TOXIC TORT LITIGATION

Our Clients

Our Toxic Tort attorneys represent clients engaged in a variety of business arenas, including chemical, oil and gas production, waste management, wood treatment, aerospace, consumer product manufacturing, building and construction, and transportation industries. We have substantial experience defending community exposure suits brought by notable members of the plaintiffs' bar, including Tom Girardi, Ed Masry, Walter Lack and Wendell Gauthier.

Our Services

Katten's attorneys understand the challenge that companies face when navigating the confusing array of federal, state and local laws and regulations, particularly when those laws and regulations are in a constant state of change. We are regularly called on by our clients to assist with a wide variety of environmental issues—from permitting power plants and redeveloping Superfund sites to crafting proactive strategies and policies to resolving environmental issues before they become roadblocks to continuing business. Our team is routinely successful in narrowing the scope of complaints, as well as in obtaining summary judgment in related cases.

The Toxic Tort practice draws upon lawyers with significant, hands-on experience defending major toxic tort litigation, scientific and technical knowledge in environmental fields, and familiarity with insurance recovery and health and safety law practices. Our group combines legal and practical knowledge with unparalleled resources to engineer effective solutions to the legal disputes facing our clients in this challenging area of the law. We also employ sophisticated computer GPS systems for the mapping of plaintiffs' residences, water distribution systems, groundwater aquifers and contaminant plumes, all of which aid consultants and trial counsel. Our attorneys maintain a network of contacts that includes the top professionals in virtually every facet of toxic tort litigation. We have relationships with the preeminent experts in the fields of oncology, epidemiology, toxicology, potable water distribution, contaminant fate and transport, geology, hydrogeology, air dispersion and modeling, industrial practices, real estate valuation and economics that provide our clients with strategic and economic advantages. By being able to engage the necessary capabilities without delay, our Toxic Tort practice provides clients with narrowly focused direction and helps them avoid the needless expenditure of resources.

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- Law360
  - Environmental Practice of the Year 2014
- The Legal 500 United States
  - Industry Focus – Environment: Litigation 2015
- U.S. News – Best Lawyers® "Best Law Firms"
Our Experience


This toxic tort and property damage action was brought against virtually all operators at the Ports of Los Angeles and Long Beach, including shipping companies, terminal operators, trucking companies and railroads. Our lawyers defended clients including more than 35 vessel and terminal operators, and were appointed to act as liaison counsel for all pretrial and trial proceedings. When filed, the complaint sought compensation for alleged violations of Proposition 65, personal injuries, emotional distress, property damage and fear of cancer purportedly arising from the release of diesel exhaust and volatile organic compounds into the San Pedro and Wilmington communities surrounding the ports. Specifically, plaintiffs claimed that the construction and operation of the China Shipping Holding Co., Ltd. Terminal, vessel traffic, hoteling, terminal operations and diesel trucks resulted in the emission of diesel exhaust and other chemicals. Claims of nuisance, negligence and violation of Proposition 65, among others, were asserted in the initial complaint and plaintiffs pursued the recovery of punitive damages.

We unified the defense on behalf of more than 120 defendants and filed various motions attacking the pleadings. Following several favorable court rulings, the claim for punitive damages was dismissed, as well as claims under theories of negligence and violation of Proposition 65. Significantly, plaintiffs’ personal injury claims were also barred. As a result, plaintiffs dismissed all trucking and shipping defendants in their entirety. The case against terminal operators remained only on a theory of common law nuisance seeking property damage, which was also subsequently dismissed.

- Joint Consolidated Groundwater Cases in California


Celi, et al. v. San Gabriel Valley Water Company  
Criner, et al. v. San Gabriel Valley Water Company  

These consolidated actions were brought by thousands of plaintiffs and arose out of alleged drinking water contamination throughout the San Gabriel Valley in Southern California. The cases uniformly asserted claims by residents for personal injury, property damage, wrongful death, fear of cancer, medical monitoring, punitive damages, and penalties and damages under California’s Proposition 65 and Unfair Business Practices Act. More than 100 defendants were named, comprised of chemical and other manufacturers, waste management companies and water purveyors. Our lawyers were appointed to act as liaison counsel by other defense counsel and the court on issues concerning pretrial and trial proceedings. The court's rulings on four phases of demurrers resulted in the dismissal of claims brought under theories of alleged violations of Proposition 65, ultrahazardous activity, negligence per se, public nuisance, fraudulent concealment, civil conspiracy, battery, alleged violations of the Unfair Business Practices Act, “stigma” damages, negligent infliction of emotional distress and plaintiffs’ requests for the recovery of punitive damages.

