MONSANTO, PCB'S AND FUTURE TOXIC TORTS

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I. INTRODUCTION

Large toxic tort cases can be lengthy, expensive, and complicated to pursue. Few lawyers who have not litigated such cases appreciate the complex issues that arise and the practical solutions to those issues. As with any case, proper assessment and preparation are key. The factors to be considered in these cases, however, vary dramatically from normal attorney intake procedures. From the logistical perspective of managing thousands of clients, difficulties of proving causation, facing a well funded adversary, to the perseverance required to complete such a long, expensive journey, these cases present challenges to the best of attorneys. However, every once and a while, a case comes along that demonstrates how things should work; *Tolbert v. Monsanto* was one of those cases.

A. History of Monsanto

For 40 years Monsanto produced PCB's. They stopped producing it in 1977 (two years before the nationwide ban) after they spent years dumping millions of pounds of the toxin into open-pit landfills. Long before the government changed their regulations, Monsanto was aware of the dangerous nature of the chemical and failed to handle it accordingly. This caused serious contamination of Calhoun County, Alabama. A predominately rural area, the residents of Calhoun County fished their lakes and rivers and harvested their personal gardens never knowing that they were putting themselves and their children at risk. When the community did start suffering, they were faced with the challenge of what to do. Once they sought legal representation, their attorneys faced unique challenges as well.

B. Case Selection

The toxic tort case has the largest upside for verdict/settlement of any case litigated today. (1) *Tolbert v. Monsanto Company, et al.*, United States District Court for the Northern District of Alabama, Southern Division; (2) *Anderson v. PG&E*, Superior Court for the County of San Bernadino, Barstow Division; (3) *Perrine, et al. v. E.I. Du Pont De Nemours and Company, et al.*, Circuit Court of Harrison County, West Virginia; (4) *Leach, et al. v. E. I. Du Pont de Nemours and Company,* Circuit Court of Wood County, West Virginia. It also, however, has the most risk. Cases in this area routinely cost more than $1M and more (much more) to prepare for trial. This makes case selection and co-counsel very important.

Faced with an injured party, every attorney must assess the claim and chances of recovery. However, when faced with a toxic tort case, the normal considerations of injury, bad conduct, causation, and damages become incredibly complex and only part of the assessment. A prime consideration affecting every aspect of these cases is the massive amount of resources required to litigate them. No single plaintiff can afford to pay for this type of litigation and only a few firms in the country can do so.

One of the first things to consider is the number of clients. Once viable clients are identified, you must assess the client base. This includes several factors. You must consider the number of clients you reasonably believe will seek your representation. Normally firms cannot afford to do this type of litigation on contingency agreements for a small number of individuals. The decision to bring personal injury or property damage claims will have a lot to do with this decision. If your case will include a large number of clients, you need to consider the client base's proximity to each other, organization, and leadership. Finally, you need to consider how much of the

defendant's overall pollution problem is represented by this group of plaintiffs. Almost all defendants will be more inclined to resolve cases if more of its problem can be resolved with your suit. These factors can not be fully assessed initially but must be considered throughout the pre-filing phase of the suit.

These factors weighed heavily in favor of the plaintiffs in *Tolbert*. By the time Beasley Allen was contacted, there were 1500 clients. They were well organized and had strong community leadership. The effects of the toxin were reasonably restricted to the residents of Anniston and the surrounding area. Due in large part to these facts, the client base grew to an eventual total of 20,000+ members representing the bulk of Monsanto's outstanding problem.

Another thing to consider is the known history of the toxin or suspected toxin. You must learn everything you can about the toxin. There are multiple resources that can be used. For property-based claims, the existence of the toxin on the land must be either a nuisance or constitute a compensable trespass. For personal injury, the toxin must be a (and perhaps *the*) cause of the injury. You must also be able to prove the toxin came from the defendant and into your client's body. Science can be used to prove such things, but prior litigation is a better indicator of the probability of a favorable ruling. If the toxin has previously been found to legally cause this specific type of injury, it is more likely a different court will follow suit.

PCB literature on causation was fairly strong. There was evidence that the companies knew the chemical caused specific illnesses in humans back in the 1930's. By the 1990's, the EPA was labeling PCB as a probable carcinogen with further studies linking the toxin to other illnesses. All of this, however, was already litigated and legally proven. Between 1980 and 2001, there were over 280 federal suits involving

PCB's, 61 of which specifically involved personal injury. Much of the scandal caused by PCB's, to include a role in the Love Canal disaster, was well publicized and known to many jurors. PCB's character had been firmly established.

