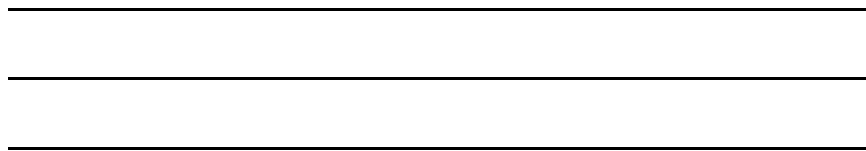


THE LAW OFFICES OF  
**BERGMAN & DACEY, INC.**



**ENVIRONMENTAL LITIGATION**

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## ENVIRONMENTAL LAW

**Bergman & Dacey, Inc.** has extensive experience and expertise representing both public and private sector clients with environmental issues. Our attorneys are knowledgeable in all areas of environmental law, and have successfully defended our clients' respective interests in both federal and state court.

Environmental matters are typically complex, involving a multiplicity of ever-changing statutes, ordinances, regulations, case law and political issues. We pride ourselves on our ability to stay abreast of all matters in the environmental field, utilizing our knowledge and experience to advance our clients' goals and interests.

Our firm's extensive environmental experience creates comprehensive and cost-effective representation. **Bergman & Dacey, Inc.** is well-equipped to provide our clients with the necessary tools to successfully manage and resolve environmental disputes – familiarity with federal and state environmental laws, document control, selection of experts, effective discovery, strong motion work, effective trial strategies, and creative methods of alternate dispute resolution.

The following examples are illustrative of **Bergman & Dacey, Inc.**'s experience in complex, multi-plaintiff environmental cases involving soil, bedrock, surface water, groundwater, and air contamination matters, as well as with toxic tort and coastal zone management issues.

1. The Lockheed Litigation was a complex, coordinated action involving the claims of over six hundred plaintiffs who have sued for personal injury and wrongful death as a result of alleged exposure to chemical products while working at the Lockheed plant in Burbank, California (where commercial aircraft, such as the L1011, and secret military aircraft, such as the Stealth Fighter, were built). **Bergman & Dacey, Inc.** represented one of the defendant chemical companies and conducted trials of two groups of plaintiffs. The defense of our client was unique among the other defendants in that we were able to retain a full-time professor of toxicology who was independent of the chemical industry. He performed basic and cost-effective testing of the client's product, which allowed the professor to testify at trial on the basis of hard data and first-hand experience as opposed to theory and speculation. Our client was a "target" defendant, yet we obtained the best result of all defendants at the end of the second trial (low-dollar judgment for only one out of fifteen plaintiffs based on minimal liability against our client). On the strength of these results, **Bergman & Dacey, Inc.**, along with the client, was able to negotiate a structured settlement (payable over several years) of all but six of the plaintiffs' claims for

approximately 11% of the settling plaintiffs' collective pretrial settlement demand.

2. **Bergman & Dacey, Inc.** successfully tried a case involving environmental contamination arising from leaks in an underground fuel storage tank system. **Bergman & Dacey, Inc.** obtained a jury verdict against the installer on negligence, trespass and private nuisance causes of action, with the jury also finding that the school district proved its damages in the amount of \$4,500,000.00. **Bergman & Dacey, Inc.** also prevailed on a breach of contract claim, tried before the court, in the amount of \$1,500,000.00. In that action, the court awarded attorneys fees in our client's favor.

3. **Bergman & Dacey, Inc.** currently represents a chemical manufacturer in a products liability litigation involving allegations of personal injury caused by alleged overexposure to chemicals in the workplace. Causes of action include negligence, breach of warranty, strict liability, willful and malicious misconduct, and fraudulent concealment. Our client is one of eighty-four defendants who have been sued for the alleged failure to provide adequate warnings for products supplied to a manufacturing facility. Given the number of parties, chemicals, and issues of causation and damage, this litigation will involve a close analysis of potentially hundreds of thousands of documents and numerous factual nuances. Multiple depositions of both lay and expert witnesses will, in all likelihood, be necessary in order to establish the appropriate defenses and ultimate case strategy.

4. In a matter regarding the clean-up of an oil recycling facility, **Bergman & Dacey, Inc.** was able to extricate a school district defendant from federal litigation involving more than three hundred parties. Facing potential exposure of several hundred thousand dollars, we negotiated a \$25,000.00 settlement and also obtained contribution protection for one client.

5. In a matter in which plaintiffs alleged exposure to chemicals in the workplace, our initial strategy was to assess the nature and extent of plaintiffs' damages as well as our client's potential exposure. **Bergman & Dacey, Inc.** was able to reach a very favorable settlement (\$45,000.00) in light of the prohibitive defense costs that would have been expended if our client were to remain in the action as the case proceeded to trial.

6. **Bergman & Dacey, Inc.** represented the State of California in an action where more than 3,800 plaintiffs sued for personal injury and/or property damage as a result of alleged exposure to chemicals at the Stringfellow Superfund site. Our firm participated in one jury trial that extended over a period of nine months. We overcame many obstacles during the trial, including the settlement by all of the transporter and manufacturer defendants a few weeks into the matter for a combined amount of approximately \$100 million dollars. The trial resulted in a minimal verdict for only some of the plaintiffs. **Bergman & Dacey, Inc.** participated in the negotiation of a settlement of the remaining

3,000 claims, wherein the State did not have to make a financial contribution.

7. **Bergman & Dacey, Inc.** represented clients in a transaction involving environmental contamination emanating from a dry cleaning establishment. The dispute was successfully resolved with our clients receiving additional compensation pursuant to a promissory note.

8. **Bergman & Dacey, Inc.** represented a chemical manufacturer that had been sued by a plaintiff who purchased the remaining stock of chemicals from our client when it closed a facility. Plaintiff alleged that it bargained for and was shown “on spec” chemicals, and that our client committed fraud in the purchase by selling chemicals that were blends and otherwise not “on spec.” Due to the allegation of fraud in the inducement, *i.e.*, that plaintiff inspected the merchandise and was shown only the “on spec” chemicals, our client was subject to punitive damages. There was a dispute as to whether the written sales document specifying that the purchased chemicals were “as is” would protect our client on the issue as to whether the chemicals were “on spec.” We argued that the “as is” language was controlling and precluded any possible recovery against our client. Plaintiff took no action for several years. Counsel for plaintiff had previously been nonresponsive to our request for voluntary dismissal of the matter. **Bergman & Dacey, Inc.** filed a Motion to Dismiss on grounds of failure to prosecute and plaintiff was forced to dismiss our client with prejudice.

9. **Bergman & Dacey, Inc.** represented a manufacturer in a matter involving serious injuries and a sympathetic plaintiff who was burned while at work as a result of spilling a powerful and caustic super adhesive glue on her lap and leg. At the time of the injury, plaintiff was gluing rubber gaskets. She claimed permanent and recurring disabilities, including gross scarring, recurrent pain, increased sensitivity, itching and numbness, embarrassment of the exposed scar and inability to sleep on her left side. The scarring was visible while wearing normal clothing. The central allegation against our client was that it failed to provide sufficient warnings, labeling and safety information concerning the caustic and adhesive nature of the product. We undercut the factual basis for this claim by pinpointing in depositions of co-employees that the plaintiff was aware of the nature of the product by her knowledge of other workplace mishaps. The matter was settled for \$24,000.