After focusing the litigation on the selection, discovery and trial of bellwether and preference plaintiffs, discovery commenced in earnest. Faced with significant discovery burdens, potential further dismissals and a united defense, plaintiffs made a de minimis settlement demand on our client, which ultimately resulted in a settlement of all claims of remaining plaintiffs for less than $1,500 per plaintiff.


This matter presents a textbook example of how
experienced counsel can successfully implement defense strategies. As initially filed, this highly publicized neighborhood toxic tort action alleged personal injuries, including cancer, emotional distress, property damage (specifically "stigma," "advertising injury" and loss of use) and fear of cancer as a result of the operation of the Sunshine Canyon Landfill located in Sylmar, California. According to the approximately 160 initial plaintiffs, their injuries were caused by exposure to airborne hazardous and biotoxid dust and debris, groundwater contamination and the contamination of Los Angeles’ potable water stored in a nearby reservoir. The court issued our proposed case management order early in the litigation, which required plaintiffs to respond to a lengthy and detailed questionnaire or be subject to automatic dismissal. Thereafter, the court dismissed approximately 40 plaintiffs for failure to provide responses and another 15 plaintiffs for failure timely to provide complete responses.

Our lawyers began to take the depositions of the remaining 105 plaintiffs and, as we anticipated, many plaintiffs voluntarily dropped out of the litigation rather than be further burdened by actively participating. We obtained approximately 40 such dismissals in this manner, leaving around 60 plaintiffs.

During discovery, the court granted our motion for summary adjudication, dismissing in their entirety plaintiffs' claims for "advertising injury" and all permanent property damage, as well as dismissing many plaintiffs’ claims for fear of cancer, emotional distress and personal injury. Further, we were able to limit plaintiffs’ ability to proceed on the majority of their remaining claims by obtaining verified statements through discovery from each plaintiff relinquishing his or her right to make certain claims. The court dismissed such claims at our request. As a result, the few claims that remained included approximately 12 personal injury claims; 35 continuing nuisance and trespass claims; 28 fear-of-cancer claims; and 40 claims for emotional distress. At this juncture, the court set a hearing on general and specific causation pursuant to the terms of our case management order and under Cottle v. Superior Court, which required plaintiffs to demonstrate, among other things, that (1) the alleged contaminants existed at the landfill; (2) such contaminants were delivered to plaintiffs through the air, soil and/or groundwater; (3) plaintiffs were exposed to the contaminants; (4) the contaminants are able to cause the personal injuries and property damage complained of; and (5) the contaminants did, in fact, cause each plaintiff’s alleged personal injury and property damage. While these hearings were pending, the court dismissed all remaining claims with prejudice.

• Dwayne Lee v. E.I. du Pont de Nemours and Co.

Our lawyers defended E.I. du Pont de Nemours and Company against claims raised by a worker at Structural Composites Industries who alleged his kidney failure was a consequence of exposure to solvents and other chemicals during the course of his employment. This matter was resolved by a de minimis settlement.

• Nelson v. Unocal, et al.

Our attorneys defended against claims that long-term occupational exposure to benzene and related chemical components of aromatic hydrocarbon and other petroleum distillate products allegedly distributed by Unocal caused plaintiff to develop acute myelogenous leukemia. After aggressively defending this case through the discovery phase, we obtained an extremely favorable settlement for our client.

• Del Monte Fresh

Our lawyers defended claims made by more than 6,000 plaintiffs—former agricultural workers resident in Honduras, Panama, Nicaragua and Guatemala—asserting the use of nematode pesticides in foreign jurisdictions caused sterility and birth defects. The numerous claims were consolidated into four cases filed in California Superior Court and, following significant discovery and motion practice, were dismissed on a variety of both procedural and substantive grounds.

• The Beaumon Trust v. Ameron, Inc., et al.

Our lawyers defended our client against property contamination, fear of cancer, emotional distress and personal injury claims brought by owners of
property contaminated with PCBs, chlorinated solvents, total petroleum hydrocarbons and myriad other chemicals. After elimination of the majority of plaintiffs' claims by motion during trial, coupled with our successful tender of defense to, and subsequently making, claims against our client's insurers, this lawsuit favorably settled during trial at no cost to our client.

- **Snyder, et al. v. City of Fallon, et al.**

We defended Kinder Morgan Energy Partners against a class action brought as a result of the documented leukemia cluster in Fallon, Nevada. This case implicated our client, Naval Air Station Fallon, ExxonMobil Corporation and the City of Fallon. The cancer incidents have been the subject of congressional testimony, CDC and other agency investigations, *The Donahue Show*, almost daily news-media coverage and an award-winning documentary. Our lawyers obtained a dismissal at the pleading stage of the litigation.