The next thing to consider is the suspected site. *This is very important.* Has the site been identified by government authorities? Has it been the subject of previous litigation? As with the harmful properties of the toxin itself, prior litigation of the suspected site adds weight to the plaintiff's claims. However, with both of these, be aware of the possible impact on the commencement of the time allowable under the applicable statute of limitations. A further discussion of the statute of limitations is below.

Anniston was the first American site to commercially produce PCB's back in 1927 and continued to produce it until 1977. Monsanto was the only authorized producer in North America. There were a handful of suits either pending or resolved at the outset. Significantly, while *Dyer v. Monsanto* and *Owen v. Monsanto* had recently settled, no cases directly involving contamination from the Anniston plant had been completed on its merits. However, the Environmental Protection Agency had identified it as a PCB polluted site by 2000 and Monsanto Co. as the polluter. *U.S. v. Pharmicia Corporation f/k/a Monsanto Co.*, 2003 WL 22319070 (N.D. Ala.) (The EPA had issued an Administrative Order of Consent in October 2000 concerning the Anniston site).

Getting your arms around the whole problem can be a difficult but very rewarding task. Not only do you put yourself in the driver's seat in mapping out the litigation strategy, but, as previously mentioned, the more of the problem you can get a handle on, the better your claims should be. The two main factors you need to consider in this area are pending cases and the number of total plaintiffs.

While past litigation or litigation well underway can be a positive sign for case selection, pending similar cases may be more of a negative. In order to achieve judicial economy, the judge may order the cases consolidated. Now you have a partner whether you wanted one (or that particular one) or not. You must now work together in a case involving numerous clients with varied but related claims that are, themselves, complex.

Additionally, if there exists a smattering of cases, the likelihood of resolution is diminished. A defendant has motivation at this point to either resolve them all or see that the first one fails on the merits. Unlike a class or mass action, multiple cases may favor the defendant because they are allowed to concentrate on smaller groups and apply lessons learned to subsequent suits.

When we became involved in *Monsanto*, the only pending case of significance was *Abernathy v. Monsanto* pending in state court. That case involved PCB exposure attributed to the Monsanto Anniston plant causing both personal injury and property damage much like our *Monsanto* case. It had been ongoing since the early 1990's and by the time we got involved in the fall of 2001, it was well on its way to trial. Based on the advanced stage of that case and the different jurisdictions (our *Tolbert* case was filed in federal court) we believed it unlikely the cases would be judicially consolidated. During mediation Monsanto expressed a preference for settling both cases, or neither of them. The federal judge in our case was presiding over the ongoing case and eventual settlement between the EPA and Monsanto. His vision of the entire landscape prompted him to investigate involving the *Abernathy* plaintiffs in our mediation. It is strongly believed that this confluence of events was the key motivator behind Monsanto's decision to resolve the cases. All parties believed that the three suits, the EPA suit, the *Abernathy* suit, and our suit, effectively constituted Monsanto's entire

Anniston problem. With the global settlement that included the settlement agreement with the EPA by reference, Monsanto believed they could end this entire issue and resolve over 21,000 suits. Obviously, this was a strong motivator.

One thing to be wary of in a toxic tort case, especially one involving personal injury, is "toxic soup." This is a tongue-in-cheek term for a situation where more than one toxin is present and/or more than one source of the toxin. This exacerbates the already complex and difficult task of proving causation and liability. In the form of causation, you must now prove both that this toxin can cause this type of injury ***and*** that that these other toxins are not to blame for your client's injury. This quagmire only thickens when you add multiple producers of the toxin at issue. Now you must prove whose toxin it is.

Anniston is a very industrialized area and would definitively have been a candidate for this complication. However, with Monsanto being the only North American producer of PCBs and their plant, which had been producing if for fifty years, located within the area, the issue never truly manifested itself. While there was some effort by Monsanto to divert liability, it was a halfhearted effort that was easily dismissed by the court. This is not always typical.

