Waivers Hold the Line: New Jersey Appellate Division Shields LSRPs from Personal Liability

May 15, 2026

Categories:

Publications

Authors:

Frederick A. McDonald III

On May 5, 2026, the New Jersey Superior Court, Appellate Division issued a decision in *R.A.W., Inc. d/b/a Roxbury Auto Wreckers v. Verdantas, LLC, et al.*,[1] affirming a trial court's entry of summary judgment and finding that the plaintiff could not maintain personal-liability claims against a licensed site remediation professional (LSRP).

Background

In 2015, the plaintiff, Roxbury Auto Wreckers (R.A.W.), contracted with JM Sorge, Inc. to provide LSRP-related services for the remediation of R.A.W.'s auto salvage yard. JM Sorge assigned Michelle Bouwman as the LSRP for the project. Approximately eight years later, Verdantas, LLC succeeded JM Sorge's interest and continued to provide LSRP-related services under the terms of the initial agreement between R.A.W. and JM Sorge. The agreement contained a provision that limited personal liability of any shareholder, officer, director, partner, principal, employee, or LSRP of JM Sorge/Verdantas, and also contained a further provision where R.A.W. expressly waived its right to bring any personal liability claims directly against the LSRP. The agreement did not limit R.A.W.'s ability to pursue claims against JM Sorge/Verdantas and its insurance company.

In 2024, R.A.W. filed suit against Verdantas/JM Sorge, Bouwman, and Joseph Sorge for professional malpractice, negligence, fraud, breach of contract, breach of good faith and fair dealing, common law indemnification, and unjust enrichment. The trial court dismissed in part R.A.W.'s claims against the individual defendants based on the personal-liability waiver in the agreement. R.A.W. then filed an amended complaint alleging "the LSRP deviated from industry standards and caused it to suffer damages."[2] All defendants subsequently moved for summary judgment, asserting that R.A.W.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

failed to provide an affidavit in accordance with N.J.S.A. 2A:53A-27 [3] and that the claims against the individual defendants were barred by the personal-liability waiver in the agreement. Regarding Verdantas/JM Sorge, the trial court granted summary judgment because R.A.W. failed to submit the appropriate affidavit required under New Jersey law. As to Bouwman and Joseph Sorge, the trial court granted summary judgment based on the personal-liability waiver in the agreement.[4] The trial court subsequently denied R.A.W.'s motion for reconsideration.

Appellate Division Decision

R.A.W. only appealed the portion of the trial court's decision addressing summary judgment as to Bouwman and Joseph Sorge, not Verdantas/JM Sorge. The issue on appeal was whether the waiver provision in the agreement violated public policy because it precluded liability from being imposed against individual LSRPs. A two-judge panel of the Appellate Division determined that the trial judge did not err in concluding that the personal-liability waiver in the agreement was enforceable and that said provision did not violate public policy.

Despite reiterating the long-standing proposition that a court should not rewrite a contract, the panel, nevertheless, stressed that a liability-waiver provision, such as the one at issue, is subject to close judicial scrutiny and will be enforced "only when the clause reflects the unequivocal expression of the party giving up his or her legal rights[, and] the decision was made voluntarily, intelligently, and with the full knowledge of its legal consequences."[5] Notwithstanding, the panel determined that because (1) the agreement, which included the personal-liability waiver, was entered into between sophisticated parties in an arms-length transaction, and (2) the waiver provision clearly stated that R.A.W. waived its right to assert claims against any individual LSRP, the waiver provision was enforceable and did not violate public policy. Moreover, the waiver provision, as the panel found, only limited R.A.W.'s ability to recover against Bouwman and Joseph Sorge, not Verdantas/JM Sorge.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

As part of its decision, the panel rejected R.A.W.'s argument that the trial court failed to analyze the public policy underlying the LSRP profession. To the contrary, the panel found that the trial court expressly considered the New Jersey Site Remediation Reform Act (SRRA) — the law governing LSRPs — as part of its consideration as to whether the waiver provision violated public policy. First, the panel determined that the trial judge was correct in finding that the SRRA does not create a private right of action against LSRPs, and therefore the waiver provision in the agreement could not undermine the SRRA. Second, the panel found that the waiver provision did not run contrary to the overall purpose of the SRRA, which is to improve the efficiency and speed with which environmental sites are remediated.

The panel further rejected R.A.W.'s argument that more general public policy rationales underlying the invalidation of waiver provisions apply in this case. In rejecting this argument, the panel determined that the rationales for disfavoring or invalidating waiver provisions — deterrence of careless behavior and compensation by the wrongdoer for injuries sustained by victims — were not present. This was so because unlike cases where courts invalidate waiver provisions, R.A.W. still had, under the terms of the agreement, the ability to pursue claims against Verdantas/JM Sorge, and therefore was not left without recourse. The fact that R.A.W. failed to properly advance its claims against Verdantas/JM Sorge (*i.e.*, submit the appropriate affidavit) was of no moment to determining whether the waiver provision was improper in this case.

Key Takeaways

This decision underscores the importance of agreements involving LSRPs and provides the following guidance to practitioners in the environmental space:

- While personal-liability provisions in agreements are subject to close judicial scrutiny, a court will likely not invalidate such provisions when the parties involved in a transaction (a) are sophisticated entities, (b) the provision at issue clearly states the right being waived, and (c) the party injured by the waiver

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

provision has the ability to seek recourse against other entities. In other words, where parties voluntarily, intelligently, and with full knowledge of the legal consequences enter into agreements, a waiver provision will not violate public policy.

- To show that a personal-liability waiver violates public policy, courts will look for agreements that do not deter careless behavior and fail to provide an avenue for compensation by the wrongdoer for injuries sustained by victims.
- The SRRA does not provide a private right of action against LSRPs.

For more information about these proceedings and their potential implications for your business, please contact the author or any member of our **Environmental** practice group.

---

[1] No. A-3143-24, 2026 WL 1217564, at *1 (N.J. Super. Ct. App. Div. May 5, 2026).

[2] *Id.*

[3] Pursuant to N.J.S.A. 2A:53A-27, a plaintiff in a professional malpractice or negligence action is required to submit, within 60 days of the defendant's answer (subject to one possible 60-day extension for good cause), an affidavit from a qualified professional attesting that the defendant's conduct likely fell below accepted professional standards.

[4] The court found that the affidavit requirement in N.J.S.A. 2A:53A-27 had not yet been triggered as to Bouwman and Joseph Sorge.

[5] *R.A.W.*, 2026 WL 1217564, at *3 (citation modified).

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons