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APPENDICES

Appendix 3A. Sample Points and Authorities in CERCLA Cost Recovery Action Regarding Allocation (Discussion of Gore Factors): Motion for Partial Summary Judgment

Appendix 3B. Sample Points and Authorities in CERCLA Response Costs Recovery Action: Opposition to Motion for Partial Summary Judgment

Appendix 3C. Sample Reply Points and Authorities in CERCLA Response Costs Recovery Action: Reply Memorandum in Support of Motion for Partial Summary Judgment

Appendix 3D. Sample Points and Authorities in Support of CERCLA Settlement/ Proposed Consent Decree

Appendix 3E. Sample Points and Authorities in Opposition to CERCLA Settlement/Proposed Consent Decree

Appendix 3F. Sample Reply Points and Authorities in Support of CERCLA Settlement/Proposed Consent Decree

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§ 4:71 Settlement agreement between the plaintiff (state) and a prp third-party defendant that was neither judicially approved nor subject to administrative review does not bar the original prp defendant's 113(f) contribution claim
§ 4:72 In deciding whether to approve a CERCLA settlement, the courts must apply three factors—Fairness, reasonableness, and consistency and faithfulness with CERCLA's objectives. These three standards also apply to the approval of settlements involving CERCLA claims between/among private parties (again, not just to settlements between the government and private parties)
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§ 4:78 F.R.E. 802 (hearsay) does not bar court from considering EPA allocation report when deciding on consent decree
§ 4:79 When a federal court reviews a settlement of a case brought under both state and federal law, the court applies state substantive law to the state claims
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CHAPTER 5. THE DE MINIMIS, DE MICROMIS, AND ABILITY TO PAY PRP

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§ 5:26 Negotiating settlements for de minimis PRPs—What government agencies can/cannot do—For purposes of approving proposed consent decrees, if the data that the EPA uses to allocate liability is within the broad spectrum of believable/reasonable approximations, district courts should not second guess
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CHAPTER 6. THE LAW ON ALLOCATION OF ENVIRONMENTAL LIABILITY

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§ 6:5 USEPA cost allocation guidance: generally, courts defer to USEPA decision making. Likewise, state courts, in state-CERCLA counterpart statute disputes, typically, defer to state environmental agency decision making
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