Setting aside issues of which toxin is "the toxin," one thing an Alabama attorney must be aware of is the Statute of Limitations in this area. Issues specifically regarding Alabama law and this in connection with personal injury claims are addressed later. However, CERCLA provides a highly beneficial federal provision which specifically states it will supersede state laws. In state court cases for either personal injury or property damage caused by the release of toxins into the environment, the federal commencement date will be used in lieu of an earlier state law commencement date for

the running of the statute of limitations. 42 U.S.C. § 9658. The federal commencement date is triggered not only by the discovery of the loss but, significantly, the discovery of the connection between the loss and the specific release in question. 42 U.S.C. § 9612(d)(2).

Pending in state court in 2001 was *Payton v. Monsanto Co.*. 801 So.2d 829 (Ala. 2001). The Alabama Supreme Court had just overturned Monsanto's summary judgment based on the timeliness of the claim. *Id.* Apparently the CERCLA rule was not argued as that case was remanded based upon whether the polluted site created a continuing release of toxins and, therefore, a continuing tort. *Id.* at 833-836. However, the CERCLA rule precluded the need to show such a continuing tort in the *Monsanto* case and only required a showing of when the connection between the injury and the toxin release was discovered.

II. CLASS ACTION vs. MASS ACTION

Before filing such a suit, you must be aware of the costs and benefits of filing a class action versus a multi-plaintiff action (hereinafter referred to as mass action). These considerations are essential. Class actions look very attractive, but certification is often very difficult. Relatively new techniques in case management can make mass actions just as, if not more appealing.

A class action benefits the plaintiff in that, once the class is certified, the case can proceed with only a handful of named plaintiffs. This reduces the early costs for the plaintiff class as they only need to do expensive testing on this small number of plaintiffs. However, class certification is not an easy task. It is difficult to get a personal injury class certified due to the complex nature of the injury and plaintiff-specific causation. This may be easier to overcome in a jurisdiction that recognizes medical

monitoring as a separate cause of action. Alabama lawyers should be aware that Alabama is not one of these progressive states. Even where the injury claimed is only property damage, some courts are very reluctant to certify class actions in toxic tort cases. As Alabama courts fall into this category, the likelihood of getting a toxic tort case involving personal injury certified in Alabama is slim.

There are advantages to seeking certification. It does not prevent the plaintiff from filing suit individually (to include in a mass tort action) if the class is not certified. Significantly, it tolls the statute of limitations for all perspective class members. This often means more plaintiffs end up coming forward. If your class is certified, be very happy for your clients. If not, your numerosity will aid you in the mass action.

There are specific issues inherent to mass actions. However, these issues need not be dispositive of the case. With the difficulties of class certification created by case management styles, a mass action does not necessarily take longer to litigate than a class action suit. Additionally, by filing as a group, the plaintiffs maintain their strength created by their numbers.

The practical considerations of available resources can be dispositive of the plaintiff's case. Toxic tort issues are difficult and complex. Not surprisingly, the litigation of these issues is expensive and will last multiple years. The defendant will bring experienced, knowledgeable, and well funded representation to the fight. You must meet this challenge with a team who possesses the resources and commitment to reach resolution for your clients.

One of the primary keys to successful litigation in this area is the knowledge and experience of the attorney. Most attorneys will never face such daunting challenges as proving a chemical compound released by this defendant caused this plaintiff to

develop cancer 10 years later. Even fewer will face such a task for a client base numbering in the thousands. These challenges require special attention.

The complexity of the law governing this area is dwarfed by the need for a clear understanding of the scientific and medical principals required to prove the case. As a toxic tort litigator you must not only pass the bar, you must have a solid understanding of the science behind proving your case. Where an attorney starts from ground zero, he or she starts this journey already behind because the opposing attorney will be fully versed.

These issues may be overwhelming, but they can not be ignored. Class certification, when you can get it, can constitute the first two years of the suit. Mass actions are no better in that it takes a significant amount of time and at least a couple personal visits to the judge just to get a scheduling order. Simple considerations like staffing become important as you must be staffed sufficiently to deal with traditional client management issues but on this scale. The financial outlay will be substantial; the complicated testing and the experts required to explain it all are expensive. Exacerbating all of this is the fact that these cases take years to resolve. You will be paying for all of these expenses in the expectation of a recovery that will be years in the future.

A. Case Management of Mass Actions

Class Actions were created to provide injured parties whose damages may not have been substantial enough individually a viable avenue for redress. This does not mean, however, it is the only option. Due in large part to the complex nature of proving causation in toxic tort cases, courts are often reluctant to certify classes. This does not mean that the plaintiff's action is effectively barred. With the right case management

and sufficient resources, plaintiffs may use the simple rules of joinder to decrease their overall litigation costs and increase their likelihood of resolution. They may pursue their suit as a mass action.

