NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0313-11T3

MORRISTOWN ASSOCIATES,

Plaintiff-Appellant/
Cross-Respondent,

v.

GRANT OIL COMPANY, ABLE ENERGY, PARSIPPANY FUEL OIL, EDWARD HSI and AMY HSI and SPARTAN OIL COMPANY,

Defendants-Respondents,

and

PETRO INC., JOHNSON OIL COMPANY, MEENAN OIL COMPANY d/b/a REGIONAL OIL COMPANY,

Defendants-Respondents/
Cross-Appellants,

and

GRANT OIL COMPANY, ABLE ENERGY, INC., PARSIPPANY FUEL OIL CO., and PETRO INC.,

Defendants/Third Party
Plaintiffs-Respondents,

v.

BYUNG LEE and MULTI CLEANERS, INC. d/b/a PLAZA CLEANERS, EDWARD HSI and AMY HSI, JOHNSON OIL COMPANY,

MEENAN OIL COMPANY d/b/a REGION OIL
as successor in interest to JOHNSON
OIL COMPANY and SPARTAN OIL COMPANY,

Third-Party Defendants/
Respondents.

Argued April 15, 2013 – Decided August 23, 2013
Remanded by Supreme Court January 26, 2015
Reargued October 14, 2015 – Decided November 17, 2015

Before Judges Yannotti, St. John and
Guadagno.

On appeal from the Superior Court of New
Jersey, Law Division, Morris County, Docket
No. L-2071-06.

Steven T. Singer argued the cause for
appellant/cross-respondent.

Lawrence F. Rosello argued the cause for
respondents/cross-appellants Petro, Inc.,
Johnson Oil Company and Meenan Oil Co.
(Gaul, Baratta & Rosello, L.L.C., attorneys;
Richard J. Isolde, on the brief).

David W. Field argued the cause for
respondents Edward Hsi and Amy Hsi
(Lowenstein Sandler, P.C., attorneys; Mr.
Field, on the brief).

Kristin V. Hayes argued the cause for
respondent Spartan Oil Company (Wiley
Malehorn Sirota & Raynes, attorneys; Ms.
Hayes, of counsel and on the brief; Carolyn
Conway Duff, on the brief).

PER CURIAM

This matter returns to us following a remand by the Supreme Court, Morristown Associates v. Grant Oil Co., 220 N.J. 360 (2015), to resolve the issues that were not addressed in our

prior opinion, Morristown Associates v. Grant Oil Co., 432 N.J. Super. 287 (App. Div. 2013). In our opinion, we affirmed the motion judge's grant of summary judgment based on his holding that the general six-year statute of limitations for damage to property, N.J.S.A. 2A:14-1, applies to a private claim for contribution pursuant to the New Jersey Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11f(a)(2)(a). Because we affirmed the grant of summary judgment, we did not address the other issues raised on appeal and cross-appeal. 432 N.J. Super. at 291.

The Supreme Court reversed, holding that the six-year statute of limitations does not apply to private claims for contribution made pursuant to the Spill Act, and that the motion judge erred in concluding that plaintiff's Spill Act claims against certain defendants were time-barred. Morristown, supra, 220 N.J. at 364.

I.

We provide a brief summary of the facts of this case from the Court's opinion.

> In 1979, plaintiff, Morristown Associates, purchased commercial property located at 30 Lafayette Avenue in Morristown, New Jersey. The property contained a strip-mall-style shopping center known as Morristown Plaza. Among the tenants of Morristown Plaza was Plaza Cleaners, a dry cleaning business owned at

the time by Robert Herring (Herring). Herring and his wife had entered into a lease with the property's previous owner, Morris Center Associates, in 1976. Due to construction, Herring was unable to occupy and operate Plaza Cleaners until approximately January 1, 1978. At some point before the move-in date, Herring installed a steam boiler in a room at the rear of the leased space and an underground storage tank (UST) beneath the concrete floor of that room; the UST held fuel oil needed to operate the boiler. The boiler and UST were installed to generate the heat and steam required for the dry cleaning process. Fill and vent lines for the UST protruded through an exterior wall of the building into an alleyway.

