

## **Recent Environmental Litigation Representations**

### ***APPEALS***

- Quinn Emanuel achieved a significant victory for its client **Hyundai** by successfully petitioning the Ninth Circuit en banc to overturn an unfavorable ruling by the initial panel. Quinn Emanuel represented Hyundai in multi-district class action litigation that was resolved at the district court through a class settlement. After a Ninth Circuit panel issued a decision overturning the district court's approval of the class settlement, we successfully petitioned the Ninth Circuit for rehearing en banc. The en banc court affirmed the district court's approval of the settlement allowing the nationwide resolution to move forward.
- We represented the **National Resources Defense Council** and the **Public Utility Law Project** in filing an amicus brief in an action where a group of landlords challenged the New York City Water Board's ability to set rates for water usage. The plaintiffs advanced a theory, adopted by a lower court, that would potentially hamstring the Water Board's authority to set rates in ways that would reduce the burden on low-income households, incentivize water conservation, and prevent stormwater runoff (an emerging and important environmental issue in urban areas nationwide). The New York Court of Appeals adopted the argument advanced by Quinn Emanuel and the amici (and neither of the parties), ruling that the Water Board had acted within its authority, and preserving the Water Board's authority to promote environmental issues going forward.
- We successfully represented **Entergy Corporation** before the Vermont Supreme Court, obtaining dismissal of an original complaint seeking a shutdown of the Vermont Yankee Nuclear Power Station. The Vermont Supreme Court held that no equitable grounds for relief existed. We continue to represent Entergy in administrative proceedings in Vermont seeking a new state license for operation of the plant. We also represent Entergy on matters involving federal preemption both in an appeal before the Second Circuit and in the U.S. District Court for the District of Vermont.
- We won an 8-1 victory for **Shell Oil** in the U.S. Supreme Court in *Burlington Northern & Santa Fe Railway v. United States*, which greatly limited "arranger" liability under CERCLA and held that Shell could not be held liable as an arranger for shipping useful chemicals. The case also greatly clarified the standards for apportionment in CERCLA suits.
- We represented the **Alliance of Automobile Manufacturers** in one of the highest-stakes appellate and environmental litigation matters in years. At issue was whether nationwide greenhouse gas emission standards for automobiles, on which our client had already relied in constructing their 2012 model year fleet, would survive a challenge from a host of states and other industry groups in the U.S. Court of Appeals for the D.C. Circuit Court. We helped the Alliance navigate a gigantic administrative record and ensured that no matter the

outcome, the Alliance's interests would be protected and the nation's car manufacturers would continue to operate without interruption.

- We obtained a significant victory in the Ninth Circuit for **Shell Offshore Inc.** and **Shell Gulf of Mexico Inc.** in a decision denying petitions for review challenging the Bureau of Ocean Energy Management's approval of Shell Offshore Inc.'s Revised Camden Bay Exploration Plan under the Outer Continental Shelf Lands Act and holding that the agency was entitled to significant deference when interpreting the Act, interpreting its own regulations, and making certain technical and scientific assessments. (This was our second win for Shell on such a petition; we obtained a similar win as to an earlier exploration plan in 2010. The Court also issued an unpublished memorandum opinion denying petitions for review of the agency's approval of Shell Gulf of Mexico Inc.'s Revised Chukchi Sea Exploration Plan.)
- We represented the **Alliance of Automobile Manufacturers** in appeals before both the Second and the Ninth Circuits, in which we argued that federal fuel economy laws preempted state authority to regulate greenhouse gas emissions. Seeking to overturn district court judgments in Vermont and California, we argued that federal law commits the task of balancing fuel conservation against the economic impact on the auto industry to the federal government, not the states. The appeals were ultimately mooted by new federal legislation that raised federal fuel economy standards.

