

INSIGHTS

## Apex Oil: Environmental Cleanup Liability Survives Bankruptcy

September 22, 2009

By: [Kevin A. Ewing](#)

In *U.S. v. Apex Oil*, a three-judge panel of the Seventh Circuit ruled 3-0 that EPA's cleanup injunction against the corporate successor to a chemical company was not discharged in Chapter 11 because the injunction does not create a right to payment and, consequently, is not a "debt" under the Bankruptcy Code. In essence, Apex had argued that the injunction would require the company to incur costs upward of \$150 million and that the purpose of the restructuring would be defeated if these costs had to be incurred. Judge Posner's opinion turns on the fact that the order required cleanup and was not a substitute for payment; consequently, liability under the order was not a "debt" recognized by the Bankruptcy Code. The court recognized but disavowed a contrary ruling of the Sixth Circuit, thereby setting up a split between the circuits on this important issue.