

From: Jackson, Bill J.
To: [AG-PFASProposal](#)
Cc: [Synk, Polly \(AG\); Jackson, Bill J.](#)
Subject: Michigan PFAS RFP Response - Kelley Drye Team
Date: Wednesday, June 5, 2019 11:54:47 AM
Attachments: [Michigan PFAS Proposal CONTRACT v5.docx](#)
[Final Michigan PFAS RFP .pdf](#)

I am attaching our team's Response to the Michigan PFAS RFP and proposed revisions to the form contract.

Please confirm receipt, when convenient.

Thank you,
Bill Jackson

WILLIAM JACKSON

Partner

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PROPOSAL FOR LEGAL SERVICES PREPARED FOR
**STATE OF MICHIGAN
DEPARTMENT OF THE
ATTORNEY GENERAL**

June 5, 2019

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Kelley Drye & Warren, LLP is pleased to submit this response to State of Michigan, Department of Attorney General's Request for Proposals for PFAS Manufacturer Tort Litigation on behalf of our proposed team: Kelley Drye & Warren LLP; Taft, Stettinius & Hollister, LLP; Douglas & London, P.C.; Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A.; SL Environmental Law Group, PC; Kennedy & Madonna, LLP; The Sam Bernstein Law Firm, PLLC; and Ufer, Spaniola & Frost, P.C. As set forth herein, this team is eminently qualified to assist the Attorney General on PFAS Litigation, and we would be honored to team with the Attorney General and the State of Michigan on such an incredibly important matter.

1. Bidder Contact Information

1.1 Identify the bidder's contact person for the RFP process. Include name, title, address, email, and phone number.

William J. Jackson
Partner
515 Post Oak Blvd., Suite 900
Houston, TX 77027
bjackson@kelleydrye.com
(713) 355-5050

1.2 Identify the person authorized to sign a contract resulting from this RFP. Include name, title, address, email, and phone number.

William J. Jackson
Partner
515 Post Oak Blvd., Suite 900
Houston, TX 77027
bjackson@kelleydrye.com
(713) 355-5050

2. Company Background Information

2.1 Identify the company's legal business name, address, phone number, and website.

Kelley Drye & Warren LLP
515 Post Oak Blvd., Suite 900
Houston, TX 77027
(713) 355-5000
www.kelleydrye.com

Taft, Stettinius & Hollister, LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
(513) 381-2838
www.taftlaw.com

Douglas & London, P.C.
59 Maiden Ln, 6th Floor
New York, New York 10038
(212) 566-7500
www.douglasandlondon.com

Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A.
316 South Baylen Street
Pensacola, FL 32502
(800) 277-1193
www.levinlaw.com

SL Environmental Law Group, PC
201 Filbert Street, Suite 401
San Francisco, CA 94133
(415) 348-8300
www.slenvironment.com

Kennedy & Madonna, LLP
48 Dewitt Mills Road
Hurley, New York 12443
(845) 481-2622
www.kennedymadonna.com

The Sam Bernstein Law Firm, PLLC
31731 Northwestern Highway, Suite 333
Farmington Hills, MI 48334
Phone: 248-737-8400
www.callsam.com

Ufer, Spaniola & Frost, P.C.
5440 Corporate Drive, Suite 250
Troy, Michigan 48098
Phone: 248-641-7000
www.usf-law.com

2.2 Identify the State your business is organized in.

Kelley Drye & Warren LLP (New York)
Taft, Stettinius & Hollister, LLP (Ohio)
Douglas & London, P.C. (New York)
Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A. (Florida)
SL Environmental Law Group, PC (California)
Kennedy & Madonna, LLP (New York)
The Sam Bernstein Law Firm, PLLC (Michigan)
Ufer, Spaniola & Frost, P.C. (Michigan)

2.3 Identify the location (city and state) that would have primary responsibility for this work if awarded a contract.

Kelley Drye & Warren LLP (Houston, Texas)
Taft, Stettinius & Hollister, LLP (Cincinnati, Ohio)
Douglas & London, P.C. (New York, New York)
Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A. (Pensacola, Florida)
SL Environmental Law Group, PC (San Francisco, California)
Kennedy & Madonna, LLP (Hurley, New York)
The Sam Bernstein Law Firm, PLLC (Farmington Hills and Grand Rapids, Michigan)
Ufer, Spaniola & Frost, P.C. (Troy, Michigan)

2.4 Identify the practice group area, if applicable, proposed to handle the work.

Environmental & Natural Resource Damages Practices

2.5 Explain any partnerships and strategic relationships you have that would bring significant value to the State.

Kelley Drye & Warren LLP (“Kelley Drye”) is submitting this response together with a team of firms with whom we are working nationally on PFAS matters, together with Michigan local counsel:

- Taft, Stettinius & Hollister, LLP
- Douglas & London, P.C.
- Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A.
- SL Environmental Law Group, PC
- Kennedy & Madonna, LLP
- The Sam Bernstein Law Firm, PLLC
- Ufer, Spaniola & Frost, P.C.

Collectively, Kelley Drye and this team of law firms bring unmatched experience and capabilities to represent Michigan in per- and polyfluoroalkyl substances (PFAS) matters. Kelley Drye is lead counsel for the States of Ohio and New Jersey in the most significant PFAS matters pending in the country: Ohio's claims for massive Perfluorooctanoic acid (PFOA) contamination emanating from DuPont's Washington Works Facility in Parkersburg, West Virginia, and New Jersey's claims for significant PFOA and other PFAS contamination from DuPont's Chambers Works Plant in New Jersey, DuPont's Parlin, New Jersey Facility, and various other sites and PFAS sources in statewide administrative and litigation actions. Similarly, our national co-counsel have worked together for years and bring unmatched experience (and demonstrated results) related to PFAS matters across the country, including DuPont's notorious conduct at the Washington Works Facility in West Virginia, as well as the only trials, three plaintiff verdicts, and a \$670 million settlement for PFOA exposure in six water districts within Ohio and West Virginia.

The work that Michigan contemplates in its RFP will require a significant undertaking of both time and financial resources to properly develop the scientific case for risk and injury; the case for remediation and/or restoration of Michigan's natural resources; and the damages case. This team is uniquely qualified and able to streamline discovery regarding 3M's and DuPont's knowledge and egregious conduct, and substantially accelerate the State's case. For example, many of the documents and materials uncovered by the Taft Law firm were used by the State of Minnesota's Attorney General's Office in the first litigation in the country seeking natural resource damages for PFAS contamination. That case was ultimately settled with 3M prior to trial for \$850 million. Similarly, for Michigan, our team is uniquely qualified to best position the State to pursue claims against the PFAS and Aqueous Film-Forming Foam (AFFF) product manufacturers.

In addition to national expertise on State environmental and natural resource damages matters, and unparalleled experience with litigation against DuPont and 3M related to PFAS compounds, we have added the Sam Bernstein Law Firm to our team as local counsel. Local counsel is a leading plaintiff litigation firm in Michigan engaged in complex, consequential cases involving government clients and individuals. Partners of the firm are among the most accomplished lawyers in Michigan with notable contributions to the legal, civic, political, educational and cultural communities.

In this litigation, local counsel leads a consortium of Michigan lawyers with decades of leadership in the environmental and conservation movements across Michigan.

2.6 If you intend to use subcontractors to perform the work, disclose: (1) the subcontractor's legal business name, website, address, phone number, and primary contact person; (2) a description of subcontractor's organization; (3) a complete description of the services or products it will provide; (4) information concerning subcontractor's ability to provide the services; (5) whether the bidder has a previous working experience with the subcontractor, and if yes, provide details of that previous relationship.

In addition to the Sam Bernstein Law Firm, we have engaged a local consortium of Michigan law firms deeply connected to environmental and community stakeholders, bringing significant potential value, experience and expertise to the State in the prosecution of this case across myriad potential venues. The primary location for work performed by The Sam Bernstein Law Firm, PLLC would be Farmington Hills and Grand Rapids, Michigan. Additional local counsel work that could be performed by the local consortium may occur in other locations in Michigan including offices in the cities of Flint (Mike Behm, Behm & Behm), Lansing (David Mittleman and Mick Grewal, Grewal Law PLLC), Grand Rapids (Elizabeth Welch, The Welch Law, PLC), Traverse City (Tim Smith, Smith & Johnson, Attorneys PC) and St. Joseph (Barry Conybeare, Conybeare Law Office, P.C.).

2.7 Identify the name and title of the individuals you propose as key personnel. Attach resumes or CVs for each person.

In order to present the best proposal and response to the Attorney General's PFAS RFP, we have carefully curated the preeminent team of law firms to investigate, manage and litigate vast and potentially sprawling PFAS claims across the State of Michigan. This team brings unparalleled experience in representing states and Attorneys General in cases of statewide size and national import; in litigating PFAS claims against DuPont and 3M; in successfully quantifying and recovering for environmental harms and natural resource damages; and in trying cases in Michigan's courts. Our proposed team is large, precisely because it will require significant resources and enormous efforts to successfully prosecute and recover for the unprecedented scope of damages caused by ubiquitous PFAS contamination in Michigan. The leading lawyers from these firms are joined together to create a powerful team with unparalleled subject matter experience.

The qualifications of each firm and individual anticipated to take a leadership role in this matter is set forth in the following sections of this response to the Attorney General's RFP. In addition to the general qualifications set forth in our responses, this team has specific qualifications and strengths that are unmatched for the PFAS matters. First and foremost, **Rob Bilott** and **David Butler** of the Taft Law Firm – together with **Mike London**, **Gary Douglas**, and **Rebecca Newman** of Douglas & London, P.C., **Mike Papantonio**, **Ned McWilliams** and **Wes Bowden** of Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A., and **Kevin Madonna** of Kennedy Madonna – are the only lawyers in the country to have litigated and tried to successful verdict, including punitive damages verdicts, multiple PFAS claims against a PFAS manufacturer. Members of this team already have discovered, evaluated, and utilized over six million pages of 3M and DuPont documents, taken scores of depositions of DuPont and 3M personnel, assembled a remarkable expert team, and tried multiple claims against DuPont and

3M for PFAS contamination. These team members, together with **Richard Head** of SL Environmental Law group, PC, bring unmatched experience and results with PFAS contaminants and their primary creators, DuPont and 3M.

Similarly, **Bill Jackson, John Gilmour, David Zalman, Melissa Byroade, David Reap** and the Kelley Drye team are currently serving as Special Counsel for the State of New Jersey for statewide PFAS contamination and multiple site-specific claims against DuPont, Chemours and 3M, and are serving as Special Counsel to the State of Ohio in litigation against DuPont and Chemours based on DuPont's infamous Washington Works facility in Parkersburg, West Virginia. In those cases, the States of New Jersey and Ohio are alleging common law claims in their *parens patriae* capacity and public trustee for the States' natural resources for massive PFOA contamination sprawling across these States. Kelley Drye's experience, approach and strategy in those statewide PFAS cases stands alone.

Finally, **Mark Bernstein** and the lawyers of The Sam Bernstein Law Firm, PLLC bring unmatched experience, success and experience in Michigan's courts. Given the potentially sprawling nature and number of sites involved in this matter, we have also assembled a consortium of local Michigan law firm firms to call upon across myriad potential venues, including **Mike Behm**, Behm & Behm (Flint), **David Mittleman** and **Mick Grewal**, Grewal Law PLLC (Lansing), **Elizabeth Welch**, The Welch Law, PLC (Grand Rapids), **Tim Smith**, Smith & Johnson, Attorneys PC (Traverse City), and **Barry Conybeare**, Conybeare Law Office, P.C. (St. Joseph). Similarly, to aid us with local governmental interactions and regulatory interface, we are working with **Tony Spaniola** of Ufer, Spaniola & Frost, P.C. to assist and advise our team.

Our individual lawyers and proposed team leaders bring unique talents and qualifications that we will utilize for the Attorney General and State of Michigan on PFAS matters. We will work as an integrated team on each of these matters, but we envision sharing primary responsibilities as set forth below.

- Case Management and Global Strategy. Our team leaders – **Rob Bilott, Mike London, and Bill Jackson** – will collaboratively and collectively work to set the global strategy for all PFAS matters. Because we envision that there could be multiple pieces of related litigation, we will collectively analyze and set the global strategies for the PFAS cases across the State, together with the Attorney General's office.
- Trial Teams. We envision multiple trial teams and a deep bench, as there may be several matters proceeding simultaneously. We anticipate lead trial counsel will be **Mike Papantonio and Gary Douglas**, but in all PFAS litigation matters, we propose that the following partners appear on the pleadings as we will be ready to field multiple trial teams as necessary: **Rob Bilott** and **David Butler** of Taft, **Mike London, Gary Douglas** and **Rebecca Newman** of Douglas & London, **Mike Papantonio, Ned McWilliams** and **Wes Bowden** of Levin, Papantonio, **Bill Jackson, John Gilmour** and **David Zalman** of Kelley Drye, **Mark Bernstein** from The Sam Bernstein Law Firm, and additional local counsel as advisable in other local matter.
- MDL Coordination. Because they already hold leadership roles in the AFFF MDL, we propose that **Mike London, Rob Bilott, Kevin Madonna, Richard Head, Ned McWilliams, John**

Gilmour and **Bill Jackson** assume primary responsibility for pursuing and coordinating Michigan's claims in the AFFF MDL.

- DuPont & 3M Liability. The liability team against DuPont and 3M will be led by the lawyers who have built this record, discovered the toxicity and impacts of PFAS, and successfully tried these cases for almost twenty years: **Rob Bilott, David Butler, Mike London, Gary Douglas, Rebecca Newman, Mike Papantonio, Ned McWilliams, Wes Bowden, Kevin Madonna** and **Richard Head**. The liability team will discover and make the case that PFAS products are defective, demonstrate DuPont's and 3M's state of knowledge regarding the risks and impacts of PFAS, their knowing and egregious conduct supporting punitive damages, and the unprecedented profits they made from the Teflon, Scotchgard, AFFF and other PFAS-containing products.
- Fraudulent Transfer Claims. It is important to note that DuPont has undertaken a series of corporate transactions, reorganization, and efforts to isolate and/or strand the liabilities for its egregious conduct and defective products associated with PFAS. We are proposing that **David Zalman, Melissa Byroade, Bill Jackson** and **John Gilmour** guide the team's efforts to make the fraudulent transfer and alter ego case.
- Natural Resource Damages. We anticipate that **Bill Jackson** and **John Gilmour** and the Kelley Drye team will lead the efforts and expert team to establish natural resource damages, remediation and/or restoration costs, and related matters at all sites across the State. This will ensure a coordinated expert team and corresponding damages model and approach across all sites. In other PFAS matters, we have already assembled the leading experts in their respective fields with specific areas of expertise as set out herein.
- Toxicology and Human Health Risks. Coordinating with the NRD expert team, **Gary Douglas, Ned McWilliams, Rob Bilott** and **Rebecca Newman** will take the lead on the risk assessment, toxicology and other matters to demonstrate that PFAS present a risk to human health and the environment. Given the evolving understanding of the risks and impacts of PFOA, PFOS, and other PFAS, it is imperative that we be prepared to make the case for injury and harm.
- Economic & Punitive Damages. **Bill Jackson, John Gilmour** and **David Zalman** will lead the economic damages team, including past and future remediation costs, economic damages, lost revenues, disgorgement and punitive damages.
- Discovery & ESI. **David Butler, Rebecca Newman, Wes Bowden** and **Melissa Byroade** will oversee ESI and site-specific discovery efforts, together with the support of **Mark Bernstein, Tony Spaniola**, and local counsel across the state. Our team have tremendous experience handling ESI and related matters.
- Brief Writing and Appellate Needs. **Kevin Madonna**, as well as attorneys from Taft and Douglas & London will lead our research and brief writing team. We pride ourselves on both our written

and oral advocacy, and we bring an incredibly deep bench and group of talented attorneys to the briefing and written advocacy needs.

These assignments are not intended to compartmentalize or restrict these team members from fully collaborating across responsibilities or cases. To the contrary, this is simply an effort to assign primary tasks and responsibilities so as to take advantage of each team member's experience, strengths, and backgrounds. We individually and collectively intend to partner across areas, cases, and responsibilities to maximize our capacity and, importantly, to maximize Michigan's recoveries in the PFAS Actions.

We are attaching the CVs for these team members, as well as additional counsel who are available to assist as needed or required.

A. CVs for Kelley Drye Key Personnel



WILLIAM J. JACKSON

PARTNER
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Education

University of Houston Law Center
J.D., 1992
Houston Law Review, associate editor
American Jurisprudence Award

University of Texas–Austin
B.A., Government, 1989

Bar Admissions

Texas

Courts

U.S. Supreme Court

U.S. Court of Appeals- D.C. Circuit

U.S. Court of Appeals–Fifth Circuit

U.S. District Court–Southern, Northern,
Eastern and Western Districts of Texas

U.S. District Court–Eastern and Western
Districts of Arkansas

U.S. District Court–District of New Mexico

Bill Jackson is co-chair of the firm’s national Environmental Law practice group, is a member of the firm’s Executive Committee, and is managing partner of the firm’s Houston office. Bill has one of the most sophisticated and successful environmental and natural resource damages litigation practices in the country. For more than two decades, Bill has represented states, port authorities, railroads and energy-sector clients in noteworthy contamination cases that are often valued into the hundreds of millions (and even billions) of dollars at stake. Bill is known and valued as a fierce advocate for his clients and for achieving remarkable results in complex litigation that can involve literally hundreds of parties. His ability to navigate beyond obstacles that seem insurmountable is the reason his client’s turn to him again and again.

