

Caltex contaminated sites case highlights need to understand contract

A contaminated sites dispute between Caltex and Charben Haulage highlights the need to clearly understand contractual provisions, says Rebecca Mohr, partner in law firm Deacons. Last November, the Full Court of the Federal Court upheld appeals by Caltex Australia Petroleum and an environmental consultancy relating to a former service station site. The appeal judgment ([EM561](#)) overturned Justice Murray Wilcox's original finding against Caltex and Environmental & Earth Sciences Pty Ltd (EES) ([EM498](#)). Justices Tamberlin, Kiefel and Emmett said the contract was the result of commercial negotiations in which clauses indicated "the acceptance of a commercial risk on the part of Charben". The case shows parties should be very clear about contaminated sites provisions in a contract, "what does it provide, how does it impact on your rights and liabilities, and does it protect you", Mohr told *EM*. Mohr and colleague Kylie Eggleton noted the matter could go further. Charben Haulage has approached the High Court for special leave to appeal the Full Court decision.

- **Getting a grip on site contamination risks** during merger and acquisition negotiations can be complex, Mohr and colleague Jacinta Studdert told *EM*. Studdert said the first step was to obtain as much information as possible, using EPA and council records and environmental experts. The next step was to appropriately allocate risk in the contract. "Your due diligence provides the information and then once you've got that ... you can tailor the warranties and indemnities (in the contract)," Mohr said. These were "really important in terms of addressing risk, allocating risk and covering risk but they are not necessarily a foolproof way to do things", she cautioned. "You still have to have the knowledge about what the risk is to be able to assess the value of the indemnity or the warranty."

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