In 1985, Herring sold Plaza Cleaners to defendants Edward and Amy Hsi (collectively the Hsis). The Hsis owned the business until 1998 when it was sold to current owner and third-party defendant, Byung Lee (Lee). The original boiler remained in operation from the time the business opened in 1978 until approximately November 2003; Lee later replaced it with a natural-gas-fired boiler.

In 1993, as part of a proposed refinancing, plaintiff hired Giorgio Engineering, P.C., to perform an environmental audit of the Morristown Plaza property. Giorgio Engineering incorrectly reported that there were no USTs on the site. In 1999, an UST that served a ShopRite grocery store in Morristown Plaza leaked. It was removed under the supervision of Morristown Plaza's then property manager, Ekstein Asset Management. Although Ekstein Asset Management and the Department of Environmental Protection (DEP) entered into a memorandum of agreement in respect of that incident, Ekstein Asset Management failed to comply with DEP's remedial process;

notwithstanding, DEP terminated the memorandum of agreement on November 1, 2000.

Importantly, in August 2003, a monitoring of a well installed near Plaza Cleaners's UST revealed fuel oil contamination. Plaintiff was informed that the UST used by Plaza Cleaners might be the source. A subsequent investigation revealed that although the UST was intact, the fill and vent pipes were "severely deteriorated, with large holes along a significant portion of their lengths." Plaintiff's experts concluded that those holes had developed as early as 1988 and, since that time, oil had been leaking from the pipes each time the tank was filled. Each of the named oil company defendants allegedly supplied fuel oil to Plaza Cleaners at various times between 1988 and 2003. Those companies delivered varying quantities of oil on a more or less monthly basis, filling the UST from tanker trucks by means of the fill pipe located in the alley wall.

Plaintiff took steps to remediate and clean up the contamination and pursued a contribution claim against other allegedly responsible parties. In its action, plaintiff contends that, before 2003, it was unaware that any UST existed on the property.

On July 31, 2006, plaintiff filed an initial three-count complaint naming as a defendant Grant Oil Company (Grant Oil). Count one of the complaint asserted a claim under the Spill Act . . . seeking contribution for costs related to the cleanup and removal of the fuel oil.

Between October 2007 and July 2009, plaintiff filed three amended complaints, adding as defendants the Hsis and other heating oil companies—Able Energy, Parsippany Fuel Oil Company (Parsippany

Fuel), Petro Incorporated (Petro), Johnson Oil Company (Johnson Oil), Meenan Oil Company (Meenan Oil) doing business as Region Oil Company (Region Oil) as successor in interest to Johnson Oil, and Spartan Oil Company (Spartan Oil). The heating oil companies filed answers, third-party complaints, cross-claims, and counter-claims. Lee and Multi Cleaners, Inc., doing business as Plaza Cleaners, were brought into the action as third-party defendants.

Meanwhile, the parties engaged in extensive discovery. In response to a series of motions, the trial court entered orders barring proposed testimony by Robert Walters, plaintiff's oil delivery expert, and granting summary judgment in favor of defendants on various claims against them. In particular, in respect of the summary judgment motions, the trial court held that the general six-year statute of limitations for injury to real property . . . applied to private claims for contribution pursuant to the Spill Act and, as such, claims against defendants for damage that had occurred more than six years before that defendant was brought into the case were time-barred. Further, after conducting a hearing pursuant to Lopez v. Swyer, 62 N.J. 267 (1973), the trial court held that plaintiff did not get the benefit of the Lopez discovery rule because plaintiff should have discovered its claims when the other leaking UST was found in 1999 on the ShopRite property. Accordingly, the court granted motions for summary judgment by Spartan Oil, Petro, Johnson Oil, Meenan Oil doing business as Region Oil, and the Hsis on statute of limitations grounds. Able Energy's motion for summary judgment was granted in part and denied in part; the claims for damages based on deliveries occurring in 2001 and 2002 were allowed to proceed. Grant Oil's and Parsippany Fuel's motions for summary judgment were denied.

[220 N.J. at 365-68 (footnotes omitted).]