This road is not without its bumps. Inexperienced judges may be unaware and/or wary of the methods utilized in this arena. Inexperienced attorneys may be uncomfortable with the methods themselves and ill-prepared to educate the judge, particularly when faced with a formidable opponent. In order to reap the benefits of a class action suit despite a denial of class certification, however, you need to convince the judge that your style of case management is the fairer of the two (or at least just as fair) and will reduce the burden on the court.

It is likely the defendant will advocate a Lone Pine case management plan. *Lore v. Lone Pine Corp.*, No. L-33606-85, 1986 WL. 637507 (N.J. Super. Ct. 1986). This plan requires that causation for <u>all</u> plaintiffs be proven upfront. The defendant will argue that it is unfair they should be dragged into court to defend a suit against a plaintiff who can't make an initial showing that their specific injury is the result of exposure to a certain toxin. It makes a compelling argument until you look behind it. Causation is one of the most difficult and expensive parts of the litigation, especially those involving personal injury. This order would require the plaintiff to incur most of its scientific expert and testing costs upfront and for the entire group of plaintiffs; these are the most substantial financial outlays required. It gives the defendant a running start on discovery by causing you to bear the burden of producing a massive amount of information while the defendant produces nothing. The most striking procedural advantage it gives the defendant is two shots at summary judgment. Once you have presented your initial showing on causation, the defendant will, inevitably, move that it

is insufficient. If you survive this, the defendant will file another motion after discovery challenging the initial showing of liability. This method places you, the alleged injured party, in the position of making an initial showing of a substantial part of your case-in-chief, making substantial disclosures, and repelling two motions for summary judgment while the defendant, the alleged polluter and wrong-doer, sits with nominal disclosure requirements and very little else to do.

In opposition to the Lone Pine method is the Bellwether Phased method. This case management plan more closely mimics class actions and will most likely be advocated by you. This method places liability up front and proceeds to trial in the first phase with an initial sampling of plaintiffs. You will ague that this is the fairer approach and will further judicial economy. Once the sample or bellwether plaintiffs are identified, the case goes to trial. If the plaintiffs fail on any one element of liability of the specific defendant, all plaintiffs' claims will be precluded and the defendant and the court no longer need to be involved. If, however, the bellwether plaintiffs succeed in proving liability, it is very likely the defendant will settle the remaining claims. If not, the court is still saved the need to litigate liability of the remaining thousands of plaintiffs. The advantage of this is it allows you to survive summary judgment and get to trial by concentrating on the small number of bellwether plaintiffs. Additionally, while some of the scientific expert and testing expenses will be incurred, the remaining can be spread out as specific causation for non-bellwether plaintiffs will not need to be proven until subsequent trials. Given the David-Goliath aspect of these cases and the public policy behind allowing class action suits, this method is much more likely to achieve justice.

III. PERSONAL INJURY – A PAIN TO LITIGATE

Any personal injury case can be fraught with causation and liability issues. Where the injury is acute, possible causes can be limited by proximity in time and place. However, where the injury does not manifest itself until years after the "act" and can be attributable to or exacerbated by more than one cause, the cause at fault can be very hard to prove. Typical toxic tort cases arise years after the party is exposed to the toxin and are rife with impediments to proof.

The first element that must be proven is the exposure to the toxin. Part of this is the requirement to quantify the exposure and pinpoint the timing of the exposure. Additionally, any subsequent or continuing exposures must also be shown.

The next step is to show that this toxin causes this illness. This is made easier if the illness is a signature disease of the toxin. An easy example of this is asbestos and Mesothelioma. Only those exposed to asbestos will develop Mesothelioma. Asbestos is definitely NOT representative of the normal toxin. Even where there is a signature disease, say the toxin is a know carcinogen, showing the plaintiff developed the illness, e.g. cancer, is not normally sufficient. The plaintiff must show a causal connection between the toxin and the type and location of the cancer at bar. Part of this causation will entail a showing that the level and timing of exposure suffered by plaintiff can cause this specific type of illness.

Proving this toxin at this level of exposure in this timeframe can cause this type of illness does not get you out of the causation quagmire. You still must discount other potential causes and other potential exposures. Assuming this can be achieved, you must now tie it together by showing this plaintiff is suffering from this illness due to

exposure to this toxin at this level during this time. (Remember, you still have to show that this defendant caused the specific exposure in order to recover.)