## *CIVIL*

- We represented **Entergy** in seeking Vermont regulatory approval of a first-of-its-kind transaction in which an already-shutdown nuclear plant would be sold by a utility operator to a decommissioning schedule. The regulatory proceeding involved numerous rounds of written testimony, discovery, depositions, a settlement with certain parties (including the key Vermont agencies), and finally an evidentiary hearing before the Vermont Public Utility Commission. The Commission issued its decision granting approval on December 6, 2018.
- We represented **OBOT**, a real estate developer. OBOT entered into a Development Agreement with the City of Oakland. The Agreement permitted OBOT to build a marine terminal to handle bulk commodities for export by cargo ship. This type of agreement shields a developer from later-enacted regulations. The city passed legislation proscribing coal from being handled at the terminal. After a trial, the federal district court ruled that the city breached the Development Agreement because this later enacted legislation was not justified by a health and safety exception in the Development Agreement. The court enjoined enforcement of the legislation against OBOT.
- Since 2010, we have represented **SEACOR** and its subsidiaries with respect to thousands of claims relating to the DEEPWATER HORIZON oil spill. In addition, we have been named defense liaison counsel and appointed to the Defense Steering Committee. In 2014, in a significant victory for ORM and NRC, we won the fight to use a Lone Pine-type approach to force Plaintiffs to come forward with specific disclosures clarifying the basis for the claims asserted against them. Following receipt and analysis of Plaintiffs' disclosures, in February 2016, the Court granted ORM and NRC's motion for summary judgment on

derivative immunity and implied conflict pre-emption grounds. The upshot was a dramatic victory: dismissal of over 20,000 claims asserting, among other things, exposure to dispersant during the cleanup, carving out only 11 claims for further proceedings. This decision is significant because the Court found that private parties with no contractual relationship to the federal government can and will share in the government's immunity in connection with their response actions where such actions were undertaken consistent with the government's instructions. At the time, there were no other reported cases extending derivative immunity in this manner. Following this victory, we filed renewed motions for summary judgment as to the 11 remaining cases, which the Court granted in August. We have thus successfully defeated all personal injury and exposure-based claims asserted against ORM and NRC in the MDL. In addition, we won a Fifth Circuit appeal involving our prior summary judgment win in a personal injury action against SEACOR and its vessel.

- We represented **Koch Industries'** entities in a number of lawsuits relating to the handling of petroleum coke and coal at transfer terminals in Chicago. Quinn Emanuel defeated the Illinois Environmental Protection Agency's petition for emergency rulemaking before the Illinois Pollution Control Board, preventing the implementation of "emergency" regulations applicable to Koch's operations. We were lead counsel during a 1-week trial against the IEPA, after having been brought on to the case the weekend before the trial began. In a 50 page opinion, the IPCB made findings in favor of Koch on every issue. In addition, a class action lawsuit filed against Koch, as well as two separate lawsuits brought by Illinois Attorney General Lisa Madigan in Illinois state court, concluded in very favorable settlements for our client, which were largely attributable to our development of expert testimony to defend Koch's operations. Further, in the face of debilitating regulations proposed by the City of Chicago, QE worked with Koch to present its opposition to the regulations. In direct response, the City adopted many of Koch's proposals in its final regulations.
- We are representing **AEP Generating Company ("AEPG")** and **Indiana Michigan Power Company ("I&M")** in a \$1.4 billion breach of contract and indemnification case brought by a series of trusts on behalf of corporate investors. The case, *Wilmington Trust Co. et al. v. AEP Generating Co. et al.*, (filed July 26, 2013 in the S.D.N.Y), concerns the operation of a coal-fired power plant located in Rockport, Indiana, which was sold to plaintiffs in 1989 in a sales/leaseback transaction. After successfully moving to transfer the case from the Southern District of New York to Ohio, we obtained dismissal of the majority of plaintiffs' claims. Plaintiffs subsequently withdrew their remaining claims with prejudice and appealed to the Sixth Circuit. On appeal, the Sixth Circuit affirmed in part and reversed in part the district court's dismissal, and the case was remanded for further proceedings.
- We represented **Mitsui Chemicals Agro, Inc.**, in a case in California superior court in which a number of environmental groups challenged the validity of the State's approval of new uses of our client's neonicotinoid pesticide. Following briefing and oral argument at a merits hearing, the superior court judge granted a complete judgment in favor of our client.
- In a case the *New York Times* called "the most ambitious environmental lawsuit ever," we helped secure a complete dismissal with prejudice that was subsequently affirmed on March 3, 2017 by the U.S. Court of Appeals for the Fifth Circuit. The headline-making complaint