The unaddressed issues which now must be resolved are:

1. Did the trial court err in ruling that Spill Act liability requires a triggering notice to defendants?

2. Did the trial court err by excluding the testimony of plaintiff's expert Robert Walters?

3. Did the trial court apportion damages among three defendants and, if so, was that error?

4. Should the claims against Johnson Oil and Petro be dismissed because there is no evidence that these companies ever delivered oil to the site?

5. Should plaintiff's negligence claims be dismissed?

6. Should plaintiff's negligence claims against the Hsi defendants be dismissed because the Hsis were not contractually obligated to inspect or maintain plaintiff's property?

II.

Triggering Notice

The motion judge ruled that Spill Act liability requires notice of a discharge to defendants:

> [I]n the absence of some triggering notice, or some triggering event or knowledge, the mere fact that an, that an oil company delivers oil to a tank without any reason whatsoever to know that that tank is somehow impaired or problematic or the system of filling is somehow defective, that strict liability would not ordinarily attach in that hypothetical situation.

> There must be more. Now that — that more may not necessarily be negligence per se. But an act or omission. Something that occurs to trigger the strict liability under the Spill Act, I believe, is required.

The judge did not rule on whether any of the defendants had notice because he barred plaintiff's claim by applying the statute of limitations.

We begin by noting that there is no specific notice requirement in the Spill Act. The Court in New Jersey Department of Environmental Protection v. Dimant, 212 N.J. 153, 182 (2012), held that a party seeking contribution must prove a nexus or "reasonable link between the discharge, the putative discharger, and the contamination at the specifically damaged site."

Dimant involved groundwater contamination with perchloroethylene (PCE or PERC), a compound used in the dry cleaning industry. Id. at 163. The investigation into the source of the contamination focused on a dry cleaning facility in a strip mall. Ibid. The New Jersey Department of Environmental Protection (DEP) and the Administrator of the New Jersey Spill Compensation Fund filed a suit for contribution pursuant to the Spill Act alleging that the dry cleaner was responsible for groundwater contamination of various properties. Id. at 159. After a bench trial, the judge ruled that

plaintiffs failed to prove a nexus between a discharge by defendant and the contamination. Id. at 167-68. We affirmed, New Jersey Department of Environmental Protection v. Dimant, 418 N.J. Super. 530 (App. Div.), and the Supreme Court granted certification. 208 N.J. 381 (2011).

The Court held that to obtain damages under the Spill Act, there must be proof by a preponderance of the evidence of a reasonable connection between the discharge, the discharger, and the contamination at the damaged site. Id. at 182. Applying that standard, the Court found that the proofs failed to establish a sufficient nexus between the groundwater contamination and the dry cleaner's discharge during its operation. Id. at 185. The Court cautioned that "the Spill Act does not require proof of the common law standard of proximate-cause causation of specific environmental damage as a precondition to relief under the Act." Id. at 160.

Consistent with the holding in Dimant, Morristown is required to establish a reasonable nexus or connection between the discharge by each defendant and the groundwater contamination. Morristown presented evidence to that effect from its metallurgical expert, Peter Elliott, who wrote a report addressing the failure of the fill and vent lines connected to the underground storage tank (UST). Morristown also presented a

report from its environmental health and safety expert, Robert Walters,[1] quantifying the potential fuel loss associated with the fueling events.

When viewed in the light most favorable to plaintiff, there was sufficient evidence to create a genuine issue of material fact concerning defendants' connection to the contamination. Whether Morristown has established a nexus between each defendant and the environmental damage by a preponderance of the evidence is an issue that must be determined at trial.

Plaintiff contends that defendants are liable under both of the Spill Act liability provisions, as a "discharger" and as "a person in any way responsible for any hazardous substance." Defendants maintain that they are neither.

N.J.S.A. 58:10-23.11g(c)(1) provides in pertinent part:

> any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred.

N.J.A.C. 7:1E-1.6, defines a "person responsible for a discharge" as:

> 1. Any person whose act or omission results or has resulted in a discharge;

[1] That aspect of Walter's opinion was not excluded by the trial court.

> 2. Each owner or operator of any facility, vehicle or vessel from which a discharge has occurred;
>
> 3. Any person who owns or controls any hazardous substance which is discharged;
>
> 4. Any person who has directly or indirectly caused a discharge;
>
> 5. Any person who has allowed a discharge to occur; or
>
> 6. Any person who brokers, generates or transports the hazardous substance discharged.

