

THE LAW OFFICES OF
BERGMAN & DACEY, INC.

PRODUCTS LIABILITY LITIGATION

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Products liability litigation typically arises from allegations of a defective product causing personal injury, property damage, and/ or economic loss. Plaintiffs pursue claims of defect in design, manufacturing and/or warning, as well as breach of warranty and contract claims. These cases often involve the analysis of intricate engineering issues, which highlight the importance of developing factual and legal defenses for complex scientific and technical issues.

Actions involving defective products are most often a battle of experts. Having access to the best experts in the field is a necessity. Our attorneys have extensive experience working with the best experts in their respective fields. Members of our products liability team also regularly work with our client's in-house experts to efficiently and quickly evaluate the key scientific issues at the outset of the case.

Products liability lawsuits commonly allege one or more of three kinds of defects and these matters are typically brought under one or more of four theories: strict liability, negligence, breach of warranty, and wrongful death. Each theory applies different standards and different statutes, as well as different defenses.

Bergman & Dacey, Inc. has developed specific and effective strategies addressing these standards and defenses. Our goal is to protect our clients' reputation while allowing them to focus their personnel and resources on the continued success of their business. We know how important it is to provide individualized and fully-defined strategies specific to the facts of each products liability matter.

BERGMAN & DACEY INC.'S REPRESENTATIVE CASES

The following matters are representative of the results we routinely achieve for our clients in the defense of products liability claims:

1. **Bergman & Dacey, Inc.** negotiated a settlement for approximately 11% of the settling plaintiffs' collective pretrial settlement demands in the **Lockheed Litigation Cases**, a multi-billion dollar complex, coordinated litigation that involved the claims of over 600 plaintiffs who sued for personal injury and wrongful death as a result of alleged overexposure 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.** successfully conducted trials involving two groups of plaintiffs. The defense of our client was unique among the other defendants in that we hired a full-time university professor of toxicology who was independent from the chemical industry. He performed cost-effective testing of our 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. Although our client was a "target" defendant, **Bergman & Dacey, Inc.** 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 basis of our very favorable results in the first two trials, our client was able to settle all remaining claims.

2. **Bergman & Dacey, Inc.** successfully settled a complex products liability/ environmental litigation case during trial. The case involved a waste water treatment system that operated in a printed circuit board manufacturing plant. Plaintiffs alleged that the treatment system malfunctioned causing contamination of the soil and groundwater on plaintiffs' property. Plaintiffs also alleged stigma damages and damages to adjacent properties. Our client supplied one of the essential chemical products utilized in the waste water treatment system. Plaintiffs initially sought over \$200,000,000.00 in damages from multiple parties. Plaintiffs' final pre-trial settlement offer to our client was \$7,520,000.00. After the first week of trial, and our effective, precise, detailed cross-examination of plaintiffs' key witnesses, the plaintiffs accepted our client's counter-offer to settle the case for \$50,000.00.

3. **Bergman & Dacey, Inc.** defended a toxic tort action arising from injuries allegedly sustained by plaintiff as a result of claimed exposure to toxic chemicals in the workplace. Plaintiff alleged that his exposure to chemicals caused him to develop interstitial pulmonary fibrosis. Our client was one of forty named defendants in this designated complex action. Through targeted discovery, and work with our client's in-house product experts, we established that plaintiff could not have actually used our client's product in a manner that could result in an exposure sufficient to cause his injury, and obtained our client's dismissal from the litigation before defense costs escalated in the expert discovery phase.

4. **Bergman & Dacey, Inc.** successfully challenged a wrongful death and survival action arising from injuries allegedly sustained by decedent and his survivors as a result of decedent's alleged exposure to carcinogenic chemicals in the workplace. By coordinating efforts with the other twenty co-defendants, we successfully attacked both complaints on multiple occasions in an efficient and cost-effective manner. The court sustained demurrers to the complaints and ultimately denied plaintiffs the opportunity to

amend their complaints.

5. **Bergman & Dacey, Inc.** represented a multi-national aerospace technology contractor in a claimed overexposure to hazardous gamma radiation by a past employee. Plaintiff alleged the onset of leukemia while his wife alleged loss of consortium. Plaintiff also alleged causes of action for products liability against the gamma cell manufacturer and all companies who monitored and tested the radiation detection devices. The claims included negligence, breach of warranty, strict liability, willful and malicious misconduct, and fraudulent concealment. After **Bergman & Dacey, Inc.** conducted plaintiff's deposition, and allowed persons most knowledgeable to be deposed, **Bergman & Dacey, Inc.** filed a Rule 56 motion for summary judgment. The plaintiff then agreed to dismiss the matter with prejudice in exchange for a waiver of attorneys' fees and costs.

