

## Overview

For over 20 years, Steptoe & Johnson attorneys have been involved in virtually every toxic and mass tort issue litigated in the region. Team attorneys have served as national and regional counsel for defendants in asbestos litigation. In fact, team attorneys were involved in the drafting of the Case Management Order used in the State of West Virginia's asbestos litigation.

Our Toxic Torts and Mass Torts Team is comprised of lawyers with a track record of recognized excellence in litigating cases. Utilizing technology and efficiencies of scale, the team routinely handles regional litigation in a cost-effective manner. The team, which includes a board certified pathologist, a pharmacist and several nurse paralegals, routinely builds a medical defense in complex causation cases.

West Virginia is touted by the American Trial Lawyers of America (ATLA) as the ideal venue to introduce new toxic and mass tort liability theories. This is because the Supreme Court of Appeals has implemented Rule 26.01 of the West Virginia Trial Court Rules, which allows plaintiffs' claims to be consolidated before the West Virginia Mass Litigation Panel. No other state has a similar rule, which makes West Virginia the most attractive jurisdiction for toxic and mass torts.

Recently in West Virginia, a Fortune 500 company lost over \$2 billion in stockholder equity in a single day after a West Virginia jury found its products and premises to be defective. The drop in stock price occurred even though the company had yet to pay a single dollar and faced years of costly follow-up damage trials before it learned if its conduct had actually harmed a single plaintiff. Based on the trial format and the impact on its stock, the company chose to settle the claims. The stakes in West Virginia toxic and mass tort litigation are enormous. Partnering with an experienced team of legal professionals helps clients navigate the hazards.

## ASBESTOS LITIGATION

For two decades, team members have represented several national asbestos-related manufacturers, suppliers, distributors, and employers in asbestos litigation. The total number of claims resolved by the team has reached over 33,000, including West Virginia's seven mass trials and thousands of other individual cases. Claims defended include products liability, breach of express and implied warranties, medical monitoring, and fear of future disease (negligent infliction of emotional distress). The team's experience

was recognized in 2002 when it was selected to be counsel for an asbestos defendant that has asbestos claims pending in several jurisdictions. The team members also represent multiple insurance companies in the Unfair Trade Practices Act (UTPA) asbestos cases first filed in 2002. Plaintiffs in these cases allege violations under West Virginia's unique UTPA. In addition to the UTPA claims, team members represent companies in deliberate intent cases where employees allegedly exposed to asbestos attempt to pierce the workers' compensation immunity.

## **BENZENE LITIGATION**

Team members have been retained by several companies to defend benzene cases in West Virginia. Plaintiffs in these cases alleged they contracted leukemia, non-Hodgkin's lymphoma, and other blood-related disorders as a result of benzene or "trace" benzene exposure. These plaintiffs seek damages for current personal injuries, psychological injuries or "fear of future disease," and medical monitoring. Team members represent raw benzene manufacturers and suppliers, manufacturers and suppliers of benzene-related products (paint, solvents, thinners, gasoline), employers whose workers allege benzene exposure, and premises owners. Recently, the firm was retained by insurance carriers who performed gratuitous risk assessment surveys of industrial sites. These carriers were named as direct defendants based on their alleged knowledge that benzene exposure was occurring to workers above the threshold-level values.

## **CHEMICAL EXPOSURE LITIGATION**

West Virginia has a significant chemical manufacturing base. As a result, team members have played a pre-eminent role in the defense of personal injury claims premised on chemical exposure and multiple chemical sensitivity. Defendants that manufactured and distributed formaldehyde, latex, isocyanates, toluene, xylene, and a number of other complex chemical compounds have sought the assistance of team members to defend these claims. Steptoe & Johnson has been entrusted by several international and national companies to investigate chemical-related claims and to defend lawsuits in state and federal courts.

## **MOLD LITIGATION**

Predicted to be the next asbestos, mold has garnered national attention although the medical and scientific communities have not reached a conclusion about short and long term medical implications. Realizing the potential liability for various types of businesses, Steptoe & Johnson was the first West Virginia law firm to offer its clients, insurance companies, and trade associations free seminars about mold. Team members have defended mold claims and offered consultation to employers, public and private building owners/landlords, and insurance carriers about mold. Working with skilled scientists and certified mold inspectors, team members have counseled clients in personal injury claims, property damages, and first and third party bad faith liability. In 2002, the firm was selected by a national company to create and host several mold-related seminars in West Virginia.

## SILICA LITIGATION

Team members have represented companies that sold silica-containing products and manufacturers of protective equipment. Like asbestos, silica claims are being filed on an individual and mass tort basis in West Virginia. The same plaintiffs' law firms, historically active in asbestos litigation, are now moving into silica litigation and are routinely trying to use the same tactics and approaches used in the asbestos arena. In 2002, Steptoe & Johnson was selected by a client to be national counsel for silica litigation pending in Mississippi, South Dakota, Oregon, Texas, California, and West Virginia.

## Representative Experience

- Experienced in toxic tort litigation, including groundwater contamination, and Clean Water Act citizen suits
- Defended clients and insurance companies in various toxic and mass tort claims arising from allegations of chemical exposure, natural events (flooding and landslides) and alleged violations of various environmental and mining laws
- Defended multi-national chemical manufacturer in claim of alleged arsenic exposure
- Defended mass tort claims for mining and drilling related water and property damages, including medical monitoring
- Defended major timber company against negligence and nuisance claims stating that cutting timber caused widespread flooding
- Represented numerous types of defendants in asbestos litigation in West Virginia and other states
- Analyzed medical issues in toxic tort cases, which may show other causes for the claimed injuries or other non-related medical problems that would indicate decreased life expectancy and lower potential damages claims
- Represented various product manufacturers, premises owners, and contractors in toxic exposure cases
- Represented Fortune 500 equipment manufacturing corporations in asbestos litigation



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