Notably, Bill is currently serving as counsel for several States in both litigation and administrative actions related to contamination and natural resource damages from perfluorinated compounds (PFCs). Previously, Bill was lead counsel for the state of New Jersey in the Passaic River litigation, recovering over \$355 million in damages (including \$67.5 million in restoration projects) and up to \$400 million more in remediation costs, which is the largest settlement of its kind in the state’s history. Bill also represented the state of Louisiana and the Louisiana Oil Spill Coordinator’s Office in the BP/Deepwater Horizon Oil Spill, including leading Jindal Administration efforts to identify and quantify billions of dollars in economic and natural resource damages to the state of Louisiana, all of which were ultimately recovered as part of a \$20 billion global settlement, the largest environmental and natural resource damages recovery in history.

Bill’s multi-dimensional understanding of environmental issues, proven and effectual advocacy skills, and complete understanding of the practical and policy impacts environmental regulation has on industrial, commercial and governmental enterprises, enable him to create an approach to environmental litigation that ends in the right result. Bill’s focus is to win

either in or out of court in the most cost-effective way possible for his clients. He knows first-hand that environmental litigation can have huge implications to governmental actors, trustee agencies, industry and the impacted communities, and he has unique abilities to bring all parties together and to achieve lasting solutions.

With a demonstrated capacity to successfully prosecute complex environmental litigation, often in tandem with the requisite state and federal administrative processes, Bill has proven time and again that he is able to balance the public and policy needs of his clients. Bill also has extensive skill in representing parties to significant commercial litigation disputes, including suits involving partnership and corporate formation issues, alter ego and de facto merger issues, civil-RICO, breach of fiduciary duty, fraud and negligent misrepresentation, tortious interference and breach of contract and indemnity matters. Clients appreciate Bill's fundamental ability to quickly analyze their case, no matter how daunting or problematic, and advise them regarding the most practical and effective course of action.

Experience

Serving as Special Counsel to the Attorney General of New Jersey representing the New Jersey Department of Environmental Protection in a series of actions related to statewide-PFAS contamination, including litigation brought against DuPont and Chemours related to PFOA contamination at and from their Chambers Works facility and several other industrial facilities in New Jersey, as well as statewide AFFF litigation.

Representing the State of Ohio and Ohio Attorney General Dave Yost in litigation against DuPont and its spin-off Chemours Co. over the company's decades-long discharge of a perfluorinated chemical (PFOA) from its Washington Works Plant in Parkersburg, West Virginia into Ohio and seeking to recover all past and future costs to investigate, remediate, and restore lands and waters of Ohio contaminated by PFOA, as well as damages and equitable relief.

Serving on the Plaintiffs Executive Committee and Chair of the State Claims Committee in *In Re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn2873-RMG, in the United States District Court for the District of South Carolina.

Serving as Special Counsel to the Attorney General of Guam in bringing an action against the United States to recover a portion of the costs of removal and remedial action incurred by Guam arising in connection with military contamination and operations on the island for decades.

Serving as lead counsel for the state of New Jersey in the Passaic River litigation, recovering over \$355 million in damages, including \$67.5 million in restoration projects, and up to \$400 million more in remediation costs for the state. The Passaic River recovery is the largest settlement of its kind in the history of New Jersey.

Representing the state of Louisiana and the Louisiana Oil Spill Coordinator's Office in the BP/Deepwater Horizon Oil Spill, including leading Jindal Administration efforts to identify and quantify billions of dollars in economic and natural resource damages to the state of Louisiana, all of which were ultimately recovered as part of a \$20 billion global settlement, the largest environmental and natural resource damages recovery in history.

Currently serving as special counsel to the state of New Mexico and New Mexico Environment Department in seeking remediation, costs and damages arising from the Gold King Mine blowout and decades of mining waste

contamination of the Animas and San Juan Rivers, including an original action in the United States Supreme Court.

Currently representing the commonwealth of Puerto Rico in seeking remediation costs and natural resource damages arising from island-wide groundwater contamination in both multi-district litigation and trial sites in the District of Puerto Rico.

Serving as special counsel to the Attorney General of the District of Columbia related to the federal investigation, remediation and restoration of the Anacostia River following decades of contamination from upstream military installations and industrial users.

Recovering \$100 million in environmental remediation and costs, property damages and economic protections for the Port of Houston Authority, a Texas navigation district and assigned natural resource trustee, arising from the intentional discharge of DDT and other pesticides into the Houston Ship Channel.

Currently representing the San Diego Unified Port District in litigation filed in the Southern District of California that seeks costs, injunctive relief and damages for navigational impacts and injuries to the natural resources of the San Diego Bay arising from bay-wide PCB contamination.

Representing private sector clients in significant natural resource damages and remediation matters across the country, including the Portland Harbor Superfund Site in Oregon, the Clark Fork River Basin Superfund Site in Montana, and the Malone Superfund Site on Galveston Bay.

Serving as co-national counsel for a major railroad in its system-wide effort to assess, remediate and recover environmental remediation costs and property damages at various sites across the country.

Representing various port authorities in pursuing claims against petrochemical and pesticides plants for releasing hazardous materials onto the ports' properties, submerged lands and waterways, impacts to navigation and commerce, remediation and disposal costs, and resulting public economic impacts.

Representing numerous clients in litigation concerning contractual allocation, indemnity and assumption agreements, allegations of alter ego, successor liability, fraudulent transfers and breaches of fiduciary duties, and civil-RICO and related conspiracy and fraud matters.

Representing various public and private condemning authorities in condemnation matters.



ANN L. AL-BAHISH

PARTNER

HOUSTON, TX | (713) 355-5024

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Ann Al-Bahish litigates environmental, commercial and tort matters across the country and has tried cases in state and federal courts. In addition to general litigation experience, Ann thoroughly understands federal environmental statutes, including CERCLA, RCRA and NEPA, as well as various state counterparts.

Ann is highly adept in conducting and analyzing expert testimony and evidence, including scientific and economic evidence essential to liability and damages findings in civil cases. Because many environmental matters involve longstanding contamination and/or multiple parties and sites, Ann has also developed complementary skills in corporate successorship law, indemnity and insurance principles, real estate analyses, and factual and environmental forensic investigations.

Using her litigation abilities, Ann also helps her clients prevent and/or mitigate legal disputes through the negotiation and creation of clear, cohesive documents that aid and promote successful business relationships and allocate risk. Ann strives to responsively provide practical, creative and useful legal advice, and believes in investing her own time to better learn and understand the needs of her clients.

Ann has represented diverse clients in the transportation, chemical manufacturing and upstream, midstream and downstream energy sectors. She has also represented governmental entities, lumber companies, Internet businesses, web design companies, manufacturers, health care organizations, nonprofit corporations, partnerships and individuals.

Clients appreciate that Ann not only offers them consistently on-point advice, but that she is also easy to work with, responsive, flexible and down-to-earth, and delivers continually meticulous attention to detail. Ann is dedicated to understanding what her clients need, and then effectively developing the case around those goals. Ann's tenacity, intelligence and preparation regularly result in the right outcome for her clients.

Ann is active in and dedicated to the community in which she lives and works, especially in the areas of public health, environmental policy and pro bono legal services. Ann served as chair of the board of Healthcare for the Homeless—Houston. She has represented Justice for Children in several

Education

Harvard Law School
J.D., cum laude, 1993

Journal of Law, Medicine and Ethics, editor and author
Law, Medicine and Health Care, editor and author

Trinity University
B.A., magna cum laude, 1990
Phi Beta Kappa
Economics

University of Texas Health Science Center—Houston
Ph.D., 2016
Studies in public health, focusing on health policy, environmental health and epidemiology

Bar Admissions

Texas

Courts

U.S. District Court—Southern and Eastern Districts of Texas

U.S. Court of Appeals—Second and Fifth Circuits

unique appeals involving children's rights and the admission of psychiatric and psychological testimony, and was recently recognized as a founding member of Doctors for Change. In addition, Ann also represented pro bono clients in political asylum, the Violence Against Women Act and human trafficking cases, and is currently a member of the Pro Bono College of the State Bar of Texas.

Experience

Served as a special counsel to the state of New Jersey in litigation involving the dioxin contamination of the Passaic River. Responsible for supervising expert testimony and the development of economic modeling, which supported the largest environmental damages settlement for the state (\$190 million based on lost taxes and state revenues).

Representing a client in significant clean-up and natural resource damages claims based on sediment contamination at the Portland Harbor Superfund Site.

Defending an environmental cost-recovery claim filed in the United States District Court for the Central District of California based on contaminated groundwater at the Omega Superfund Site in Southern California.

Defense of multiple entities linked to environmental sites in Indiana, Kansas, Louisiana, Oregon, South Carolina, Texas and Washington.

Assisting transportation clients in environmental issues related to emergency response.

CERCLA trial experience in the Eastern District of Texas representing a third-party plaintiff. Helped the client prevail in claims against multiple parties.

Appellate experience related to CERCLA statute of limitations and admission of expert testimony, including statistical modeling.

Trial counsel and coordinator of medical causation/epidemiology and other scientific evidence in a high-profile toxic tort case in which the jury returned a complete defense verdict. Argued and drafted multiple Daubert motions successfully.

Favorable arbitration outcome involving environmental claims related to pesticide formulation facility.

Arbitration awards in commercial matters involving international lumber-shipping contracts.

Represented energy companies in property damage and other tort litigation arising from upstream activities, and obtained dismissals of or favorably settled numerous cases.

Performed environmental/corporate due diligence.

Litigated successfully on behalf of a United States subsidiary of a Mexican corporation in a breach of contract and breach of fiduciary duty case against its president. Significant challenges included the application of Mexican law and the review and synthesis of the company's Spanish documents.

Assisted with the drafting of environmentally enabling legislation for Iraq under the supervision of the United States Coalition Provisional Authority.

Experience with litigation involving forest sustainability auditing practices.

Represented a railroad in environmental and contractual matters, including damage claims arising out of a derailment.

Drafted and analyzed environmental indemnity provisions.

Developed public health and risk communication strategies.

Resolved environmental insurance coverage matters.

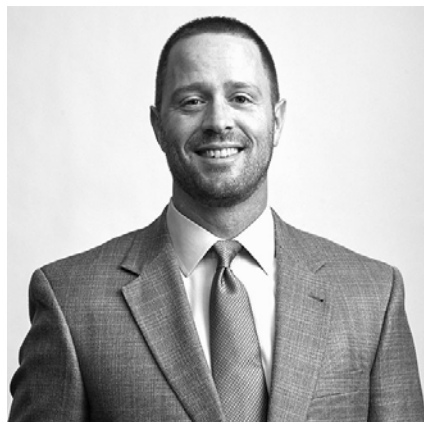
Managed a multi-plaintiff chemical exposure and environmental property damage case, and resolved all claims for less than 10% of the demand.

Drafted cooperation agreements among parties jointly addressing large contaminated sites.

Won jurisdictional challenges for a global auto manufacturer and full-service financial services company.

Assisted companies with commercial and employment contracts and day-to-day legal issues. Served in an outside general counsel role.

Trial experience related to premises liability, breach of contract, breach of fiduciary duty, white collar criminal defense, trucking accidents and medical malpractice claims.



JOHN D.S. GILMOUR

PARTNER
HOUSTON, TX | (713) 355-5005
JGILMOUR@KELLEYDRYE.COM

John Gilmour co-chairs the Environmental Litigation section. His practice encompasses significant commercial, tort and environmental matters from coast to coast, including some of the largest contaminated sites in the country.

John represents public and private sector clients in environmental litigation and natural resource damages matters in both state and federal courts across the country. John's environmental focus predominantly has been contaminated groundwater, surface waterways and mining sites, including river systems degraded from years of industrialization/urbanization; chemical and weapons manufacturing processes; and mining operations. He also handles complex commercial, tort and select IP matters for clients. In every case, John works with the client throughout the representation to determine specific goals, whether it is early settlement, alternative dispute resolution, trial through verdict or other avenues to resolution.

A former multiyear Texas *Super Lawyers* "Rising Star," John personally enjoys learning as much as possible about each of his client's businesses and strategic goals in order to better meet their needs and serve their interests. Clients value John's creative analysis and dispute resolution strategies that consistently result in successful settlements and verdicts. A trusted advisor, John is appreciated for demystifying the litigation process and aggressively defending his client's rights at every turn, including at trial. He regularly resolves multimillion-dollar disputes by focusing not only on what his client hopes to achieve, but also on what makes sense for them financially.

John began his litigation career clerking for one of the most well-known federal judges in Texas, Judge David Hittner, in the U.S. District Court for the Southern District of Texas. He continues to put his trial skills to good use for his clients nearly two decades later.

Experience

Representing the State of New Jersey in multiple litigations involving PFAS compounds statewide and at specific sites within the state.

Education

Tulane University Law School
J.D., 1999
Order of the Barristers
Phelps Dunbar Senior Trial Competition
Champion

McGill University
B.A., 1993

Bar Admissions

Texas

Courts

U.S. Supreme Court

U.S. Court of Appeals-Fifth Circuit

U.S. District Court-Northern, Southern
and Western Districts of Texas

U.S. District Court-District of New Mexico

Representing the Territory of Guam related to cost-recovery against the United States for decades of environmental contamination.

Representing the State of Ohio regarding PFOA contamination from DuPont's infamous Washington Works Facility in West Virginia.

Representing the District of Columbia regarding the cleanup of, and natural resource damages related to, the Anacostia River in the Nation's Capital.

Representing a Class I railroad in defending against potential cost recovery, contribution and natural resource damages claims arising from three contiguous Superfund sites spanning nearly 300 square miles.

Representing the state of New Jersey as special counsel in pursuing costs and other damages associated with the remediation and restoration of the Passaic River.

Representing the state of New Mexico as special counsel in pursuing costs and other damages associated with the Gold King Mine blowout near Silverton, CO, into the Animas and San Juan Rivers.

Representing the Commonwealth of Puerto Rico related to island-wide groundwater contamination.

Representing a national transportation company concerning the recovery of costs associated with the remediation of the client's properties against former lessees that released hazardous materials.

Representing an international energy company in a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) contribution action against various potentially responsible parties arising out of a contaminated dump site and salvage yard.

Representing the city of Houston in defending against a citizen suit action under the Clean Water Act arising out of construction projects at Bush Intercontinental Airport.

Representing an international energy company in defense of Superfund litigation and other matters involving claims brought under CERCLA, Resource Conservation and Recovery Act (RCRA) and various common law theories of recovery.

Representing an oil and gas owner and operator in the defense of a groundwater contamination suit.

Representing the largest private port in Texas in litigation bringing claims against a major oil company for fraud and breach of various easements, leases and contracts.

Representing an international telecommunications company in the prosecution of a contract and fraud dispute arising out of the installation of a voice and data system at federal facilities.

Representing 62 members of the U.S. House of Representatives as amicus on a class action against the Federal Emergency Management Agency related to Hurricane Katrina.

Representing a Class I railroad in the recovery of costs and damages arising from derailments.

Representing an oil and gas royalty interest owner in a breach of contract and breach of fiduciary duty dispute.

Representing a chemical manufacturer in the defense of multiple personal injury claims related to an airborne release.

Representing a chemical manufacturer in the defense of personal injury claims arising from an incident on site.

Representing a pipe manufacturer in the defense of multiple toxic tort suits in Texas.

Representing a respirator manufacturer in the defense of multiple toxic tort suits in Texas.

Served as local counsel in various matters, including intellectual property, environmental and commercial litigation, in federal district court in the Southern District of Texas and the Western District of Texas.



DAVID I. ZALMAN

PARTNER
NEW YORK, NY | (212) 808-7985
DZALMAN@KELLEYDRYE.COM

Education

Brooklyn Law School
J.D., 2000

University of Colorado
B.A., 1993

Bar Admissions

New York, 2001

Courts

U.S. Court of Appeals—Second and Third
Circuits

U.S. District Court—Southern and Eastern
Districts of New York

U.S. District Court—Northern District of
Illinois

David Zalman’s practice involves commercial and complex civil litigation, including class action defense, contract disputes, unfair competition, false advertising, real estate disputes, corporate fraud, bankruptcy litigation and employment-related matters. He represents businesses of all sizes across a broad spectrum of industries. David regularly tries cases and is always prepared to take a case to trial or arbitration – his proven track record of successful results speaks for itself. He is valued by clients and colleagues alike for his strategic approach to litigation and dispute resolution.

David carefully analyzes each case on its merits and the probability of a successful outcome, as well as the impact that a dispute may have on his client’s brand and reputation in the marketplace. He is an advocate who is able to engage in difficult conversations with even the most hostile of adversaries. David is sensitive to the risks inherent in litigation, the expenses associated with fighting a claim, and the disruption to his client’s business that can occur throughout the process. As a result, David strives to minimize the strain of litigation to his client’s operations and devise solutions that best suit his client’s overall business objectives.

David is a skilled litigator who adapts his knowledge of the law to his client’s particular business interests. A consummate team player, David is an effective collaborator whose relationships are grounded in the strength of his experience and his unwavering commitment to managing risk for his clients.

Representative Experience

Environmental Litigation

Representing the State of Ohio in a lawsuit against DuPont and its spin-off Chemours Co. over the company’s decades-long discharge of a perfluorinated chemical (PFOA) from its Washington Works plant in Parkersburg, West Virginia.

Trials and Arbitrations

Successfully defended a leading health information technology company in a five-day arbitration involving claims arising from the implementation of a suite of clinical and revenue software solutions.

Successfully defended as co-trial counsel a leading financial institution in an eight-day bench trial in the Southern District of New York. In a complete defense verdict, the judge dismissed a breach of contract and fraud suit brought against the client over its alleged failure to disclose potential tax liabilities when the plaintiff purchased one of the client's lines of business.

Successfully represented as co-trial counsel a major international construction company in a five-day bench trial in the District of New Jersey arising out of the client's purchase of a New Jersey construction company. The court found that the sellers breached representations and warranties in the Share Purchase Agreement, and awarded the client millions of dollars in damages plus attorneys' fees.

