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Client Alert

Indiana Supreme Court Rules on Environmental Legal Action Statute and Environmental Liability for Corporate Successors

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Our client, the City of South Bend, has won what we believe to be the first Indiana Supreme Court decision construing the Indiana Environmental Legal Action Statute, or ELA. The ELA is one of the principal legal mechanisms allowing the recovery of environmental cleanup costs.

The case, *Cooper Industries, LLC v. City of South Bend*, 899 N.E.2d 1274 (Ind. 2009), contradicts a federal district court decision predicting how Indiana state courts would apply the statute of limitations to the ELA. It also overruled the Indiana Court of Appeals' decision dismissing the City's action as time barred.

Without concluding whether either a 6 or 10 year statute of limitations applies, the Court found the City sued soon enough after the enactment of the ELA in 1998, which the Supreme Court found created a brand new cause of action.

The ruling also clarifies the law of corporate successor liability for asset purchasers. The Court found that Cooper Industries, which today primarily manufactures electrical products and hand tools, is the legal successor to the environmental problems left behind when Studebaker Corporation closed its automotive plants and headquarters in South Bend in the early 1960s.

The 1967 asset purchase involving Cooper's predecessor, the Court found, was a "de facto merger" and that the resulting company was a "mere continuation" of Studebaker. Thus, the liabilities did not expire when Studebaker terminated its corporate existence in 1968.

A number of factors convinced the Court the transaction was more similar to a merger than a mere sale of assets. The Cooper entity expressly assumed many of Studebaker's liabilities and obligation of the seller. Studebaker ceased operations and dissolved after the transaction. In addition, there was a significant degree of continuity between in terms of shareholders, ownership and control, and also in terms of officers and employees.

In addition to Cooper, the City filed suit against Studebaker's former liability insurers. In 2005, the Indiana Court of Appeals ruled the City could maintain an action seeking a declaration of coverage



against the insurers via Studebaker's liability successor. The 2009 ruling paves the way for that action.

Spread across approximately 100 acres, the Studebaker automobile works once dominated the City. When it closed, Studebaker left behind blight and contamination. The City began acquiring former Studebaker properties in an effort to revive the area. The City recently announced the site is set to become the home of "Ignition Park," which will concentrate on nanotechnology commercialization of concepts emerging from the Midwest Institute for Nanoelectronics Discovery (MIND) at Notre Dame, the newest of four national research centers funded by the nation's leading computer chip makers.

George Plews and Jeff Featherstun of Plews Shadley Racher & Braun are proud to have represented the City since the inception of the Studebaker action. They also are pursuing a similar action to address the cleanup of the nearby South Bend Oliver Plow Works site.