

PESTICIDES (FIFRA)

OVERVIEW

BCLP lawyers are well-versed with respect to the pesticide and agricultural chemicals industry. Our experience traces from the early stages of research and development, through registration, manufacturing, marketing, sale and distribution, import and export, and product discontinuance. On a daily basis, we counsel on regulatory and transactional matters, represent our clients in litigation, and defend against inspections, investigations and enforcement. While our agricultural industry experience is very deep, our experience also extends to the lawn and garden, industrial, turf and ornamental, antimicrobial and consumer products, pesticide devices (such as UV lights) and treated articles.

STRATEGIC MANAGEMENT OF REGULATORY ISSUES AND ENFORCEMENT

Our regulatory team is experienced in handling the day-to-day issues, the bet-the-company issues, and everything in between. We regularly counsel on a wide range of statutes, including the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Food, Drug and Cosmetic Act, Federal Seed Act, and Toxic Substance Control Act, as well as the many state laws regulating agricultural inputs. Our team works closely with federal agencies (such as EPA, FDA, and USDA) and their state counterparts regarding these laws and the obligations they impose, including claims about product labeling, ingredients, processing, packaging, advertising and sales practices.

OUR REPUTATION IN HIGH PROFILE LITIGATION

Our Pesticide team has helped lead the defense in both the glyphosate and dicamba mass tort litigation, as well as against individual spray drift and chemical exposure claims. BCLP lawyers have and continue to defend a leading glyphosate herbicide manufacturer in the glyphosate litigation at both the post-trial and appellate levels, including arguing successfully to reduce damages by over \$2.2 billion in one case. Our team also has played a lead role in defending a major dicamba herbicide manufacturer in the In re Dicamba Herbicides Litigation MDL proceeding through all stages of the litigation, including briefing, preparation of company witnesses, identification and development of expert witnesses, trial of the first dicamba herbicide lawsuit included within that MDL proceeding, and appeal. In addition to this particular experience, we have represented companies in miscellaneous disputes (and in avoiding disputes) at all stages of the spectrum. We have experience in trade secret, employment, personal injury, property damage and labeling claims in the pesticide industry.

OUR TRANSACTIONAL EXPERIENCE AND MID-MARKET FOCUS

Our top-ranked Agribusiness and M&A practices converge in particular in the pesticides industry, where we have represented buyers, sellers and investors with numerous sales and acquisitions in the industry, including everything from an individual registration, a product line, a market segment, or an entire company. Each type of acquisition presents its own unique considerations, and we have certainly handled it. Additionally, we have significant experience with commercial contracts in the pesticides industry, including representing clients with respect to third party manufacturing agreements (including manufacturing that occurred in the US, Europe, China and India), data access and compensation agreements, registration agreements, supply and licensing agreements of all types and sizes, distribution and repackaging agreements, and more.

MEET THE TEAM



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RELATED PRACTICE AREAS

- Energy & Natural Resources
- Food & Agribusiness

EXPERIENCE

Regulatory

- Registering various insecticides, herbicides, plant-incorporated protectants and antimicrobial products for crop, commercial and personal uses, as well as in preparing Petitions to Cancel registrations and responses thereto.
- Advising on registration and labeling issues relating to fertilizers, inoculants, plant and soil amendments and biologicals.
- Representation of companies in response to EPA and state investigations, requests for information, subpoenae and notices of violation, including internal investigations, root cause analyses and corrective action planning, and negotiation and implementation of consent orders.
- Representing clients in responding to inspections, stop sale orders and other enforcement and penalty actions pursued by state and federal pesticide authorities.
- Creating and acquiring data packages to support registrations and respond to data call-ins, including formation and management of multiple active ingredient task forces.
- Reviewing labels and marketing materials, including accuracy and completeness of labeling language and claims.
- Preparing comments on proposed regulations, including those relating to packaging, labeling, tolerance additions and deletions.
- Responding to offers to pay and other data compensation issues, including strategy relating to compensation and arbitration.
- Obtaining tolerances and tolerance exemptions for food use pesticides and inert ingredients.
- Advising clients regarding adverse effects reporting requirements under federal and state regulations.
- Representing various clients on the transfer of pesticide registrations and data rights.
- Advising clients regarding import, export and transportation of registered and unregistered pesticides.
- Advising clients regarding FIFRA exemptions, including the “Treated Article” exemption.