These causation issues are the most expensive portion of the litigation. And still you face impediments. Though the expert may be telling you what you want to hear, you must assess the likelihood of getting the expert recognized as such by the court and scientific methods used blessed by the court. The old rule was based on whether the methods were generally accepted by the scientific community and whether the expert employed those methods and had sufficient education and experience to speak to them. The Federal Rules of Civil Procedure now rely heavily on the *Daubert* factors to determine the sufficiency of the expert and his or her methods. S*ee Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). Note, however, that Alabama has yet to adopt these factors and still follows the old rule. Regardless of the test employed, there is always a risk that the expert or evidence will be excluded and the plaintiff will need to re-accomplish this expensive and time-consuming work.

Another impediment to toxic tort personal injury cases, particularly in Alabama, is the statute of limitations. As earlier addressed, where the injury results from pollutants released into the environment, the federal commencement date will supplant the state date. You need not bring a CERCLA claim to assert this. Not being required to assert this federal claim may increase your chances of staying in state court and not require you to dilute your case simply to take advantage of the commencement date portion.

This federal law is critical to toxic tort claims in Alabama. Plaintiffs are subject to two, conflicting rules. First, the "date of last exposure" rule requires that such plaintiffs bring their lawsuit within two years of the date when they were last exposed to the

hazardous substance. *Garrett v. Raytheon Co.*, 368 So.2d 516 (Ala. 1979). Alabama also adheres to the rule that a cause of action for personal injuries does not accrue until the plaintiff's cancer or other dread disease has manifested itself. *Thomas v. BSE Indus. Contractors, Inc.* 624 So. 2d 1041, 1046 (Ala. 1993). However, these two rules do not harmonize because the types of injuries suffered by toxic tort victims (e.g. cancer) do not normally "manifest" until well after the two-year restriction. Therefore, if a plaintiff brings a claim within two years of their last exposure but before they have actually been diagnosed with an illness; their claim will be too early. Conversely, should the plaintiff wait to bring the claim until they are diagnosed with an illness, most likely the two years since their last exposure will have already passed. As a result, the plaintiff will be too late. When simultaneously applied, the two rules create a "catch 22" which deprives toxic tort plaintiffs of the opportunity to bring a lawsuit. The Alabama legislature took corrective action regarding this situation, however, the act was adjudicated unconstitutional and the courts were forced to revert back to the "last exposure" rule. This conflict is resolved where the exposure was caused by a release of the toxin into the environment under the CERLCA laws.

Where the exposure is not the result of a release into the environment, the plaintiff will likely be barred from pursing their claim. The recent Alabama Supreme Court decision of *Cline v. Ashland* demonstrates the currency of the law and the tragedy. 2007 WL 30070 (Ala. 2007). Mr. Cline worked as a chemist in Bessemer for 19 years. During this time he was exposed to benzene. Twelve years after he was last exposed to benzene, he developed myelogenous leukemia, a known result of benzene exposure. Within two years of developing this cancer, he brought suit against his former employer. In January of this year, the Alabama Supreme Court dismissed his suit finding his

timing insufficient. Twelve days later, Jack Cline died. His widow filed a petition for certiorari with the Supreme Court of the United States, but that Court declined to hear the case. Until the legislature once again takes up this task, future Alabama plaintiffs will find the courtroom door closed to them.

IV. TRESPASS AND NUISANCE – A BETTER ROUTE TO RECOVERY

The picture is much brighter where the claim in based on property damage. The gates barring the courthouse doors are open longer. You are more likely to prove your case and, perhaps most significantly, gain a recovery for your client. While no toxic tort case is a simple matter, strategically limiting your claims to those based only on property damage dramatically reduces the level of complexity and chances of recovery.

From the beginning the proof issues are simplified. Instead of the labyrinth of the various layers of causation, property causation is relatively simple. First, simple testing will usually identify whether it exists on the property or not. Sufficiently proving a particular chemical is "bad" in order to meet trespass or nuisance requirements is only a matter of getting an expert to testify to what it could do to the plaintiff or just how foul its odor really is. However, no path is without its bumps.