The Spill Act defines a discharge as:

> any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State[.]
>
> [N.J.S.A. 58:10-23.11b.]

In this case, viewing the evidence in the light most favorable to plaintiff, any defendant who is shown to have delivered fuel oil into a leaking UST system, released a hazardous substance into the ground and could meet the statutory definition of a discharger. Additionally, if a defendant owned or operated a vehicle from which a discharge occurred, they could be a "person responsible for a discharge." N.J.A.C. 7:1E-

1.6.

At trial, plaintiff must establish a nexus between each defendant and the fuel-oil contamination. Plaintiff need not, however, prove that defendants had triggering notice that the fill line was leaking.

III.

Plaintiff's Expert

Plaintiff retained Robert Walters to provide an opinion on the deficiencies of the fuel oil practices of the defendant delivery companies. Walters concluded that the delivery defendants failed to follow certain practices.

After conducting a Rule 104 hearing, the motion judge noted that the UST here was an unregulated tank, that is, the owner was under no obligation to test or inspect the tank at regular intervals as would be required with regulated tanks. The judge then found that an overriding factor in Walters's testimony was his opinion that it would be prudent for oil delivery companies to apply regulations for regulated tanks to unregulated tanks. Walters opined that defendants should not have delivered oil before verifying the tank size, and confirming that the tanks had been inspected and tested, but conceded that they were under no obligation to do so.

Addressing Walters's experience, the judge concluded that "Walters was not candidly familiar with the actual industry of retail oil delivery," and instead his experience focused on large scale storage and movement of oil. The judge concluded that Walters "had little or no experience in the retail oil delivery business, per se," and did not address in his opinion under what circumstances a test for the integrity of the tank would have to be produced or how often tanks should be tested.

Walters was unaware of protocols that delivery companies should follow when presented with conflicting information about tank size. Walters based his opinion, at least in part, on certain manuals, including ones from the National Oilheat Research Alliance, which were not in effect during the time that the deliveries were made. Walters also admitted that his personal opinions are not based on a consensus of other experts' opinions and that he performed no study or test to support his personal opinions.

The motion judge concluded that to the extent that there are events that put the delivery companies on notice that are not barred by the statute of limitations, the jury did not need and should not be subjected to the ad hoc opinions of Walters as to what he personally believes are the best practices or proper procedures to be followed by delivery companies. The judge

found there was not a sufficient foundation for Walters's opinion in industry customs, standards, rules, regulations, and practices. Moreover, Walters could not state that his opinion was given within a reasonable degree of certainty of industry practices, standards, or professional judgment because the opinion is his judgment alone.

The judge concluded: "While [Walter's] testimony clearly was based upon his work experience, and he was familiar with industry practices, the substance of his opinion is not founded upon industry practices. And while I respect his overall credentials, the substance of his opinion will be deemed inadmissible . . . ."

Our review of a trial court's evidential ruling is limited to examining the decision for abuse of discretion. Hisenaj v. Kuehner, 194 N.J. 6, 12 (2008). The admissibility of Walters's testimony is governed by N.J.R.E. 702:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

The rule requires that, "(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art

such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony." Hisenaj, supra, 194 N.J. at 15. The burden of proving that the testimony satisfies those threshold requirements rests with the party proffering the testimony. State v. Harvey, 151 N.J. 117, 167 (1997), cert. denied, 528 U.S. 1085, 120 S. Ct. 811, 145 L. Ed. 2d 683 (2000).

As to the first prerequisite, the motion judge found that the jury "does not need or should not be subjected to the ad hoc opinions of Mr. Walters as to what he personally believes to be best practices or proper procedures to be followed by oil companies without a sufficient foundation in industry customs, standards, rules, regulations, practices or the like."

Walters's opinion was not based on expertise in the applicable area. He offered his own opinion as to deliveries without support from authorities or any applicable regulations or manuals. He conceded that what he proposed was not an industry standard or custom. He had no experience in the delivery of oil to retail or residential establishments.

