

ENVIRONMENTAL AND TOXIC TORT LITIGATION

Kazmarek Mowrey Cloud Laseter LLP (KMCL) has extensive experience representing clients in complex, high-stakes, multi-party environmental litigation before federal and state courts and administrative agencies throughout the United States. We have successfully prosecuted and defended cases arising under the major federal environmental statutes (including NEPA, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act), analogous state statutes, and common law tort claims representing millions of dollars of potential liabilities.

Because KMCL attorneys have handled, and resolved in a manner favorable to their clients, some of the largest and most complex environmental litigation in the Southeast and nation, we have the resources and know-how to tackle any environmental or toxic tort matter. We understand that no client enjoys litigation, environmental or otherwise, and we pride ourselves on providing our clients with creative and innovative strategies for quickly and cost-effectively prevailing, often through negotiation. But when talks are not productive or for other strategic reasons, we are ready to aggressively litigate to protect our client's interests.

In major cases, we often recommend a multi-disciplinary, team-based approach, especially where toxic tort or property damage litigation is a realistic possibility. While the correct approach always depends on the circumstances of a given case, we often recommend public relations, government affairs, and technical consulting components.

Representative Matters

- Handled simultaneous defense of enforcement investigations by U.S. Environmental Protection Agency, U.S. Department of Transportation, U.S. Agency for Toxic Substances and Disease Registry, Georgia Environmental Protection Division, Alabama Department of Environmental Management, and the Georgia Department of Health, along with a major private class action, concerning a pesticide release to the air allegedly exposing population within a 200 square mile area. Obtained favorable resolution of enforcement actions and settlement of class action.
- Successfully defended the City of Atlanta in litigation by Fulton County seeking to set aside contracts for the management of all of the City's residential waste. We defeated county's attempt to enjoin the performance of the contracts, obtained the complete dismissal of the county's claim, and successfully moved for the City's attorneys' fees. After oral argument before the Georgia Supreme Court, the dismissal was affirmed on the constitutional grounds we raised.
- Led the simultaneous enforcement negotiations and private party litigation defense for major manufacturer at site involving up to \$500 million in remedial costs. Finalized what was termed the most complex agreement ever entered by U.S. EPA Region 4 that provided for investigation and cleanup of up to 12,000 residential parcels, and litigated issues concerning the contribution protection effects of that agreement. Succeeded in obtaining very favorable settlement of ongoing consent order obligations with a cash-out agreement.

- Represented client as plaintiff in property damage lost profit litigation against major U.S. corporation in North Georgia obtaining \$20,000,000 verdict after 3-week jury trial regarding PCB damage to client's property.
- Represented client in \$200 million penalty case brought by United States alleging vinyl chloride releases from large chemical plant in Louisiana. Attended, took and defended numerous depositions of lay and expert witnesses. Supervised massive discovery response. Successfully negotiated resolution with government for penalty under \$4 million. Successfully developed and implemented plan to prevent claims by surrounding property owners regarding vinyl chloride releases.
- Represented client, along with two other PRP's, in multi-million dollar remediation effort along the shores of Lake Superior in the Upper Peninsula of Michigan regarding wood treatment and charcoal facility contamination. Successfully developed and implemented strategy for dealing with state and federal regulators, local municipality and county regarding remediation issues, local university regarding contamination on university property and successfully prevented suits by private property owners.
- Defended \$10 million property damage case involving alleged perchloroethylene release to shopping center property from client's delivery activities. Attended, took and defended numerous lay and expert witness depositions. Prepared and argued three motions for partial summary judgment on various issues. After a week trial, jury returned with verdict for only \$350,000 which was overturned with a motion for a JNOV.
- Served as co-counsel in a toxic tort suit in Louisiana in which approximately 400 contract workers filed suit against our client, a large chemical manufacturer, alleging harmful exposure to toxic chemicals accidentally released at the client's plant.
- Developed and implemented strategy for defense of hundreds of personal injury cases involving formaldehyde claims for manufacturing housing (e.g. mobile homes). Implemented strategy for handling serial cases. Additionally, responsible for negotiating insurance coverage for defense and indemnity costs regarding formaldehyde litigation.
- Served as primary counsel in defending and settling approximately 42 personal injury property damage claim arising out of explosion of pressure vessel from formaldehyde plant in Columbus, Ohio and alleged exposure to emissions from plant in a primarily minority neighborhood. Allegations, in addition to air emissions from explosion, also related to groundwater contamination and other ambient exposures. Case was brought to conclusion with settlement under \$1,000,000. Attended, took and defended numerous expert and lay witness depositions and successfully developed and managed strategy for settling cases.
- Responsible for overseeing defense of 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 into the Mississippi River. Class was certified and the litigation ultimately was settled for under \$10,000. Successfully negotiated insurance coverage for a substantial portion of said defense and indemnity costs and supervised litigation of claims against remaining carriers.
- Supervised the defense of numerous personal injury cases involving exposure to vinyl chloride, including development of the defense to claims that participation in trade association activities constituted a conspiracy in furtherance of the acts leading to exposure to the chemical.