In order to meet those trespass and nuisance requirements, particularly where the toxin is not visible, you must show that a sufficient amount of it can be found on the plaintiff's property. Lawyers have long looked for government standards to find a maximum concentration level (MCL) allowable. Where standards have been established and the toxin exceeds the MCL, it is very likely the level is sufficient. Where there are no standards or where the level does not exceed the MCL, the issue can get more complicated, especially where standards exist but the level fails to exceed it. Some claim there is a growing trend for courts to use the MCL as a threshold showing; barring the

claim if the contamination does not exceed it. Joseph F. Madonia and Alison C. Conlon, *The MTBE Multidistrict Litigation – Has the Bar Been Lowered for Toxic Tort Claims?*, 20-7 Mealey's Poll. Liab. Rep. 28 (2007). If the level at issue does not exceed the standard, and even where no standard exists, you must proceed with caution.

As with issues concerning proof, statutes of limitation for property damage claims are often more favorable than those for personal injury claims. Rather than face the possible "catch 22" discussed earlier, it is much more likely the CERCLA commencement date will apply. Contamination of real property is very unlikely without a release into the environment. With this fact, the CERCLA law may be applied.

As for the actual damages to your client, the biggest hurdle is proving diminution in value. More than likely the property is the plaintiff's home and has a sentimental value to them. The court will not take that into consideration. However, it may order the defendant to pay remediation costs or diminution in value. While courts have historically allowed the plaintiff to choose their claim for damages, a recent Alabama case rebuffed this norm. *Poffenbarger v. Merit Energy Co.*, 2007 WL 1278333 (Ala. 2007).

The *Poffenbarger* court held "the appropriate measure of direct, compensatory damages to real property generally is the diminution in the value of that property, even when the cost to remediate the property exceeds the diminution in the value thereof." *Id.* at 9. That case may be distinguished from many other cases on two grounds. First, the land at issue was undeveloped woodland and not a residence or business. *Id.* at 1. Second, the disparity between the diminution in value of the land and the cost of remediation was great. The land was valued at $38,628 prior to the contamination and

$32,628 after, a $6,000 difference. *Id.* Conversely, the cost to remediate was estimated at over $2M. *Id.*

However, that court stated the rule applied only to direct, compensatory damages and not to any potential injunctive relief. *Id.* at 10. This leaves the door open for you to seek both diminution in value and an injunction requiring defendant to remove "substances tortuously placed on the affected land." *Id.* While not a consolation to the Poffenbargers, this is a clear sign for you to request injunctive relief.

Another possible trend in this area is the awarding of stigma-related damages. *See* Brent A. Olson, Esq. and Lisa C. Thompson, Esq., 9A Ariz. Prac., Business Law Deskbook § 24:10 (2006-2007 ed.) (Section written by Chris. M. Amantea); Brent A. Olson. Twila L. Foster. Joseph W. Deng, Chris M. Amantea, Cal. Bus. Law Deskbook § 38:10 (2007 ed.). Even when available, there must be substantial evidence the property suffered permanent damage despite remediation efforts. A small number of courts have held permanent physical damage was not required for a finding of stigma-related damages. However, the courts are generally hesitant to award these damages at all considering the speculative nature of both establishing and quantifying the damage. You must carefully assess the pros and cons of pursuing such a risky award.

Another situation which requires careful handling is explaining to a plaintiff that their personal injury claim will not be pursued. Though it may not initially be received well by the plaintiff, this route will often lead to similar if not better awards than including the personal injury claim. The first reason is the questionable outcome of filing such a claim. As previously discussed, personal injury cases are difficult and expensive to prove. These claims are more likely to fail and litigation costs will be greater. The second reason is jury members are better able to grasp and judge the

validity of the scientific evidence. Without the complex issues involved in proving which toxin did what to who, the jury is able to focus on these simple steps: the toxin is on the plaintiff's property, the toxin is bad, the defendant caused the toxin to be there, the defendant is bad. This streamlining produces the third reason: jury outrage. Your job is to incite the jury's righteous indignation in favor of your client. This is done, in part, by proving just how bad the defendant is. However, too often in personal injury cases, the focus shifts to the science as the experts battle it out. By streamlining the claims, you keep the jury focused on the bad actor. Additionally, as the indignation of the jury is more closely related in time to when they make their decisions, they are more likely to be favorable with pain and suffering and punitive damage awards. These can equate to or exceed what may have been recovered if all the claims had been litigated.

V. CONCLUSION

These are difficult cases. They usually require multiple law firms to prosecute because of both the expense and labor required. The recovery can be great, but so is the risk. I would urge everyone to proceed with caution.