Co-trial counsel for a major chemical company in a fraud, unfair competition and breach of contract case arising out of the sale of a company. Successfully obtained a multimillion-dollar jury verdict and successfully prosecuted a contempt application against the defendant.

Served as lead trial counsel and successfully defended a mental health facility in a lawsuit that alleged race discrimination, wrongful termination, racial harassment and retaliation. After a one-week jury trial in New York State Court, the claims were dismissed.

Lead counsel in 10-day bench trial in the New York Surrogate Court involving a probate dispute.

Commercial Litigation

Represented Polo Ralph Lauren Corp. in several litigations with the U.S. Polo Association and its master trademark licensee in the U.S., JRA Trademark Company Ltd., alleging violation of intellectual property rights and contempt of prior judgment arising from use of a polo player logo in connection with various goods and services. Obtained favorable settlement for client.

Represented major insurance companies in connection with disputes relating to surety bonds. Obtained favorable settlements after discovery.

Successfully represented a major banking institution in lender liability and fraud actions in state and federal courts.

Consumer Class Actions

Defending numerous clients in putative class actions alleging false advertising and claims under the TCPA. Among other matters, David was a member of the Kelley Drye team that won summary judgment in a multi-district TCPA class action in federal court, which addressed the substantive law regarding TCPA third-party liability claims.

Representing an infant nutrition company in a lawsuit filed by the FTC alleging that infant formula advertising claims violated Section 5 of the Federal Trade Commission Act, as well as several "piggy back" class actions alleging breach of warranty, intentional and negligent misrepresentation, unjust enrichment, and violation of various state consumer fraud and false advertising statutes.

Represented a major satellite communications provider in a case brought in the United States District Court for the Central District of Illinois on behalf of the Federal Trade Commission and several state attorneys general alleging violations of the Telemarketing Sales Rule, the TCPA and various state claims.

Defended a major electronics retailer in putative class action involving false advertising claims. Plaintiff alleged violations of statutes enacted by all 50 states, plus the District of Columbia and Puerto Rico, for breach of express and implied warranty and violation of various consumer protection laws.

Trade Secrets

Lead counsel for a financial services company, its president and one of its employees accused of misappropriating a competitor's trade secrets and interfering with a competitor's contractual, existing and prospective relationships. Successfully obtained a pre-discovery dismissal of trade secret claims. Following extensive discovery, the court granted summary judgment in our clients' favor and dismissed the action in its entirety.

Successfully represented a major athletic shoe retailer in a theft of trade secrets action. Obtained summary judgment for the client.

Successfully represented former employees of a computer networking company in a nonsolicitation, trade secrets and breach of fiduciary duty lawsuit. Obtained a dismissal of the complaint with prejudice and with no payments to plaintiff.

Labor and Employment

Successfully represented a hospital in a race discrimination case, and obtained summary judgment dismissal.

Represented a major health care products company in an age discrimination lawsuit in federal court. The court granted the company's motion for summary judgment and dismissed the plaintiff's breach of contract claim.

Represented a manufacturer in an age discrimination case in federal court. The case was dismissed on summary judgment.

Represented a hospital in a wage and hour class action.

False Advertising

Represented a major technology company in a lawsuit brought by a state attorney general alleging fraudulent and deceptive trade practices with respect to advertising, warranties, rebates, technical support and customer service. The case settled favorably.

Bankruptcy Litigation

Represented Wilmington Savings Fund Society as indenture trustee in multibillion-dollar litigation related to Caesars Entertainment's chapter 11 bankruptcy case.

Represented a major oil company in bankruptcy court in a dispute impacting the manner in which crude oil is traded in the United States. The bankruptcy court granted summary judgment in the client's favor.

Represented a major reprographics company in an appeal of a multimillion-dollar bankruptcy court judgment. The case settled.

Real Estate and Foreclosure

Represented a real estate investment firm in a dispute related to a proposed work-out of a \$125 mortgage loan. The court denied the plaintiff's application to enjoin the work-out and dismissed all tort claims against the client.

Represented various lenders in mortgage foreclosure actions, including, among other representations, the completion of a \$12.5 mortgage foreclosure sale of a 35-unit mixed-use building.

Represented a real estate developer in a dispute concerning the sale of real property, and successfully obtained an award of specific performance against the seller and a second purchaser of the same property.



MELISSA E. BYROADE

SPECIAL COUNSEL

WASHINGTON, D.C. | (202) 342-8823

NEW YORK, NY | (212) 808-7772

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Melissa Byroade represents sophisticated domestic and international clients in high-stakes disputes. She focuses her practice on international arbitration and complex business litigation. Melissa's broad experience helping companies navigate the challenges and opportunities of a global marketplace includes matters involving difficult contract disputes, environmental law, consumer fraud claims, bilateral investment treaty protections, the Foreign Sovereign Immunities Act, and the enforcement of arbitration awards and foreign judgments in the United States.

Melissa is involved in resolving claims that have ranged into the hundreds of millions of dollars. A *New York Super Lawyers* "Rising Star," Melissa is dedicated to providing creative, cost-effective solutions to her client's legal and business issues.

Melissa is appreciated by clients and colleagues alike for her consistently good judgment, tenacity, strong writing abilities and efficiency. She frequently works on cross-border disputes in a variety of venues, and helps foreign clients to navigate the pitfalls of U.S. litigation.

Experience

Environmental Litigation

Representing the State of Ohio in a lawsuit against DuPont and its spin-off Chemours Co. over the company's decades-long discharge of a perfluorinated chemical (PFOA) from its Washington Works plant in Parkersburg, West Virginia.

Representing the State of New Jersey in litigation against 3M, DuPont, Chemours & others for statewide PFAS contamination of drinking water and cleanup of several sites.

International Arbitration

Representing HOCHTIEF AG, a major international construction company, in an arbitration brought against the Republic of Argentina, before the International Centre for Settlement of Investment Disputes. HOCHTIEF's claims in the arbitration are made pursuant to the bilateral investment treaty between Germany and Argentina. Handled all aspects of

Education

Georgetown University Law Center
J.D., 2006

University of Virginia
B.A., 1999

Bar Admissions

New York, 2007

District of Columbia, 2019

Courts

U.S. Court of Appeals—Second, Third and
D.C. Circuits

U.S. District Court—Southern and Eastern
Districts of New York

U.S. District Court—Western District of
Wisconsin

U.S. District Court—Northern District of
Illinois

the case in relation to the parties' experts on international law, including preparing witness statements and taking hearing testimony.

Representing Continental Transfert Technique Limited in an action against Nigeria involving the enforcement of an arbitration award and a foreign judgment confirming the award. The court ruled that both the award and the judgment are enforceable, and issued a judgment for approximately \$430 million in favor of the client. In continuing proceedings, obtained an unprecedented award of sanctions against Nigeria for failing to comply with post-judgment discovery regarding its assets in the United States.

Representing an international entertainment technology company in a multimillion-dollar arbitration of a dispute with a Panamanian company concerning the purchase and development of movie theaters in Central America, South America and the Caribbean. Handled all aspects in connection with testimony of legal experts, including preparing witness statements and hearing testimony. The arbitration is being administered by the International Centre for Dispute Resolution.

Preparing an investment treaty claim against a Middle Eastern country as lead counsel for a European client.

Preparing an investor-state claim on behalf of a technology company to recover the value of an expropriated telecommunications concession in South America.

Commercial Litigation

Defending a leading Indian consulting firm in a federal court litigation alleging trade secret misappropriation.

Defended a putative class action against a major manufacturer of football helmets alleging state consumer protection and false advertising claims relating to the performance of the client's helmets. Obtained favorable settlement following extensive briefing on class certification.

Represented BP Oil Supply Company in various lawsuits initiated, following the bankruptcy of SemGroup, L.P. The dispute involves defending BP against claims brought by crude oil and gas producers that sold production to the debtors prior to the bankruptcy, and that sought payment from BP and other companies engaged in financially and physically settled crude oil transactions with the debtors. The Bankruptcy Court recommended that BP's motion for summary judgment be granted in full, and the District Court adopted the Bankruptcy Court's findings.

Represented the largest privately held spirits company in the world as a defendant in a complex commercial/IP dispute involving a multiyear, multimillion-dollar exclusive marketing agreement with a major sports franchise. After extensive discovery and prevailing on numerous discovery motions, successfully negotiated a settlement.

Represented U.S., Belgian and French manufacturers against claims brought by the Government of Iraq arising out of the "oil for food" program administered by the United Nations. Obtained complete dismissal of the claims against the manufacturers.

Represented BP Products North America, Inc., in a putative federal court class action and 18 state court cases, brought by over 600 residents of Greenpoint, Brooklyn, alleging in excess of \$1 billion in property damages and personal injuries due to a large oil spill.



Represented Raymond James Financial and certain of its officers and directors in class action securities fraud claims seeking over \$2 billion. Obtained complete dismissal of action before class certification and prior to discovery.

Defended JPMorgan Chase & Co. in a multibillion-dollar, multidistrict litigation brought by note holders of a bankrupt healthcare company that alleged the bank breached its duties as indenture trustee. Obtained favorable settlements prior to trial.



DAVID M. REAP

ASSOCIATE
NEW YORK, NY | (212) 808-7636
DREAP@KELLEYDRYE.COM

David Reap is a litigation associate who focuses on commercial litigation, consumer class action defense, and law enforcement investigations involving consumer protection.

David was previously a deputy attorney general with the New Jersey Attorney General's Office, Consumer Fraud Prosecution section. He prosecuted several high-profile civil enforcement actions on behalf of the New Jersey Division of Consumer Affairs and other New Jersey State agencies against a wide range of companies for violations of the New Jersey Consumer Fraud Act (CFA) and related statutes and regulations.

Previously, David was a law clerk for the Honorable Harriet F. Klein in the Chancery Division of New Jersey Superior Court.

Education

Benjamin N. Cardozo School of Law,
J.D., 2012
The Cardozo Jurist, editor-in-chief
Cardozo Journal of Conflict Resolution, staff
writer

University of Michigan, Gerald R. Ford
School of Public Policy
B.A., Public Policy, 2009

Bar Admissions

New York

New Jersey

Courts

U.S. District Court-Southern and Eastern
Districts of New York

U.S. District Court-District of New Jersey

Representative Experience

Environmental Litigation

Representing the State of New Jersey in litigation against 3M, DuPont, Chemours & others for statewide PFAS contamination of drinking water and cleanup of several sites.

Consumer Fraud Prosecution

Lead counsel for investigation into national residential service contract company regarding its deceptive tactics to deny consumers' claims for repair or replacement of home appliances, and resulting civil enforcement action. Negotiated settlement including civil penalties and consumer restitution, as well as various forms of injunctive relief, including imposition of compliance monitor to oversee the company's business practices.

Lead counsel for investigation into eldercare financial services company that charged senior citizen veterans fees for preparation and filing of applications for benefits with the U.S. Department of Veterans Affairs, and failed to submit the applications on their behalf. Negotiated settlement including consumer restitution, and permanent injunction barring the company from advertising or offering such services.

Lead counsel for civil enforcement action against New Jersey chain of pet stores that sold sick puppies to consumers and refused to reimburse them

for expensive veterinarian bills. Coordinated efforts with local, New Jersey State and federal agencies in preventing stores from selling certain puppies while the action was pending. Negotiated settlement including consumer restitution for veterinarian bills, and permanent injunction barring the company and its principal from selling puppies in New Jersey.

Lead counsel for investigation of first impression into national fertility consulting company that included a clause in its contracts with consumers that prevented them from posting reviews about its services on the internet. Negotiated settlement including civil penalties and requirement that the company remove the clause from its contracts.



FABIO DWORSCHAK

ASSOCIATE

HOUSTON, TX | (713) 355-5032

FDWORSCHAK@KELLEYDRYE.COM

Fabio Dworschak is an environmental litigation associate in the firm's Houston office. Fabio represents clients in environmental, commercial, and general civil litigation matters.

Prior to joining Kelley Drye, Fabio served as a clerk in the Southern District of Texas for the Honorable Rolando Olvera and as an Army medic. During his military service, Fabio served as an infantry platoon medic during a fifteen-month deployment to Iraq and as a police detachment medic during a twelve-month deployment to Afghanistan. Fabio earned the Combat Medic Badge in Iraq.

Education

University of Houston Law Center
LL.M., 2016
International Law

Seattle University School of Law
J.D., cum laude, 2015
Dean's List
American Indian Law Journal, staff editor

University of Houston
B.A., magna cum laude, 2012
Dean's List
Political Science

Bar Admissions

Texas

Courts

U.S. District Court–Southern District of
Texas

Languages

Portuguese



LANA ROWENKO

SENIOR ASSOCIATE
HOUSTON, TX | (713) 355-5013
LROWENKO@KELLEYDRYE.COM

Lana Rowenko is an environmental litigation senior associate in the firm's Houston office. Her practice focuses on environmental and commercial litigation. Lana has experience in civil commercial litigation in both state and federal courts, including litigation involving complex contract disputes, breach of fiduciary duty, shareholder disputes, corporate dissolution, and wrongful termination. Her practice has involved multiple industries, including oil and gas, pharmaceutical, insurance, and real estate development.

Prior to joining Kelley Drye, Lana practiced in the area of securities litigation, enforcement, and investigations. In that practice, Lana represented corporations and their officers and directors in a range of industries in securities class action and derivative litigation, as well as in SEC investigations and enforcement matters.

Education

University of Virginia School of Law
J.D., 2012
Virginia Journal of International Law,
articles editor
Dillard Fellow for the Legal Research and
Writing Program

American University
B.A., magna cum laude, 2007
International Studies

Bar Admissions

Texas

New York

Courts

U.S. District Court–Southern District of
Texas

B. Taft CVs



ROBERT A. BILOTT

PARTNER
CINCINNATI, OH | (513) 357-9638
BILOTT@TAFTLAW.COM

A seasoned litigator, Rob represents a diverse range of clients on a wide variety of matters involving federal, state and local environmental laws. For more than 27 years, he has handled environmental issues of regulatory compliance, permitting and corporate/real estate transactions, as well as all aspects of litigation arising from such issues, from administrative hearings to multi-party, complex multi-district litigation, mass torts and class actions.

Rob is a cornerstone of Taft's Environmental, Litigation and Product Liability and Personal Injury teams. With an aptitude for handling complex and nuanced matters, Rob's work has kept him at the forefront of environmental and regulatory litigation, mass tort, and compliance issues. He has handled matters involving highly complex and emerging scientific issues with some of the nation's leading medical, technical, scientific and regulatory experts and advisors. Such matters have included hazardous, solid, medical and infectious wastes, emerging and unregulated chemicals, per- and polyfluoroalkyl substances (PFAS), such as PFOA and PFOS, air and water pollution and permitting, medical monitoring, brownfield redevelopment, landfill regulation and permitting, wastewater treatment, and chemical risk assessment, regulation and testing.

During his time at Taft, Rob has sought out and defended against class certification, has presented and defended against challenges to expert testimony under Daubed and, in perhaps his most widely known case, has served as co-lead counsel of the Plaintiffs' Steering Committee in multi-district litigation involving thousands of individuals with serious disease claims attributable to their exposure to PFOA (C8) released into their drinking water by DuPont.

Rob has proudly represented Taft and his community as a board member of Less Cancer, as a member of the Cincinnati Academy of Leadership for Lawyers (CALL) Class V and as a former chair of the Cincinnati Bar Association's Environmental Law Committee. He received his undergraduate degree from New College and earned his J.D., cum laude, from the Ohio State University College of Law, where he served as managing editor of the *Law Journal*.

Rob is a Fellow in the Right Livelihood College and an Honorary Professor at the National University of Cordoba in Argentina. The following eight institutions represent the Right Livelihood College worldwide:

- Lund University (Sweden).
- Addis Ababa University (Ethiopia).
- University of Port Harcourt (Nigeria).
- Universidad Austral de Chile (Chile).

- University of California Santa Cruz (USA).
- University of Bonn (Germany).
- Tata Institute of Social Sciences (India).
- National University of Cordoba (Argentina).

Awards

- MVP for Class Action Honoree, Law360 (2017)
- Class Action Honoree, Kentucky Super Lawyers (2017 - present)
- Honoree, Best Lawyers in America , Environmental Law, Litigation - Environmental (2010 - present)
- Leading Lawyer Honoree, Cincy Magazine, Environmental Law (2008 - present)
- Top Local Plaintiff Litigation Star Honoree, Benchmark Plaintiff (2011 – present)
- Top 100 Trial Lawyers in Ohio Honoree, National Trial Lawyers Association (2008 - present)
- Laureate, Right Livelihood Award (2017)
- AV Peer-Review Rated, Martindale-Hubbell
- Clarence Darrow Award Honoree, Mass Tort Bar (2014)
- Trial Lawyer of the Year Award Honoree, The Trial Lawyers for Public Justice Foundation (2005)
- “Giraffe Hero” Commendation Honoree, Giraffe Heroes Project (2016)
- Fellow, Right Livelihood College
- Member, The National Trial Lawyers: Class Action Trial Lawyers Association Top 25
- Fellow, American Bar Foundation
- Lawyer of the Year Honoree, Best Lawyers in America® (2019)

Professional Affiliations

- Cincinnati Academy of Leadership for Lawyers (CALL)
Member, Class V
- Cincinnati Bar Association

Member

Former Chair, Environmental Law Committee (2013)

- Kentucky Bar Association

Member

- American Bar Association

Member

Community Involvement

- Less Cancer

Board Member

- Giraffe Heroes Project

“Giraffe Hero” Commendation (2016)

- Greening Our Children

“Champion for Children” Award (2016)

- Working in Neighborhoods ("WIN")

Member, WIN Hall of Fame (2016)

- Rotary Club of Cincinnati

Member

- New College Alumni/ae Association

Member, Board of Directors

- Right Livelihood College

Fellow

Practices

Class Action, Derivative and Multi-Party Litigation

Environmental Litigation

Product Liability and Personal Injury

Environmental Regulatory Environmental

Commercial Litigation Environmental Transactional Services

Crisis Management

Pharmaceutical and Life Sciences Litigation

Education

The Ohio State University College of Law (1990)

New College (1987)

Admissions

Federal - Southern District of Ohio

Federal - 4th Circuit Court of Appeals

Federal - 6th Circuit Court of Appeals

State - Ohio

State - Kentucky

Federal - Eastern District of Kentucky



DAVID J. BUTLER

PARTNER-IN-CHARGE
COLUMBUS, DELAWARE
CINCINNATI, OH | (614) 334-6167
DBUTLER@TAFTLAW.COM

David is partner-in-charge of Taft's Columbus office. He is a business trial lawyer with extensive experience in complex civil litigation, mass tort class actions and multi-district litigations.

