



Environmental Litigation

Overview

Environmental and toxic tort litigation is one of Archer's core practice areas. Our attorneys have an established track record litigating some of the most challenging environmental, natural resource damages (NRD), toxic tort, contract indemnity, and product liability matters in the country, including occupational exposure, pharmaceuticals, and environmental causes. We have litigated in federal and state courts in various jurisdictions throughout the Northeast and Mid-Atlantic regions, as well as in the Midwest, California and Oregon.

We have served as lead counsel in hundreds of cases, including cost recovery/contribution claims involving landfills, former mining locations, former manufacturing facilities, or Superfund sites; underground storage tank claims; groundwater contamination cases; citizen suit claims; and natural resource damage claims. These cases have involved hydrogeological issues, air modeling, hydrocarbon fingerprinting, aging analysis, forensic accounting and other complex issues. Because of the nature of the claims, many of the toxic tort matters we have handled were considered mass tort litigation as they involved hundreds or thousands of plaintiffs.

Our team focuses on those issues specific to environmental matters, including, but not limited to:

- Environmental problems related to leaking underground storage tanks, soil and groundwater contamination and MTBE contamination
- Defense of property damage litigation brought by owners, including owners of sites allegedly contaminated by off-site migration
- Defense of personal injury and medical monitoring claims based on alleged contaminant exposure
- Defense of litigation brought under the Pennsylvania Storage Tank and Spill Prevention Act, the Clean Streams Law and the Hazardous Sites Cleanup Act, as well as the New Jersey Spill Act and other common law public and private cost recovery actions, including litigation seeking natural resource damages ("NRD")
- Assertion of affirmative claims against other responsible parties
- Petroleum Marketing Practices Act ("PMPA") matters and other marketing matters

Our litigators are very skilled in achieving fair settlements and have done so countless times. The key to these settlements is a combination of Archer's reputation as skilled and experienced environmental litigators who are formidable adversaries to the State and the long-standing relationships Archer has developed through those matters with high-level representatives of the Attorney General's office and the NJDEP. Our attorneys work to

quickly master complex factual and legal matters, identify critical issues, evaluate the merits efficiently, and to reduce and communicate complicated problems simply, practically and persuasively. Among our goals is to ensure that the litigation process causes minimal disruption to a client's business activities.

Archer routinely represents industrial clients in environmental and toxic tort matters arising under state and federal law from the time they begin navigating the regulatory process and start thinking about the possibility of litigation through the completion of the litigation process, including trial and appeal, if necessary. Archer understands that litigation is oftentimes a last resort, but that litigation success depends upon careful planning and strategies that take root before the formal litigation process begins, and Archer works with its clients from the very beginning of the process to make sure that those strategies are employed efficiently and effectively.

Attorneys in the group understand that providing legal advice on environmental matters means putting the law in context. All of our advice is tailored to a client's situation, requirements and business goals. In consultation with our clients, we determine the best way to maximize their chances of success. We know that different clients have different litigation objectives. We understand that in some cases an aggressive approach is warranted, while in others, a step-by-step approach is best. In all cases, we consult with our clients to define litigation objectives and carefully plan our approach to their cases to achieve their litigation goals.

As part of Archer's litigation defense efforts and regulatory negotiations, our attorneys are accustomed to working and coordinating in the most cost-effective manner with a team or experts, consultants, project managers, engineers and technical advisors to achieve results. Our group is well versed in such areas as toxicology, epidemiology, hydrology, and we have developed a database of material relating to plaintiff and defense experts.

Representative Experience

*Results may vary depending on your particular facts and legal circumstances.

- Served as lead trial counsel in the defense of toxic tort litigation in Detroit, Michigan brought by more than 1,300 residents related to emissions from a former secondary lead smelter. The plaintiffs alleged causes of action in negligence, nuisance, trespass, and under the Michigan Natural Resources and Environmental Protection Act. They sought damages for personal injury, property damage, loss of income, medical expense reimbursement, and medical monitoring. Following a successful bellwether trial involving 8 plaintiffs, in which the jury denied most of the claims and awarded only minimal damages to a few plaintiffs, we negotiated a favorable settlement for our client to resolve the claims of the remaining approximately 1,300 plaintiffs.
- Served as lead trial counsel in a purported class action on behalf of two classes of persons living in the town of Quapaw, Oklahoma who alleged injury as a result of lead contamination from historic mining activities: (i) a medical monitoring class of residents; and (2) a property owner class of residential,



commercial and government property owners (including the town and school board). We obtained dismissal of the plaintiffs' claims.

- Counseled major petroleum company client as it responded to a significant gasoline spill from a service station in a residential area outside Baltimore, Maryland, including advising the client on matters related to the regulatory process for addressing the contamination, provision of alternative water, public outreach and trial preparation. Then acted as joint trial counsel in the defense of claims brought by hundreds of residential and commercial plaintiffs seeking more than a billion dollars for loss of property value, medical monitoring, fear of cancer, and other damages allegedly resulting from toxic exposures. Our client obtained a judgment that rejected the claims of approximately 850 plaintiffs and paved the way for a favorable pre-trial settlement of the claims of another approximately 200 plaintiffs in a related matter.
- Served as lead trial counsel in products liability litigation in New Jersey related to a roofing worker's alleged development of Acute Myelogenous Leukemia (AML) as a result of alleged benzene exposure from working with or in the proximity to the clients' products. Obtained summary judgment for our clients after demonstrating that plaintiff's AML could not be attributed to our clients' products.
- Served as lead trial counsel in a purported class action toxic tort case in Luzerne County, PA, in which plaintiffs alleged personal injuries, including AML, Multiple Myeloma, Non-Hodgkin's Lymphoma, and Chronic Myelogenous Leukemia, due to exposure to benzene vapors inside plaintiffs' homes. Following our examinations of plaintiffs, class certification was denied and plaintiffs' personal injury claims were either dismissed or settled on favorable terms.
- Served as lead trial counsel in a purported class action lawsuit in Ocean County, New Jersey, in which plaintiffs alleged personal injuries, emotional distress and property damages due to exposure to benzene, MTBE and chlorinated solvents in well water. Successfully managed to obtain dismissal of class certification, then succeeded in having plaintiffs' individual claims for personal injury and medical monitoring dismissed. Plaintiffs' remaining property damage claims were settled on favorable terms on the eve of trial.
- Served as lead trial counsel in a lawsuit brought by a municipal water utility in Lacey Township, NJ to recover the cost of installing new wells and a water supply system for homeowners whose private wells were allegedly contaminated with benzene and MTBE. Following a bench trial, the Court entered judgment for the client.
- Served as lead trial counsel in a purported class action lawsuit in Pittsburgh, PA, in which plaintiffs claimed property damages, emotional distress, and personal injuries from gasoline vapors and benzene that allegedly entered plaintiffs' homes through the municipal sewer system. The Court denied class certification, and plaintiffs' individual claims were tried to a jury. The case settled favorably to the client during trial.



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