- Successfully defended California OSHA claim for PCB exposure to employees at facility in California and negotiated significant narrowing of remedial activities required by California OSHA.
- On behalf of a municipal client, the team researched and identified responsible parties associated with manufactured gas plant operations dating back to 1850. We then filed a lawsuit in federal court against the corporate successor of an entity that dated back to the plant's origins. We litigated the case through trial in the liability phase, after which the case settled with the lead party making a multimillion dollar contribution to an escrow fund to help pay for the clean up.
- On behalf of the owner of a warehouse in Tennessee, we identified responsible parties associated with a chlorinated solvent plume migrating beneath the client's property. We filed suit in state court seeking injunctive relief and recovery for property damage. After discovery, the case settled with a substantial cash payment and the assumption of clean up responsibility by a major chemical company.
- Defended claim from City in Washington State and class action from 2000 residents in relation to release of chlorine gas from pulp and paper mill. Obtained dismissal of most claims. Settled remaining claims favorably. Successfully negotiated insurance coverage for indemnity and defense costs.
- Served as primary counsel for defendant in claims from 35 individuals from exposure to chlorine gas released in City of Industry, California. Took and defended numerous expert and lay witness depositions, argued two motions, obtained dismissals in a substantial number of cases and settled favorably remaining claims after approximately one year of litigation. Negotiated with insurance carriers for coverage of 100% of defense and indemnification costs.
- Assisted in the defense of numerous dioxin litigation matters including large class action in Mississippi alleging property damage to riparian owners for dioxin sediment contamination from discharges into river. Negotiated successfully with insurance carriers for substantial contribution to settlement and defense costs.
- Represented major southern metropolitan city in suits brought by Riverkeeper, State, and USEPA regarding wastewater discharges from POTW and CSO . Successfully negotiated comprehensive Consent Decree resolving matter.
- Represented a major utility in a toxic tort class action lawsuit with potentially dramatic political overtones. By combining a vigorous litigation strategy with an innovative settlement alternative, all claims were resolved favorably to the client out of court.
- Filed suit against a number of insurance carriers for a utility client seeking coverage for cleanup costs at more than a dozen sites. After several years of hard-fought litigation, the client secured tens of millions of dollars in net recoveries.
- Capitalized on a cost-recovery lawsuit, we were able to develop extensive evidence of participation by other potentially responsible parties. This, in turn, led to a multi-party settlement with the EPA and a greatly reduced share of cost to the clients.
- On behalf of a private landowner in Georgia, we identified responsible parties associated with historical dry cleaning operations on neighboring, up gradient property. We then filed suit in state court seeking to compel clean up and for cost recovery. The case settled after discovery with a substantial cash payment and a requirement by defendant to fund the cleanup.

