



And The Defense Wins

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DRI member [P. Gerhardt Zacher](#) of **Gordon & Rees LLP** in San Francisco led colleagues in a defense victory for client Cooper Industries in *Hinds Investments, L.P., et al. v. Cooper Industries*, venued in the Central Civil West division of Los Angeles Superior Court. The plaintiffs alleged contamination of their property by the chemical perchloroethylene stemming from 40-plus years of dry cleaning operations on the property and filed suit against Cooper, the successor to a dry cleaning machine manufacturer and dry cleaning store franchisor.

Gordon & Rees, on behalf of Cooper, filed motions for summary judgment and adjudication against the plaintiffs based both on the statute of limitations and as to plaintiffs' claim against it under the HSAA (California Superfund) on the merits. As to the statute of limitations, the Gordon & Rees Cooper team argued that as the plaintiffs became aware of the contamination by PCE and its alleged cause by the dry cleaning operations in 1999, but did not sue Cooper until 2008, some or all of its claims against Cooper were barred. It was also argued that it did not qualify as an "arranger" under HSAA as a matter of law, as it could avail itself of the "useful product defense," the 2009 U.S. Supreme Court ruling requiring a heightened level of intent for "arranger" liability in *United States v. Burlington Northern & Santa Fe Railroad Co.*, 129 S.Ct. 1870, and as it also did not own possess any hazardous substances or waste or have the ability to control or duty to dispose of hazardous substances and exercise that duty, as required by the Ninth Circuit by *United States v. Shell Oil*, 294 F.3d 1045 (9th Cir. 2002).

On July 27, 2011, the court held that the plaintiffs' negligence and waste claims against Cooper were barred by the three year statute of limitations, and further held that Cooper did not qualify as an "arranger" under HSAA, eliminating the HSAA claim and related contribution and indemnity claims against Cooper. In all, seven claims were adjudicated in Cooper's favor.

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