KENTUCKY BAR ASSOCIATION 2011 CONVENTION

PURSUING JUSTICE
IN THE 21ST CENTURY

FEATURE CLE:
THE POWER OF ONE

CLE Credit: 1.0
Friday, June 17, 2011
2:00 p.m. - 3:00 p.m.
Bluegrass Ballroom
Lexington Convention Center
Lexington, Kentucky

A NOTE CONCERNING THE PROGRAM MATERIALS

The materials included in this Kentucky Bar Association Continuing Legal Education handbook are intended to provide current and accurate information about the subject matter covered. No representation or warranty is made concerning the application of the legal or other principles discussed by the instructors to any specific fact situation, nor is any prediction made concerning how any particular judge or jury will interpret or apply such principles. The proper interpretation or application of the principles discussed is a matter for the considered judgment of the individual legal practitioner. The faculty and staff of this Kentucky Bar Association CLE program disclaim liability therefore. Attorneys using these materials, or information otherwise conveyed during the program, in dealing with a specific legal matter have a duty to research original and current sources of authority.

Printed by: Kanet Pol & Bridges
7107 Shona Drive
Cincinnati, Ohio 45237

Kentucky Bar Association

TABLE OF CONTENTS

THE PRESENTER

Erin Brockovich
Keppler Speakers Bureau
4350 North Fairfax Drive, Suite 700
Arlington, Virginia 22203
(703) 513-4000

ERIN BROCKOVICH is President of Brockovich Research & Consulting, a company devoted to addressing environmental issues throughout the world. She is best known for uncovering groundwater contamination in Hinkley, California, which led to a record-breaking settlement with Pacific Gas & Electric and the Oscar-winning film, Erin Brockovich, which tells the story of that investigation. She uses her reputation and celebrity as the "voice for those who don't know how to yell." Ms. Brockovich has worked on several television projects and published Take It From Me. Life's A Struggle, But You Can Win, an inspirational and motivational best-selling book. She is "a modern-day 'David' who loves a good brawl with today's 'Goliaths.'"

I. ERIN BROCKOVICH

A. Erin's Background[1]

She learned how to come out on top from her tight-knit Midwestern family in Lawrence, Kansas. Erin was the youngest child of an industrial engineer father and journalist mother. Her parents always believed that she could do anything she set her mind to if she learned to focus her amazing energy.

After a few years roaming around at various colleges, Erin decided that she wanted to be a California girl. She first landed a job as a management trainee for K-Mart but when that didn't make her swagger, she decided to study electrical engineering. But that wasn't enough for the Kansas beauty… on a fluke, she entered the Miss Pacific Coast beauty pageant… and, not surprising, won the title.

When she realized that beauty pageants weren't her thing, Erin, along with her husband and two children, settled in Reno, Nevada. After divorcing, the single mother became a secretary at a brokerage firm where she met and married her second husband. That marriage was short lived and the now mother of three was solo again.

Up until this point, Erin was the average divorced single mother trying to make a living… until she crossed paths with lawyer, Ed Masry, which changed the course of both their lives.

After being seriously injured in a traffic accident in Reno, Erin moved back to California's San Fernando Valley, and hired Masry & Vititoe to represent her. They won a small settlement but she still needed work, so she got a job at their law firm as a file clerk. It was while organizing papers on a pro bono real estate case that Erin first found medical records that would explode into the largest direct action lawsuit in U.S. history.[2]

---

[1] From The Official Website of Erin Brockovich (Last Accessed on May 13, 2011), http://www.brockovich.com/mystory.html.

[2] *Id.*

B. Hinkley

In 1952, Pacific Gas & Electric built a gas compression station in Hinkley, California, to compress gas for delivery through pipelines. To prevent the compressors from overheating, the station used water held in cooling towers. PG&E added hexavalent chromium (chromium 6) to the cooling tower water to prevent corrosion. From 1952 to 1964, PG&E deposited the used water/chromium 6 mixture into unlined ponds on the station grounds. That wastewater seeped into the underground water supply and contaminated the water supply for areas north of the station, including Hinkley.

In the 1980s, residents of Hinkley began complaining of adverse health effects such as tumors, nose-bleeds, and stomach problems. In 1987, PG&E conducted a test on the groundwater and reported the contamination to the EPA, which resulted in a cleanup order against the company. PG&E made efforts to decontaminate the water and, around 1990, made abnormally high offers to purchase property affected by the wastewater. Those offers raised alarms among the community.

