Environmental Services Agreement: Federal Court Addresses Limitation of Liability Clause

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The United States District Court for the Middle District of Georgia ("Court") addressed in an April 27th Order issues arising out of an environmental services agreement. See *Thiele Kaolin Company v. Environmental Resources Management—Southeast, Inc.*, 2023 WL 3137991.

One of the issues addressed was a limitation of liability clause.

Thiele Kaolin Company ("Thiele") is described as a mining and mineral processing group.

Thiele entered into an agreement with Environmental Resources Management—Southeast, Inc. ("ERM"). ERM was tasked to provide certain environmental due diligence services related to Thiele's potential acquisition of mining sites in Sandersville, GA.

ERM was described as having three objectives to address in the "Phase 1 Environmental Site Assessment" and "Limited Environmental Compliance Review" it produced. These included:

1. Identify[ing] environmental risks that might materially affect the value of the Mineral Facilities;
2. Identify[ing] any actual or potential noncompliance issues with state and federal environmental laws; and
3. Provid[ing] estimates of methods and costs to correct actual or potential non-compliance issues.

Thiele purchased the Sandersville sites after review of the ERM reports. Thereafter, Thiele alleged discovery of several instances of actual or potential non-compliance with federal and state environmental laws and regulations."

Thiele claimed it incurred damages caused by the sites' non-compliance with certain governmental environmental requirements. It filed suit in the United States District Court alleging breach of contract, professional negligence, and negligence.

ERM responded with a counterclaim for breach of contract and a motion to dismiss of Thiele's claims due to the Agreement's limitation of liability clause, which—to their interpretation— precluded all claims for damages. The clause read as follows:

UNLESS OTHERWISE AGREED AND EXPRESSLY SET FORTH IN A PROJECT CONTRACT, IN NO EVENT SHALL ONE PARTY, ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, BE LIABLE TO THE OTHER PARTY AND/OR ANYONE CLAIMING BY, THROUGH OR UNDER IT, INCLUDING WITHOUT

LIMITATION INSURERS, FOR ANY LOST, DELAYED OR DIMINISHED PROFITS, REVENUES, BUSINESS OPPORTUNITIES OR PRODUCTION OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, FINANCIAL, CONSEQUENTIAL OR ECONOMIC LOSSES OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER, HOWEVER CAUSED.

ERM also argued that the claims did not satisfy the Agreement's materiality provision.

Thiele answered with their own motion to dismiss of ERM's counterclaim in line with their position that the Agreement allowed for their own previously filed claims.

The Court applied Georgia contract law to interpret the Agreement. In doing so, it decided that neither motion to dismiss should be granted.

First, the Court denied ERM's interpretation of the limitation of liability provision given that their desired meaning ignored many other relevant sections in the contract including the indemnification, insurance, standard of care, and dispute resolution clauses. It refused to ignore these clauses in order to adopt ERM's position.

The Court also held that ambiguity of certain clauses in the Agreement could not be resolved in the context of a motion to dismiss.

ERM argued that the damages Thiele identified were "de minimis" in comparison to the scope of the project it was assigned. If so, the claim was argued to be precluded under the Agreement's materiality clause. However, motions to dismiss cannot be based on questions of fact. Therefore, the Court denied this argument.

Because of ambiguity the Court also denied Thiele's motion to dismiss on ERM's counterclaim.

A copy of the Opinion can be downloaded here.