Two recent Supreme Court opinions addressing the net opinion rule support the motion judge's decision. In Townsend v. Pierre, the Court observed that N.J.R.E. 703 requires expert opinion to be "grounded in 'facts or data derived from (1) the

expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts.'" 221 N.J. 36, 53 (2015) (quoting Polzo v. Cty. of Essex, 196 N.J. 569, 583 (2008)). The Court noted that the net opinion rule is "a 'corollary of [N.J.R.E. 703] . . . which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data.'" Id. at 53-54 (alteration in original) (quoting Polzo, supra, 196 N.J. at 583).

The Court explained that the rule "mandates that experts 'be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable.'" Id. at 55 (quoting Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992)). "An expert's conclusion 'is excluded if it is based merely on unfounded speculation and unquantified possibilities.'" Ibid. (quoting Grzanka v. Pfeifer, 301 N.J. Super. 563, 580 (App. Div.), certif. denied, 154 N.J. 607 (1997)).

In Davis v. Brickman Landscaping, Ltd., the Court stated that the net opinion rule "'requir[es] that the expert 'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion.'" 219 N.J. 395, 410 (2014) (alteration in

original) (quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 372 (2011)). The Court held that an expert offers an inadmissible net opinion if he or she "cannot offer objective support for his or her opinions, but testifies only to a view about a standard that is 'personal.'" Ibid. (quoting Pomerantz Paper Corp., supra, 207 N.J. at 373). The Court quoted Wellenheider v. Rader, 49 N.J. 1, 7 (1967), for the proposition that "[t]he customs of an industry are not conclusive on the issue of the proper standard of care; they are at most evidential of this standard." Davis, supra, 219 N.J. at 411.

We are satisfied that the judge's decision was consistent with the principles set forth in Townsend and Davis. We conclude that the judge did not abuse his discretion in excluding the expert testimony of Walters.

IV.

Apportionment Ruling

Plaintiff claims that the trial judge made a determination concerning the equitable allocation of liability of the remaining defendants, Parsippany Fuel, Able Energy, and Grant Oil, which is contrary to the joint and several liability mandated by the Spill Act, N.J.S.A. 58:10-23.11g(c)(1). A review of the trial judge's decision reveals that he did nothing of the sort. Rather, the judge was identifying the deliveries

that were not barred by the applicable six-year statute of limitations:

> There are, however, several deliveries that occurred within the 6-year period. Grant Oil had a few. I believe Able had a few. And with regard to those, the claims are maintained.
>
> To the extent that the plaintiff has shown that deliveries occurred within 6 years of the filing of its claims against those individuals, those claims will be -- be preserved, but I note, and I put it as footnote on there, to the extent of those deliveries.
>
> To the extent that the plaintiff seeks compensation for deliveries made beyond the 6 years, they will be barred because the theory of the plaintiff here is to allocate. And the allocation expert uses the deliveries as the -- as the theory of allocation and that the damages are occurring on each delivery. Each delivery is a [discret] act of damage, according to the plaintiff's theory.

Clearly, the judge was not apportioning liability, he was explaining which claims were still viable and which were dismissed due to the statute of limitations. As the judge's decision on the statute of limitations has been reversed, this portion of his ruling is moot.

Moreover, most of the arguments that defendants raise on appeal in attempting to avoid liability can properly be made to the trial court and considered if and when liability is allocated.

V.

Claims Against Johnson, Petro and Meenan Oil

On their cross-appeal, Petro, Johnson Oil, and Meenan Oil purport to appeal from the order of February 24, 2011, which granted their cross-motions for summary judgment and dismissed plaintiff's complaint against them with prejudice as barred by the statute of limitations. Cross-appellants maintain that, in addition to the dismissal on statute of limitations grounds, the claims against them should have been dismissed because they never delivered oil to the site.

We note that prior to the filing of their notice of cross-appeal, the motion judge had already granted their motions for summary judgment based on the statute of limitations. Thus, at the time they filed their cross-appeal, Petro, Johnson Oil, and Meenan Oil were not aggrieved by the judgment they sought to appeal. See Price v. Hudson Heights Dev., LLC, 417 N.J. Super. 462, 466 (App. Div. 2011) (the plaintiff who obtained the ultimate relief he sought cannot be said to have been aggrieved by the judgment).

