

Statement of Qualifications in Toxic Torts and Chemical Exposure

Based on decades of experiences in a broad range of cases involving chemical exposure, the attorneys in our Environmental, Safety and Toxic Tort practice group offer superior experience in cases involving toxic torts and other claims involving exposure to chemicals, such as those arising under products liability and environmental and safety laws. Our experiences in cases involving chemical exposure are not limited to those exposures occurring as a result of exposure to contaminants or pollutants in a workplace setting, but also involve chemical exposure in our clients' products or manufacturing processes (which often are characterized as "products liability" rather than "toxic tort" cases). Across the country, in a variety of jurisdictions and settings, we have defended clients against claims of personal injury arising from chemical exposure in the form of workplace exposure, products liability, and exposures arising from groundwater contamination, airborne contamination, dermal exposure, and ingestion. Such cases arise as personal injury claims, workers compensation claims, property damage claims, OSHA and environmental cases, and citizens' suits. We have experience in single-plaintiff and multi-plaintiff cases, and we handle cases which involve acute exposure as well as chronic exposures to chemicals manufactured, processed or used by our clients.

Multi-Discipline Experience

Our experiences have made us proficient in identifying and addressing the many complex issues that arise in cases involving chemicals and chemical exposure. We've seen that cases often involve a number of disciplines; for example: chemical exposure initially arising in a workplace setting may expand to include exposure to family members at home; a release of ammonia or other catastrophic air release at a plant can involve OSHA issues, products liability claims, personal injury claims by neighbors and evacuees, workers compensation claims, products liability claims, and environmental issues associated with cleanup and spill reporting. Latex sensitivity cases may involve concepts of products liability as well as toxic tort litigation, and can also arise as OSHA cases. In all disciplines, our attorneys use their wealth of experience to effectively and efficiently defend our clients at all levels: we are counselors, advisors, negotiators, and when necessary, trial lawyers and appellate advocates. Whether counseling, or litigating, we work actively with our clients to staff cases in an efficient and professional manner.

Because of the breadth and depth of experiences within our practice group, we are uniquely qualified to respond not only to common law toxic tort claims, but also to the challenges of a catastrophic emergency. Recently, a client endured a particularly complicated set of cases arising from a single transportation incident; a valve on a tanker containing an acutely poisonous substance broke during a product delivery. The resulting catastrophic release injured the truck driver and employees at the receiving facility. Furthermore, materials spilled onto driveways and into ditches, contaminating vehicles, structures,

sewers, industrial and residential properties. The release resulted in residential and commercial business evacuations, and the closing of a school.

We responded immediately to assist the client: we performed release reporting, secured evidence, assisted in engaging spill responders and remediation contractors; we oversaw media communications; contacted and worked with our client's insurers, managed community relations with the municipal government and state and local fire, police and emergency response personnel, evacuees and neighbors. The incident unfortunately spawned numerous claims relating to: the failed valve (products liability); release of an extremely toxic chemical (environmental reporting) personal injury to the truck driver (OSHA and worker's compensation issues), personal injury to employees at the facility where the chemical was being delivered (toxic tort, products liability and OSHA) cost recovery claims by the municipality property damage to the industrial facility and nearby residences (property claims including trespass and nuisance) and extensive decontamination and cleanup of the tanker, the building and structures affected, the vehicles in the parking lots, the parking lot itself, and adjacent and downgradient industrial, commercial and residential soils and surface waters. The incident resulted in myriad claims between the chemical manufacturer and supplier, the transportation company, the chemical purchaser, the municipality, the tank and valve manufacturer, the remediation company, and the insurers. The governmental agencies involved included EPA, OSHA, the state environmental protection agency, the state and local emergency management agencies, state police, and the municipality.

During the entire incident and in the months that followed, our attorneys worked closely with our client and the numerous involved parties to resolve all issues efficiently and professionally. As a result, our relationship with the client is strong, and they are an unfailing reference for the Environmental Safety and Toxic Tort practice group.

Chemicals of Concern

Our experiences include an astonishing range of chemicals, of varying toxicity, with potential for both acute and chronic health effects. Experiences include, but are not limited to cases involving PCBs, benzene, sulfur trioxide, sulfuric acid, hydrochloric acid, pentachlorophenol, a variety of chlorinated solvents (including perchloroethylene, trichloroethylene, trichloroethane and vinyl chloride), asbestos, heavy metals, mold, agent orange, toluene diisocyanate, ammonia, and various explosives, propellants, and perchlorate. We have also handled cases where plaintiffs have alleged multiple chemical sensitivity.

Exposure Pathways

The cases we handle involve exposure to the general public (for example medical device and pharmaceutical products liability) and occupational exposure (we have an unparalleled OSHA practice which includes a specialty in addressing workplace exposures and fatalities). We also have significant experience in cases involving releases of chemicals during transportation incidents, plant explosions and

catastrophes, ambient and indoor airborne releases of chemicals, exposure to asbestos and mold, spills to waterways, contaminated soils, and groundwater, chemicals and metals adhered to buildings, structures and containers, failed storage tanks and secondary containment, refrigerant system leaks, and vapor intrusion.

Jurisdictions

We have experience in numerous states and federal jurisdictions, in court as well as before administrative tribunals, including state and federal environmental protection agencies and occupational safety and health administrations. Our multi-plaintiff experience includes a number of class action cases in state and federal courts.