David brings his proactive approach to challenging, specialized casework. He concentrates his practice in federal court, representing companies in a wide range of nuanced, commercial and mass tort legal matters. He also routinely serves as local counsel in federal court.

A critical member of the Taft litigation team, David's experience includes leading the firm's special counsel team for a large Ohio agency, handling high-stakes business, healthcare fraud and abuse and construction litigation, and headline-making mass tort environmental and pharmaceutical cases. When the state of Ohio faced tobacco litigation, he and the Ohio team helped secure a record-setting \$10 billion settlement for the state.

Prior to his time at Taft, David served as extern to the Honorable Justice Paul E. Pfeifer, Ohio Supreme Court, and to the Honorable Magistrate Judge Barry S. Seltzer, United States District Court, Southern District of Florida. He currently serves on the development board of Riverside Hospital and is an active member of the Columbus, Ohio, American and Federal Bar Associations.

David received his undergraduate degree, cum laude, from the University of Notre Dame and his J.D. from the University of Notre Dame Law School.

Notable Matters

- Counsel in multi-district litigation involving claims of thousands of individuals exposed to a chemical in their drinking water ("C8") that has been linked to causing six serious diseases (including two types of cancer) in humans.
- Represents governmental entities in lawsuits against the distributors and manufacturers of opioid pain medications.
- Member of the firm's special counsel group for the state of Ohio in the "national tobacco litigation," contributing significantly to the record setting \$10 billion settlement for the state of Ohio.
- Represents large Ohio state agency in two lawsuits, including a purported class action, seeking hundreds of millions of dollars of alleged premium overpayments.
- Represents an owner of a municipal power company in construction litigation concerning large power plants.

- Represented an international lawn and garden company in successful enforcement actions involving Lanham Act violations and trademark/trade dress infringement.
- Represented an international construction and consulting company in a fraud and breach of contract lawsuit, resulting in a favorable ruling on summary judgment and ultimate favorable settlement.
- Represented a Fortune 500 company in the successful defense of a disappointed bidders' fraud and open meetings act challenge to the state award of an eight year, \$45 million contract to provide electronic benefits transfer services to more than 450,000 Ohio food stamp recipients.

Awards

- AV Peer Review Rated, Martindale-Hubbell
- Honoree, Best Lawyers in America, Commercial Litigation Law (2014 - present)
- Honoree, Ohio Super Lawyers, Business Litigation (2015 - present)
- Honoree, Ohio Super Lawyers, Top 50 Columbus
- Honoree, Ohio Super Lawyers Rising Stars (2005 - 2007, 2009, 2011 - 2012)
- Under Age 36 Community Service Award Honoree, Columbus Bar Association (2004)
- Forty Under 40 Honoree, Business First (2004)
- Honoree, Top Ten Personal Injury Settlements (2017)

Professional Affiliations

- American Health Lawyers Association
Member, Fraud and Abuse Section
- American Bar Association
- Columbus Bar Association
- Federal Bar Association
- Ohio State Bar Association

Community Involvement

- Riverside Hospital Development, Board Member

Practices

Commercial Litigation Class Action, Derivative and Multi-Party Litigation

Pharmaceutical and Life Sciences Litigation

Crisis Management

Construction Claims

Audits, Investigations and Healthcare Litigation

University of Notre Dame Law School (1997)

University of Notre Dame, B.A., cum laude (1994)

Admissions

Federal - Northern District of Ohio

Federal - Southern District of Ohio Federal - 6th Circuit Court of Appeals

Federal - U.S. Supreme Court State – Ohio



JONATHAN N. OLIVITO

ASSOCIATE
COLUMBUS, OH | (614) 220-0236
JOLIVITO@TAFTLAW.COM

Jon litigates business and partnership disputes and employment law matters. He represents clients in a variety of industries, including health care, construction, manufacturing, transportation and telecommunications, in state and federal courts and in arbitrations. His clients have included governmental entities, businesses and individuals.

Prior to joining Taft, Jon clerked for the Honorable Edmund A. Sargus, Jr., Chief Judge of the United States District Court for the Southern District of Ohio. He helped to draft opinions in employment discrimination, breach of contract, and Section 1983 cases, among others. When the Chief Judge sat by designation with the United States Court of Appeals for the Sixth Circuit, Jon helped with preparations for oral arguments and worked on opinions involving police misconduct claims and claims brought under the Employee Retirement Income Security Act of 1974 (ERISA). In a criminal case involving material support of terrorism charges, Jon helped to draft opinions on motions brought under the Classified Information Procedures Act (CIPA) and the Foreign Intelligence Surveillance Act (FISA).

Before his clerkship, Jon was a litigator at a small Columbus-based law firm. While practicing there, he successfully defended a favorable jury verdict before Ohio's Tenth District Court of Appeals in *RAE Assocs., Inc. v. Nexus Commc'ns, Inc.*, 2015-Ohio-2166, 36 N.E.3d 757 (10th Dist.), a case involving breach of contract, fraud and conversion claims.

Jon earned his J.D. from The Ohio State University Moritz College Law, magna cum laude and Order of the Coif. He received the 2014 Distinguished Legal Writing Award from The Burton Awards. He was honored by the *Ohio State Law Journal* with the Donald Teller Memorial Award for the best student Note by a journal member in 2013. He also was honored with CALI Excellence for the Future Awards for receiving the highest grade in Evidence and International Law.

Jon earned a Master of Public Administration from Ohio University and was designated as the Overall Outstanding MPA Student his graduating year. While pursuing his degree, he was a graduate assistant at Ohio University's Voinovich School of Leadership and Public Affairs. His bachelor's degree is also from Ohio University, where he majored in history and Spanish and minored in psychology. He graduated summa cum laude, Phi Beta Kappa, and Phi Alpha Theta from the University's Honors Tutorial College. Jon also studied abroad at two international universities, the Universidade do Sul de Santa Catarina in Florianopolis, Brazil and the Universidad Publica de Navarra in Pamplona, Spain.

Jon serves on the board of directors for Halt Violence, a nonprofit organization devoted to reducing violence through conflict mediations and mentoring.

Professional Affiliations

- Halt Violence
Member, Board of Directors
- Ohio State Bar Association
Member
- Federal Bar Association
Member
- Columbus Bar Association
Member

Practices

Commercial Litigation

Corporate Compliance and White Collar Criminal Defense Workers' Compensation Appellate

Class Action, Derivative and Multi-Party Litigation

Education

The Ohio State University College of Law (2014), Master of Public Administration,

Ohio University (2011)

Ohio University (2009)

Admissions

State - Ohio

Federal - Southern District of Ohio

C. Kennedy Madonna CVs



Kevin J. Madonna

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Kevin J. Madonna is a partner in the law firm of Kennedy & Madonna, LLP. The firm was formed in 2000 by founding partners Robert F. Kennedy, Jr. and Mr. Madonna and specializes in complex environmental and consumer litigation matters in federal and state courts throughout the United States. Prior to private practice, he served as Executive Director for the Waterkeeper Alliance, the umbrella organization for the over 300 Riverkeeper programs operating throughout North, Central and South America, Europe, Asia, Africa and Australia. Mr. Madonna earned a Juris Doctorate and Environmental Law Certificate from Pace University School of Law in 1995 where he served as Research and Writing Editor for the *Pace Environmental Law Review*. He is admitted to practice in the State of New York and the Southern District of New York.

Among the leading environmental cases in which Mr. Madonna has litigated are:

In re E. I. du Pont de Nemours & Co. C-8 Pers. Injury Litig. (MDL 2433), No. 2:13-md-2433 (S.D. Ohio). In 2013, the firm was appointed to the Plaintiffs' steering committee in a PFOA groundwater contamination case centralized in the Southern District of Ohio. The firm represented over 3,500 individuals who have personal injuries linked to PFOA exposure. Since the MDL's inception in early 2014, the firm assisted with litigating three bellwether cancer cases to trial and securing plaintiff victories in all three cases. The firm was primarily responsible for briefing in this MDL, whose docket contains over 5,000 filings. The firm also represented the first bellwether plaintiff in her appeal before the Sixth Circuit Court of Appeals. The MDL was settled in February 2017 for \$671 million.

Southern California Gas Leak Cases, Judicial Council Coordination Proceeding No. 4861 (Cal. Sup. Ct., Cty. of Los Angeles). The firm represents over 7,000 individuals in personal injury and property damage cases against Southern California Gas Company relating to the defendant's gas well blowout that resulted in the discharge of approximately 100,000 tons of natural gas into the environment and mandatory evacuations of entire neighborhoods that lasted for over four months.

Perrine v. E.I. du Pont de Nemours & Co., No. 04-C-296-2 (Harrison Cty., W. Va.). The firm represented an 8,000 member property owner and medical monitoring class for claims arising from defendant's operation of a zinc smelting plant in Spelter, West Virginia. The firm received a \$400 million jury verdict after a seven week trial. After two years of post-trial appeals, the case settled for an approximate value of \$175 million.

City of St. Louis, Mich. v. Velsicol, No. 07-10385 (Gratiot Cty., Mich.). The firm represented a city whose wells were contaminated with pCBSA, a byproduct of DDT manufacturing. The firm secured a settlement valued at \$25 million which allowed the City to construct a new water system for its residents.



Morgan v. Ford Motor Co., No. 2:06-CV-1080 (JAP) (D.N.J.). The firm represented over 600 members of a state recognized Indian tribe for property damage and personal injury claims arising from defendants' illegal disposal of hazardous waste. The lawsuit was settled on a confidential basis four years after the case was filed.

Waterkeeper Alliance, Inc. v. Smithfield Foods, Inc., Nos. 4:01-CV-27-H, 4:01-CV-30-H (E.D.N.C.). Involved federal Clean Water Act and RCRA claims against owners and operators of two concentrated animal feeding operations in North Carolina. The case settled in January 2006 for \$8 million in injunction relief.

Samples, et al. v. Conoco, No. 01-0631-CA-01 (1st Cir. Escambia Cty. Fla.). The firm represented a class of property owners whose properties and drinking water were impacted by releases of hazardous substances from defendants' CERCLA site. In 2004, a settlement was reached in the amount of \$96 million in damages.

D. Douglas & London CVs



GARY J. DOUGLAS, ESQ

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Gary J. Douglas, co-founding partner of Douglas & London, P.C., has been a trial lawyer for over three decades during which time he has obtained landmark verdicts against chemical industry giants such as DuPont, pharmaceutical industry giants, such as Bayer, Johnson & Johnson and Merck and tobacco industry giants, including Brown Williamson and Philip Morris. Some of those cases include Mr. Douglas securing the first ever plaintiff's verdict in the state of New York against the tobacco industry on behalf of a widow whose husband died as a result of lung cancer, and one of the first plaintiff's verdicts against the automobile industry in a defective airbag case.

During the years of 2015 through 2017, Mr. Douglas served as co-lead trial counsel in three PFAS trials. The first trial concluded in October 2015 resulting in a \$1.6 million jury verdict in compensatory damages (*Bartlett v. E. I. du Pont, et al.*); the second trial concluded in July 2016 resulting in a jury verdict of \$5.1 million in compensatory damages and \$500,000 in punitive damages (*Freeman v. E. I. du Pont, et al.*); and the third trial concluded in January 2017 resulting in a jury verdict of \$2 million in compensatory damages and \$10.5 million in punitive damages (*Vigneron v. E. I. du Pont, et al.*).

In December 2017, Mr. Douglas served as lead trial counsel in the first and only plaintiff verdict against Bayer and Janssen for the drug Xarelto in the amount of \$27.8 million (*Hartman v. Janssen Pharmaceuticals, Inc., et al.*).

Back in 2010, Mr. Douglas, along with co-counsel, secured the first and only multi-million dollar verdict against Merck in the Fosomax multidistrict litigation in the amount of \$8.5 million (*Boles v. Merck & Co., Inc.*). Just weeks following the *Boles* verdict, Mr. Douglas secured an \$8 million verdict against Ethicon, a subsidiary of Johnson & Johnson, for a defective staple gun used in a gastric-bypass procedure, which resulted in the plaintiff's death (*Bush v. Merola, et al.*).

Currently, Mr. Douglas represents clients facing PFAS-contamination issues secondary to the use of aqueous film-forming foams (AFFF), which claims are pending as part of multidistrict litigation in the United States District Court for the District of South Carolina, captioned as *In re Aqueous Film-Forming Foams Products Liability Litigation*, MDL-2873. Mr. Douglas has been appointed as the Co-Chair of the Science Committee in MDL-2873.

Mr. Douglas has tried hundreds of cases and obtained dozens of multi-million dollar verdicts and settlements. Because of his impressive trial success record, Mr. Douglas is a past recipient of the Clarence Darrow Award, the prestigious award given to those lawyers who best embody the attributes and skills of the legendary trial attorney and champion of the underdog, Clarence Darrow. More recently, in April 2018, Mr. Douglas was the youngest lawyer ever to be inducted into the Trial Lawyer Hall of Fame, an honor bestowed only to those trial lawyers who have established themselves as true champions and crusaders for American justice.

Mr. Douglas is admitted and licensed to practice law in the States of New York and Pennsylvania, as well as in the United States District Courts for the Eastern and Southern Districts of New York.



MICHAEL A. LONDON, ESQ.

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Michael A. London, co-founding partner of Douglas & London, P.C., has been appointed to, has served, and continues to serve, as either lead or liaison counsel on numerous Plaintiffs' Steering Committees in some of the largest national mass tort and complex litigations in recent years. His formal lead and liaison counsel roles have been in the following matters with the following results

- Vice-Chair of Plaintiffs' Steering Committee – *In re: Zyprexa Products Liability Litigation*, MDL-1596, before the Honorable Jack B. Weinstein in the United States District Court for the Eastern District of New York (status: resolved, \$700 million settlement of approximately 8,000 claims);
- Co-Lead Counsel of Plaintiffs' Steering Committee – *In re: Yasmin and Yaz (Drospirenone) Marketing Sales Practices and Products Liability Litigation*, MDL-2100, before the Honorable David R. Herndon in the United States District Court for the Southern District of Illinois (status: resolved, over \$2 billion in settlements);
- Co-Lead Counsel and Liaison Counsel for Plaintiffs' Steering Committee – *In re: Bayer Corp. Combination Aspirin Products Marketing and Sales Practice Litigation*, MDL-2023, before the Honorable Brian M. Cogan in the United States District Court for the Eastern District of New York (status: resolved, \$15 million class settlement);
- Liaison Counsel and Plaintiffs' Executive Committee Member – *In re: Ortho Evra Products Liability Litigation*, MDL-1742, before the late Honorable David S. Katz in the United States District Court for the Northern District of Ohio (status: resolved, individual confidential settlements of approximately 3,000 claims in federal and state courts);
- Co-Lead Counsel of Plaintiffs' Steering Committee – *In re: Pradaxa (Dabigatran Etexilate) Products Liability Litigation*, MDL-2385, before the Honorable David R. Herndon in the United States District Court for the Southern District of Illinois (status: resolved, \$650 million settlement of approximately 4,000 claims);
- Co-Liaison Counsel for all Plaintiffs – *In re: Levaquin Litigation*, centralized and consolidated litigation before the late Honorable Carol E. Higbee in the Superior Court of New Jersey, Atlantic County (status: resolved, individual confidential settlements of hundreds of claims in federal and state courts);

- Chairperson of the Plaintiffs' Executive Committee – *In re: Testosterone Replacement Therapy Products Liability Litigation*, MDL-2545, before the Honorable Matthew F. Kennelly in the Northern District of Illinois (status: resolved via separate global settlements against each of the individual manufacturing-defendants);
- Co-Lead Counsel of Plaintiffs' Steering Committee – *In re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation*, MDL-2433, before the Honorable Edmund A. Sargus, Jr. in the United States District Court for the Southern District of Ohio (status: resolved, \$671 million settlement of approximately 3,600 claims);
- Co-Lead Counsel of Plaintiffs' Steering Committee – *In re: Invokana (Canagliflozin) Products Liability Litigation*, MDL-2750, before the Honorable Brian Martinotti in the United States District Court for the District of New Jersey, (status: resolutions pending for individual confidential settlements of approximately 2,000 claims);
- Chairperson of the Plaintiffs' Executive Committee – *In re: Davol, Inc./C.R. Bard, Inc. Polypropylene Hernia Mesh Products Liability Litigation*, MDL-2846, before the Honorable Edmund A. Sargus, Jr. in the United States District Court for the Southern District of Ohio (status: active); and
- Co-Lead Counsel of Plaintiffs' Executive Committee – *In re: Aqueous Film-Forming Foam (AFFF) Products Liability Litigation*, MDL-2873, before the Honorable Richard M. Gergel in the United States District Court for the District of South Carolina (status: active).

Mr. London is admitted and licensed to practice law in the States of New York and New Jersey, as well as in the United States District Courts for the Eastern District, Southern District, and Western District of New York, as well as the District of New Jersey.