Although the filing of a cross-appeal by these defendants is improper given that the judgment entered below was in their favor, defendants may raise the argument as an alternative basis to sustain the judgment below. Sprint Spectrum, L.P. v. Zoning

Bd. of Adjustment of Leonia, 360 N.J. Super. 373, 376 n.1 (App. Div. 2003). Our review of such an argument is discretionary. Gray v. Press Commc'ns, LLC, 342 N.J. Super. 1, 13 (App. Div.), certif. denied, 170 N.J. 390 (2001).

A Spill Act defendant may raise non-responsibility in-fact as a defense to a contribution claim. Hous. Auth. of New Brunswick v. Suydam Inv'rs, 177 N.J. 2, 24 (2003); N.J. Schs. Dev. Auth. v. Marcantuone, 428 N.J. Super. 546, 562 (App. Div. 2012), certif. denied, 213 N.J. 535 (2013). If a defendant did not deliver oil to the dry cleaning business, it cannot be held liable for contribution. However, whether a defendant delivered oil to the site, or is legally responsible for an entity that delivered oil to the site at a time when the pipe was leaking, presents a genuine issue of material fact to be determined at trial.

VI.

Plaintiff's Negligence Claims

Petro, Johnson Oil, and Meenan Oil argue that plaintiff's negligence claims should be dismissed because they are ancillary and incidental to the Spill Act claims. They cite no law in support of that contention. Although plaintiff would not be entitled to a jury trial on claims that are merely ancillary and incidental to a principal Spill Act claim, GEI International

Corp. v. St. Paul Fire & Marine Insurance Co., 287 N.J. Super. 385, 391-96 (App. Div. 1996), aff'd sub nom. In re Environmental Insurance Declaratory Judgment Actions, 149 N.J. 278 (1997), such claims cannot be dismissed on that basis alone.

Petro, Johnson Oil and Meenan Oil also argue that plaintiff's negligence claims should be dismissed because plaintiff failed to establish a prima facie case. They contend that without expert testimony there is no proof that they knew or reasonably should have known that fuel oil was leaking from the UST system. The motion judge did not consider this argument because he dismissed the negligence claims on statute of limitations grounds.

Claims of common law negligence arising from damage to property are governed by a six-year statute of limitations. N.J.S.A. 2A:14-1; Bd. of Trs. v. J.P. Fyfe, Inc., 188 N.J. Super. 288, 293 (Law Div. 1982), aff'd, 192 N.J. Super. 433 (App. Div. 1983), certif. denied, 96 N.J. 308 (1984). Plaintiff's negligence claims against defendants whose last delivery of oil occurred more than six years prior to the institution of this action are therefore barred.

In our prior decision, we upheld the trial court's finding that the circumstances here do not justify affording plaintiff the benefit of the discovery rule. 432 N.J. Super. at 300-02.

The Supreme Court's decision did not disturb that conclusion. 220 N.J. at 383. Thus, the dismissal of plaintiff's common-law negligence claims as barred by the statute of limitations is affirmed.[2]

VII.

Plaintiff's Claims Against the Hsi Defendants

The Hsi defendants argue that the dismissal of the claims against them should be affirmed because they were not contractually obligated to inspect, maintain or repair plaintiff's property.

The only defenses that may be raised to a claim for contribution under the Spill Act are those specifically set forth in the Act itself. Morristown Assocs., supra, 220 N.J. at 381. As operators of the dry cleaning business who purchased fuel oil that was pumped into the leaking UST system, the Hsis were persons responsible for a discharge as defined in N.J.A.C. 7:1E-1.6 (1), (2), and (4). Further, because they exercised ownership or control over the property at the time of a discharge, they are parties "in any way responsible" for the discharge. N.J. Schs. Dev. Auth. v. Marcantuone, 428 N.J.

[2] We note that plaintiff did not appeal from the dismissal of its common-law negligence claims nor did it brief that issue on appeal. "An issue not briefed on appeal is deemed waived." Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011).

Super. 546, 558-59 (App. Div. 2012). Their contractual responsibilities vis-à-vis plaintiff provide no defense to the contribution liability claims. The relationship between the Hsis and plaintiff may, of course, be taken into account when the court assesses liability among the responsible defendants.

Reversed and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.