

Wednesday, January 2, 2008

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From the December 31, 2007 Massachusetts Lawyers Weekly.

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Verdicts & Settlements

Judge: defendants do not have to pay clean-up costs

Defense verdict (\$3.93M in fees, costs, interest)

On remand from the Appeals Court, Superior Court Judge Allan van Gestel found that the defendants were not obligated to indemnify the plaintiff for up to \$25 million in environmental clean-up costs at the Haverhill Landfill Superfund site under a shared purchase agreement.

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The judge awarded the defendants \$3.93 million in fees, costs and prejudgment interest. The cost estimate provided to the defendants within five years of closing did not comply with the condition in the contract provision since it was not "investigation or negotiation with third parties' of or about the Haverhill site, nor did it 'reasonably identif[y] and reasonably quantif[y]' the anticipated costs of clean-up there."

The judge's decision stated: "The Guyott shareholders were not looking for a picture of 'typical costs' for a generic Superfund site clean-up. They wanted realistic information about the Haverhill site in particular and they did not get it."

Type of action: Contract

Injuries alleged: Breach of environmental indemnification arising from sale of business

Name of case: Bardon Trimount, Inc. v. Guyott, et al.

Court/case no.: Suffolk Superior Court Business Litigation Session, No. 96-1665

Tried before judge or jury: Judge

Name of judge: Allan van Gestel

Amount of verdict: \$3.93 million in fees, costs, interest for defendants

Date: Oct. 25, 2007 (final judgment on remand entered)

Demand: No firm demand

Highest offer: No offer made

Most helpful experts: Michael Thomas, attorney, Boston; Richard Brownell, White Plains, N.Y.

Attorneys: Michael R. Gottfried, Katherine Y. Fergus and Aaron A. Arzu, Duane Morris, Boston; Lawrence Diamond, Duane Morris, Newark, N.J. (for the defendants)

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