No. 22-465

IN THE

Supreme Court of the United States

GEORGIA-PACIFIC CONSUMER PRODUCTS LP, FORT JAMES LLC, AND GEORGIA-PACIFIC LLC,

Petitioners,

v.

INTERNATIONAL PAPER COMPANY AND WEYERHAEUSER COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL BRIEF OF RESPONDENTS INTERNATIONAL PAPER COMPANY AND WEYERHAEUSER COMPANY

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None of the arguments in petitioners' supplemental brief does anything to overcome the multiple vehicle problems identified by the United States. Those problems—which stem primarily from petitioners' failure to properly identify the source of their Section 113(f) contribution claims—would make it frustratingly difficult (and perhaps impossible) for this Court to resolve the question presented in this case.

The Solicitor General explains that "this case is a poor vehicle for deciding the question presented" because of "[t]he uncertainty as to the source and nature of petitioners' current claims," U.S. Br. 20–21, and because the statute-of-limitations question presented "turns on the precise meaning and legal import of the various *KRSG* judgments," U.S. Br. 22. Specifically, the Solicitor General observes that petitioners have not been clear in their briefing about which action or judgment entitled them to bring Section 113(f) contribution claims—as distinguished from Section 107 claims—in the first place. And to the extent that petitioners rely on the *KRSG* "declaratory judgment as the source of [a] contribution right," their argument opposing the statute of limitations is *inconsistent* with the Solicitor General's position that the judgment did not trigger the limitations period because it did not give rise to a right to recover contribution. U.S. Br. 20–21.

Attempting to sidestep these objections, petitioners now contend that their right of recovery arose not

from the *KRSG* judgment but (at least in part) "from consent orders or judgments entered in 2009." Pet. Supp. Br. 7. The Sixth Circuit, however, ruled against petitioners on that issue, holding that "the 1998 KRSG judgment…established [petitioners'] right to seek contribution" for all the response costs at issue. Pet.App.27a. Petitioners have not sought certiorari on that separate question.

As a result, this case comes to the Court in a bizarre posture. The Court would need to take it as given that the *KRSG* judgment triggered petitioners' contribution claims, and then consider petitioners' argument that, nevertheless, that same judgment did not start the statute of limitations. That contention makes no sense: as the Solicitor General explains, and as respondents have always argued, the determination of when the statute of limitations for a Section 113(f) contribution claim runs necessarily involves determining when that Section 113(f) claim accrued. U.S. Br. 10–12, 21; Weyerhaeuser Br. in Opp. 27; Int'l Paper Br. in Opp. 26–27. But it would not be possible in this case for the Court to apply the Solicitor General's interpretation of Section 113(f), because the crucial factual predicate for that argument—that petitioners' contribution claims did not accrue in *KRSG*—is uncontested by petitioners in this Court. In short, petitioners' briefing choices have created a fundamental disconnect between what they ask this Court to decide and what would actually be before the Court for decision.

For the Court to reach out and consider that unpresented question involves its own problems. Petitioners do not disagree that the Court would have to

resolve "the precise meaning and legal import of the various *KRSG* judgments." U.S. Br. 22; Pet. Supp. Br. 9–10 (asserting instead that petitioners' "characterization" of those judgments is correct). That inevitably "would complicate this Court's analysis." U.S. Br. 22. It would also risk a case-bound decision that has little broader import—and may even fail to reach the operation of Section 113(g)(3)'s statute of limitations in virtually any other case.

The vehicle problems identified by the Solicitor General are insuperable, and petitioners' response only reinforces the point. Given its unusual posture, this case is a wholly unsuitable vehicle to decide the statute-of-limitations issue presented by the petition.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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