One of the offerees, Roberta Walker, consulted Masry & Vititoe about the situation. Masry took the case and asked Erin to do research. She discovered a link between Chromium 6 and the health problems affecting many of the people in Hinkley. That link provided the grounds for a massive personal injury lawsuit by over 600 Hinkley residents against PG&E.[3] PG&E unsuccessfully moved for dismissal and eventually both parties entered into binding arbitration. In 1996, the parties reached a settlement agreement under which PG&E paid $333 million dollars, the largest settlement of its kind.

PG&E has faced several subsequent lawsuits stemming from the Chromium 6 contamination and is currently subject to a cleanup order requiring that they monitor and reduce the chemical's presence in the Hinkley water supply.[4] Despite PG&E's efforts, as of 2010, the concentration of chromium 6 remains dangerously high in some parts of the Hinkley area. Even more alarming, recent

[3] Anderson et al. v. Pacific Gas & Electric, No. BCV-00822 (filed in San Bernardino County Super. Ct.) (settled July 2, 1996).

[4] Cleanup and Abatement Order No. R6V-2008-002, California Regional Water Quality Control Board, Lahontan Region (Aug. 6, 2008).

studies show that the contaminated area is growing at a high rate, which has re-ignited concerns.[5]

C. Erin -- after Hinkley

Since her work with the Hinkley Case, Erin has championed environmental causes around the world through her work as president of Brockovich Research & Consulting. She's tackling several issues, such as mold, pharmaceutical product liability, and environmental toxic torts like the one in Hinkley, CA.

The remaining material provides a broad overview of toxic tort law and practice, mainly focusing on environmental toxic torts.

II. WHAT IS A TOXIC TORT?

A. Black's Law Dictionary defines "Toxic Tort" as "[a] civil wrong arising from exposure to a toxic substance, such as asbestos, radiation, or hazardous waste."[6]

B. Michael Dore, in Law of Toxic Torts, lists the following as the ten primary characteristics of a toxic tort:

1. The injuries involved allegedly arose from exposure to a harmful substance.

2. The nature of the exposure was such that there is a significant risk that a large number of people suffered comparable injuries (*i.e.*, drinking from a contaminated aquifer as opposed to being hit by a truck).

3. The full consequences of the exposure may not be immediately apparent (for example, diseases with long latency periods may be triggered).

4. The connection between the exposure and the injuries suffered is open to reasonable dispute, either because of questions about the nature of the substance (was it harmful), the nature of the exposure

[5] Noaki Schwartz, Erin Brockovich Back In Hinkley Testing Water, Yahoo News (Associated Press Mar 9, 2011), http://news.yahoo.com/s/ap/20110309/ap_on_re_us/us_toxic_water_brockovich.

[6] Black's Law Dictionary (9th ed. 2009) (under "tort").

(was it significant), or the nature of the affliction (was it one that can derive from multiple causes).

5. The identity of the particular party responsible for the agent allegedly causing injuries is an open question (for example: who manufactured the particular generic drug taken by the claimant).

6. The evidence used to establish causation is on the frontiers of medical science.

7. The injuries suffered are so serious and/or the claimant's situation so sympathetic that traditional legal defenses such as contributory negligence, statute of limitations, etc., are evaluated extremely critically by the court.

8. The actions which have been or will be brought raise serious administrative and legislative problems for the judiciary and these problems are capable of being resolved in a manner that provides tactical advantages to either claimants or defendants.

9. Insurance coverage disputes are or will be present.

10. The facts involved give rise to additional potential liability exposure such as possible application of the criminal law or imposition of individual responsibility upon corporate officials.[7]

III. LITIGATING TOXIC TORT CLAIMS – A TEAM APPROACH[8]

A. Many suggest assembling a litigation team to help manage the complexity and scope of toxic tort claims. Some critical team members include:

1. Lead attorney: The lead must have the ability to create a case theory out of multiple facts, ambiguous law, and complicated science. This person heads the team by delegating assignments and overseeing the case's progress.

[7] Michael Dore, Law of Toxic Torts, §2.2 (1st ed. 2011).

[8] *See generally* James T. O'Reilly, Toxic Torts Practice Guide §1:1 (2nd ed. 2010).

2. Junior attorneys: Toxic tort cases almost always require more than one attorney to analyze facts and research the many facets of law involved with proving each element.

