Contaminants & Toxic Tort

Claims of bodily injury or property damage arising from the alleged exposure to toxic chemicals and hazardous substances in products manufactured, stored, distributed or used in a business' day-to-day operations are commonly brought against commercial enterprises. These "toxic tort" claims often involve a complex mix of local, state, and federal laws and regulations, and can garner unwanted media attention regardless of their validity. Anyone facing such allegations needs a legal team that not only understands the science and laws underlying such claims and how to defeat them in court, but who can also effectively navigate community and government relations, insurance and media coverage, and crisis management.

Through its decades of experience defeating claims involving both short-term and long-term exposure to hazardous chemicals, toxic waste and other regulated substances, Lathrop GPM's toxic tort team has the deep regulatory, litigation, trial and insurance recovery experience necessary to aggressively defend cases in any jurisdiction around the country. We stand ready to fight against "junk science" claims meant to spread fear and misinformation, recover insurance proceeds for the claims alleged, and work with our clients to manage publicity and present the actual, credible and persuasive facts in court.

Lathrop GPM's toxic tort team defends claims asserted by individual plaintiffs as well as multiparty mass torts and class actions. We also serve as national coordinating counsel for Fortune 500 companies with large industrial manufacturing capabilities that frequently find themselves targets of serial chemical exposure lawsuits brought across the country, including Multidistrict Litigation.

The Lathrop GPM toxic tort team is prepared to go wherever our clients need us to defend their interests and minimize the effects of such mass, repetitive litigation on their bottom lines. Thus, we represent our clients against complex, high-stakes toxic tort litigation at every level -

as national, regional and local counsel - and against a myriad of claims, including:

- Personal injury, including cancer, mesothelioma and occupational asthma
- Property damage
- Emotional distress
- Fear of cancer
- Increased risk of cancer or other injury
- Loss of use and enjoyment of property
- Medical monitoring
- Mesothelioma
- Multi-chemical sensitivity
- Occupational asthma

Our successes are based on our deep understanding of the toxic tort plaintiffs' bar, and the alleged "science" it sponsors. Working at the intersection of law and science, we routinely deal with complex scientific issues, and have debunked the "science" of toxic exposure to a multitude of hazardous substances, including:

- Agricultural wastes
- Anhydrous ammonia
- Asbestos
- Bauxite
- Benzene
- Chromium
- Creosote
- Dioxins
- Formaldehyde
- Herbicides, such as 2,4-D
- Hexavalent chromium
- Landfill wastes
- Metals
- Oil spills

- PCBs
- PCE/PERC
- Pentachlorophenol
- PFAS/ PFOS/PFOA
- Radiologically impacted material
- Silica
- Talc
- TCE
- Vinyl chloride
- Zinc

Our successes are also attributable to our trial prowess. When plaintiffs' attorneys attempt to expedite trial, hoping to leave defendants unprepared, we are unphased, as we are adept at swift and effective responses to such attempts. When plaintiffs seek to establish general and specific causation through allegedly "expert" opinions in, by way of example, toxicology, epidemiology, or medical monitoring, we know how to challenge these experts and get their so-called opinions excluded or limited, which almost is often key to a satisfactory resolution for our clients.

For our clients, we recommend a limited number of effective experts in our clients' defense, and favor those who have expertise in more than one area, focusing on the medicine and science behind chemical exposure claims. This helps to streamline opinion development and constrain litigation costs. We have long-term, successful relationships with experts in these fields, among others:

- Environmental engineering
- Epidemiology
- Exposure modeling
- Freight and transport
- Forensic chemistry
- Hematology
- Hydrogeology
- Industrial hygiene

- Neurology
- Oncology
- Pathology
- Photogrammetry
- Product engineering and design
- Safety regulations
- Toxicology

In cases involving environmental property damage, our team of experts assist in providing evaluations, recommendations and oversight of remedial activities to ensure we propose the most prudent and cost-effective course of action.

We are particularly sensitive to the interplay between remedial issues, allocation issues, liability insurance coverage issues and toxic tort exposure. Where appropriate, we have defended and pursued litigation by and against government agencies, and pursued and defended numerous contribution and cost-recovery civil actions. We assist clients in identifying other PRPs (potentially responsible parties) that may have contributed to, and are responsible for, the alleged damage or harm. We have initiated cost-recovery litigation for clients after our investigation identified additional PRPs, which then shared in the liability or contributed to a necessary remedial action. We have experience bringing CERCLA claims against hundreds of PRPs, with various levels of contribution, that significantly offset our clients' costs.

