

07-1601 BURLINGTON NO. & SANTA FE R. CO. V. UNITED STATES

DECISION BELOW:520 F.3d 918

LOWER COURT CASE NUMBER: 03-17125, 03-17153, 03-17169

QUESTIONS PRESENTED:

The Comprehensive, Environmental, Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., allows the government to obtain reimbursement for the costs of remediating hazardous waste sites from the owners and operators of land on which a disposal of hazardous substances has occurred. Because even passive landowners may be subjected to CERCLA liability, Congress removed language from early CERCLA bills mandating joint and several liability for multiple defendants who own or operate a particular site. In the present case, the Ninth Circuit nevertheless imposed joint and several liability for the entire cost of a facility's remediation on two landlords, even though they owned only a portion of the overall site for a fraction of its period of operation, and the parcel they owned required no remediation. The question presented is:

Whether the Ninth Circuit erred by reversing the district court's reasonable apportionment of responsibility under CERCLA, and by adopting a standard of review and proof requirements that depart from common law principles and conflict with decisions of other circuits.

CERT. GRANTED 10/1/2008

CONSOLIDATED WITH 07-1607 FOR ONE HOUR ORAL ARGUMENT.