Litigation

- We are co-national counsel for one of the world’s largest multinational agribusiness, biotechnology and life sciences companies in the dicamba herbicide crop damage litigation

currently pending in the U.S. which includes a multidistrict litigation proceeding in the U.S. District Court for the Eastern District of Missouri, as well as state court actions.

- Represent the largest producer of potash and the third largest producer of nitrogen fertilizer in the world in the areas of:
 - crop loss, including matters related to chemical drift/spray drift and volatilization claims in numerous states;
 - chemical exposure, including matters involving occupational and third party exposure to various agricultural fertilizers and chemicals;
 - unfair competition/non-compete disputes, providing representation in non-compete matters in state and federal courts of California, New York, and Delaware involving breach of contract and misappropriation of confidential information.
- Represented one of the world's largest multinational agribusiness, biotechnology and life sciences companies in at trial and on appeal in Bader Farms, the first dicamba lawsuit alleging crop damage to be tried in the U.S.
- Represented the largest producer of potash and the third largest producer of nitrogen fertilizer in the world regarding negligence and personal injury, after a highly favorable 2015 settlement in a catastrophic personal injury case.
- Represent one of the world's largest multinational agribusiness, biotechnology and life sciences companies in in a successful regulatory challenge related to the Arkansas State Plant Board's regulation of pesticides within the State. The lawsuit alleged that the process for appointing members to the Plant Board was unconstitutional and also challenged a regulation passed by the Plant Board.
- Represent the largest producer of potash and the third largest producer of nitrogen fertilizer in the world in a multiple fatality incident involving exposure to a restricted-use pesticide.
- Representing one of the world's largest multinational agribusiness, biotechnology and life sciences companies in as appellate counsel in the ongoing cases alleging that exposure to Roundup causes non-Hodgkins Lymphoma, including in post-trial motions that resulted in a 75% reduction of punitive damages.

Transactions

- Advised the largest U.S. producer of potash and phosphate fertilizer in its strategic partnerships with:

- an agricultural biotechnology manufacturer to bring a revolutionary nutrient efficiency product to market to boost yields across major row crops and improve soil health.
- a developer of microbial solutions that enhance plant phenotypes and increase crop yields.
- a leader in discovering and developing innovative agricultural products from diverse microbial communities.

- Represented one of the world's largest multinational agribusiness, biotechnology and life sciences companies in the sale of another global pesticide product line containing the herbicide sulfosulfuron to Sumitomo Chemical Co., Ltd.
- Representing a private equity client in the acquisition of a North American pesticide and agricultural chemicals products company focused on the agricultural and turf/ornamental markets, as well as subsequent bolt-on acquisitions to help grow the company.
- Representing a client in multiple sales of their worldwide interests in different pesticide active ingredients, including registrations, manufacturing capabilities, and intellectual property in 20+ different countries.
- Represented one of the world's largest multinational agribusiness, biotechnology and life sciences companies in the sale of the assets of one of its global agrichemical businesses, Latitude® wheat seed treatment fungicide, to Mitsui & Co., Ltd, a Japanese company. Mitsui acquired the Latitude seed treatment trademarks, as well as global product registrations, registration data, and manufacturing know-how (including manufacturing process patents).
- Representing a client in the sale of a worldwide pesticides market segment, which involved the transfer of hundreds of pesticide registrations throughout the world, licensing of significant intellectual property rights, and contracting back for manufacturing capabilities.
- Representing a client in the formation of a joint venture designed to distribute pesticides in a particular market segment.