3. Community allies/public relations expert: It is beneficial to enlist entities who share the same interests as your client because those agencies and organizations may provide useful scientific data and environmental research. Toxic torts involve multiple parties, including public companies, government agencies, environmental advocacy groups, and many plaintiffs, if not entire communities. It is important to have someone on the team who knows how to effectively communicate with these constituencies.[9]

4. Paralegals and support staff: Though important in any case, these professionals are crucial in toxic tort cases. Litigation will require a great deal of research, organization, and case-management. Also, if the case involves multiple plaintiffs, which is common among toxic tort cases, then it can be a fulltime job mailing filings and correspondence alone. Many smaller firms take on additional support staff when litigating toxic torts.

5. Scientific experts: While expert witnesses should be impartial and independent from the representation of the plaintiffs or defendants, the choice of expert witness is just as important, if not more so, than picking the members of the litigation team. The success of most toxic tort claims hinge on whether plaintiffs can prove a causal link between the contamination and the injury(s) suffered by the plaintiff. This requires experts who can forge that link. The expert must obviously be credible and academically/professionally qualified, but it is also very important that he/she be able to communicate the favorable scientific evidence in a way that the average person can understand.

IV. LAW OF TOXIC TORTS

A. Toxic tort claims span a broad spectrum of common and statutory law and an exhaustive discussion is beyond the scope of this material. However, this section hopes to introduce practitioners to some of the many different common law liability theories and statutory regulations that provide grounds for toxic tort claims.

[9] Attorney's must, however, remain mindful of SCR 3.130(3.6) regarding publicity.

B. Statutes

Statutes play an important role because toxic tort actions often involve interplay between common law and statutory rights. Some statutes, like CERCLA, provide private individuals the right to file civil actions while other regulatory schemes provide grounds for negligence per se actions.

1. Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (part of Superfund legislation) (42 U.S.C. §§9601 *et seq.*).

2. Resource Conservation and Recovery Act (RCRA, Hazardous Waste) (42 U.S.C. §§6901 *et seq.*).

3. Clean Water Act (33 U.S.C.S. §§1251-1387).

4. Toxic Substances Control Act (TOSCA) (15 U.S.C.S. §§2601-2629).

5. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C.S. §§136-136y).

6. Price-Anderson Act (42 U.S.C. §2210 (1994)) (for nuclear materials).

C. Common Law

As toxic tort law develops and evolves, so do common law theories. Several theories are available, so plaintiffs often advance multiple causes of action. The cases below address some of the more common theories.

1. Negligence.

   a. Hester v. CSX Transp., Inc., 2008 WL 4427236 (W.D. Ky. Sept. 25, 2008) (chemical exposure due to train derailment).

   b. Hogan v. Goodrich Corp., 2006 WL 2037388 (W.D. Ky. Jan. 17, 2006) (claim against manufacturers of vinyl chloride).

   c. Capital Holding Corp. v. Bailey, 873 S.W.2d 187, 194 (Ky. 1994) (on fear of future effects).

d. Regional Airport Authority of Louisville and Jefferson County v. LFG, L.L.C., 255 F.Supp.2d 688, 694 (W.D. Ky. 2003) (negligence per se).

e. Dickens v. Oxy Vinyls, LP, 631 F.Supp.2d 859 (W.D. Ky. 2009) (vinyl chloride odor shown was insufficient to prove injury).

2. Trespass.

a. Brockman v. Barton Brands, Ltd., 2010 WL 231738 (W.D. Ky. Jan. 14, 2010) (visible mold establishes trespass claim).

b. Smith v. Carbide & Chems. Corp., 226 S.W.3d 52 (Ky. 2007) (contamination by PCBs, case discussed in next section).

c. Newsome v. Columbia Natural Res., Inc., 2005 WL 2386228 (E.D. Ky. Sept. 27, 2005) (trespass injury found from oil that escaped after flood).

d. Rockwell Intern. Corp. v. Wilhite, 143 S.W.3d 604 (Ky.App. 2003) (contamination from PCBS, case discussed in the next section).

3. Nuisance.

a. Lamb v. Martin Marietta Energy Sys., 835 F.Supp. 959 (W.D. Ky. 1993) (no nuisance when contaminant level is *de minimis*).

b. Dickens v. Oxy Vinyls, L.P., 631 F.Supp.2d 859, 865 (W.D. Ky. 2009) (negligence not required for nuisance claim).

c. Regional Airport Authority of Louisville and Jefferson County v. LFG, L.L.C., 255 F.Supp.2d 688 (W.D. Ky. 2003) (Current owner cannot recover from prior one.).