- Represented individuals and trusts benefitting the children and grandchildren of the deceased founder of a major pesticide plant. Facing millions of dollars of cleanup costs, our attorneys filed suit against the insurance companies that wrote policies in the 1960s and 1970s. After initially losing in the trial court, we won reversal before the 11th Circuit. After additional litigation on remand, our clients secured partial summary judgment in their favor and we were able to secure a multi-million dollar settlement and obtain a release of liability from the U.S. EPA.
- Represented a local government in nuisance suit opposing a major industrial facility, resulting in a six-week jury trial and a split verdict. Capitalizing on the favorable aspects of that verdict, however, we then represented the client in obtaining a very favorable settlement that addressed the facility's most significant impacts, much to the client's satisfaction.
- Representing a local trade association, we intervened in a challenge by a number of environmental organizations to a major new environmental program. After participating in the successful defense of the program through several rounds of litigation, we then continued to represent the client in working with the state agency to develop the next set of rules that faced the prospect of similar challenges, thereby avoid additional litigation.
- Responsible for all toxic tort personal injury and property contamination claims and litigation at Georgia-Pacific Corporation for 10 years. Responsible for managing and setting up procedures and methods for handling approximately 10,000 asbestos personal injury cases, including attending, taking and defending numerous depositions of lay and expert witnesses, arguing motions before state and federal courts and trying several personal injury claims. Also responsible for setting up a nationwide "stable" of local trial counsel and expert witnesses. Responsible for implementing strategy for obtaining coverage from primary and excess insurance carriers for defense costs and indemnity, with result that 80% of all indemnity and expense costs were covered by insurance.
- Representative clients in toxic tort litigation include: Georgia-Pacific Corporation, Lynchburg Foundries, Internet Foundries, Gold Kist, Woolfolk Chemical Company, City of Atlanta, Augusta-Richmond County.
- Successfully led the defense of a major manufacturer facing threatened mass tort/nuisance action involving residents near major smelting operation. Using creative approach to aggressively challenge plaintiffs' claims, avoided suit and obtained favorable settlement.
- Obtained for Fortune 500 financial institution, the dismissal of multi-million dollar CERCLA litigation brought by a potentially responsible party group. The case involved the attempted imputation of officer liability to the institution as well as complex federal jurisdictional issues.
- Obtained for a Fortune 50 worldwide transportation and logistics company, the dismissal of RCRA citizen suit litigation brought by a California environmental organization in two separate proceedings.
- Co-counsel in case in Iberville, Parish Louisiana brought by minority residents of historic African-American town alleging personal injury and property damage from emissions from chemical plant immediately adjacent to town. Developed strategy for negotiating with town leaders and in particular, town minister. Successfully negotiated settlement of multi-million dollar personal injury and property damage claims including relocation expenses for reconstruction and relocation of entire historic African-American town. This not only resolved the claims but removed the possibility of future claims regarding emissions. Successfully negotiated with insurance carrier for contribution of over 50% of above costs of defense and indemnity in settlement.

- Represented a company sued by a community organization to block a cleanup that had been mandated by the state environmental agency. Recognizing that the client was merely caught in the middle of a controversy between two other parties, we were able to engage in a form of “shuttle diplomacy” between the warring factions, ultimately brokering a settlement that not only addressed the concerns of the community organization, but also resulted in a settlement with the environmental agency that produced a lower-cost cleanup for the client in the process. After a Court of Appeals decision that dramatically changed the principles governing the ability of adjoining landowners to file suit for so-called “stigma damages,” we were retained to file an amicus brief before the state Supreme Court. As a result of the appeal, the Court of Appeals decision was reversed on the key aspects of those claims. The clients on whose behalf we intervened were very pleased with the result, and the outcome remains good law in that jurisdiction.
- Successfully obtained for a Fortune 50 worldwide transportation and logistics company, the dismissal of toxic tort litigation brought in West Virginia.
- Successfully prosecuted litigation brought by large Southeast municipality against its landfill gas contractor.
- Obtained favorable resolution for the City of Atlanta in nuisance litigation alleging property damage and personal injury resulting from alleged sanitary sewer issues.
- Obtained favorable resolution for the most significant defendant in multi-party CERCLA litigation over an alleged landfill on plaintiff’s property.
- Obtained for Fortune 50 diversified chemical company, favorable resolution in multi-party CERCLA litigation in separate cases in New Jersey and Georgia.