BCLP. Client Intelligent

TOXIC TORT

OVERVIEW

We maintain a nationally recognized Toxic Tort Team. Our dedicated toxic tort lawyers represent clients in all manner of toxic tort claims – ranging from environmental contamination cases involving communities to single-plaintiff personal injury product and workplace exposure cases. Our clients include industrial, chemical and manufacturing clients.

Our regulatory toxic tort team focuses on business resolutions, but sometimes litigation is inevitable. When that time comes, our lawyers are ready to build a successful defense with a trial-ready focus. An evidence-based strategy is critical to a dispositive motion practice, trial, class certification and resolution, and we start with understanding the underlying science. We understand the technical science behind our toxic tort exposure cases and we have the background and experience to hit the ground running quickly and efficiently. We have defended claims involving a broad range of chemicals, including Agent Orange, benzene, dioxin, BTEX, diesel range organics, PCBs, diacetyl, rubber hydrocarbons, asbestos, formaldehyde, PFAS, latex, ammonia, chlorinated solvents, pesticides, volatile and semi-volatile organic compounds, polycyclic aromatic hydrocarbons and metals such as mercury, lead and arsenic.

We know which experts to hire and how to work with them to deploy a winning scientific defense. We have long-standing relationships with experts in the fields of toxicology, epidemiology, medicine, including multiple medical specialties, risk assessment, hydrogeology, forensic chemistry, industrial hygiene, environmental engineering, exposure modeling, vapor intrusion, remediation and property damage valuation.

We have prevailed in cases on a myriad of substantive and procedural defenses. Our successes include:

- winning Daubert and Frye challenges;
- defeating class certification;
- obtaining dismissal through the use of Lone PineCase Management Orders;
- barring claims on the basis of statute of limitations, statute of repose and preemption; and
- defeating novel causation theories, such as market share liability.

Coordinating nationwide litigation in multiple jurisdictions is often necessary in massive toxic tort litigation matters, and we have significant experience with multidistrict litigation (MDL) coordination.

We regularly defend clients in the chemical, energy, water, manufacturing, transportation, food/beverage and hospitality industries facing these complex claims, which require the ability not only to understand the substantive law and associated regulatory framework, but also to interpret and, at times, to challenge the science.

Our cases involve allegations of personal injury and property damage stemming from exposure to harmful chemicals or substances contained in a product or related to a release from a facility. We routinely serve as national coordinating counsel for companies and property owners that face these types of suits. Unlike many other firms, our team members are not split into regulatory lawyers and litigators. Rather, our team members do it all – consult on regulatory issues, handle governmental enforcement defense, and spearhead toxic tort, environmental and Proposition 65 litigation. Given this broad focus, our litigators understand how to manage parallel enforcement and private claims and to employ defenses that arise out of overlapping actions.

MEET THE TEAM

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EXPERIENCE

Following are examples of strategies we have implemented to achieve successful results for clients.

THE SCIENCE AND CHALLENGING EXPERT TESTIMONY

- Represented several major corporations in litigation involving alleged allergic reactions to natural rubber proteins in latex gloves. Successfully excluded key causation expert in a *Daubert* hearing in multidistrict litigation and served as national counsel as well as trial counsel.
- Successfully excluded all opinion testimony from environmental experts under *Daubert* in soil and groundwater contamination case in Colorado, ultimately leading to favorable settlement for client.
- Obtained directed verdict at trial based on cross-examination of plaintiffs' environmental experts, extracting key admissions regarding causation and damages.
- Oversaw design and implementation of simulation study that established client's product did not emit asbestos fibers, causing plaintiff's case to unravel.

DEFEATING CLASS CERTIFICATION

- Defeated class certification in case involving 80 residents alleging exposure to pesticides and other chemicals.
- Defeated class certification in case involving more than 200 individuals arising out of accidental release of ammonia and methylamines.
- Defeated motion for certification of medical monitoring class in California case alleging TCE exposure in drinking water.
- Defeated class motion in Texas state court cases alleging arsenic exposure.

STRATEGIC CASE MANAGEMENT TOOLS & LONE PINE ORDERS

- Defense of a uranium milling company in a personal injury and wrongful death action against allegations of exposure to radioactive and non-radioactive substances, using a Lone Pine-style Case Management Order that required plaintiffs to produce expert affidavits showing harmful exposure and specific causation. After twenty-five plaintiffs were dismissed for failing to provide the affidavits, the remaining three plaintiffs' claims were dismissed on summary judgment. Ruling was affirmed by the Tenth Circuit.

- As national or regional counsel, we regularly coordinate the removal and transfer of cases to MDL panels.

WINS IN PLAINTIFF FRIENDLY JURISDICTIONS

- In state court in Nevada, on behalf of largest managed care organization in the country, obtained early judgment on the pleadings with respect to absence of physical injury in case involving 60,000 putative class members seeking to certify a class to obtain medical monitoring as a remedy for possible exposure to blood-borne pathogens.
- In Madison County, Illinois, used forensic chemistry to establish our client was not responsible for a large, historic plume of millions of gallons of hydrocarbons.
- In St. Louis, disposed of lead paint mass tort action at summary judgment stage based on challenge to market share liability theory. Missouri Supreme Court affirmed trial court decision.

ENVIRONMENTAL TOXIC TORT

We have litigated multi-plaintiff personal injury and property damage claims involving contamination impacting all environmental media – groundwater, surface water, ambient air, indoor air and soil.