VIRGINIA E. ANELLO, ESQ.

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Virginia E. Anello, a senior associate of Douglas & London, P.C., is admitted and licensed to practice law in the States of Louisiana, New York and Massachusetts, as well as in the U.S. District Courts for the Eastern and Southern Districts of New York, the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Federal Claims.

Since obtaining her law degree from Louisiana State University, Ms. Anello has devoted her career to representing injury victims and consumers, primarily in the mass tort and class action setting. She has been an associate with Douglas & London, P.C. for over 12 years, and her practice areas in the law have always focused on, and continue to focus on, products liability litigation, vaccine litigation and complex litigation.



Over the course of these 12 years, she has been actively involved in major nationwide mass tort litigations and has litigated numerous cases on behalf of clients injured as a result of defective medical devices and pharmaceutical drugs.

In the toxic exposure context, Ms. Anello was actively involved in the litigation and ultimate settlement of the World Trade Center Disaster Site Litigation before the Honorable Judge Alvin Hellerstein in the U.S. District Court for the Southern District of New York, in which she represented hundreds of individuals that were injured following their toxic exposure from the September 11th attacks. Her continued pursuits in this regard include representing individuals who were injured secondary to toxic exposures at the World Trade Center site, both under The James L. Zadroga 9/11 Health & Compensation Act and the September 11th Victim Compensation Fund.

REBECCA G. NEWMAN, ESQ.

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Rebecca G. Newman, a senior associate of Douglas & London, P.C., is admitted and licensed to practice law in the States of New York and New Jersey, U.S. Court of Appeals for the Sixth Circuit, U.S. District Courts for the Eastern and Southern Districts of New York, the District of New Jersey, Eastern District of Wisconsin, District of Colorado and the U.S. Court of Federal Claims.

Ms. Newman obtained her law degree from Brooklyn Law School where she was a member of the Journal of Law and Policy, and from where she graduated cum laude. Prior to law school, she attended Vassar College where she graduated with degrees in Political Science and French Language. Since obtaining her law degree, she has devoted her over ten (10) years with Douglas & London, P.C. to representing injury victims and consumers, primarily in the mass tort and class action context. Ms. Newman's practice areas in the law include products liability, environmental and complex litigation.

Between the years 2013 and 2017, Ms. Newman was integrally involved with litigation concerning PFAS. In particular, Ms. Newman actively participated in the *In re E. I. du Pont de Nemours and Co. C8 Personal Injury Litigation*, MDL 2433, in nearly every respect, including preparing for, participating in and attending nearly every case management conference held before the Hon. Edmund A. Sargus, Jr., U.S. District Court for the Southern District of Ohio, handling multiple fact depositions of both plaintiffs and treating physicians, preparing for depositions of expert witnesses for both plaintiff and defense, defending plaintiff's expert depositions, preparing jury instructions, trial witness preparation, legal research and writing numerous motions filed prior to and during the three trials, including summary judgment, Daubert, motions in limine, directed verdict, discovery motions and other related motions.

In addition, Ms. Newman was a member of the trial team for the first three bellwether cases that went to trial in the C8 MDL. The first trial concluded in October 2015 resulting in a \$1.6 million dollar jury verdict in compensatory damages (*Bartlett v. E. I. du Pont, et al.*, Case No. 13-cv-0170); the second trial concluded in July



2016 resulting in a jury verdict of \$5.1 million in compensatory damages and \$500,000 in punitive damages (Freeman v. E. I. du Pont, et al., Case No. 13-cv-1103); and the third trial concluded in January 2017 resulting in a jury verdict of \$2 million in compensatory damages and \$10.5 million in punitive damages (Vigneron v. E. I. du Pont, et al., Case No. 13-cv-0136).

Concurrently with her work in the C8 MDL, Ms. Newman likewise devoted her time to the In re Xarelto Products Liability Litigation, MDL 2592, where she represented the firm's clients who suffered bleeding events as a result of their use of the novel oral anticoagulant, Xarelto. In this role, Ms. Newman was a member of two of the state court trial teams in the consolidated Pennsylvania state court litigation, including the only one to have obtained a plaintiff's verdict. As part of these trial teams, her work included trial witness preparation, legal research and writing, in addition to other aspects of trial support. In 2019, a \$775 million settlement was secured for the plaintiffs in the Xarelto litigation.

Currently, Ms. Newman along with the firm represent clients facing PFAS-contamination as a result of the use of aqueous film-forming foams, which claims are pending as part of multidistrict litigation in the United States District Court for the District of South Carolina captioned as In re Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2873. Ms. Newman has been appointed as the Co-Chair of the Law and Briefing Committee in MDL No. 2873.

LARA J. SAY, ESQ

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Lara Say received her Juris Doctor from Brooklyn Law School where she was a member of the Journal of Law and Policy. Prior to law school, she attended the University of North Carolina – Chapel Hill where she graduated with an honors degree in English and a minor in Chemistry.

Ms. Say first focused her legal skills on the *Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL 2100, where she spent countless hours representing young women who suffered blood clots, pulmonary emboli, strokes, and gallbladder disease as a result of their exposure to oral contraceptive pills manufactured by Bayer Healthcare Pharmaceuticals, Inc. Ms. Say was an integral part of the *Yaz/Yasmin/Ocella* team where she aided partners Gary J. Douglas and Stephanie O'Connor, as well as other plaintiff firms throughout the country, in overseeing the management of key evidence found within the 90 million pages of documents produced by Bayer and assisting in over 25 depositions, conducted both in the United States and overseas.

Ms. Say then applied her knowledge gained in the *Yaz/Yasmin/Ocella* litigation to the *Pradaxa (Dabigatran Etexilate) Products Liability Litigation*, MDL 2385, representing individuals who suffered bleeding events as a result of taking the anticoagulant Pradaxa, manufactured by Boehringer Ingelheim. She again worked closely with Mr. Douglas in his role as Co-Chair of the Science Committee and lead counsel for the first bellwether trial, as well as serving on

the Bellwether Selection Committee, and focused on the discovery process, namely, the development of the science and regulatory themes from over 70 million pages produced by Boehringer Ingelheim and assisted in multiple key depositions of corporate witnesses in the U.S. and abroad. She also played an integral role in the development of generic scientific and regulatory expert reports based on the information obtained in the discovery process, as well as case-specific reports, and party depositions, for the first bellwether trial.

Ms. Say also utilized her experience working with experts in the *In re E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL 2433) concerning C8/PFOA. She played a key role in the retention and development of multiple case-specific expert witnesses for plaintiffs, as well as preparing for and assisting in the depositions of key expert witnesses, both generic and case-specific.

For the past four years, Ms. Say has dedicated her time to the *Xarelto Products Liability Litigation*, MDL 2592, representing individuals who suffered severe bleeding events as a result of taking the anticoagulant Xarelto, manufactured and sold by Bayer and Janssen Research & Development, LLC. She was chosen as Co-Chair of Clinical Trials Sub-Committee and Science Committee Liaison, served as a member of the Bellwether Committee, and again supported Mr. Douglas in his role as Co-Chair of the Science Committee. In those roles, she guided the discovery process in preparation for corporate witness depositions, assisted Mr. Douglas and other lead counsel in those depositions, and retained, cultivated, and worked with a large panel of scientific and regulatory experts on composing and serving generic and case-specific expert reports for multiple rounds of bellwether cases. Ms. Say also ultimately served as an integral member of the team in four of the six bellwether trials in both federal and state court, with a focus on developing and executing expert witness testimony as well as the overarching scientific and regulatory themes and structure of plaintiffs' case.

Ms. Say is admitted to practice law in the States of New York, New Jersey and North Carolina. She is also admitted in the United States District Court for the Southern District of New York, the Eastern District of New York and the District of New Jersey.

E. SL Environmental Law Group CVs



ALEXANDER LEFF

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Alex founded SL Environmental in 2003. Under his leadership, SL Environmental has recovered over \$1 billion dollars in settlements and judgments for its clients.

Alex graduated from Stanford University in 1979 where he earned degrees with honors in both Economics and Human Biology and was Phi Beta Kappa. He received his JD from Yale Law School in 1983.

After graduating from law school, Alexander joined McKinsey & Company, an international management consulting firm, where his clients included a number of Fortune 100 companies. Before co-founding SL Environmental, Alexander was a consultant to a number of leading for-profit and non-profit enterprises on issues of strategy, negotiation, and conflict resolution.

Alex's business experience, coupled with his legal training, enable him to play an important role in managing the staffing and financing challenges inherent in complex contingency litigation. His background as a former management consultant provides unique insights that he utilizes in crafting settlement strategies with large corporate defendants. Alex is an attorney in good standing in California.



RICHARD HEAD

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Richard is Of Counsel at SL Environmental with a history of public sector employment. Before joining SL Environmental, Richard was Associate Attorney General for the New Hampshire Justice Department. Over the course of his 14 year career at the Department of Justice, he argued more than 15 cases before the New Hampshire Supreme Court and frequently testified before the New Hampshire Legislature on a wide range of issues on behalf of the Attorney General. Richard also held multiple senior leadership roles throughout his tenure with the Department of Justice. As Associate Attorney General, Richard was the Director of the Division of Legal Counsel and oversaw the management of the Civil and Transportation Bureaus and the Charitable Trust Unit. As a Senior Assistant Attorney General, he served as the Bureau Chief of the Environmental Protection Bureau and the Consumer Protection and Antitrust Bureau.

Richard's experience at the Department of Justice included complex litigation cases. Richard served as a senior member of the legal team working on New Hampshire's MTBE litigation, including its three-month jury trial. He

also was the lead attorney for New Hampshire in enforcement of the multi-state Tobacco Master Settlement Agreement, which established standards on tobacco marketing and a formula for payments by tobacco manufacturers. In the nine years Richard was involved in litigation against the tobacco manufacturers, he worked with the National Association of Attorneys General (NAAG) and the tobacco units of virtually every state's office of the attorney general.

Prior to working for the New Hampshire Justice Department, Richard worked in the New Hampshire Department of Environmental Services after spending 10 years in private practice as a litigator.

Richard earned his B.A. from Clark University and his J.D. and M.S. in Environmental Science from Indiana University. During law school, he was an editor of the *Indiana Law Journal*.

Richard is an attorney in good standing in New Hampshire, Vermont and the First Circuit Court of Appeals.



KENNETH SANSONE

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Ken is a partner at SL Environmental who focuses his practice on complex Environmental matters. Ken has nearly two decades of experience in handling sophisticated civil and criminal litigation at both the trial and appellate level in state and federal court. In May of 2018 Ken led SL Environmental Trial Team in the *City of Pomona v. SQM North America*. Though the jury found that Defendant's product was the cause of the City's perchlorate contamination, they failed to award any damages and the matter is currently pending before the 9th Circuit Court of Appeals.

Prior to joining SL Environmental, Ken served as an assistant attorney general for the State of New Hampshire, representing state officials, agencies, and employees, and the state itself, in a wide range of disputes. Ken argued several cases before the New Hampshire Supreme Court, and regularly appeared for the State in trial court and before administrative agencies. Ken also routinely consulted on appeals and other complex litigation handled by the office, particularly on matters involving difficult issues of federal civil procedure and administrative law.

Ken also served as the senior law clerk to the Honorable Joseph N. Laplante, Chief Judge of the United States District Court for the District of New Hampshire. Ken joined the Chief Judge in resolving, by trial, motion practice, or mediation, hundreds of civil cases, including many complicated products liability, intellectual property, and constitutional matters. Ken also served as a law clerk to the Honorable Jeffrey R. Howard of the United States Court of Appeals for the First Circuit, in Boston, and the Hon. Joseph A. DiClerico, Jr., of the United States District Court for the District of New Hampshire. Ken began his career at Goulston & Storrs, a large Boston law firm, where he handled a variety of complex commercial cases.

Ken received his law degree from New York University School of Law, and his bachelor's degree, magna cum laude with highest distinction, from Duke University. Ken is an attorney in good standing in California.



SETH MANSERGH

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Seth Mansergh has been an attorney at SL Environmental Law Group since 2009. He focuses his practice on complex environmental litigation. Seth has substantial experience involving MTBE contamination litigation. He was a member of the legal team that represented the State of New Hampshire in its successful statewide MTBE case resulting in a jury verdict of \$816 million dollars. He is currently engaged in environmental contamination matters for water systems and school districts.

Seth attended Golden Gate University School of Law where he was an editor on both the *Golden Gate University Law Review* and *Environmental Law Journal*. His article, “Out the Smokestack, Retooling California’s Marine Vessel Rules for Federal Authorization,” was published by the *GGU Law Review* in 2009. Seth was president of the Environmental Law Society, a co-chair on the California Water Law Symposium, and graduated with Distinction in Environmental Law. He earned his undergraduate degree from University of California, San Diego where he focused on Public Policy and Environmental Studies. Seth is an attorney in good standing in California.

F. Levin Papantonio CVs



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Mike Papantonio is a senior partner of Levin Papantonio and is a Board Certified Civil Trial Lawyer by the Florida Bar and the National Board of Trial Advocacy. He is a member and leader of both national and international legal associations, including the National Trial Lawyers Association, of which he was the 2012 President. Mr. Papantonio is recognized as one of the Best Lawyers in America and a Leading American Attorney, was awarded the Florida Justice Association 2011 Perry Nichols Award, and has been selected by the Public Justice Foundation as a finalist for its Trial Lawyer of the Year Award. Mr. Papantonio also founded Mass Torts Made Perfect, which has trained thousands of lawyers in how to better their legal practice, and featured speakers including United States Presidents. Mr. Papantonio has obtained multiple settlements and verdicts in the tens and hundreds of millions of dollars. In 2001, Mr. Papantonio obtained a \$70 million settlement against polluters of waterways. In 2007, as lead trial counsel in an environmental class action Mr. Papantonio received a jury verdict award for a West Virginia community with an estimated value in excess of \$380 million. In 2017, he helped secure a \$671 million DuPont C8 settlement.



NED MCWILLIAMS

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Ned McWilliams is a partner at Levin Papantonio and has a national reputation representing Plaintiffs in pharmaceutical and environmental law. In addition to his experience with complex pharmaceutical litigation, he has extensive experience with equally complex environmental class action litigation. He has served as class counsel in three major environmental cases. He began his legal career in *Perrine vs. DuPont*. *Perrine* was a certified class of more than 8,000 individuals whose persons and property were contaminated with the heavy metals arsenic, cadmium and lead by a hundred year old zinc smelting facility located in the town of Spelter, West Virginia. The case was complex both **procedurally** and substantively – involving dozens of fact witnesses, dozens more expert witnesses, millions of pages of discovery, three interlocutory appeals and ultimately a four phase trial spanning six weeks which resulted in a verdict in excess of \$380 million. For his work he was selected by the Public Justice Foundation as finalist for their Trial Lawyer of the Year award in 2008. He also served as class counsel in *Sher vs. Raytheon*. The *Sher* case related to a plume of chlorinated solvents that had contaminated the groundwater under a former defense contractor facility and was migrating under hundreds of properties in a residential neighborhood in St. Petersburg, Florida. The case was successfully certified as a class by the District Court, decertified by the 11th Circuit, and ultimately settled on the eve of the second class certification hearing. Lastly, he served on the Plaintiffs

Steering Committee for the In Re C8 Litigation. The C8 litigation involved thousands of individuals who brought personal injury actions against DuPont after DuPont contaminated the drinking water of tens of thousands of residents near one of its facilities in West Virginia. After numerous jury verdicts, the case was successfully resolved for \$621 million in 2017.



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Wes Bowden is a partner at Levin Papantonio, focusing his practice on complex product liability and environmental cases. He served as trial counsel for two environmental cases against DuPont. In 2016, he was part of the trial team securing a \$5.6 million verdict on behalf of an Ohio resident who developed cancer after drinking water contaminated by DuPont with C8/PFOA. In 2017, he served as co-lead in another C8/PFOA litigation case against DuPont resulting in a \$12.5 million verdict on behalf of an Ohio resident with cancer due to C8/PFOA contamination. The C8/PFOA litigation would resolve for \$671 million in 2017. In 2019, he was appointed to the Plaintiffs Executive Committee for MDL No. 2873 *In re: Aqueous Film-Forming Foams Products Liability Litigation*.

G. The Sam Bernstein Law Firm, PLLC CVs



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Mark serves as the President and Managing Partner of The Sam Bernstein Law Firm, PLLC. In courtrooms and communities across Michigan he fights to make sure everyone gets a fair shake – not just powerful corporations and insurance companies. He continues the Bernstein family commitment to public service, work in government, business and the law.

Mark recently served as the Director of Michigan Governor Gretchen Whitmer’s Transition Office leading the policy, political, legal, compliance, search and recruitment efforts related to establishing a new gubernatorial administration including the Executive Office of the Governor and state departments, agencies and commissions. This work included the transformation of the Michigan Department of Environmental Quality (MDEQ) into the new Department of Environment, Great Lakes & Energy (EGLE).

Mark is engaged in environmental and conservation related advocacy as a Director of the Michigan League of Conservation Voters, an early and forceful voice regarding the presence and dangers associated with PFAS contamination across Michigan.

In the mass tort arena, Mark has lead the activity of the Sam Bernstein Law Firm in several significant mass tort litigation areas including pharmaceutical and medical device cases. Currently, The Sam Bernstein Law Firm is engaged in a consortium of law firms in the representation of Michigan municipalities (counties and cities) in the Multi-District Litigation (MDL) involving opioid manufacturers and distributors.

Mark serves on the Executive Board of the Michigan Association for Justice. He was elected by leading defense and plaintiff attorneys from across Michigan to serve on the State Bar of Michigan Negligence Section Council. He was recently honored as a Fellow of the Michigan State Bar Foundation and a Leader in the Law by Michigan Lawyers Weekly. Mark is recognized as a Super Lawyer for excellence in the practice of law.

