclude other parties from having to foot the bill for cleanups.

But the lawyer for Pyne's estate expressed surprise that the high court took up the matter.

No remedial action has been taken for the land in question though the legal bills have been growing, attorney Neil Gingold said, adding that the price tag for possible remediation was estimated by the state in 2009 at \$12 million.

Remet, purchased from Pyne in 1999 by Burmah Castrol Holding Inc., is seeking \$550,000 in expenses from the estate tied to its investigation into possible remediation.

Remet's attorney Scott A. Chesin of Mayer Brown LLP told Law360 on Wednesday that his client is very pleased with the high court's decision.

"The Court of Appeals decision makes clear what Remet has been arguing for years: that when a company in New York receives a communication from an environmental regulator demanding action, it has no choice but to respond," Chesin said.

He noted that Remet firmly believes it is not responsible for any environmental contamination at the site adjacent to the Erie Canal.

"[B]ut it is very satisfying to know that if the company is eventually required to reimburse the state for cleanup costs, it will be entitled to the indemnification it bargained for many years ago," Chesin said.

An attorney for Pyne's estate did not immediately respond to a request for comment late Wednesday.

Remet is represented by Scott Chesin, Kevin Desharnais and Fern Bomchill and Alex Kardon of Mayer Brown LLP.

Pyne's estate is represented by Neil M. Gingold.

The case is Remet Corp v. The Estate of James R. Pyne, case number APL-2014-00163 before the Court of Appeals for the State of New York.

--Additional reporting by Pete Brush. Editing by John Quinn.