- **Environmental Law Foundation v. 938 South Lake Street**

Our attorneys defended a real property redevelopment company against allegations of personal injury, fear of cancer and liability under California's Proposition 65 as a result of plaintiffs' alleged exposure to lead dust and debris during renovation activities. We utilized our environmental counseling and negotiating skills in meeting with public interest groups representing the plaintiffs in order to resolve this matter efficiently. We reached a mutually beneficial settlement short of full-scale litigation, enabling our client to proceed with its redevelopment project without delay.

- **EDR, et al. v. Unocal Corporation**

We defended Unocal against real property and emotional distress damage allegations by commercial and residential property owners stemming from petroleum hydrocarbon contamination released from leaking underground storage tanks. The case was resolved by *de minimis* settlement following our execution of an aggressive discovery plan to bring to light inconsistencies in plaintiffs' claims and to expose plaintiffs' lack of proof on their damage claims.

- **Fanning, et al. v. Santa Fe Pacific Pipeline Partnership, et al.**

In this litigation, our lawyers defended toxic tort, property damage and medical monitoring claims, as well as claims under California's Proposition 65, brought by Wendell Gauthier of Louisiana on behalf of approximately 350 residents of Elmira, California. This highly publicized litigation originated out of the release of gasoline and diesel fuel from a pipeline owned and operated by our client that passed through plaintiffs' town. Due to the incendiary nature of press coverage and community reaction, we defended our client while at the same time assisting with the management of adverse media coverage. Our defense strategy consisted of two parts: first, favorably settle as many claims as possible and, second, at the earliest possible time, require plaintiffs to demonstrate actual injuries caused by the underground release pursuant to a hearing under *Cottle v. Superior Court*. This strategy was overwhelmingly successful. Statutory offers were made pursuant to the Civil Code in amounts of $1,000 to $2,000 per plaintiff, which required plaintiffs' counsel to convey each offer to each one of his 350 clients. The offers were made immediately preceding the year-end holidays, and one-half of the plaintiffs accepted the offers.

Second, we convinced the court that a *Cottle* causation hearing should be commenced without delay, arguing that the cost of continued litigation was unjust in light of our belief that the remaining plaintiffs could not satisfy their evidentiary burdens. Although a causation hearing such as this is almost always conducted immediately prior to trial, if at all, the court granted our request and required plaintiffs to make their showing within the first six months of the litigation. This is the earliest causation hearing schedule we are aware of and, of course, it placed incredible pressure on plaintiffs' counsel. As a result, plaintiffs who had not previously settled gained a renewed interest in settlement and the matter was favorably resolved.

- **Stevens, et al. v. Unocal Corporation, Texaco, et al.**

Katten successfully defended two oil companies against claims arising out of alleged benzene, toluene, xylene and ethylbenzene contamination
deposited during historical drilling operations in Ventura County, California. Because drilling operations, including the deposit of drilling muds on site, were permitted by the then-owners of the property in question, a motion for summary judgment was brought on the grounds that consent was an absolute and complete defense. The court agreed, granting judgment in favor of his clients on all claims and making this the first California decision barring claims of a landowner based on his or her predecessor's consent. The decision was thereafter affirmed by the California Court of Appeals.

**Dylan Kaleb Ridenour, et al. v. United States of America, et al.**  
**Marie Snyder, et al. v. United States of America, et al.**

This class action litigation followed the highly publicized leukemia diagnoses in Fallon, Nevada, and asserted claims of negligence, strict liability, nuisance and battery against the United States of America, fuel transportation companies, fuel refiners and manufacturers, among others. Plaintiffs asserted that the release of jet fuel and other contaminants into the environment of Fallon resulted in the diagnosis of acute lymphocytic leukemia in 17 children. They sought funding for an elaborate medical monitoring and research program. Based on plaintiffs' failure to demonstrate causation, a complete dismissal was obtained at the initial pleading stage of the litigation following the District Court's rulings on several motions to dismiss.

**Laico v. Chevron Chemical Company, et al.**

Our lawyers represented six oil companies in a joint defense filed by a plaintiff who claimed his pre-leukemia blood disorder (myelodysplastic syndrome) was caused by his low-level occupational exposures to defendants' benzene-containing petroleum products. We obtained summary adjudication of the vast majority of the plaintiff's claims, including fraud and punitive damages claims, resulting in a significantly narrowed case for trial. Plaintiff then sought to proceed against our clients on a strict-liability, failure-to-warn theory; however, we obtained a trial court ruling that our clients' material safety data sheets adequately warned of potential health hazards associated with prolonged exposure to high levels of benzene, virtually eviscerating plaintiff's case.