4. Strict liability.

a. Lamb v. Martin Marietta Energy Sys., 835 F.Supp. 959 (W.D. Ky. 1993) (no strict liability for enriching uranium).

b. Posey v. Warner-Lambert Consumer Healthcare, 2001 WL 1776757 (W.D. Ky. Sept. 17, 2001) (risk must affect multiple persons).

c. C & S Fuel, Inc. v. Clark Equipment Co., 552 F.Supp. 340 (E.D. Ky. 1982) (failure to warn).

d. Fletcher v. Tenneco, Inc., 816 F.Supp 1186 (E.D. Ky. 1993) (later depublished per judge's request) (applying strict liability to contamination from PCBs).

5. Fraud/misrepresentation.

a. Ferguson v. Aventis Pasteur, Inc., 444 F.Supp.2d 755 (E.D. Ky. 2006) (Thimerosal case).

b. Kentucky Laborers Dist. Council Health & Welfare Trust Fund v. Hill & Knowlton, 24 F.Supp.2d 755 (W.D. Ky. 1998) (tobacco industry misrepresentation).

D. Specific Toxic Tort Litigation Concerns

Statute of Limitations.

The statute of limitations for personal injury is one year from the time of injury.[10] However, the adverse health effects of exposure to toxic substances sometimes take years to develop. The statutory language could bar claims for latent conditions appearing years after the injurious act, leaving injured parties with no recourse against liable actors.

The discovery rule provides toxic tort plaintiffs some relief from the statute of limitations:

> "A cause of action will not accrue under the discovery rule until the plaintiff discovers or in the exercise of reasonable diligence should have discovered not only that he has been injured but also that his injury may have been caused by the defendant's conduct." Louisville Trust Co. v. Johns–Manville Products Corp., 580 S.W.2d 497, 501 (Ky.1979)[11]

[10] KRS §413.140.

[11] A factual issue regarding reasonable diligence should be presented to the jury. (R.T. Vanderbilt Co., Inc. v. Franklin, 290 S.W.3d 654, 659 (Ky. App. 2009).

Under the discovery rule, the action accrues only at the moment the plaintiff has "actual knowledge or knowledge of the probability of disease."[12] This gives plaintiffs one year to file their claim once they begin developing latent diseases.

According to the Kentucky Supreme Court's holding in Carroll v. Owens-Corning Fiberglas Corp., the rule also applies when the plaintiff knew of one disease, but later contracts another "separate and distinct" disease.[13] In Carroll, the plaintiff sought recovery for cancer caused by exposure to asbestos though he had previously contracted the relatively minor condition of asbestosis. Defense argued that the rule against splitting causes of action[14] prevented the plaintiff from filing an action for cancer because he knew he had an asbestos-related disease. The court did not apply the rule against splitting causes because the plaintiff had not filed any claim regarding asbestosis and instead ruled that cancer created a new cause. The action for the subsequent disease accrued separately and triggered a new limitations period.[15]

However, in Combs v. Albert Kahn Associates, Inc., the Kentucky Court of Appeals limited the Carroll rule. In Combs, the plaintiff had filed a previous claim and therefore the rule against splitting causes applied. Furthermore, the plaintiff had sought damages related to the future cancer risk in his initial action. In ruling that the cancer action had accrued at the time of his first filing, the court also stated that Carroll only applied when the plaintiff's initial condition was "slight [and] non-disabling" and he had "no reason to believe that he [was] at an elevated risk of suffering from any more serious injury."[16]

Though Combs involved a previous claim relating to the subsequent condition, the ruling also appears to apply when no previous claim has been made. This leaves plaintiffs with the

[12] Louisville Trust Co. v. Johns–Manville Prods. Co., 580 S.W.2d 497, 500 (Ky. 1979) (followed in Carroll v. Owens–Corning Fiberglas Corp., 37 S.W.3d 699, 701 (Ky. 2000)).

[13] Carroll v. Owens–Corning Fiberglas Corp., 37 S.W.3d 699, 701 (Ky. 2000) (Holding that an "action for cancer accrued on the date of the diagnosis of the cancer, not the diagnosis of asbestosis, which is a separate and distinct disease.").

[14] "The rule against splitting causes of actions, found in Restatement (Second) of Judgments, §§24 and 26, is an equitable rule, limiting all causes of action arising out of a single 'transaction' to a single procedure." (Capital Holding Corp. v. Bailey, 873 S.W.2d 187, 193 (Ky. 1994)).

[15] Carroll, 37 S.W.3d at 700.