named our clients **Koch Industries, Inc.** and **Koch Exploration Company, LLC**, and nearly a hundred other oil and gas companies, and claimed that oil and gas activities destroyed Louisiana's coastline. The Board alleged that, as a result, it faced increasing storm surge risk and flood protection costs, and sought damages from the defendants to pay for the restoration of the coastline, an effort it claimed would cost approximately \$50 billion. The case was the subject of extensive national and local press coverage as it touched on national issues like the Keystone Pipeline debate and the federal government's role in encouraging oil and gas exploration, and hot button local issues such as wetland loss and hurricane protection.

- We represent affiliates of **Koch Industries** in defense of class actions and governmental environmental lawsuits relating to the storage of petroleum coke, fugitive dust emissions, state and municipal regulatory challenges.
- We are representing a **major chemical manufacturer** with respect to multiple mass tort claims alleging that toxic chemicals have migrated from a CERCLA clean up site, purportedly causing personal injuries and diminished property values as to over 1,000 people.
- We represent **Lexington Insurance Company**, the issuer of a \$35 million environmental closure policy relating to EnCap Golf Holdings, Inc.'s undertaking to remediate four closed landfills located in northern New Jersey. EnCap filed for Chapter 11 bankruptcy protection in May 2008 and is currently seeking to reorganize.
- We represent **Invista** in a putative class action brought by property owners and citizens under the Resource Conservation and Recovery Act alleging groundwater and surface water contamination purportedly released through historical operations spanning over 50 years at a multi-purpose industrial facility, including manufacture of polyester and other polymers. This multi-defendant case requires sophisticated groundwater modeling and chemical fate and transport expertise.
- We represented **Occidental Petroleum** in a mass environmental tort action relating to a train derailment that allegedly resulted in the release of toxic chemicals to the air and groundwater.
- We defended an **affiliate of General Instrument Corp.** in a CERCLA cost recovery action involving several hundred million dollars, based on alleged groundwater contamination in Northern California.
- We represented **Occidental Petroleum** in a class action brought by an indigenous Peruvian tribe for environmental contamination in which damages were alleged to be in excess of \$30 million.
- We represented **Playa Vista** in a dispute with a developer who sought almost \$700 million in damages for its alleged breach of purchase agreements by failing to provide a soil and groundwater remediation plan to the Regional Water Quality Control Board as the purchase agreements required.

- We advised **Playa Vista** on strategy for addressing and defending challenges to environmental reports for the Phase II commercial/residential portion of the urban infill project.
- We oversaw Superfund litigation on behalf of **Bechtel** in litigation brought against it involving the Summitville Mine in Colorado.
- We oversaw remediation and related litigation on behalf of **Bechtel** involving litigation brought against it regarding a nuclear waste at the Idaho National Engineering and Environmental Laboratory.
- We headed up the overall legal strategy on behalf of **Bechtel** in a dispute over the demolition of a nuclear power plant, including supervising both construction counsel as well as environmental and nuclear regulatory counsel.
- We represented **Sequoyah Fuels Corporation** against parties obligated to pay for the monitoring, decontamination, decommissioning and remediation of a plant in Oklahoma that formerly converted uranium ore to uranium hexafluoride.
- We represented **General Atomic Energy Services** in an arbitration with a joint venture partner regarding responsibility for lost profits and cleanup costs incurred as a result of a series of shutdowns by the Nuclear Regulatory Commission due to improper releases of contaminants at a uranium hexafluoride processing plant in Illinois.
- We represented **Waste Management** in an eleven-plaintiff nuisance/negligence case arising from sounds and smells at a landfill and eventually settled with all of the defendants for fairly modest sums.
- We represented **CNA Insurance** in an insurance coverage trial concerning CNA's obligation to pay for \$135 million in damages caused by Aerojet as a result of contaminating the San Gabriel Valley aquifer with rocket fuel. The underlying cases included CERCLA claims, personal injury claims and others. We settled the case one month into trial.
- We represented **FMC** in a four-month trial in an insurance coverage case in San Jose brought by Liberty Mutual Insurance Company involving contamination of three sites. We won the liability phase and then settled for nine-figures.
- One of our partners represented **BP, Chevron, and other major oil companies** in multiple actions filed throughout the country alleging that the gasoline additive MTBE contaminated water supplies, which resulted in a favorable settlement.
- One of our partners represented **International Paper** in various cases involving state law theories for water pollution from dioxins and phenols from paper mills.