6. Plaintiff sought recovery of personal injury from severe pulmonary fibrosis leading to a transplant operation for one lung. Plaintiff had been employed at a lab facility that had subsequently been sold to a third party not related to our client. Plaintiff's husband, sought recovery for loss of consortium. Plaintiff claimed special 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 approximately sixty chemical manufacturers, together with her employer, on the grounds that the manufacturers had failed to provide sufficient warning, labeling and safety information concerning the deleterious effect of the chemicals on the pulmonary systems. To minimize cost associated with this file, we utilized the ongoing discovery efforts of the other defendants and we selectively attended the depositions of plaintiffs' experts and employer's supervisory personnel. To facilitate settlement, **Bergman & Dacey, Inc.** 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.

7. **Bergman & Dacey, Inc.** negotiated a minimal settlement in a multi-million dollar lawsuit. Plaintiff sued our client, an international chemical manufacturer, along with eighty-four defendants, for personal injury caused by alleged overexposure to chemicals in the workplace. The causes of action included negligence, breach of warranty, strict liability, willful and malicious misconduct, and fraudulent concealment. By working with our client's in-house experts, we quickly established our client's low probability of liability, and reached a settlement with plaintiff for a nominal sum at the outset of the case.

8. **Bergman & Dacey, Inc.** negotiated a minimal settlement in an action filed by a plaintiff who suffered burn injuries as a result of spilling a powerful and caustic super adhesive glue (SICOMET 8300) on her lap and leg. At the time of the injury, plaintiff was gluing rubber gaskets. She claimed permanent disabilities, including gross scarring, recurrent pain, increased sensitivity, itching and numbness, inability to sleep on her left side, and embarrassment because of her exposed scar. 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 eliminated any 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.

9. In this matter, plaintiffs alleged exposure to chemicals in the workplace. Our strategy was to stay in this action only long enough to assess the nature and extent of plaintiffs' damages and our client's exposure. After presenting the strength of our client's defense, **Bergman & Dacey, Inc.** negotiated a very favorable settlement (\$45,000.00) in that such sum would have been quickly exhausted in defense costs if our client were to remain in the action as the case proceeded to trial.

10. 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 cross-defendant and cross-complainant 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. Before our appearance, repeated discussion occurred with plaintiff's counsel whereby we were able to convince counsel that service was untimely and therefore invalid as to our client. We argued the application of the "Relation Back Doctrine," and 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 a dismissal with prejudice. Plaintiff provided us with this dismissal prior to our appearance and fortunately our client was not subsequently brought back into the case by any of the other cross-complainants. **Bergman & Dacey, Inc.** was able to obtain this dismissal without paying any money to plaintiff upon our agreement not to share our theory with other parties plaintiff had recently brought into the action.

11. **Bergman & Dacey, Inc.** successfully negotiated a settlement well below the expectations of the plaintiff computer company who had complained that **Bergman & Dacey, Inc.**'s client's product, a muffler manufactured for a specially designed air conditioning system installed in a telecommunications computer room, had leaked due to defective design and manufacture, and caused irrevocable damage to computer equipment

and past and future business losses to a telecommunications company. **Bergman & Dacey, Inc.** focused on the provability and reasonableness of the claimed business losses, and convinced a mediator that the losses were not as extensive as claimed, thereby allowing the parties to settle within an acceptable range.

12. **Bergman & Dacey, Inc.** successfully tendered the defense of its retailer client to the manufacturer of hiking shoes in an action brought by a consumer purchaser alleging personal injuries requiring surgery caused by the alleged inadequate design of the hiking shoes. In so doing, the retailer was furnished a complete defense to plaintiff's claims without cost.

13. **Bergman & Dacey, Inc.** represented an international chemical manufacturer in a products liability action initiated by an individual claiming physical injury due to prolonged use/exposure in the workplace. The matter was ordered into the Court's Complex Civil Litigation Program due to the lawsuit's numerous issues, parties and locations. Utilizing leading medical experts and technology, we successfully challenged plaintiff's claims to negate any claimed correlation between plaintiff's alleged injuries and our client's products.

14. **Bergman & Dacey, Inc.** obtained a dismissal for our client in an action in which the plaintiff sued after purchasing our client's remaining stock of chemicals upon its closure of a facility. The plaintiff alleged that it bargained for and was shown "on spec" chemicals, and that our client committed fraud by selling chemicals that were blends and otherwise not "on spec." Due to the allegation of fraud in the inducement, our client was subject to punitive damages. There was uncertainty 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. After aggressively establishing our client's defense, the plaintiff took no action for several years. Counsel for the plaintiff was nonresponsive to our request for voluntary dismissal of the matter. **Bergman & Dacey, Inc.** filed a successful motion to dismiss on grounds of failure to prosecute.

15. **Bergman & Dacey, Inc.** represented defendants in an action in which an excess of 3,800 plaintiffs sued for personal injury and/or property damage as a result of proximity to a superfund site. **Bergman & Dacey, Inc.** participated in one trial that extended over a period of nine months in front of a jury which resulted in a minimal verdict for only some of the plaintiffs. We participated in the negotiation of a settlement of the remaining claims wherein our client did not have to make a financial contribution.