[16] Combs v. Albert Kahn Associates, Inc., 183 S.W.3d 190, 198 (Ky. App. 2006).

choice of either pursuing damages for risk of future illness at the first sign of any adverse health effect or waiting until the more severe condition presents itself to file a claim, with the risk that relief related to the previous disease will likely be barred.[17]

E. Increased Risk of Disease/Mental Distress

In light of the Combs rule, a plaintiff facing pressing medical fees may decide to pursue a claim for the risk of future harm instead of waiting until a more severe condition develops. The rule in Capital Holding Corp. v. Bailey,[18] "permits recovery for enhanced risk of cancer as well as mental distress if first the plaintiff can cross the threshold of establishing a harmful change has resulted from exposure to the potentially cancer producing agent."[19] There must be a physical harm beyond "mere ingestion of a toxic substance."[20] If liability exists, juries will measure damages by "how much greater now is the plaintiffs' risk of developing cancer in the future than it was before the tort occurred."[21]

F. Admissibility of Expert Testimony

When weighing the strength of a toxic tort case, counsel should strongly consider the effect that Daubert,[22] and its progeny, might have on the admissibility of expert testimony. Proving causation in a toxic tort case inevitably requires expert opinion evidence due to the complicated science involved. Often, causation rests on newly developed science and/or research conclusions that stray from traditionally accepted scientific theory. Unfortunately for plaintiffs with those types of claims, post-Daubert[23] courts have been reluctant to allow the admission of testimony based on science that falls outside mainstream science.[24]

---

[17] Combs, 183 S.W.3d at 198.

[18] Capital Holding Corp. v. Bailey, 873 S.W.2d 187 (Ky. 1994).

[19] Capital Holding Corp., 873 S.W.2d at 194.

[20] Capital Holding Corp., 873 S.W.2d at 195.

[21] *Id.*

[22] Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993).

[23] *Id.*

[24] *See generally* Neil B. Cohen, "The Gatekeeping Role in Civil Litigation and the Abdication of Legal Values in Favor of Scientific Values," 33 Seton Hall L. Rev. 943 (2003).

For more law on expert witnesses in toxic torts, *see*:

1. Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993).

2. Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999).

3. Robert G. Lawson, The Kentucky Evidence Handbook, §6.15 (3d Ed., 2002 supp.).

4. FRE 702.

5. Burton v. CSX Transp., Inc., 269 S.W.3d 1 (Ky. 2008) (instructing jury to disregard causation testimony when expert could not reach definite conclusion).

6. Rockwell Intern. Corp. v. Wilhite, 143 S.W.3d 604 (Ky. App. 2003) (testimony ruled inadmissible as opinion of law).

7. Stringer v. Com., 956 S.W.2d 883 (Ky. 1997) (comparing expert opinion and opinion on ultimate fact).

G. Injury to Property

Toxic tort actions commonly include trespass and nuisance claims for property damage caused by contamination. Though intentional trespass entitles plaintiff to nominal damages, plaintiffs must show actual harm to recover any more than nominal damages.[25] Plaintiffs must also prove harm in negligent trespass[26] and actual interference with use in nuisance claims.[27] Visible property damage and detectable interference are relatively easy to prove. However, plaintiffs face difficulty proving harm from a toxic substance that is imperceptible to human senses.

[25] Smith v. Carbide and Chemicals Corp., 226 S.W.3d 52, 55 (Ky. 2007) (intentional trespass) (*quoting* Hughett v. Caldwell 230 S.W.2d 92, 95 (1950)).

[26] Rockwell Intern. Corp. v. Wilhite, 143 S.W.3d 604, 620 (Ky. App. 2003).

[27] Rockwell, 143 S.W.3d at 627 (Ky. App. 2003) (interpreting KRS 411.550).

1. Actual harm in trespass.

In Rockwell v. Wilhite,[28] the Kentucky Court of Appeals held that plaintiffs must prove a physical injury to property in order to recovery actual damages from trespass. In Rockwell, the plaintiff sought damages for the property value diminution his land suffered due to contamination by PCBs that were colorless and odorless. The court ruled that diminution in value did not establish injury. Instead the court required actual harm was required. The court stated:

> Trespass is designed to protect against interference with exclusive possession, and not just mere entry. When an object can be seen or sensed in some manner, one may even assume that a landowner's right to exclusively possess his property is infringed. When the "thing" that has entered plaintiff's property is imperceptible to ordinary human senses, it does not so obviously infringe upon a land-owner's right to exclusive possession. In such cases, only when the substance actually dam-ages the property does it intrude upon the landowner's right to exclusive possession. Therefore, an essential element of [the land-owners'] claim is that the PCBs interfere with their right to exclusive possession by causing actual harm to the property.[29]

The court then ruled that, to prove injury by PCBs, the plaintiffs must show that the contamination was sufficient enough to pose a health risk.[30] However, in Smith v. Carbide,[31] the Kentucky Supreme Court declined to follow that requirement.