- One of our partners represented **Norfolk Southern Railway Company** in class action lawsuits alleging personal injuries and exposure to chlorine following a train collision in South Carolina, which resulted in a favorable settlement and the dismissal of a separate putative class action.
- We successfully represented **Packaging Advantage Corporation**, a consumer-product manufacturer, that was accused of breaching the leases for a manufacturing campus by failing to comply with hazardous materials storage regulations and permitting on-site and off-site contamination.

## ***CRIMINAL***

- We advised **Mobil**, one of the minority shareholders in the Alaskan Pipeline, in the numerous suits commenced, including the federal criminal investigation, involving the wake of the Exxon Valdez oil spill.
- We represented **Onyx Environmental Services**, a hazardous waste disposal company, in a state criminal prosecution (and parallel civil proceeding) related to the illegal discharge of toxic chemicals. We negotiated single misdemeanor and our client paid a small fine.
- We represented **Neutrogena** (owned by Johnson and Johnson) in a federal grand jury investigation into allegedly improper disposal of excess chemicals. No charges were filed.
- We represented a **city councilmember** from the city of Thousand Oaks, California in a federal and state environmental criminal investigation arising out of the largest waste water spill in California history emanating from the city's waste treatment facility.
- We represented **Texaco** in a federal environmental criminal investigation related to refinery emissions.
- We represented the **target of a federal environmental criminal investigation** arising out of the alleged illegal dumping of chemicals.
- One of our partners was lead counsel in representing a **major oil company** in numerous high-stakes environmental actions in California. He was brought in as trial counsel in an action filed by the Orange County District Attorney, and in hotly contested litigation achieved a favorable result for the client on the eve of trial. He led multiple other actions and investigations against the California Attorney General's Office, the United States Attorney's Office in Los Angeles, and more than a dozen district attorney, city attorney, and county counsel offices in California.

- One of our partners was lead trial counsel for the former Director of Hazardous Waste at **Rockwell's Rocketdyne Division** in a criminal environmental prosecution brought by the United States Attorney's Office in Los Angeles. The case involved environmental and scientific expert testimony, and media issues arising from the death of two scientists in an explosion from hazardous waste disposal that formed part of the basis for the charges. A very favorable result was obtained on the eve of trial.
- One of our partners represented the **City of Lancaster** in a federal grand jury investigation into multiple alleged environmental violations of RCRA, hazardous waste and storage laws, and the Clean Water Act.
- One of our partners represented a **cosmetics company** in a federal grand jury investigation into alleged violations of hazardous waste and materials storage and transportation laws and negotiated a deferred prosecution agreement.
- One of our partners represented a **large utility and energy company** in a federal criminal investigation into alleged violations of the Clean Water Act.
- One of our partners spearheaded the defense of a **Fortune 100 company** in connection with a statewide investigation conducted by the former and current California Attorney General and several District Attorneys' offices into the company's statewide hazardous waste and materials practices. The case raised complex issues of first impression involving the application of these laws to retail facilities, with the government claiming the right to seek billions of dollars of multi-day penalties for hundreds of stores throughout California. In late 2007, our partner negotiated a favorable settlement for the client following an extensive two-and-a-half-year investigation and lengthy negotiations.
- One of our partners represented a **pyrotechnic company** in connection with criminal investigation alleging the unlawful transportation of hazardous materials.
- One of our partners represented a **manufacturer of pesticides** in connection with administrative actions filed by the Department of Pesticide Regulation regarding the sale of unregistered pesticides in California and criminal action filed by the San Bernardino County District Attorney's Office regarding workplace injuries.