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John S. Guttman's From the Chair Note
For the June 2018 Issue of
For the Defense

The rapid rate of change in toxic tort and environmental law has continued in 2018. At the federal level, both EPA and the Department of the Interior have made major shifts in priorities from those of prior administrations. They have also announced important changes in how they evaluate and use scientific data. States are responding to the changes at the federal level. In addition, NGOs and the plaintiffs' bar are aggressively seizing opportunities to fill space that is being vacated by government. Climate change and emerging contaminants, such as perfluorinated compounds, are among the hot topics.

The members of DRI's Toxic Tort and Environmental Law Committee are active in all aspects of these important and challenging changes in the legal environment. The Committee's approximately 1,200 members include both regulatory lawyers and litigators who are working aggressively to advance our clients' interests. It is my pleasure and privilege to Chair this strong part of DRI. Carmen Toledo is TTEL's Vice Chair. We are fortunate to have the support of a strong and deep Steering Committee that enables TTEL to offer an excellent mix of services to our members, which keeps them active and engaged. If you practice in this area and are not a member of TTEL, we encourage you to get involved. You will find that participation adds value to your practice and you will develop a network of key contacts and friends.

Our committee began 2018 with a superb seminar in Nashville. Under the leadership of Bill Hubbard and Kristin Orr, we had a conference with a program that built upon the 25th anniversary of the Supreme Court's decision in *Daubert*. In addition, for the first time, we had separate regulatory and litigation tracks for part of the conference. We continued the expanded networking opportunities that began last year. Feedback from those in attendance was extremely positive. Thanks to all of our sponsors and presenters. As hard as it is to believe, work has already begun on planning the 2019 conference, again under the leadership of Bill and Kristin. Please contact them if you would like to get involved.

Publications are a strength of our committee. Besides this issue of *For the Defense*, there are a number of other opportunities, such as our electronic newsletter. Please contact Susan Van Gelder, who is our Publications Chair or Irving Jones, who is Vice Chair of Publications, if you would like to write for one of the DRI publications.

Before turning to this issue of *For the Defense*, I would like to mention one new initiative that TTEL is starting in 2018. In addition to webinars, we will be introducing podcasts. Watch out for announcements. If you have an idea for a podcast, please contact Roy Prather, who is our Online Programming Chair or Alana Fortna, who is Vice Chair. Also contact one of them with ideas for webinars.

Turning to this issue of *For the Defense*, members of the Committee have offered four timely and thoughtful articles that we hope will be of broad interest to DRI members.

Oliver Twaddell, George Buermann, Susan Smith and Joseph Welter of Goldberg Segalla have authored an excellent overview of the developing law related to so called emerging contaminants. They focus on perfluorinated chemicals and 1,4 dioxane, which are two of those contaminants and are now a major focus of attention of both regulators and the plaintiffs' bar. Much of what the authors discuss will extend to other currently unregulated contaminants.

Superfund is a major area of practice for a significant number of TTEL members. Joe Hovermill and Elizabeth Haley have authored an excellent piece on challenges to remedy selection, including the use of matters outside the administrative record. They focus on the critical importance of preserving challenges to the administrative record, using a very recent case to highlight the key takeaways.

Forum shopping - so called "litigation tourism" - has long been a source of frustration for defendants. Plaintiffs with no real connection to their chosen forum have sometimes been able to forum shop their way to favorable verdicts in pro plaintiff jurisdictions. James Brady and Melissa Roemer offer an excellent early assessment of whether the Supreme Court's recent decisions in the *Bristol-Myers Squibb* and *BNSF* cases are likely to undercut "litigation tourism" by the plaintiffs' bar.

Lastly, Deanna Ballou has given us a fascinating piece on the litigation that is developing out of the opioid crisis. Here, it seems that the claims and defenses both are reminiscent of both tobacco and MTBE and the litigation that is now pending related to climate change.

We hope to see all of you at the DRI Annual Meeting, which will be in San Francisco on October 17-21, 2018 and at the next TTEL conference, which will be on March 14-15, 2019 in New Orleans.