

Environmental And Toxic Tort Litigation

What Sets Us Apart

Keller and Heckman is uniquely positioned to represent clients in environmental and toxic tort litigation across the country through its integrated team of litigators, in-house scientists, regulatory attorneys and technical specialists. These are high stakes cases that often come down to questions of science and issues of regulatory compliance. Whether a case turns on product identification, toxicology and risk assessment, the fate and transport of chemicals or heavy metals in the environment, or the intricacies of a complex regulatory scheme, we have the expertise to efficiently handle a broad range of litigation issues that other law firms do not.

We have over 25 Ph.D. and graduate-level scientists and technical specialists. Our pre-eminent chemical and pesticide, food and drug, and oil and gas regulatory practices are well-known within each industry, with the firm's chemical and pesticide practice constituting one of the largest in the United States. Our regulatory lawyers, many of whom also have scientific and technical backgrounds, have worked in private industry, at state and federal agencies, at consulting firms, and in academia. At the beginning of each case, our litigators blend their defense capabilities with our scientific and regulatory expertise, mapping out the most advantageous strategy for our clients, whether focusing on early dismissal, securing a favorable settlement, or aggressively defending the case in court.

Who We Are

Keller and Heckman's nationally recognized litigation attorneys recently secured one of the "Top Defense Verdicts in California." Our litigation team counts among its members a former trial attorney at the U.S. Department of Justice, Environmental Torts Section; litigators with chemical engineering and environmental science backgrounds; a former environmental engineer and air quality consultant; and former environmental counsel at a global engineering firm.

We litigate cases across the country before federal and state courts, defending our clients in class and mass tort actions, as well as in single plaintiff cases, and serve as national trial coordination counsel in a number of toxic tort matters. We also represent clients before administrative and industry-sanctioned bodies, and in arbitrations, mediations, and other alternative dispute resolution forums.

Our environmental and toxic tort litigation experience includes:

- **Environmental Exposures and Contamination.** Defending personal injury and property damage cases involving soil, drinking water and groundwater contamination, as well as air and surface water pollution. These lawsuits typically include counts of trespass, negligence, nuisance and strict liability, as well as statutory and regulatory violations.
- **Product Liability and Workplace Exposures.** Handling product liability and workplace exposure cases claiming bodily injuries from allegedly hazardous chemicals and other materials. These lawsuits may involve claims of manufacturing and design defects, failure to warn, breach of warranty, and consumer fraud.
- **Enforcement Actions.** Defending against environmental enforcement actions, whether before administrative bodies or courts, under the Clean Air Act (CAA); Clean Water Act (CWA); Resource Conservation and Recovery Act (RCRA); Emergency Planning and Community Right-To-Know Act (EPCRA); Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA); Toxic Substances Control Act (TSCA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and state/local programs.

- **Appellate Practice.** Representing industry clients and trade associations at the appellate level on critical environmental and regulatory issues before the United States Supreme Court, the D.C. Circuit, and other federal and state appeals courts.
- **Internal Audits and Investigations.** Conducting internal investigations and company audits involving environmental practices and regulatory compliance under numerous statutes, including those listed above, as well as the Safe Drinking Water Act, the Occupational Safety and Health Act, California's Proposition 65, the U.S. Department of Transportation hazardous waste regulations, and underground storage tank requirements. We also have extensive experience managing liability and obtaining relief under the U.S. Environmental Protection Agency's (EPA) "Audit Policy" and state analogues. The firm also conducts audits for compliance with requirements associated with the U.S. Food and Drug Administration, the Consumer Product Safety Commission and the Consumer Product Safety Act.
- **Insurance Counseling.** Advising clients on insurance coverage matters, and seeking defense and indemnity from carriers arising from environmental and toxic tort claims.