Clients

Our clients include not only manufacturers, processors and users of chemicals, but also toll manufacturers, transportation providers, recyclers and reclaimers, disposal companies, and clients involved in the packaging, sale and distribution of chemicals. We represent these companies not only when they are defendants in cases; we have prosecuted citizen suits against adjacent property owners whose chemicals have impacted our client's properties or employees; we represent businesses in the sale or acquisition of contaminated property and buildings, we assist our clients in assessing risk in financing transactions, and we are often involved in insurance and coverage matters.

Representative Toxic Tort and Exposure Cases:

Specific examples of our toxic tort experience include:

- In a class action brought by hundreds of homeowners in Illinois, we successfully represented a third-party defendant alleged by numerous direct defendants to be responsible for the groundwater contamination claimed by plaintiffs. Issues included successor liability and various CERCLA defenses. Seyfarth also represented this defendant in two related personal injury actions arising from the same alleged contamination.
- Seyfarth Shaw represented a landowner in a toxic tort action alleging that exposure to benzene caused plaintiff acute lymphoblastic leukemia.
- *Kellum v. Kuhlman Electric Corporation, et al.* (and related cases): We represented the main defendants in a number of toxic tort cases pending in the Circuit Court of Copiah County, Mississippi involving the alleged exposure to PCBs generated by a transformer manufacturer. Among the allegations of the plaintiffs, who live on properties adjacent to the plant, is that PCB run-off from the facility has contaminated the sediment in a drainage ditch leading to a lake northwest of the facility.

- *Adams v. PMC Inc. et al.*: Seyfarth Shaw represented a chemical manufacturers in two mass tort actions (each involving thousands of plaintiffs) arising from a release of sulfur trioxide on Chicago's southside. The release caused the evacuation of surrounding neighborhoods and led to multiple claims of chemical exposure. We settled one case for roughly \$40 per plaintiff, and obtained a favorable summary judgment ruling in the other case, which has just been upheld on appeal.
- *Valentine Mis v. Rhodia Inc.*: Class action involving hundreds of members filed in Indiana arising from a sulfuric acid release. Seyfarth settled the class action, after certification, for roughly \$500 per class member.
- *Redelmann v. Alexander Chemical, Inc. et al.*: Seyfarth represented a hydrochloric acid distributor in a case where plaintiffs alleged a nervous system disorder stemming from chemical exposure.
- *Anaya, et al., v. BASF Corporation, et al.*: In this agent orange toxic tort suit we defended against personal injury and property damage claims brought by residents of property neighboring and partially built upon a major cleanup site. After initial discovery plaintiffs withdrew their request for class certification of personal injury claims but continue to seek certification for property damage claims.)
- *BorgWarner*: We represented BorgWarner and related entities in numerous single and multi-plaintiff cases relating to PCB exposure.
- *Cutlip v. Campana Properties*: Seyfarth represented a property owner whose contractor improperly disturbed asbestos during construction activity, causing the release of asbestos dust and fibers into portions of the building. Certain employees of the owner's tenant sued our client in a class action seeking to recover the costs of medical monitoring that class members may incur in the future to periodically test to determine if an asbestos-related disease has manifested. We defended the case asserting that Illinois law would not recognize a claim for medical monitoring where the plaintiff cannot show any present injury. Additionally, working with experts, we concluded that named plaintiffs could not establish that they had inhaled asbestos fibers as a result of the improper asbestos removal, but only that the building had contained some asbestos, such that it would be inappropriate to impose the costs of medical monitoring on our client. After presenting our defense, the plaintiffs agreed to dismiss the case.
- *Trull v. Beloit Corporation*: We defended a manufacture of paper machines against claims by a neighboring family who sued for several million dollars and punitive damages alleging that the company had knowingly allowed pollution to migrate unabated through groundwater and on to the neighbor's property. Using scientific experts in litigation, we were able to establish the company had acted reasonably in investigating the contamination, that the contamination did not pose a

threat to the plaintiff's drinking water supply, and that any diminished property value was negligible. Faced with certain knowledge of a weak case, the plaintiffs then agreed to a modest settlement.

- *Mold Cases:* Seyfarth was defense counsel in a mold case wherein plaintiffs alleged that their exposure to mold caused a cluster of miscarriages in a community.
- *Shelby Williams:* We defended a client in the state court of New Jersey in multiple cases alleging our client was successor to a company that contaminated the drinking water supplier of the Camden, New Jersey with chromium; plaintiffs were seeking medical monitoring as well as other relief, including injunctive relief to remediate a contaminated aquifer.

Representative Products Liability Cases

In a notorious products liability case, we defended an Agent Orange manufacturer in a class action on behalf of more than 2.5 million U.S., Australian and New Zealand veterans of the Vietnam War, and their family members, for injuries allegedly caused by the veterans' exposure to Agent Orange in Vietnam; after five years of litigation, class claims were settled, and the claims of approximately 300 opt-out plaintiffs were dismissed on defendants' motion for summary judgment based on the government contractor defense and the insufficiency of plaintiffs' proof of medical causation) (propriety of class settlement's purported bar of claims of "future" claimants, i.e., veterans without manifest injury at time of settlement, to be addressed in appeal now pending in U.S. Supreme Court.) For a discussion of additional products liability experience, please see our website at www.seyfarth.com.

The breadth of our toxic tort and products liability practices across a broad range of cases and chemicals, combined with the depth of our attorneys' experiences, allows us to maximize results for our clients; at the same time, our culture and dedication to our clients ensures practical, effective counseling and representation.