**Litigating claims brought under state statutes, such as California's Unfair Business Practices Act, and handling environmental warning obligations and claims advanced through citizens' suits premised on alleged violations of California's Proposition 65.**

**Defending clients in the manufacturing, oil, chemical, waste management, fuel transportation and aerospace industries against toxic tort claims alleging personal injuries caused by contaminated drinking water.**

**Litigating claims alleging cancer induction and claims for medical monitoring, as well as other claims alleging physical and emotional injuries associated with alleged chronic and acute exposure to a wide variety of consumer and industrial products and processes ranging from the manufacture, use, storage, transportation and disposal of radioactive material to solvents and rocket engine fuels, from lead-based emissions to everyday lubricants.**

**Representing clients in all types of personal injury and property damage litigation arising out of the release and alleged exposure to, among other things, 1,4-dioxane, ammonium perchlorate, benzene, carbon tetrachloride, diesel exhaust, ethyl benzene, hexavalent chromium, jet fuel, lead, methyl ethyl ketone, methyl tertiary butyl ether, N-nitrosodimethylamine, perchloroethylene, polychlorinated biphenyl, toluene, trichloroethylene, vinyl chloride, and xylene.**


Our attorneys defended multi-plaintiff claims for personal injury, fear of cancer, infliction of emotional distress and property damage based on alleged air, solid waste and groundwater contamination. The cases were filed by 150 residents living adjacent to the Unocal refinery who alleged long-term injuries caused by the refinery's day-to-day operations. After we filed a motion for summary judgment on causation, and a motion for implementation of our case management order, the case was settled on favorable terms.
• **Smith v. A.P. Green Industries, et al.**

This matter exemplifies the efficacy of experienced counsel ever conscious of the client's best interests. In this case, our lawyers defended a lubricant manufacturer against plaintiff's assertion that his non-mesothelioma lung cancer was caused by workplace exposures to asbestos and various chemical lubricants and solvents. Working with our client's research and development team, we were able to distinguish our client's product from those products known to cause or contribute to lung cancer, and obtained a voluntary dismissal within 90 days from the date our client was served with the summons and complaint.

• **Eugenio Galaz, et al. v. United States of America, et al.**

This class action followed the highly publicized leukemia diagnoses in Fallon, Nevada (the location of the US Navy's Top Gun School), and asserted claims of negligence, strict liability, nuisance and battery against the United States of America, fuel transportation companies, fuel refiners and manufacturers, among others. Plaintiffs asserted that the release of jet fuel and other contaminants into the environment of Fallon resulted in the diagnosis of acute lymphocytic leukemia in 17 children and sought funding for an elaborate medical monitoring and research program.

Based on plaintiffs' failure to demonstrate causation, our lawyers obtained a complete dismissal of the action at the initial pleading stage of the litigation following the District Court's rulings on several motions to dismiss. Plaintiffs appealed the ruling to the US Court of Appeals for the Ninth Circuit which, based on our briefing and argument, affirmed the lower court's dismissal.

• **Avila v. Eaton Corporation**

In this action, our lawyers defended claims brought by 51 homeowners residing near a detergent manufacturing plant who alleged personal injuries and property damage caused by the release of sulfur trioxide during facility testing operations. Following our development of the facts leading up to the chemical release, and our elimination of the threat of punitive damages against our client by dispositive motion, this matter was resolved by a *de minimis* settlement arranged while plaintiffs' counsel focused attention on other defendants' liability.


These highly publicized wrongful death actions arose out of the multiple diagnoses of acute lymphocytic leukemia in Fallon, Nevada, and asserted that chemicals released into the environment by defendants, either singularly or in combination, caused the subject pediatric cancers. Our client, a pipeline owner and transporter of fuels, was one of several named defendants. After significant discovery and motion practice, plaintiffs completely abandoned their claims against our client based on our demonstrated lack of exposure and causation—an extraordinary favorable result which avoided further adverse media attention and litigation costs.


Our lawyers represented McDonnell Douglas Corporation against hundreds of personal injury and property claims brought by Rancho Cordova, California residents. These claims were based on allegations that defendants caused neighborhood exposures to ammonium perchlorate (solid rocket fuel) in drinking water via contamination resulting from rocket engine testing in the 1950s and 1960s.