We are uniquely positioned to handle these cases as many of its environmental attorneys are litigators who have tried environmental and toxic tort cases to verdict. Often times these cases are filed at sites where state or federal agencies already are involved. These cases require counsel who understand how to coordinate and manage the competing demands of the regulators and the plaintiffs. In certain situations, the environmental and occupational safety laws can be used to the advantage of the defendants in fending off toxic tort claims.

- Successfully defended a chemical manufacturer in dioxin exposure litigation arising out of its operation of herbicide plant. Obtained defense verdicts in jury trial on claims brought by multiple plaintiffs who lived near the facility and in case brought by more than 100 employees.
- Defense verdict for industrial manufacturing client in Illinois lead contamination property damage case involving breach of contract claim and allegations that client “violated” environmental laws.
- Represented chemical client in California case involving exposure to sodium hypochlorite in three-month trial. Case settled for nuisance value prior to verdict.
- Successfully defended Colorado case at trial in which landowner claimed business was harmed by TCE groundwater plume.

- Represented four chemical companies in Kentucky industrial complex in which plaintiffs asserted claims for cancer, increased risk of cancer and fear of cancer allegedly caused by air and water exposure to chemical emissions. Successfully obtained dismissal of all claims at summary judgment.
- Represent company in Navajo Tribal Court in claims arising from uranium operations. Claims allege injury due to exposure to radiation and heavy metal contamination. Natural resource damages are also at issue.
- Represented a major petroleum refinery in all of its asbestos and benzene litigation in the methyl tertiary-butyl ether (MTBE) litigation pending in the U.S. District Court for the Southern District of New York.
- Represented three industrial entities in the largest toxic tort action in Arizona involving alleged exposure to numerous industrial agents via groundwater, soil and air. One matter consists of more than 200,000 class members.
- Represented petroleum refinery in class actions and mass tort suits brought in Madison County, Illinois, by residents adjacent to refineries who alleged that petroleum contamination created plumes of hydrocarbons that decreased property values and caused medical injury necessitating medical monitoring.
- Represented foreign and domestic defendants in a consolidated action in which more than 400 claimants alleged personal injuries, nuisance, property damage and “fear of” claims from the alleged exposure to a TCE plume emanating from a manufacturing facility that leached into the local groundwater.
- Class counsel in a mass tort class action against a national railroad arising out of train derailment that caused explosion of tank car carrying propylene gas and the subsequent evacuation of residences and businesses.
- Represented national manufacturer of consumer products in the defense of environmental litigation and a class action involving the use of perfluorinated compounds (PFCs).
- Represented chemical manufacturer in a series of cases arising from the sale of the pesticide, dibromochloropropane (DBCP), including mass tort actions brought in Texas, Louisiana, California, Hawaii and certain foreign countries. We defended related property damage claims brought by water authorities seeking damages as a result of the contamination of groundwater aquifers with DBCP.

WORKPLACE TOXIC TORT

We defend claims involving alleged exposure to toxic chemicals through a product or in the workplace. Our experience includes all manner of claims (class actions, multidistrict litigation, coordinated mass tort actions) and all types of claims (regulatory, consumer fraud, personal injury, property damages, punitive damages).

- Lead counsel for defendant in MDL involving more than 1,000 cases with claims relating to PFAS (per- or polyfluoroalkyl substances) in aqueous film-forming foams contaminating groundwater near military bases, airports and industrial sites.
- Representing an educational facility against allegations that individuals were exposed to PCBs formulated in caulk and sealed inside electrical capacitors, which were in turn incorporated into ballasts used in fluorescent light fixtures. Multiple jury trials are taking place over several years, with millions in compensatory and punitive damages at stake.
- Represented aircraft manufacturer in six-month jury trial in California alleging that rain repellant used on aircraft was toxic and obtained favorable verdict for client.
- Represented a major furniture manufacturer that was, at the time, the largest civil lawsuit in U.S. history with more than 2,000 plaintiffs, 250 defendants and more than $2 billion in claims, including claims that the client's product gave off toxic fumes.
- Principal outside counsel for the world's largest carpet manufacturer in litigation regarding indoor air quality. Plaintiffs claim personal injuries from exposure to chemicals allegedly emitted from carpet. Results include defeating an effort to certify a nationwide class action and achieving summary judgment in multiple state court cases.
- Represented national manufacturer of medical supplies in latex glove litigation involving hundreds of individual claims.
- Represented chemical client in case alleging workplace exposure to ethyl benzene caused death of fetus. Case was settled for $10,000.
- Nationwide counsel for chemical producer in cases involving claims of "bronchiolitisobliterans syndrome" (otherwise referred to as "popcorn lung") allegedly caused by the naturally occurring chemical diacetyl.
- Represent national baby bottle manufacturer in consolidated class actions seeking economic loss arising out of the manufacture of its baby bottles with the organic compound bisphenol A (BPA).
- Represented defendants in more than 1,000 lawsuits involving allegations concerning asbestos exposure. Serve as national counsel for various defendants. We have had great success obtaining dismissal and summary judgment at early stages.

RELATED INSIGHTS

Awards
Jul 30, 2024
Bloomberg Law Names Christian Bromley as 2024 Top Attorney Under 40

News
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BCLP partner re-elected to Atlanta Bar Association Litigation Section Board of Directors

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