

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1641

LIVING LANDS, LLC, a West Virginia Limited Liability Company; D. C. CHAPMAN VENTURES, INC., a West Virginia Business Corporation,

Plaintiffs – Appellants,

v.

HAROLD WARD, in his official capacity as the Cabinet Secretary of the West Virginia Department of Environmental Protection, an instrumentality of the State of West Virginia,

Defendant – Appellee,

and

JACK CLINE, an Individual West Virginia Resident; ROBERT LEE CLINE, an Individual West Virginia Resident; BRADY CLINE COAL CO., a dissolved West Virginia Business Corporation, solely to the extent of its undistributed assets, specifically including the remaining limits of its available liability coverage under liability insurance policies; B. & S. CONTRACTING, INC., a dissolved West Virginia Business Corporation, solely to the extent of its undistributed assets, specifically including the remaining limits of its available liability coverage under liability insurance policies; SPRUCE RUN COAL COMPANY, a dissolved West Virginia Business Corporation, solely to the extent of its undistributed assets, specifically including the remaining limits of its available liability coverage under liability insurance policies covering it and its officers and directors,

Defendants.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:20-cv-00275)

Argued: March 21, 2024

Decided: April 15, 2024

Before HARRIS and BENJAMIN, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ARGUED: Michael O. Callaghan, NEELY & CALLAGHAN, Charleston, West Virginia; Michael Craig Donovan, LAW OFFICES OF MICHAEL C. DONOVAN, Mountain View, California, for Appellants. Isaac R. Forman, HISSAM FORMAN DONOVAN RITCHIE PLLC, Charleston, West Virginia, for Appellee. **ON BRIEF:** Michael B. Hissam, J. Zak Ritchie, HISSAM FORMAN DONOVAN RITCHIE PLLC, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Two real estate investment firms brought this lawsuit over the disposal of solid waste at a former coal mining site in West Virginia. Among the defendants was Harold Ward, sued in his capacity as Cabinet Secretary of the West Virginia Department of Environmental Protection. According to the plaintiffs, the Department's reclamation activities at the site were leading to chemical contamination in violation of the Resource Conservation and Recovery Act (RCRA) and implementing state statutes.

The district court granted summary judgment to Ward and directed entry of a final judgment pursuant to Federal Rule of Civil Procedure 54(b). The district court relied on three alternative and independent grounds for its award of summary judgment. According to the district court, two different exclusions from statutory definitions of "solid waste" exempted the site from RCRA's purview. And even if RCRA applied, the district court determined, the plaintiffs had produced no evidence that there had been a violation of any statutory standard.

On appeal, the plaintiffs challenge some, but not all, of the district court's grounds for summary judgment, raising substantially the same arguments presented to the district court. Finding no reversible error, we affirm the district court's judgment.

AFFIRMED