10. In a case where we negotiated a distinct result, plaintiff alleged various physical injuries resulting from his exposure to hazardous and toxic chemicals. Plaintiff sued to recover damages for severe injuries to his respiratory system due to inhalation and prolonged contact with various chemicals. As there were numerous other chemical manufacturers involved in this action, our strategy was, if at all possible, to avoid appearing as a party defendant or as a party cross-defendant. Prior to our appearance, repeated

discussions occurred with plaintiff's counsel whereby we were able to convince him that service was untimely and therefore invalid as to our client. We argued the application of the "Relation Back Doctrine," *i.e.*, we were able to bootstrap the filing of the First Amended Complaint to plaintiff's original Complaint such that service was untimely, entitling our client to dismissal with prejudice. Plaintiff provided us with this dismissal prior to our client's appearance. We were able to obtain this dismissal without our client paying any money to plaintiff upon agreement not to share our theory with other parties plaintiff later brought into the action.

11. Plaintiff sought recovery for personal injury resulting from severe pulmonary fibrosis and subsequent transplant of one lung. Plaintiff had been employed at a facility in the City of Industry, California that had subsequently been sold to a third party. Plaintiff's husband sought recovery for loss of consortium. Plaintiff claimed medical damages in the amount of \$1,000,000.00, with expected costs for a second lung transplant operation at \$500,000.00. Plaintiffs sued our client and approximately sixty other chemical manufacturers, together with her employer. Plaintiff claimed that the manufacturers had failed to provide sufficient warning, labeling and safety information concerning the deleterious effect of the chemicals on the pulmonary system. To minimize cost associated with this file, we utilized the ongoing discovery efforts of the other defendants and selectively attended the depositions of plaintiffs' experts and her employer's supervisory personnel. To facilitate settlement, we maintained a cordial relationship with plaintiffs' counsel despite his questionable tactics and methods. We continued settlement overtures and settled the claims of both plaintiffs for a total payment of \$42,500.00. This settlement was found by the Court to be in good faith and was substantially less than other settlements that were made with other similarly-situated defendants.

12. **Bergman & Dacey, Inc.** initiated a lawsuit on behalf of our governmental client against the installer of an underground storage tank system and the manufacturer of a component part to that system. Specifically, the storage tank's pipes developed holes that led to fuel leakage from the primary containment system to the secondary storage tank, thereby contaminating our client's property. We are seeking \$3 million in clean up and remediation costs.

13. **Bergman & Dacey, Inc.** recently handled and successfully settled a complex, document-intensive, environmental litigation case. The case involved a waste water treatment system that was placed in a printed circuit board manufacturing plant. Plaintiffs alleged contamination of the soil and groundwater on plaintiffs' property. Plaintiffs also alleged stigma damages and damages to adjacent properties. Our client supplied a product that was used in the waste water treatment system for the essential removal of copper. Plaintiffs were seeking over \$100,000,000.00 dollars in damages, and

their settlement offer to our client began at \$7,520,000.00. After the initial week of trial, and our successful cross-examination of their key witnesses, plaintiffs accepted our client's counter-offer to settle the case for \$50,000.00.

14. **Bergman and Dacey, Inc.** represented a non-profit corporation in a CEQA action to set aside a final Environmental Impact Report (EIR). A major technology corporation issued the EIR in support of its proposed development that threatened to create a major negative impact on our client's neighboring property. **Bergman and Dacey, Inc.** challenged the EIR on the grounds that it failed to properly analyze impacts on the environment, such as traffic and transportation, energy quality, shade and shadow, and building mass impacts. On the eve of the hearing of our client's petition for writ, **Bergman and Dacey, Inc.** negotiated a settlement that resolved all of our client's concerns.

15. **Bergman & Dacey, Inc.** represented a school district client in a complex soil subsidence matter involving multiple parties, including a developer, soils engineers, and contractors. **Bergman & Dacey, Inc.** utilized its extensive experience to analyze the relevant insurance coverage issues and factual and legal claims, and retained industry leading experts to evaluate geotechnical issues, repair costs and options, and the parties' respective liability. We provided our client with a comprehensive and cost-effective analysis of the entire matter, including a realistic assessment of damage claims, potential exposure and repair options, which led to a global settlement of the entire action.