

The Sky Is Falling! -- Or Is It?

Impacting Lives Through Addressing the Fear of Environmental Liabilities

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Six months ago, a couple anxiously relayed to N&D lawyers how the sky was falling – with environmental liabilities at the center of their seemingly real Chicken Little fears. The couple owned two properties in a central California town, one being a former gas station which an oil company had abandoned alleging the lease was void given partial eminent domain actions. Before interviewing us, the couple had spent in excess of \$100,000 in legal fees with another law firm trying to force the oil company to take responsibility for potential environmental impacts under the disputed lease.

The husband was battling cancer and the wife just wanted the mess to go away so she could focus on his treatment. The properties represented a large portion of the couples’ assets, but they couldn’t sell them because of the oil company fight and fear of hazardous substance liability from former underground storage tanks, gasoline lines, and a waste sump. Adding to their woes, the city continued to assess “blight” fines against the abandoned gas station which the oil company refused to address. They were at the end of their collective ropes.

In that initial meeting, we broke down the problem into manageable pieces and developed a new game plan. Cornerstone to the strategy was the fact the couple (and any subsequent owner of the former gas station) was eligible for up to \$1.5 million in truly free money from the California Underground Storage Tank Cleanup Fund (“UST Fund”). Shortly thereafter, they hired us to handle the environmental and real estate matters. After half a year of focused effort, we had both parcels sold at fair market value, secured for the buyer a sizable contribution from the oil company in exchange for a release, and resolved all outstanding issues with the city. Win-win, win-win!

Setting aside the lease battle with the oil company, the root of the couple’s fears came from an initial Phase I environmental site assessment for the gas station property. The research-based evaluation indicated that there was a likelihood of hazardous substance impacts to the soils and/or groundwater beneath the property. A more expensive Phase II assessment, involving actual subsurface testing, was needed to confirm or help eliminate the fear, but they did not have the financial means to remove the tanks and clean up any contamination.

Under our watch, the seller clients went into contract with the potential buyer who then paid for the Phase II site assessment. The buyer needed to know if there was an environmental problem. If there was, the couple was contractually-bound to assign the buyer all rights under the UST Fund. While it won’t pay for actual tank/piping removal, the fully funded UST Fund will reimburse for up to \$1.5 million in investigation



and cleanup costs related to gasoline releases from underground tanks. Once under contract, we also worked with the city and secured a deal in which the fines that had been accruing against the gas station property would be held in abeyance pending the closing of the sale.

The buyer's Phase II site assessment, which it was contractually-obligated to provide our clients, finally provided the couple much needed good news – there were no meaningful environmental impacts to the subsurface.

Given the positive results, the final component to making the deal a reality was the buyer-oil company negotiations for contribution on the tank removal in exchange for a release. Out of the blue, we got a call from the buyer who wanted us to represent it in those negotiations with the oil company. While a nice complement, such an arrangement would be awkward. Yet, since it was the remaining lynch-pin for the deal and thus to our clients' benefit, we secured a conflict waiver from all involved and dug in with the oil company's lawyers. For minimal legal fees to the buyer, we increased the oil company's contribution by over 60%.

In the end, the oil company seemed satisfied since they were finally released by everyone for alleged continuing lease obligations. The buyer was happy to get the property and the extra cash. The city was pleased since the blight property was going away. And our clients? They were glad to get the property sold for full value with all issues resolved. More importantly, once we got their second property sold, to the same buyer, they now had liquid retirement funds and the ability to turn their attention back where it belonged – to family and medical battles nobody wants to face while distracted by unproven environmental fears.

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