Mark helps educate future lawyers and leaders. He has lectured at the University of Michigan Law School and the University of Michigan College of Literature, Science & the Arts on tort and civil rights law.

In 2012, Michigan voters elected Mark to serve on the University of Michigan Board of Regents. Over 2.3 million voters in the state-wide election supported his campaign to make college affordable and accessible for Michigan families. His term on the Board of Regents ends in 2020.



Mark was the longest serving member of the Michigan Civil Rights Commission. He was appointed to serve on the Commission by Governor Jennifer Granholm in 2004 and served until 2012. In his work on the Commission, Mark was a strong voice for fairness and equality. He aggressively investigated the conduct of Michigan Civil Rights Initiative sponsors, organized the Michigan Civil Rights Summit, and examined migrant worker living conditions. Mark led the Commission to advocate for contraceptive equity, hate crime legislation, and equality for all Michigan citizens. He helped lead the Commission's work related to bullying. Mark also helped initiate the Civil Rights Youth Initiative, a collaboration between the University of Michigan and the Michigan Department of Civil Rights.

Mark served as Director of Press Pool Operations in the White House during the Clinton administration. At the White House, he helped to promote an agenda that produced the longest economic expansion in American history and the largest expansion of college opportunity since the GI Bill.

Mark has served on the Board of Directors of the Jewish Federation of Washtenaw County, as Chairperson of the Community Relations Committee of the Jewish Federation of Washtenaw County, and on the Advisory Board of Jewish Family Services of Washtenaw County. Mark has also served on both the Governing Board and Board of Trustees of the University of Michigan Hillel. Mark serves on the Board of Directors of Detroit Public Television.

His commitment to public service and professional success has been celebrated across Michigan. Mark recently received the Congressman John Conyers, Jr. Public Official Award from The ARC Detroit. He is the 2011 recipient of the Washtenaw Association for Justice Outstanding Attorney Award. Mark was also honored to receive the Claire and Isadore Bernstein Award from Jewish Family Services of Washtenaw County.

Mark is a product of Michigan's public education system...from kindergarten to earning three degrees from the University of Michigan (BA, JD, MBA).

Mark is licensed to practice law in Michigan, Illinois, and Ohio.

H. Ufer, Spaniola & Frost P.C. CVs



ANTHONY M. SPANIOLA

SHAREHOLDER
TROY, MI | 248-641-7000
AMS@USF-LAW.COM

Tony co-founded law firm now known as Ufer, Spaniola & Frost, P.C. in 1987 and served as managing shareholder for many years. His practice is focused on the representation of closely held businesses and organizations across a broad spectrum of endeavors. He has extensive experience and is sought out for advice in complex transactional and other matters, and he has been rated "AV Preeminent" by the Martindale Hubbell attorney rating service.

Tony's many and varied representations have included serving as General Counsel to a Michigan-based investor group in the ownership, operation and development of renewable energy facilities throughout the U.S. and Canada, where he oversaw and managed a number of complex litigation matters. He also has served as General Counsel to the International Hockey League; lead counsel in the negotiation of an exclusive North American apparel licensing arrangement with Rolling Stone magazine; and as primary counsel for a civil rights-based trust organization.

After learning that his family's Oscoda, Michigan cottage had been impacted by PFAS contamination from the former Wurtsmith Air Force Base, Tony developed extensive expertise on PFAS issues and became a leading spokesperson for PFAS-impacted individuals and communities throughout the state. He is a founding member of the Need Our Water (NOW) community action group in Oscoda and has worked with a number of environmental and conservation groups across the state on PFAS matters.

Education and Professional Affiliations

Tony is a graduate of Harvard University (AB, Cum Laude, John Lowell Gardner National Scholar) and the University of Michigan Law School (JD, Cum Laude, Order of the Coif), where he served as Note Editor of the Michigan Law Review. He is a member of the American and Michigan Bar Associations and was previously associated with the firms of Dickinson, Wright, Moon, Van Dusen & Freeman and Simpson & Moran. He also served as a Special Assistant to the Attorney General of the State of Michigan.

Public Interest Matters

Tony has previously been active in politics and government, running two of his father's successful campaigns for the Michigan House of Representatives and working for various government officials, including the Secretary of Transportation for the State of Massachusetts. He is also a former news reporter and radio announcer.

In the wake of Michigan's PBB public health crisis, Tony initiated legislation (enacted as Public Act 82 of 1984) creating the Michigan Cancer Registry to promote and facilitate epidemiological research in the state. In 2004, he served as a legal work group advisor to the Governor's Commission on Mental Health. In 2016, he served as a panelist on Post-Prison Rehabilitation and Re-Entry at the Leadership Institute At Harvard College.

Community Involvement

Tony is past President of the Michigan Association for Children with Emotional Disorders. He has been a member of the Schools Committee of the Harvard Club of Eastern Michigan, and he has been active with his family at the Capuchin Soup Kitchen's "On The Rise Bakery" in Detroit.

Practice Areas

- General Business Counseling and Organization
- Mergers and Acquisitions
- Real Estate

Admissions/Special Qualifications

- Michigan, 1984
- U.S. District Court, Eastern District of Michigan, 1984
- Special Assistant to the Attorney General of the State of Michigan, 1986
- Legal Work Group Advisor, Governor's Commission on Mental Health, 2004
- Panelist, Leadership Institute at Harvard College, Post-Prison Rehabilitation and Re-Entry, 2016

Education/Publications

- Harvard University (AB, Cum Laude, John Lowell Gardner National Scholar, 1981)
- University of Michigan (JD, Cum Laude, Order of the Coif, 1984)
- Note Editor and Associate Editor, Michigan Law Review, 1982-1984
- Author: Book Notice, "The Politics of Judicial Reform," 81 Michigan Law Review 774, 1983



3. Experience

3.1 Describe at least 3 relevant experiences supporting your ability to successfully perform the work set forth in the SOW. Include a description of services provided and results obtained. Include contact information for the clients you represented.

A. State of New Jersey/PFAS

Kelley Drye has been retained by the State of New Jersey to bring environmental remediation, restoration, and natural resource damages claims for contamination from PFAS across the entire State. In New Jersey, we drafted and issued (on March 25, 2019) a Statewide Directive concerning PFAS; we also drafted and filed two site-specific lawsuits (on March 27, 2019) against the primary manufacturers of PFAS: 3M and DuPont; and we filed a statewide AFFF Complaint against the manufacturers of AFFF firefighting foam, 3M and DuPont (on May 14, 2019). New Jersey has also retained Kelley Drye to assert claims for the investigation and remediation of groundwater, surface waters, and soils, and to seek relief and damages associated with impacts to the natural environment and resources of the State, as well the health risks posed to the citizens, for PFAS matters statewide.

Contact:

Gwen Farley
Deputy Attorney General
New Jersey Department of Law and Public Safety
Division of Law
Environmental Enforcement Section
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
gwen.farley@law.njoag.gov
(609) 376-2761

Contact:

Michael Gordon, ESQ
Senior Advisor
Office of the Commissioner
Legal & Regulatory Affairs
NJ Department of Environmental Protection
401 East State Street, Trenton, NJ 08625
michael.gordon@dep.nj.gov
(609) 292-2887

B. State of New Hampshire / MTBE

SL Environmental was hired by the New Hampshire Attorney General's Office to work as the State's co-counsel in a lawsuit to recover damages for MTBE contamination throughout the State of New Hampshire. With SL Environmental's assistance, the State reached settlements providing approximately \$120,000,000 in cash recovery for the State before trial and another \$16,000,000 with Citgo shortly after trial began. After a three-month trial, the jury found ExxonMobil responsible for 28.94% of the damages and awarded the State over \$236 million.

Contact:

K. Allen Brooks
Senior Assistant Attorney General
N.H. Department of Justice
33 Capitol Street, Concord, NH 03301
(603) 271-3679

C. DuPont and 3M PFAS Drinking Water Contamination Litigation (West Virginia, Ohio, New Jersey, Minnesota)

Rob Bilott from Taft Stettinius & Hollister LLP ("Taft Law Firm") is the first lawyer in the country to be involved in environmental litigation regarding PFAS and developed a comprehensive record of DuPont's and 3M's activities at their PFAS manufacturing and use facilities in West Virginia, New Jersey, and Minnesota, along with their historic knowledge and control of scientific and regulatory information on such chemicals and resulting environmental and health impacts. Across 20 years, Rob and the Taft Law Firm have developed an extensive library of documents obtained through discovery from DuPont and 3M that cannot be replicated by anyone else, including the companies themselves. These documents provide extensive documentation regarding the companies' knowledge of the risks to human health and the environment posed by PFAS for decades.

The Taft Law Firm led litigation first filed in 1999 that resulted in the discovery and public disclosure of PFOA in drinking water supplies for approximately 70,000 people in West Virginia and Ohio attributable to the DuPont Washington Works facility. Rob's discovery and dedicated perseverance spurred national regulatory interest and investigation into PFOA and the 2001 filing of the nation's first class action on behalf of individuals exposed to PFOA in their drinking water. Rob was appointed by the court as one of Plaintiffs' Class Counsel and helped negotiate and obtain a class settlement in 2004 that secured benefits for the class valued in excess of \$300 million, including water filtration systems for impacted private and public water supplies in West Virginia and Ohio, funding of independent scientific health studies for PFOA through the establishment of an independent C8 Science Panel, blood testing of 69,000 people, and eventual medical monitoring and establishment of general causation findings for personal injury claims.



Rob Bilott and the Taft Law Firm also led additional class action litigation against DuPont in New Jersey arising from PFOA contamination of water supplies near DuPont's Chambers Works facility. That case resulted in a settlement in 2011 that provided clean water to local residents. Similarly, Rob was involved in litigation against 3M in Minnesota during which dozens of 3M witnesses and experts were deposed and additional documents were collected and reviewed. He also assisted the Minnesota Attorney General's Office with its case against 3M related to PFOS contamination state-wide.

As a result of the 2004 class action settlement in West Virginia, the C8 Science Panel was created which has become the foundation for much of the scientific work that is being done today regarding the health risks associated with PFOA and the entire class of PFAS chemicals. After the Science Panel completed its work, Rob Bilott and his colleagues at the Taft Law Firm teamed with Douglas & London, Levin Papantonio, and Kennedy & Madonna to represent approximately 3,200 individuals who suffered personal injuries from drinking water contaminated with PFOA from DuPont's Washington Work's plant. These cases were consolidated in a multi-district litigation ("MDL") proceeding in the Southern District of Ohio where Rob Bilott and Mike London of the Douglas & London law firm served as Co-Lead Counsel. After four years of litigation, including three trials that resulted in verdicts in favor of each individual plaintiff of \$1.6 million, \$5.6 million and \$12.8 million (including punitive damages in the last two referenced trial results), a global resolution was reached on behalf of approximately 3,600 claimants for \$670.7 million. This legal team is comprised of the only lawyers in the country to have tried a PFOA case successfully, and, in fact, has tried three.

During the C8 MDL, which includes over 5100 docket entries, this team litigated PFOA issues that resulted in twenty-four case management orders, forty-seven pretrial orders, twelve discovery orders, twenty-nine dispositive motions orders, twenty-four evidentiary (*Daubert*) motions orders, and rulings on 142 motions *in limine*. Included in these orders is a finding from the court that "[a] reasonable jury could find the evidence shows that DuPont knew that C-8 was harmful, that it purposefully manipulated or used inadequate scientific studies to support its position, and/or that it provided false information to the public about the dangers of C-8." Specifically, at trial, the Plaintiffs' team introduced evidence that DuPont was discharging more than 80 percent of its PFOA input from its Washington Works plant back into the environment despite its own internal 1991 warning *specifically* stating that PFOA should *not* be discharged to surface water *and* a 1986 warning by the manufacturer of the PFOA - 3M - that PFOA should *only* be disposed of through incineration or disposal at a proper landfill.

This team's efforts included the analysis of hundreds of thousands of documents (that total over six million pages), taking the depositions of dozens of DuPont representatives, the preparation of dozens of expert reports (and access to many other experts, including many of the world's leading scientific experts), and the culmination of three successful trials. There are simply no other attorneys who have a better grasp of the evidence at issue in these cases.

Contact:

David Freeman
Client & Trial-Plaintiff
(740) 989-0029
freemand@marietta.edu



D. City of St. Louis, Mich. v. Velsicol, No. 07-10385 (Gratiot Cty., Mich.).

Kennedy & Madonna, LLP represented a city whose wells were contaminated with pCBSA, a byproduct of DDT manufacturing. The firm secured a settlement valued at \$25 million which allowed the city to construct a new water system for its residents.

Contact:

Kurt Giles
City Manager
(989) 681-4377
kgiles@stlouismi.com

E. New Jersey/Passaic River

The lawyers at Kelley Drye & Warren have received national and repeated recognition for their work and the remarkable results achieved in *New Jersey Department of Environmental Protection v. Occidental Chemical Corporation et al.* (the “Passaic River Litigation”) on behalf of the State of New Jersey, including the Specialty Practice Area Award for Environmental Litigation in 2015 and the EPA Smart Growth Award for Riverfront Park Project in the same year.

For nearly a decade, the lawyers of Kelley Drye (then with Jackson Gilmour & Dobbs, PC) served as Special Counsel to the Attorney General and lead litigation counsel to the State of New Jersey in the Passaic River Litigation. New Jersey sought cleanup costs and economic damages suffered as the result of hazardous substances, including dioxins, intentionally dumped into the Passaic River. These pesticides and dioxins, which were generated in connection with the manufacture of Agent Orange, caused widespread contamination of the area. As a result, the Passaic River and Newark Bay Complex are considered to be among the most contaminated waterways in America. In connection with this harm, we were faced with the challenge of recovering New Jersey’s past costs, establishing liability for future remediation and costs, and recovering related economic damages. The case put hundreds of millions of dollars at stake.

Though we brought claims for New Jersey against less than ten primary defendants, the primary defendants added almost 300 additional litigants through third-party claims. Our firm was opposed by hundreds of litigants, which were represented by teams of attorneys from the largest and most prestigious law firms in the country. While the primary defendants spared no cost on any front, our firm represented public entities with limited funding for counsel, experts, and costs.

Success in the Passaic River Litigation required a mastery of a broad array of issues, including: state environmental law and its interplay with federal Superfund processes; the chemistry of historical pesticide and herbicide production and the chemical fingerprinting of key pollutants; complex hydrodynamic and fate-and-transport analysis of contaminants in sediments and dynamic estuarine environments; human health and environmental risks arising from such contaminants; a myriad of complex financial, organizational, and



accounting transactions related to corporate restructurings and efforts to strand the liabilities at issue; and the creation and quantification of comprehensive damage theories, along with many other issues.

Notwithstanding these challenges, our diligence, as well as a litigation strategy that used the primary defendants' tactics against them, culminated in a tremendous benefit to our client. On behalf of New Jersey, our firm recovered \$355.4 million in past costs and damages; protection against all of certain future costs; up to \$400 million in protection against future costs arising from an EPA remedy announced to be over \$1.7 Billion; \$67.5 million in restoration projects in impacted communities; as well as hundreds of millions of dollars in anticipated value generated from revived economic activity. These settlements represent the largest environmental cost-recovery case in the history of New Jersey and the single largest economic damages recovery of its kind.

Contact:

Michael Gordon, ESQ
Senior Advisor
Office of the Commissioner
Legal & Regulatory Affairs
NJ Department of Environmental Protection
401 East State Street, Trenton, NJ 08625
michael.gordon@dep.nj.gov
(609) 292-2887

Summary:

All of these issues and common background have led this team of firms to join forces on national PFAS matters. Importantly, in addition to our work in Ohio and New Jersey, we are all now in leadership positions in the currently-pending Multi-District Litigation (MDL) regarding AFFF: Since the 1960s, AFFF products have been used to fight liquid fuel fires in military, industrial and municipal settings. AFFF products contain PFOA and PFOS, as well as other shorter chain PFAS.

On December 7, 2018, the Judicial Panel on Multidistrict Litigation ("JPML") centralized, for coordinated pretrial proceedings, all actions alleging that AFFF products caused PFOA and/or PFOS contamination. The JPML centralized these actions in the United States District Court for the District of South Carolina before the Honorable Richard M. Gergel: In Re: Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873-RMG. On March 20, 2019, Judge Gergel appointed Michael A. London, of Douglas & London, as Plaintiffs' Co-Lead Counsel in MDL 2873. Additionally, Judge Gergel likewise appointed Kevin Madonna, of Kennedy & Madonna, William Jackson, of Kelley Drye, Richard Head, of SL Environmental Law Group, and Wesley Bowden, of Levin, Papantonio, Thomas, Mitchell, Rafferty, Proctor, to the Plaintiffs' Executive Committee ("PEC"). Finally, Robert A. Bilott, of Taft, Stettinius & Hollister, was appointed by the Court as Advisory Counsel to the PEC. One of the PEC's first official acts was to establish sub-committees. William Jackson is co-chairing the State Claims Committee, John Gilmour is co-chairing the Property Damage



Committee, Rob Bilott and Gary Douglas are co-chairing the Science Committee, Richard Head is co-chairing the Public Water Supplier Committee, and Kevin Madonna and Rebecca Newman are Co-Chairing the Law & Briefing Committee.

With these Court and PSC appointments, each member firm has significant and pivotal roles in prosecuting the pending AFFF actions, and thus overseeing the strategic course of this MDL. As a result of these roles in leadership and committee appointments, each member firm will play an integral role in MDL 2873, and shape its ultimate course going forward. And, to this end, be able to provide invaluable resources and aid to the State of Michigan in any of its AFFF cases.

3.2 Provide publicly available motions, briefs, and other documents relevant to your experience in providing the legal services sought under this RFP.