What We Do

We Have The Scientific Advantage

Our firm is built on our ability to face science head-on. With a 1:3 ratio of scientists to attorneys, Keller and Heckman is a leader in the use of interdisciplinary approaches to problem-solving. Since 1971, our in-house scientific staff has worked closely with the firm's litigators on matters of technical complexity. We are well-equipped to look at our clients' products, operations and industries, and draw on our expert talent pool to mirror that in our case staffing. This provides a scientific advantage in any litigation or enforcement matter – we already understand your products inside out, which cuts down on inefficiencies and leads to a greater impact in the courtroom or before a regulatory agency.

We have specialists in the following areas:

- organic chemistry
- inorganic chemistry
- toxicology
- health and environmental risk assessment
- physical chemistry
- biochemistry
- carcinogenesis
- enzymology
- nanotechnology
- bioengineering
- fate and transport of chemicals

Our attorneys have litigated cases involving numerous materials, including:

- volatile and semi-volatile chemicals
- specialty chemicals
- pesticides
- heavy metals
- radioactive waste

Keller and Heckman's litigators work closely with our experts to bolster each client's legal arguments and present the strongest scientific and technical case possible, while at the same time exposing weaknesses in the opposing experts' opinions. We have successfully gained significant litigation advantages in the past by excluding opposing expert testimony before trial through *Daubert* and similar motions.

We Are Focused By Industry And Have A Global Reach

Keller and Heckman's clients come from virtually every industry sector that requires some type of environmental legal counseling. We represent businesses ranging from Fortune 500 companies, including 30% of the top 50 companies in the United States, to cutting-edge start-ups and major trade associations.

Industries and products we serve include:

- chemicals
- heavy metals
- pesticides
- plastics
- adhesives/paints/coatings
- petroleum and gas
- soaps/detergents
- paper and wood
- preservatives
- food
- personal care
- animal feed
- water treatment
- fibers/clothing
- computers/electronics
- appliances
- packaging
- pharmaceuticals

The firm's industry-by-industry focus also means that we are familiar with the entire lifecycle of our clients' products, from raw materials and supply chain management to product safety and finished consumer products, all the way through to reuse, recycling and disposal. As a result, our litigators are able to rely on this comprehensive industry expertise to thoroughly understand whatever aspects of a client's business are implicated in an environmental or toxic tort lawsuit, as well as devise a litigation strategy that takes into account the client's overall business needs.

Representative Litigation Experience

Environmental Exposures and Contamination

- Served as counsel for a specialty chemical manufacturer in a \$50 million action filed by a municipality alleging that chemicals, including DDT, were disposed of at a former manufacturing plant and contaminated or threatened to contaminate public drinking water supplies.
- Defended against 18 consolidated cases filed on behalf of residents, including minors, living in northeast Oklahoma alleging lead poisoning from exposure to lead mining wastes.

- Advised Midwest utility on potential coal ash suit involving alleged property damage and personal injuries related to airborne dust from a landfill.
- Represented a chemical company in a state action filed by 150 plaintiffs alleging that various insecticides and pesticides applied at a research facility drifted onto nearby properties, allegedly causing cancer, other personal injuries and property damage. The case settled on favorable terms.
- Defended against scrap metal dealer's lawsuit seeking more than \$12 million in personal injuries and property damage resulting from exposures to radioactive metal inadvertently sold by the defendant. The case was tried and a verdict of no damages was obtained.
- Represented the owner of several leaking underground storage tanks against a real estate developer who alleged \$10 million in damages stemming from petroleum contamination of soil and groundwater. The case was tried and a favorable verdict was obtained for the defendant.
- Defended against a lead paint lawsuit involving six minors claiming more than \$10 million in bodily injuries. The court granted defendant's summary judgment motion.
- Served as counsel for major food manufacturer in Superfund litigation in various federal and state courts around the country.
- Represented a chemical company in a state hazardous waste cleanup contribution action.

