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CONGRESS INSULATES LENDERS (LESSORS?) FROM CERCLA LIABILITY (1996)

The long and winding road regarding potential liability of lenders and lessors for EPA violations and clean ups took another turn when President Clinton signed into law the "Asset Conservation, Lender Liability and Deposit Insurance Act of 1996" (the "Act").

Under this Act, a lender (and by implication, but NOT specifically a lessor) will not have liability under the Comprehensive Environmental Response Compensation and Liability Act (often called "CERCLA" or "Superfund") unless it actually participates in management of the affected vessel or facility.

This law effectively overrules the infamous *Kelley* case, which overturned an EPA rule favorable to lenders. As with the prior rule, however, it is not entirely clear whether equipment lessors are covered under this new Act. In addition, both potential civil liability and liability for clean up under the Resource Conservation and Recovery Act remain unaffected, at least as for clean up which does not involve underground storage tanks.

In any event, this Act improves the law both for lessors and lenders, although not as much as we would like.

Marks & Weinberg, PC is law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit www.leaselawyer.com or contact Barry Marks at 205-251-8303 or Ken Weinberg at 205.251.8307.