Smith v. Carbide also involved land suffering from PCB contamination and diminished value. However, the plaintiffs in Smith also suffered cognizable injuries such as the

[28] Rockwell Intern. Corp. v. Wilhite, 143 S.W.3d 604 (Ky. App. 2003).

[29] Rockwell, 143 S.W.3d at 620.

[30] *Id*.

[31] Smith v. Carbide and Chemicals Corp., 226 S.W.3d 52 (Ky. 2007).

inability to use their water wells. The court in Smith ruled that:

> Property owners are not required to prove contamination that is an actual or verifiable health risk, nor are they required to wait until government action is taken. An intrusion (or encroachment) which is an unreasonable interference with the property owner's possessory use of his/her property is sufficient evidence of an actual injury (or damage to the property) to award actual damages.[32]
>
> Though health risks can constitute physical harm to property, plaintiffs can prove injury without showing such a risk. The Smith court provided the following guidance on injury from water contamination:
>
> When the parcel's groundwater is contaminated, whether by imperceptible particles or visible particles, to the extent that it cannot be used for consumption by humans, animals, or crops, there is an actual injury. When ponds and streams have to have signs posted to prevent swimming, fishing, drinking, or other otherwise normal uses, there is an unreasonable interference with one's use and enjoyment.[33]

2. Sufficient annoyance in nuisance claims.

The Rockwell case also addressed the damages required to prove nuisance. As with trespass, the Rockwell court held that mere decrease in value was not an injury if based on potential buyers' "unsubstantiated phobia" about the chemical.[34] A plaintiff must show a "sufficient annoyance to an adjacent property possessor that interferes with the use of the adjacent land to such a degree that its value is materially reduced."[35] If the chemical is perceptible through

[32] Smith v. Carbide and Chemicals Corp., 226 S.W.3d 52, 57-8 (Ky. 2007).

[33] Smith v. Carbide and Chemicals Corp., 226 S.W.3d 52, 58 (Ky. 2007).

[34] Rockwell,143 S.W.3d at 627.

[35] *Id.* (interpreting KRS 411.550).

human senses (smell, sound, etc.) then the plaintiff need only present proof of perceptible interference.[36] However, according to the Rockwell court, if the chemical is "imperceptible to ordinary persons," then the plaintiff must show a health or safety hazard.[37]

As of yet, no Kentucky court has explained whether the Smith rule, allowing trespass claims without proof of health risks, also applies to nuisance claims. However, the Sixth Circuit applied the Smith rule to nuisance cases and ruled plaintiffs can satisfy the injury element without a prerequisite showing of health risk.[38]

V. RESOURCES

A. Treatises

1. Law of Toxic Torts, 1st Ed, Michael Dore (West Group 2011).

2. A Guide to Toxic Torts (Matthew Bender & Company, Inc. 2011).

B. Practical Guides

1. Toxic Torts Practice Guide, 2nd Ed., James T. O'Reilly & Karen Gottlieb (West Group 2010).

2. Spriggs & Hollingsworth's A Framework for Toxic Tort Litigation -- provides a close look at substantive and procedural law. http://www.hollingsworthllp.com/media/pnc/3/media.643.pdf

3. Morgan Lewis's Environmental Deskbook 2003 -- discusses toxic torts from the defense perspective. http://www.morganlewis.com/pubs/14C3DC47-4EFF-45CF-B408DE31A4FF78D4_Publication.pdf

---

[36] *Id.* at fn. 106.

[37] *Id.*

[38] Smith v. Carbide and Chemicals Corp., 507 F.3d 372 (6th Cir. 2007).

C. Chemicals and Their Impact on Health

1. Agency for Toxic Substances and Disease Registry – federal agency that monitors hazardous waste contamination and assesses the impact that contaminants have on human health.
http://www.atsdr.cdc.gov/

2. Chembiofinder -- database of scientific information on chemicals and their effects.
www.chemfinder.com

3. PUBMED -- database of biomedical articles, great for searching mortality rates for various chemicals.
http://www.ncbi.nlm.nih.gov/entrez/query.fcgi

4. Pocket Guide to Chemical Hazards -- operated by The National Institute for Occupational Safety and Health (NIOSH).
http://www.cdc.gov/niosh/npg/