We have assembled a ShareFile, access for which will be provided to both AAG Polly Synk at synkp@michigan.gov and PFASProposal@michigan.gov. Please let us know if there is anyone else that should receive access.

In this ShareFile, you will find two subfolders, one titled “C8 MDL,” and, the other, “DuPont & Chemours MTD Briefing & Complaints.” Please note that access to the C8 MDL folder is restricted to “view-only,” and thus those documents cannot be downloaded or printed. With respect to the DuPont & Chemours MTD Briefing & Complaints folder, those documents can be downloaded and printed.

As noted above, during the course of the C8 MDL the court entered twenty-four case management orders, forty-seven pretrial orders, twelve discovery orders, twenty-nine dispositive motions orders, twenty-four evidentiary (*Daubert*) motions orders, and ruled on 142 motions *in limine*. From this massive docket, we have assembled a sampling of these orders/filings in the C8 MDL folder. This sampling of filings has been divided into folders containing: (1) orders and briefings related to *Daubert*/evidentiary briefing; (2) dispositive/summary judgment briefing; (3) motions *in limine*; and (4) motions pertaining to discovery disputes.

In particular, these folders contain two of Plaintiffs' motions to compel related to the 2015 spin-off of DuPont's performance chemical division (Chemours) and the resultant orders on these motions; two summary judgment motions and resultant orders pertaining to punitive damages which set forth some of DuPont's significant punitive conduct relating to its PFAS-related activities at its Washington Works plant in Washington, West Virginia, as well as Plaintiff's summary judgment motion on the issue of DuPont's duty with respect to the foreseeable harm resulting from its PFAS-related activities at Washington Works, and DuPont's Motion for Judgment as a Matter of Law (and order denying same) with respect to the first C8 trial, which sets forth a significant portion of the liability evidence as against DuPont, again, at its Washington Works plant in West Virginia. In addition, three of DuPont's *Daubert* motions against Plaintiffs' expert witnesses who opined as to DuPont's unreasonable conduct ("Standard of Care Experts") are also included. All three motions were denied and all of Plaintiffs' standard of care experts were permitted to testify to the totality of their opinions at trial. Finally, two motions *in limine* and resultant orders have likewise been included, which deal primarily with DuPont's retention of public relations organizations, *e.g.*, the Weinberg Group, as a means to downplay the harms it knew to be associated with PFAS, and additionally, its efforts to deflect from its own unreasonable PFAS-related conduct by emphasizing that its own pollution of the Ohio River was only a small part of the river's pollution.

In addition, we have provided in a separate printable folder, titled, DuPont & Chemours MTD Briefing & Complaints, copies of the *Ohio v. DuPont* Complaint and Briefing, the New Jersey/Chambers Works Complaint, the Parlin, NJ Complaint, and the NJ AFFF Complaint.

4. Conflict of Interest

- 4.1. Provide detailed information regarding any prior, current, or anticipated future relationship with any manufacturer of PFAS or PFAS-containing products that could give rise to potential actual or apparent conflict of interest. Disclose such information for both the bidder and any proposed subcontractors.**

None of the firms participating in this submission are aware of any prior, current, or anticipated future relationships with any manufacturer of PFAS or PFAS-containing products that could give rise to potential, actual or apparent conflict of interest.

- 4.2. Disclose any actual, apparent, or potential conflict of interest between the bidder and the State of Michigan.**

Kelley Drye is not aware of any material arrangements, relationships associations, employment, or other contacts that may cause a conflict of interest or the appearance of a conflict of interest under the State's Special Assistant Attorney's General guidelines. Kelley Drye does, from time to time, represent clients in investigations conducted by and proceedings before the State of Michigan's Consumer Protection Division. Kelley Drye expects to continue to represent such clients in these investigations and proceedings.

Ufer, Spaniola & Frost, P.C. is not aware of any material arrangements, relationships associations, employment, or other contacts that may cause a conflict of interest or the appearance of a conflict of interest under the State's Special Assistant Attorney's General guidelines. Ufer, Spaniola & Frost, P.C. does occasionally represent clients in contractual or compliance matters with the State of Michigan and expects to continue to do so.

None of the other firms participating in this submission are aware of any actual, apparent, or potential conflict of interest.

- 4.3. With respect to any information provided in response to the questions above, provide an explanation of why an actual, apparent, or potential conflict of interest would not arise, or the measures that would be taken to avoid such a conflict.**

Kelley Drye employs three full-time Conflicts Coordinators and one full-time Conflicts Analyst who assist in processing all preliminary conflicts check requests and all new matter submissions for new clients and existing Firm clients and generating conflicts of interest reports on the parties listed therein using computerized databases and computerized conflict searching technology. Specifically, Kelley Drye uses a conflicts checking platform styled E-Valuate as well as the S&P Capital IQ, Hoovers and Dunn & Bradstreet family tree tools. The results of each search are sent to the Conflicts Manager and, when necessary, to Firm Counsel, and one of them will authorize the opening of a new matter only when it is determined that there is no conflict of interest, or, if there is a conflict, that the necessary client consents have been obtained.

Ufer, Spaniola & Frost, P.C. conducts an all-attorney conflict review as a prerequisite to the opening of any new matter and will authorize the opening of a new matter only when it is determined that there is no conflict of interest, or, if there is a conflict, that the necessary conflict consents have been obtained.

The Taft firm employs similar conflict identification and resolution procedures prior to the opening of new matters.

5. SAAG Contract

See attached redline edits to the SAAG Contract

6. Fee Agreement

6.1 Attorneys Fees

Contingent Fee. The amount the Attorneys shall receive as fee for the legal services provided shall consist of a contingent fee (“Contingent Fee”), which shall be twenty percent (20%) of the Net Recovery (as defined below).

Definitions Relevant to Attorneys’ Fees.

“Net Recovery” means the total value received by the State of all Cash Recoveries plus Non-Cash Recoveries, whether awarded by Settlement or Final Judgment, minus all court-awarded Attorneys’ fees or costs recovered by the State in any Legal Action. The amount of any Net Recovery shall not include any reductions for Costs.

“Costs” include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, reasonable travel and hotel expenses, messenger service fees, e-discovery database costs associated with any Legal Action, photocopying expenses, and process server fees. Items that are not to be considered Costs, and that must be paid by the State without being either advanced or contributed to by the Attorneys, include the State’s expenses incurred in providing information to the Attorneys or defendants and expenses incurred by the State in its role as co-counsel in any Legal Action. The Attorneys will provide updates on Costs incurred in the Legal Action every two months or with such other frequency as the Parties may agree.

“Final Judgment” means any final, non-appealable court order or judgment terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of any parties to the Legal Action such that no issue is left for future consideration or appeal.

“Settlement” refers to any voluntary agreement executed by the State and any third party, whether resulting from a settlement conference, mediation, or court stipulation, terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of parties to the Legal Action such that no issue is left for future consideration or appeal.

“Cash Recovery” means, without limitation, the total monetary amount received by the State in a Settlement or Final Judgment arising from an actual or threatened Legal Action by the Attorneys **pursuant to this** Agreement, including interest of any kind received by the State. For avoidance of doubt, Cash Recovery does not include

legislative appropriations or other value from the State, federal or other government sources obtained by the State outside of the Legal Action.

“Non-Cash Recovery” means, without limitation, the fair market value of any property delivered to the State, any services rendered for the State’s benefit, and any other non-cash benefit in a Settlement or Final Judgment of an actual or threatened Legal Action by the Attorneys pursuant to this Agreement, including but not limited to any environmental clean-up required or performed in connection with any Settlement or Final Judgment.

“Present Value” means the interest rate of the one-year treasury bill as reported by the United the States Federal Reserve in the weekly Federal Reserve Statistical Release closest in time to the date of the recovery for which the present value is being calculated.

2. Calculation of Non-Cash Recovery.

For any Non-Cash Recovery resulting in the receipt of property, the provision of services, or the receipt of other non-monetary benefits by the State, including but not limited to any environmental clean-up required or performed in connection with any Settlement or Final Judgment, such property, services, or other non-monetary benefits shall be deemed for purposes of this Agreement to have been received by the State upon the execution of a Settlement or Final Judgment. The value of the property, services, or other non-monetary benefits shall be discounted to Present Value, to the extent discounting is appropriate.

If any Non-Cash Recovery is awarded in a Final Judgment, or before accepting any settlement offer that involves a Non-Cash Recovery, the State shall provide the Attorneys with its estimate of the value of the Non-Cash Recovery. The Attorneys shall promptly respond in writing, indicating whether the Attorneys accepts said estimate. If the State and Attorneys disagree as to the fair market value of any non-monetary property or services as described above, Attorneys and the State shall obtain an appraisal to be conducted by an agreed upon party and such appraised value shall be deemed the fair market value of any non-monetary property or services under this agreement. The cost for such appraisal shall be paid for by Attorneys and such cost will not be recoverable under this agreement.

Attachment A—SAAG Contract

State of Michigan Department of Attorney General

PFAS Environmental Tort Litigation

DANA NESSEL, Attorney General of the State of Michigan (Attorney General), and the Department of Attorney General (the Department) retain and appoint the **[name of firm]**, to provide legal services through the appointment of the following individuals as Special Assistant Attorneys General (SAAGs):

[list names]

The legal services provided to the State of Michigan will be pursuant to the following terms and conditions in this Contract:

1. PARTIES/PURPOSE

1.1 **Parties.** The parties to this Contract are the Department of Attorney General and the [SAAG/firm]. No other attorney may engage in the practice of law on behalf of the State of Michigan under this Contract without the Department's prior approval, a Contract amendment, and a SAAG appointment from the Attorney General.

1.2 **Purpose.** The Department and the [SAAG/firm] agree that the SAAG will provide legal services relative to the investigation, assessment, and pursuit of claims against manufacturers of per- and polyfluoroalkyl substances and/or products that contain PFAS arising from PFAS contamination in the State of Michigan (the "PFAS eEnvironmental tTort Llitigation"). As to services provided by the SAAGs to the State of Michigan under this Contract, Tthe SAAG is to work only on the PFAS Eenvironmental tTort Hlitigation and all case resolutions are to be approved in advance by the Department [if necessary, modify to add the state agency that is a party to this contract].

1.3 **Work Product.** The SAAG understands that all work product is subject to review by the Department. The Department reserves the right to deny payment for any work product deemed unacceptable. Delivery of such a deficient work product may also result in Contract termination under paragraph 9 of this Contract.

2. TERM OF CONTRACT

The initial term of this Contract is [month/day/year] through [month/day/year]. This Contract may be extended at the option of the Department upon thirty (30) calendar days written notice.

3. COMPENSATION AND COST REIMBURSEMENT

3.1 Compensation and the repayment of costs and disbursements shall be contingent upon a successful recovery of value (whether by cash or non-cash recovery) (“Recovery”) ~~funds~~ being obtained from Defendant(s) in the litigation pursued under the terms of this Contract (whether through settlement or final non-appealable judgment).

3.2 If no ~~Recovery~~ is made, the State owes nothing for costs incurred by SAAGs and is not obligated to reimburse the SAAGs for any costs.

3.3 If a ~~Recovery~~ is obtained, the costs incurred by SAAG will be deducted prior to the calculation of the fee set forth in the Fee Agreement. The SAAG will be required to submit a monthly statement to the Department of Attorney General setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement.

4. REPRESENTATIONS

4.1 Qualifications. The SAAG, by signing this Contract, attests that [he/she] is qualified to perform the services specified in this Contract and agrees to faithfully and diligently perform the services consistent with the standard of legal practice in the community.

4.2 Conflict of Interest. Prior to entering into this Contract, the SAAG and the SAAG’s law firm must identify and disclose to the Department any matter in which the SAAG or any member of the SAAG’s law firm is involved in which it is adverse to the State of Michigan. The SAAG represents that [he/she] has conducted a conflicts check prior to entering into this Contract and ~~no conflicts exist with the proposed legal services. The SAAG [or name of the firm and each SAAG] agrees to not undertake representation of a client if the representation of that client is related to the subject matter of this Contract or will be adverse to the State of Michigan, unless the SAAG obtains prior written approval to do so from both the [name of department or agency] and the Department.~~ is not aware of any material arrangements, relationships, associations, employment, or other contacts that may cause a conflict of interest or the appearance of a conflict of interest under the State’s Special Assistant Attorney’s General guidelines. The SAAG does, from time to time, represent clients in investigations conducted by and proceedings before the State of Michigan’s Consumer Protection Division. The SAAG expects to continue to represent such clients in these investigations and proceedings. Ufer, Spaniola & Frost, P.C. does occasionally represent clients in contractual or compliance matters with the State of Michigan and expects to continue to do so.

With respect to potential conflicts of interest, other lawyers in the SAAG's firm must be advised of the SAAG's representation of [name of department or agency], and that the firm has agreed not to accept, without prior written approval from ~~[name of department or agency]~~ and the Department, any employment from other interests related to the subject matter of this Contract ~~or~~ and adverse to the State of Michigan. [insert name of firm] must carefully monitor any significant change in the assignments or clients of the firm in order to avoid any situation which might affect its ability to effectively render legal services to the Department.~~[name of department or agency].~~

The Department understands that currently, and from time to time, one or more SAAG represent other states, municipalities, governmental agencies, governmental subdivisions, or investor-owned public water utilities in other actions or similar litigation, and that such work is a focus of one or more SAAG's practice. Further, the Department understands that SAAG represent other clients in actions similar to what would be brought under this Contract and against the same potential defendants. The Department understands that a recovery obtained on behalf of another client in a similar suit against the same defendants could, in theory, reduce the total pool of funds available from these same defendants to pay damages in a legal action brought under this Contract. The Department also understands that SAAG would not take on this engagement if the Department required SAAG to forgo representations like those described above.

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The Department has conferred with its own separate and independent counsel about this matter and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest that have been disclosed at this point.

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The Department acknowledges that several of the SAAG regularly represent businesses and individuals in actions that involve or may involve the State or its agencies, including but not limited to the Michigan Department of Environmental Quality, in matters that involve appeals of agency decisions, negotiation of permits and a wide variety of other matters that involve State agencies. SAAG will not knowingly take positions or represent clients that are adverse to the SAAG's representation of the Department as described in this Contract. In the unlikely event that a conflict develops during the representation, SAAG will inform the Department in order to determine an appropriate response.

4.3 Services to be Confidential. The SAAG must keep confidential all services and information obtained from or prepared for the State or Department related to work under this Contract, including records, reports, and estimates, to the extent not otherwise available in the public domain ("State Confidential Information"). The SAAG must not divulge any such State Confidential Information to any person other than to authorized representatives of the Department ~~and [name of department or agency]~~, except as required by testimony under oath in judicial proceedings, or as otherwise required by law. The SAAG must take all necessary steps to ensure that no member of the firm divulges any State Confidential Information concerning these services. This includes, but is not limited, to State Confidential Information maintained on the SAAG's computer system.

All files and documents containing State Confidential Information must be filed in separate files maintained in the office of [name of firm] with access restricted to each SAAG and needed clerical personnel. All State Confidential Information documents prepared on the [name of firm] computer system must be maintained in a separate library with access permitted only to each SAAG and needed clerical personnel.

4.4 Assignments and Subcontracting. The SAAG must not assign or subcontract any of the work or services to be performed under this Contract, including work assigned to other members or employees of the SAAG firm, without the prior written approval of the Department. Any member or employee of the SAAG firm who received prior approval from the Department to perform services under this Contract is bound by the terms and conditions of this Contract.

4.5 Facilities and Personnel. The SAAG has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

4.6 Advertisement. The SAAG, during the term of appointment and thereafter, must not advertise [his/her] position as a SAAG to the public. The SAAG designation may be listed on the SAAG's resume or other professional biographical summary, including resumes or summaries that are furnished to professional societies, associations, or organizations. Any such designation by the SAAG must first be submitted to and approved by the Department, ~~after consultation with [name of department or agency]~~.

4.7 Media Contacts. The SAAG may not engage in any on or off the record communication (written or spoken) relating to the SAAG's ~~this representation~~ and services under this Contract with any member of the media without advance approval and appropriate vetting by the Director of Communications of the Department of Attorney General.

4.8 Records. As set forth in Paragraph 3.3 of this Contract, the SAAG must submit a monthly statement to the designated representative(s) of the Attorney General, setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement (the "Records"). These ~~Records~~invoices shall be considered confidential and not be subject to discovery in the litigation brought under the

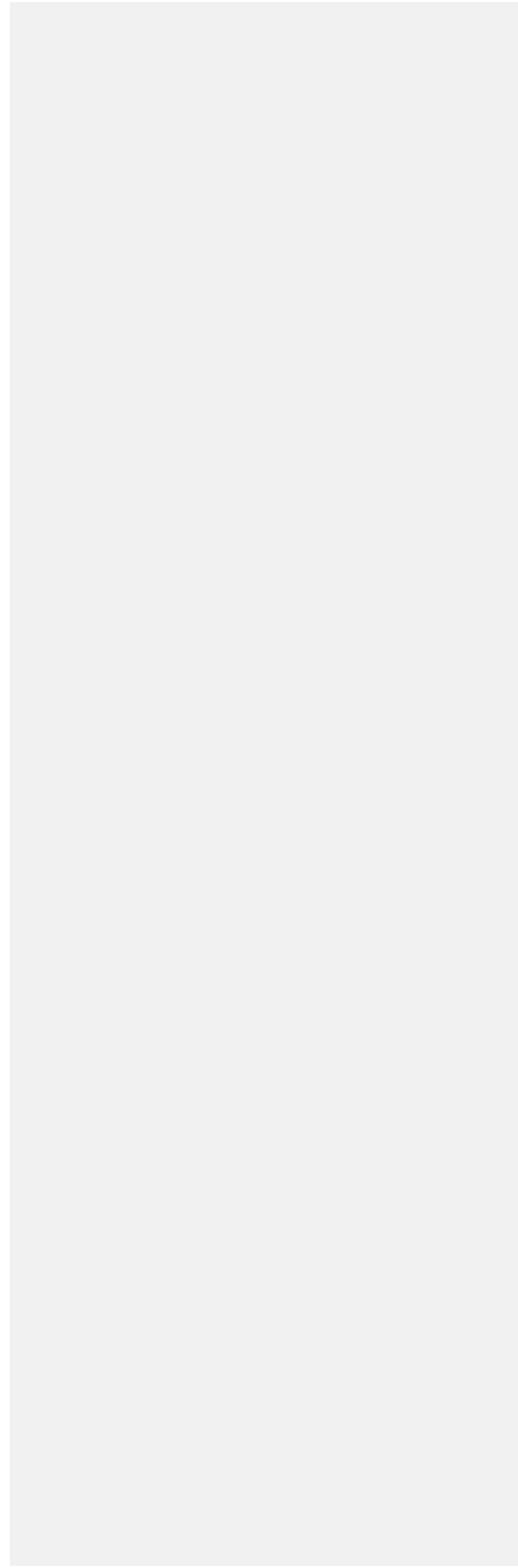
Contract Scope of Work. The ~~R~~Records must be kept in accordance with generally accepted accounting practices and sound business practices. The Department and [name of department or agency], or their designees, reserve the right to inspect all ~~R~~Records of the SAAG related to this Contract.