Product Liability and Workplace Exposures

- Currently serve as national coordination counsel for Fortune 100 distributor of brand and generic pharmaceuticals defending multiple Reglan/metoclopramide bodily injury lawsuits venued in state and federal courts nationwide.
- Currently serve as national coordination counsel for trade association defending welding fume bodily injury lawsuits in state and federal courts across the country.
- Served as national coordination counsel for trade association defending vinyl chloride monomer bodily injury lawsuits in state and federal courts nationwide.
- Defended a major food manufacturer involved in threatened wrongful death lawsuit concerning food poisoning. The case was resolved without necessity of a lawsuit being filed.
- Represented a large trade association defending multiple bodily injury lawsuits arising from incidents at McCormick Place, Chicago, Illinois.

Environmental Enforcement Actions

- Represented oil storage and distribution company in EPA action to enforce the CAA fuels regulation.
- Served as counsel to pharmaceutical company in responding to RCRA notice of violation for improper management and disposal of laboratory wastes.

- Assisted treated wood industry in blocking EPA efforts to compel reporting of certain emissions under EPCRA. Subsequently filed successful challenge and obtained repeal of underlying EPA policy.
- Represented major appliance manufacturer in responding to compliance inquiries under federal energy efficiency regulations.
- Defended major manufacturer in CAA New Source Review enforcement action regarding VOC emissions.
- Represented chemical importer in EPA enforcement action resulting from EPA review of TSCA inventory update reporting practices.
- Defended company in EPA enforcement action arising from CAA Risk Management Planning inspection of facility with anhydrous ammonia system.
- Counseled owner/operator of food manufacturing facilities in responding to state enforcement actions regarding compliance with air, wastewater and hazardous waste permitting and handling requirements.

Appellate Practice

- Represented major chemical company before the D.C. Circuit in challenge to rules issued under the CAA significant new alternatives program.
- Served as counsel for plastics trade association before the D.C. Circuit in challenge to CAA maximum achievable control technology rulemaking.
- Represented wood preservative manufacturer as *amicus curiae* before the Ninth Circuit related to a citizen's suit to enforce the CWA and RCRA against a major utility and a large telecommunication company.
- Represented two Fortune 150 manufacturers as *amici curiae* before a federal district court in a suit involving the regulation of a workplace safety device by the Food and Drug Administration.
- Served as counsel to defendant before the Sixth Circuit on statute of limitations issue in a toxic tort case involving exposures to radioactive metal.

Internal Audits and Investigations

- Conducted multimedia environmental compliance audits at biotechnology and food manufacturing facilities.
- Assisted with nationwide audit of oil storage and distribution terminals.
- Conducted environmental audit of distribution facilities for global computer and electronics manufacturer.
- Advised chemical manufacturer during nationwide audit of risk management plan compliance at ammonia and explosive gas storage facilities.

- Conducted mock multimedia environmental compliance inspection of chemical product manufacturer's facility; advised company on obtaining relief under state and federal audit policies.
- Conducted multi-facility environmental audit of retail distribution facilities; assisted company in developing environmental management practices.
- Conducted TSCA and FIFRA compliance audits of chemical manufacturing operations, including reviews of recent corporate acquisitions and assisted companies in obtaining full penalty mitigation under EPA's "Audit Policy."
- Conducted large-scale, nationwide EPCRA compliance audits for chemical and consumer product manufacturers.

Insurance Counseling

- Served as counsel for petroleum company to recover seven-figure indemnity for clean-up costs associated with an underground storage tank leak.
- Represented trade associations in recovery of defense and indemnity under multiple CGL "occurrence" policies for long-tail toxic tort.
- Served as counsel for food manufacturer in recovery of defense and indemnity under multiple CGL "occurrence" policies for long-tail Superfund claims.

How We Do It

We place our clients in the most advantageous position possible. Our interdisciplinary approach leads to creative solutions and resourcefulness resulting in efficient and superior resolutions to our clients' cases. In the end, our success stems from collaboration with our scientists and regulatory lawyers, as well as our trial advocacy, diligent trial preparation and case management excellence.

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