

ENVIRONMENTAL INSURANCE RECOVERY & PLACEMENT

KMCL attorneys have extensive experience in prosecuting environmental claims on behalf of policyholder clients under both modern and historical insurance policies. Over the course of more than 30 years, our policyholder successes have included securing coverage for asbestos-related bodily injury claims; toxic tort claims associated with pesticide plants; toxic tort, agency action defense, investigation and cleanup costs for manufactured gas plant sites; agency action defense, investigation and cleanup costs at chlorinated solvent sites; cost recovery for leaking underground storage tanks; and “reopener” defense and indemnity coverage for Brownfield sites. In addition to environmental matters, KMCL attorneys have also secured coverage for such diverse claims as property damage for a transformer failure at a major chemical plant and coverage for disability resulting from ruptured breast implants. KMCL’s experience includes litigating claims in state and federal courts in numerous jurisdictions, as well as mediations, arbitrations and other alternative dispute resolution proceedings. Further, we have helped clients settle countless insurance claims without resorting to litigation at all.

Beyond prosecuting coverage claims, KMCL attorneys have helped clients place dozens of environmental insurance policies including liability coverage for pre-existing conditions, so-called cost cap coverage for cleanup projects, lender liability coverage, contractor liability policies, post-remediation performance warranties, regulatory reopener coverage and remediation project wrap-up programs. In many cases, these efforts have included manuscripting specific policy terms as well as advising clients and negotiating coverage parameters. We find our experience prosecuting claims makes us better at negotiating new policies and that insights gained from designing coverage programs improves our ability to secure coverage when a claim actually materializes.

Representative Matters:

- Lead counsel in environmental coverage case that resulted in 2012 Alabama Supreme Court decision holding that EPA PRP Letters trigger the insurers’ duty to defend.
- Represented a real estate investment company buying one of the first sites ever removed from Georgia’s hazardous site inventory in securing environmental insurance to protect against the risk that the state agency might change its mind. When the state did, in fact, change its mind and re-listed the property, we successfully secured coverage under the environmental insurance policy for the costs of defending against both the state claim and a toxic tort claim brought by an adjoining landowner.
- Lead counsel for individuals and trusts benefitting the children and grandchildren of the deceased founder of a major pesticide plant facing claims for tens of millions in cleanup costs. Filed suit against the insurance companies covering the plant in the 1960s and 1970s. Won partial summary judgment, secured multimillion dollar settlement and obtained a release of liability from USEPA.
- Represented a company attempting to sell a portfolio of property that included a former rock quarry that had been converted to a pre-regulation era municipal landfill. Rather than having the buyer acquire the property directly, it acquired stock in an existing corporation, the sole asset of which was the environmentally challenged property. This acquisition was in turn made through a

newly formed limited liability company infused with cash equal to the low-end of expected cleanup costs. The firm then negotiated an environmental insurance policy to protect the members of that limited liability company (i.e., the actual buyers of the portfolio of property) against “blow-through” liability in the event a court were to disregard the intervening limited liability company’s corporate form, which allowed the deal to go forward.

- Lead counsel for policyholder sued by general liability carrier seeking declaratory judgment of no coverage for environmental contamination. Successfully moved for bifurcation of defense and indemnity phases and then won summary judgment confirming the carrier’s duty to defend. The carrier was then placed into receivership but the firm successfully negotiated a cash-out settlement from the state insurer insolvency pool.
- Negotiated full coverage in place (both defense and indemnity) for policyholder identified as a responsible party for a chlorinated solvent plume producing surface water impacts in stream more than 1000 feet from its facility.
- Represented owner of a portfolio of petroleum service stations in litigation against environmental carriers involving gasoline impacts at multiple sites. Secured multimillion dollar settlement through mediation following the filing of cross-motions for summary judgment.
- Negotiated pre-litigation settlement for coverage in place for manufactured gas plant site from historical general liability carrier.
- One of two primary outside counsel for multi-defendant global environmental insurance coverage litigation for major manufacturer against 18 primary and excess carriers. Took and defended numerous lay and technical depositions. Argued major motion in opposition to summary judgment by carriers. Involved in negotiations with numerous carriers and successful settlement of claims on behalf of client resulting in multi-million dollar award to client.
- Represented shopping center owner in successfully suing insurance carrier for costs involved in PCE releases from dry cleaners which allegedly contaminated a major southern city’s drinking water supply wells. Negotiated for carrier to defend claim and cover investigation and other costs.
- Responsible for negotiating insurance coverage for defense and indemnity costs regarding formaldehyde litigation from claims relating to manufactured housing (e.g. mobile homes).
- Successfully negotiated insurance coverage for a significant portion of defense and indemnity costs of a class action of over one million individuals in the Baton Rouge/ New Orleans corridor alleging personal injury for exposure to drinking water contaminated with phenol from the discharge of allegedly contaminated process water to the Mississippi River. Successfully supervised litigation of claim against remaining non-settling insurance carriers.
- Successfully negotiated with insurance carriers for substantial contribution to settlement and defense costs related to the defense of numerous dioxin litigation matters including large class action in Mississippi alleging property damage to riparian owners for dioxin sediment contamination from discharge into river.
- Successfully negotiated with insurance carrier for contribution of over 50% of costs of defense and indemnity in settlement with residents of historic African-American town in Louisiana who alleged personal injury and property damage from emissions from chemical plant adjacent to town.

- Successfully negotiated insurance coverage for indemnity and defense costs relating to defense of claim from City in Washington State and class action from 2000 residents in relation to release of chlorine gas from pulp and paper mill.
- Negotiated with insurance carriers for coverage of 100% of defense and indemnification costs related to claims from 35 individuals from exposure to chlorine gas released in City of Industry, California.