

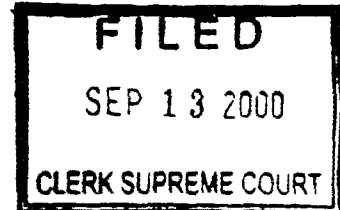
IN THE COURT OF APPEALS OF IOWA

No. 0-160 / 99-693
Filed September 13, 2000

**IOWA COMPREHENSIVE UNDERGROUND
STORAGE TANK FUND BOARD,**
Plaintiff-Appellee,

vs.

SHELL OIL COMPANY,
Defendant-Appellant.



Appeal from the Iowa District Court for Henry County, John G. Linn,
Judge.

The defendant appeals from the judgment for the plaintiff on a strict liability claim seeking recovery of cleanup costs for petroleum contamination by a service station's leaking underground storage tanks which had been supplied with defendant's petroleum products under a distribution agreement.

REVERSED.

Timothy J. Walker, Gary A. Norton, Frank M. Grenard and Lisa A. Nelson
of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, David A. Sheridan and David A.
Steward, Assistant Attorneys General, John R. Perkins of Pingel & Templer,
P.C., West Des Moines, and Webb Wassmer of Simmons, Perrine, Albright &
Ellwood, P.L.C., for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

HUITINK, J.

Shell Oil Company appeals from a judgment in favor of the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board for the cost of abating petroleum contamination at a Mount Pleasant service station. Because we conclude Shell was not an “operator” liable for the damages awarded, we reverse.

I. Background Facts and Proceedings.

Shell owned the subject service station and storage tanks from 1929 until 1969. In 1960 Shell leased the service station and tanks to Voss Petroleum. Shell sold the property to Voss in 1969. The service station was operated by Voss's lessee, Gary Whaley, until 1993. Shell had no contractual relationship with Whaley during the relevant time periods.

In 1990 the Iowa Department of Natural Resources received a report of petroleum contamination resulting from storage tank leaks at Voss's service station. Voss made a claim with the Board for assistance in taking corrective action.

The Board subsequently sued Shell to recover the costs of corrective action taken to abate the petroleum contamination at Voss's service station. The Board, citing Shell's distribution agreement with Voss, claimed Shell was an “operator” responsible for maintenance of the relevant storage tanks and strictly liable for any associated clean up costs. Shell denied liability claiming Voss was solely responsible for maintenance and related clean up costs.

Following a jury trial, the district court entered judgment against Shell for \$19,482.24. On appeal Shell contends the district court erred by failing to find as a matter of law that Shell was not an "operator" subject to strict liability for clean up.

II. The Merits.

We believe the Iowa Supreme Court's opinions in *Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. Mobil Oil Corp.*, 606 N.W.2d 359 (Iowa 2000), and *Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. Mobil Oil Corp.*, 606 N.W.2d 367, 369-70 (Iowa 2000) (an oil company under its distribution agreement was not strictly liable as an operator under Iowa Code chapter 455G for the cost of corrective action related to the clean up costs of petroleum contamination) are dispositive of the strict liability claims in this case.

The parties agree with this assessment and have filed a "Stipulation for Reversal" requesting an order reversing the district court's judgment in its entirety.

The judgment of the district court is accordingly reversed in its entirety.

REVERSED.