

INSIGHTS

## Determining Corporate Liability in the Context of Environmental Risk: Making Sense of *United States v. Bestfoods*

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By: [Daniel J. Pope](#) and [Jason B. Hutt](#)

When is a corporate parent potentially liable for the actions or omissions of its subsidiary related to the release of hazardous substances? Hint: If a party is in a position to control the environmental risk, it could be held liable.

In this episode of the Bracewell Environmental Law Monitor, host [Daniel Pope](#) talks with [Jason Hutt](#), head of Bracewell's [environment, lands and resources](#) practice, about the environmental aspect of the critical US Supreme Court case *United States v. Bestfoods* and the specific circumstances in which a court could hold a parent corporation responsible for the actions or management practices of its subsidiary. Tune in for practical takeaways that corporate counsel can use to manage liability and minimize risk.

### Featured Guest

Name: [Jason Hutt](#)

**About:** Jason Hutt, head of Bracewell's [environment, lands and resources](#) practice, advises and defends clients with a deep appreciation of the high-profile and complex environmental and energy issues of our day. His advice and advocacy are informed by a technical understanding for how energy and key industrial sectors operate, as well as an acumen for the challenges Bracewell's clients must navigate to achieve their business objectives.

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### Episode Highlights

[03:58] **Activity Consistent With “Parent Investor” Status Is Not Sufficient:** Under *Bestfoods*, a parent company is not going to encounter liabilities simply by engaging in activities that are consistent with parent investor status, such as monitoring a subsidiary's performance, supervising the subsidiaries, financing capital budget decisions and articulating general policies

and procedures.

[07:06] **Being in a Position to Control the Environmental Risk Is Key:** If a parent corporation was in a position to control the risk that manifested itself into response costs, then they are pulled into the net of potentially responsible parties.

[07:40] **Indicators of Operator Status:** Jason discusses two different scenarios of which general counsel of a company with affiliates or subsidiaries should be mindful: (1) if an entity “touches” a site, those touches could be characterized as being in a position to control environmental risk; and (2) if a company is in acquisition mode, to the company should be aware of legacy liabilities.

[10:49] **Managing Liability:** Jason shares ways that counsel can manage liability by (1) reducing the factual indicia of being an operator; (2) employing good practices so that hazardous substances are not released; and (3) obtaining indemnification, representations, warranties and covenants to mitigate legacy liabilities.

[14:52] **Defining Shared Roles:** Jason says it’s almost more important to define what roles are not versus what roles are. If you can place limitations on the roles to be clear on who has decision-making authority on environmental health and safety practices of the facility, that’s a nicely expressed boundary to have in governing documents.

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