Not all environmental litigators are created equal. Few are adept at the type of "A to Z" defense Lathrop GPM provides to our toxic tort clients in hazardous substances and chemical exposure cases. In addition to advising on compliance and regulatory issues, and representing clients in all types of litigation matters but we also specialize in recovering insurance proceeds to cover our clients' out-of-pocket costs. Lathrop GPM's insurance recovery and toxic tort team work hand in glove to ensure that our clients' bottom lines are protected.

The "soups to nuts" capability of Lathrop GPM means that instead of working with multiple outside counsel (on regulatory, litigation and

insurance recovery issues), we are able to seamlessly represent our clients across practice and geographic areas.

Representative Experience

- We have been developing regulatory strategy for per- and polyfluoroalkyl substances ("PFAS") compounds for more than 10 years, and have defended PFAS litigation for more than three years. Much of our work has involved the landfilling of wastewater treatment sludges eventually determined to have been PFAS-contaminated.
- We regularly defend our client, a national waste service company, in cases around the country involving toxic tort claims. Through our decades of representation, we have become specialists in landfills and the solid waste management industry. Several examples of our work in this area include:
  - Successfully defended a Superfund site, negotiating with the Environmental Protection Agency, the Missouri Department of Natural Resources, and St. Louis County. The entire court process was completed in 10 months and limited future litigation for the client.
  - Represented client against a number of personal injury claims. The claims alleging exposure to radioactive waste in St. Louis County, represented by two lead plaintiffs, resulted in voluntary dismissal by request of the plaintiffs.
- We serve as national trial and coordinating counsel for a leading manufacturer and distributor of beauty and skin products in alleged toxic exposure claims, including scientifically-unsupportable claims that talcum powder was historically contaminated with trace amounts of asbestos. Our firm has been at the forefront in challenging junk science in this area and developed strategy to effectively reduce clients' financial risk. We were defending our clients at trial in Middlesex County in New Jersey when the COVID-19 pandemic hit and the judge declared a mistrial. A new trial will begin when courts reopen.
- Lead counsel for over 25 companies in cost recovery claims related to the Omega Superfund Site. *Alcoa, Inc. et al. v. APC Investment Co.*, U.S. District Court, Central District of California (February 2019)
- Our attorneys secured a unanimous defense verdict in a two-week federal court jury trial involving asbestos-related mesothelioma

claims against a provider of engineered construction products and services in the Central District of California. Plaintiff was the representative of a pipefitter who died in his 60s, who worked at San Diego shipyards. Plaintiffs attempted to blame the bulk of his asbestos exposure on our client's gaskets. (November 2014)

- We obtained a defense verdict for a manufacturer of fluid sealing devices in a case involving allegations that plaintiff's pleural mesothelioma was caused by asbestos exposure as a pipefitter while employed by our client. (January 2014)
- Represented clients in numerous toxic tort actions nationwide, winning summary judgments and voluntary dismissals of a large group of high-profile hexavalent chromium exposure class actions, mass actions and individual suits.
- We successfully defended and secured dismissal of a national manufacturer and distributor of paints and solvents in five separate Texas lawsuits, each of which had more than 100 plaintiffs who alleged physical injuries based on exposure to and use of the company's products.
- We successfully defended a chemical company in a wrongful death case. The plaintiff, a former employee, alleged toxic exposure to chemicals in the workplace. We negotiated a very favorable settlement with a significantly reduced payment obligation to our client.
- Lead counsel for a defense contractor in toxic tort lawsuits arising out of alleged groundwater contamination or air pollution near ordnance assembly and testing, R&D and rocketry facilities in Northern and Southern California. *Baier, Kerr, Taylor and Yeh v. Aerojet-General Corp.*, U.S. District Court, Central District of California; *Gatter v. Aerojet-General Corp*., Los Angeles Superior Court; *Haynes v. Aerojet-General Corp*., Sacramento Superior Court; *Caldwell v. Aerojet-General Corp*., Sacramento Superior Court