4.9 Non-Discrimination. The SAAG, in the performance of this Contract, [and his/her law firm] agree(s) not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. This covenant is required by the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and any breach of the Act may be regarded as a material breach of the Contract. The SAAG agrees to comply with the provisions of the Federal Civil Rights Act of 1964, 42 USC §2000d, in performing the services under this Contract.

4.10 Unfair Labor Practices. The State will not award a contract or subcontract to any employer, or any subcontractor, manufacturer, or supplier of the employer, whose name appears in the current register compiled pursuant to 1980 PA 278, MCL 423.321 *et seq.* The State may void this Contract if after the award of the Contract, the name of the SAAG or [his/her] law firm appears in the register.

4.11 Compliance. The SAAG's activities under this Contract are subject to applicable State and Federal laws and to the Rules of Professional Conduct applicable to members of the Michigan Bar Association. In accordance with MCL 18.1470, DTMB or its designee may audit Contractor to verify compliance with this Contract.

4.12 Independent Contractor. The relationship of the SAAG to the [name of department or agency] in this Contract is that of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, must arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract. The SAAG [and his/her law firm] will be solely and entirely responsible for [his/her/its] acts and the acts of the [SAAG's firm] agents and employees during the performance of this Contract. Notwithstanding the above, the relationship is subject to the requirements of the attorney-client privilege.



5. **MANAGEMENT OF CASES**

5.1 Notifications. The SAAG must direct all notices, correspondence, inquiries, billing statements, pleadings, and documents mentioned in this Contract to the attention of the Department's Environment, Natural Resources, and Agriculture (ENRA) Division. The Division Chief of the ENRA Division is the Contract Manager, unless notice of another designation is received from the Attorney General. The Division Chief may designate an Assistant Attorney General in the Division to oversee the day to day administration of the Contract.

For the Department:

[Division Chief's name], Division Chief
Michigan Department of Attorney General
[Division name]
P.O. Box [Number]
[City], MI [Zip Code]
[Office telephone number]
[Office fax number]

For the SAAG:

[SAAG name]
[SAAG address]
[Firm name if applicable]
[Firm address]
[SAAG phone number]
[SAAG fax number]
[SAAG e-mail address]

5.2 The SAAG must promptly inform the Contract Manager of the following developments as soon as they become known:

A. Favorable actions or events that enable meeting time schedules and/or goals sooner than anticipated.

B. Delays or adverse conditions that materially prevent, or may materially prevent, the meeting of the objectives of the services provided. A statement of any remedial action taken or contemplated by the SAAG must accompany this disclosure.

For every case accepted, the SAAG must:

A. Promptly undertake all efforts, including legal proceedings, as directed by the [insert division name], and must prosecute any case to its conclusion unless directed to the contrary by the [insert division name].

B. Provide copies of all pleadings filed in any court by the SAAG, or by the opposing party, to the [insert division name].

5.3 Motions. Before any dispositive motion is filed, the supporting brief must be submitted to the [insert division name] for review and approval for filing with the court.

5.4 Investigative Support. All claims will be vigorously pursued and prepared for filing. If authorized by the Contract Manager, use of investigative subpoenas must be thorough and aggressive. The [insert division name] may request investigative subpoenas in addition to what the SAAG has filed.

5.5 Discovery Requests. The SAAG must consult with Contract Manager and assist in the preparation of answers to requests for discovery. The SAAG must indicate those requests to which [he/she] intends to object.

5.6 Witness and Exhibit Lists. At least ten (10) calendar days before the day a witness list or an exhibit list is due, the Contract Manager must receive a preliminary witness list or exhibit list for review and recommendation of additional names of witnesses or additional exhibits.

5.7 Mediation. Fifteen (15) calendar days before any mediation, the mediation summary must be submitted to the Contract Manager for review and recommendation. Immediately following mediation, the SAAG must submit a status memorandum indicating the amount of the mediation and a recommendation to accept or reject the mediation.

5.8 Trial Dates. The SAAG must advise the Contract Manager immediately upon receipt of a trial date.

5.9 Settlements. All settlements are subject to approval by the Department. The SAAG must immediately communicate any plea/settlement proposal received along with a recommendation to accept, reject, or offer a counter-proposal to any offer received to the Department's Contract Manager. "Settlement" includes, but is not limited to, the voluntary remand of a case to the trial court or by way of stipulation or motion.

5.10 Experts. The SAAG must provide advance notice to the Contract Manager prior to the selection of experts or consultants, and the Attorney General shall have the right to reject proposed experts or consultants. The SAAG shall cooperate with the Department of Attorney General and make all records and

documents relevant to the tasks as described in the Scope of Work available to the Department through the Contract manager or his or her designee in a timely fashion.

5.11 Money. A SAAG must only accept payment by an opposing party under the following terms:

A. The SAAG must immediately inform the Contract Manager upon receipt of any funds by the SAAG as payment on a case, whether pursuant to court order, settlement agreement, or other terms. Following the deduction of reimbursable costs, calculation of the fee under the Fee Agreement, and approval of the calculated fee by the Department, the SAAG shall deduct the Department-approved eligible costs, the Department-approved fee, and shall make payment of the remainder of the recovery to the State of Michigan as follows:

- i. payment must be made by check, certified check, cashier's check, or money order;
- ii. payable to the "State of Michigan" or as otherwise specified by the Contract Manager;
- iii. include the tax identification number/social security number of the payer; and
- iv. include the account to which the remittance is to be applied.

5.12 File Closing. The SAAG must advise the Contract Manager, in writing, of the reason for closing a file (e.g., whereabouts unknown, no assets, bankruptcy, payment in full, or settlement).

~~6. INDEMNIFICATION~~

~~The SAAG agrees to hold harmless the State of Michigan, its elected officials, officers, agencies, boards, and employees against and from any and all liabilities, damages, penalties, claims, costs, charges, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the State of Michigan for either of the following reasons:~~

~~A. Any malpractice, negligent or tortious act or omission attributable, in whole or in part, to the SAAG or any of [his/her/its] employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the SAAG now existing, or later~~

~~created, their agents and employees for whose acts any of them might be liable.~~

~~B. The SAAG's failure to perform [his/her] obligation either expressed or implied by this Contract.~~

7. INSURANCE

7.1 Errors and Omissions. The SAAG or [his/her] law firm must maintain professional liability insurance sufficient in amount to provide coverage for any errors or omissions arising out of the performance of any of the professional services rendered pursuant to this Contract.

7.2 Certificates of Insurance. Certificates evidencing the purchase of insurance must be furnished to the Department's [insert division name], upon request. All certificates are to be prepared and submitted by the insurance provider and must contain a provision indicating that the coverage(s) afforded under the policies will not be cancelled, materially changed, or not renewed without thirty (30) calendar days prior written notice, except for ten (10) calendar days for nonpayment of premium, ~~and any such notice of cancellation,~~ material change, or non-renewal must be promptly forwarded to the Department upon receipt.

7.3 Additional Insurance. If, during the term of this Contract changed conditions should, in the judgment of the Department, render inadequate the insurance limits the SAAG will furnish, on demand, proof of additional coverage as may be required. All insurance required under this Contract must be acquired at the expense of the SAAG or [his/her] law firm, under valid and enforceable policies, issued by insurers of recognized responsibility. The Department reserves the right to reject as unacceptable any insurer.

8. APPEALS

The SAAG agrees that no appeal of any order(s) of the Michigan Court of Claims, any Michigan Circuit Court, the Michigan Court of Appeals, or any United States District Court will be taken to the Michigan Court of Appeals, the Michigan Supreme Court, or any United States Circuit Court of Appeals, without prior written approval of the Michigan Solicitor General, Department of Attorney General. Further, the SAAG agrees that no petition for certiorari will be filed in the United States Supreme Court without prior written permission of the Michigan Solicitor General, Department of Attorney General.

9. **TERMINATION OF CONTRACT AND APPOINTMENT**

9.1 **SAAG Termination.** The SAAG may terminate this Contract upon sixty (60) calendar day's prior written notice (Notice of Termination). Upon delivery of such notice, the SAAG must continue all work and services for sixty (60) calendar days or until otherwise directed by the [insert division name], whichever first occurs. The SAAG will be paid only as set forth in the contingency fee arrangement specified under the Fee Agreement.

9.2 **Attorney General Termination.** The Department may terminate this Contract and SAAG appointment, at any time and without cause, by issuing a Notice of Termination to the SAAG. The SAAG will be paid only as set forth in the contingency fee arrangement specified under the Fee Agreement in the event of termination by the Department. If the SAAG is not terminated for cause, the Department shall reimburse SAAG the out of pocket costs incurred in the course of the litigation within ninety (90) days of termination without cause. If the Litigation continues following the termination of the SAAG, the Department also recognizes that the SAAG shall be due their equitable share of any ultimate recoveries made on behalf of the State, based upon the percentage of time and value that the SAAG contributed to the matter.

9.3 **Termination Process and Work Product.** Upon receipt of a Notice of Termination, and except as otherwise directed by the Attorney General or her designee, the SAAG must:

- A. stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- B. incur no costs beyond the date specified by the Department;
- C. on the date the termination is effective, submit to the Contract Manager all records, reports, documents, and pleadings as the Department specifies and carry out such directives as the Department may issue concerning the safeguarding and disposition of files and property; and
- D. submit within thirty (30) calendar days a closing memorandum and final billing.

Upon termination of this Contract, all finished or unfinished original (or copies when originals are unavailable) documents, briefs, files, notes, or other materials (the "Work Product") prepared by the SAAG under this Contract, must become the exclusive property of the Department, free from any claims on the part of the SAAG except as herein specifically provided. The Work Product must promptly be delivered to the [insert division name]. The SAAG acknowledges that any intentional failure or delay on its part to deliver the Work Product to the

Department will cause irreparable injury to the State of Michigan not adequately compensable in damages and for which the State of Michigan has no adequate remedy at law. The SAAG accordingly agrees that the Department may, in such event, seek injunctive relief in a court of competent jurisdiction. The Department must have full and unrestricted use of the Work Product for the purpose of completing the services provided, however, that the Department acknowledges and agrees that its reliance on or use of the SAAG's unfinished work product shall be at the Department's own risk. In addition, each party will assist the other party in the orderly termination of the Contract. Notwithstanding anything to the contrary herein, records and work product of any SAAG appointed under this Contract that are in the possession of such SAAG at the time of the execution of this Contract may be used by such SAAG in furtherance of the work under this Contract, but shall remain the property of such SAAG's individual law firm and shall not be considered property of the Department, Attorney General or State.

The rights and remedies of either party provided by the Contract are in addition to any other rights and remedies provided by law or equity.

10. GENERAL PROVISIONS

10.1 Governing Law and Jurisdiction. This Contract is subject to and will be constructed according to the laws of the State of Michigan, and no action must be commenced against the Department or the Attorney General, his designee, agents or employees [add client agency, if applicable] for any matter whatsoever arising out of the Contract, in any courts other than the Michigan Court of Claims.

10.2 No Waiver. A party's failure to insist on the strict performance of this Contract does not constitute waiver of any breach of the Contract.

10.3 Additional SAAGs. It is understood that during the term of this Contract, the Department may contract with other SAAGs providing the same or similar services for other matters, but not to file for the same costs or damages as sought in any the action brought by the SAAG.

10.4 Other Debts. The SAAG agrees that [he/she] is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.5 Invalidity. If any provision of this Contract or its application to any persons or circumstances to any extent is judicially determined to be invalid or unenforceable, the remainder of this Contract will not be affected, and each provision of the Contract will be valid and enforceable to the fullest extent permitted by law.

10.6 Headings. Contract section headings are for convenience only and must not be used to interpret the scope or intent of this Contract.

10.7 Entire Agreement. This Contract represents the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

10.8 Amendment. No Contract amendment will be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

10.9 Issuing Office. This Contract is issued by the Department, and is the only state office authorized to change the terms and conditions of this Contract.

10.10 Counterparts. This Contract may be signed in counterparts, each of which has the force of an original, and all of which constitute one document.

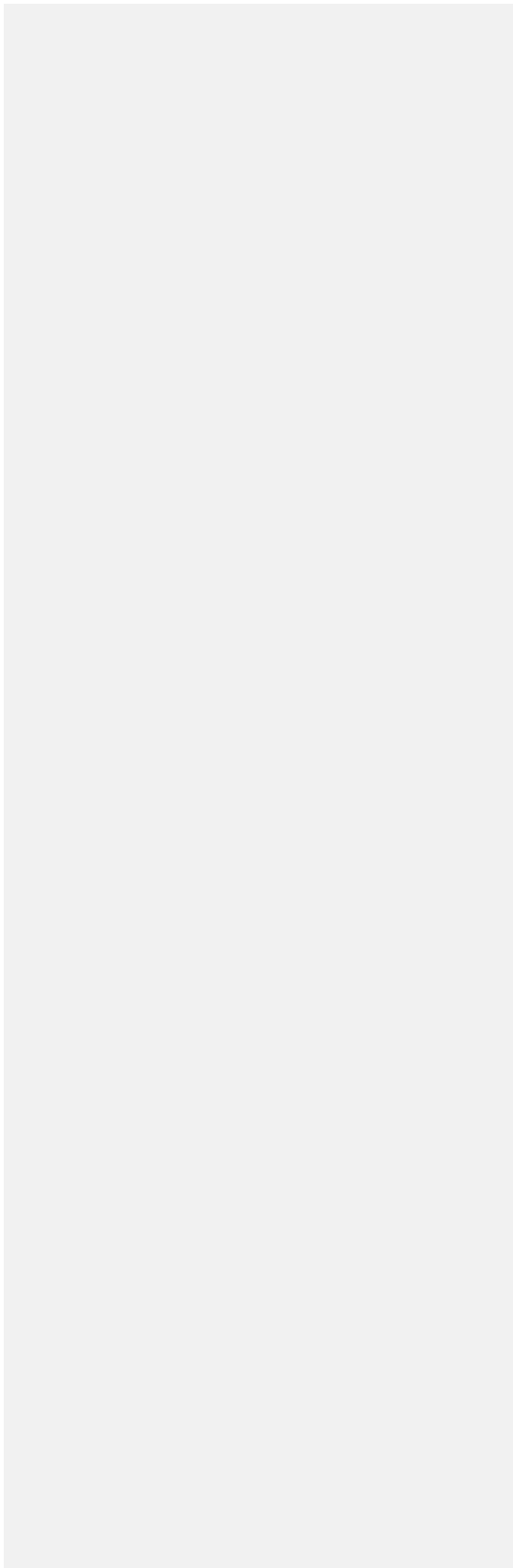
10.11 MDL Assessments. In the event any case filed under this Contract becomes part of or is subject to a federal Multidistrict Litigation (“MDL”) docket, and there is an MDL court-ordered assessment for payment of fees and costs to the MDL, the payment of legal fees from an MDL assessment order, if any, would be taken from the SAAG’s fees. At this time, SAAG cannot determine what assessments, if any, will be ordered by any MDL court. Additionally, lawyers from SAAG firms frequently serve on plaintiff management or executive committees in MDLs and perform work that benefits multiple clients as well as clients of other attorneys involved in similar litigation. As a result, the court or courts where an MDL is pending may order that SAAG are to receive additional compensation for time and effort which has benefitted all claimants in the MDL. Compensation for this work and effort, which is known as “common benefit work,” may be awarded to SAAG and funded by the MDL court’s assessments funded by settlements, including settlement by the Department and others who have filed claims that are pending in an MDL court. This common benefit compensation is separate and distinct from any contingent fee owed under this Contract, and as noted above, this payment is from an assessment that is taken from a percentage of the attorneys’ fees, not the Department’s Recovery. If SAAG receive payment of costs through an MDL assessment, any such costs that are paid and attributable to a legal action filed under this Contract will be deducted from the costs addressed in Section 3.3 of this Contract and any excess monies taken for these costs by any MDL assessment order paid to the Department would be added to its Recovery.

Dated: _____

[Attorney's Name]

Dated: _____

Dana Nessel, Attorney General
or her Designee
Michigan Department of Attorney
General



Summary report: Litéra® Change-Pro TDC 10.1.0.200 Document comparison done on 6/3/2019 4:35:38 PM	
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Intelligent Table Comparison: Active	
Original filename: Michigan PFAS Proposal CONTRACT.docx	
Modified filename: Michigan PFAS Proposal CONTRACT v2.docx	
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Delete	16
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Move To	0
Table Insert	0
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Format changes	0
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