

Class Action Litigation Experience and Representative Matters

Beveridge & Diamond (B&D) has litigated precedent-setting environmental law cases – including mass torts, putative class actions, and class actions – since 1974. Our 80 litigators handle cases in nearly every federal and state jurisdiction across the U.S., including the United States Supreme Court. Our litigators first-chair major national litigation and serve as coordinating counsel in high-stakes cases affecting entire industries.

In environmental litigation matters, our approach of pairing seasoned litigators with regulatory attorneys blends skilled litigators and subject matter experts to achieve outstanding results for our clients, including defeating numerous proposed environmental class actions. We have a robust chemicals practice with decades-long experience in the federal and state regulations affecting the chemicals supply chain. Our team includes more than 40 attorneys with science or technical degrees, as well as lawyers with advocacy experience and expertise gained as in-house counsel at major chemical companies. We translate highly technical concepts into language that judges and juries can understand – often the difference between winning and losing a case. We also help manage the public relations and medical monitoring aspects of these matters.

Our litigation experience includes toxic tort suits relating to emerging chemicals – such as 1, 4 dioxane and PFAS/PFOA – as well as more traditional chemical litigation (asbestos, gasoline). We understand the specific interplay between the regulatory data and Integrated Risk Information System (IRIS) values, the scientific discrepancies, and accordingly vulnerabilities in plaintiffs' theories of the case.

Selected current/active class action and putative class action matters

- **Multi-plaintiff ethylene oxide toxic tort litigation.** B&D is defending two chemical manufacturers in two separate toxic tort actions (filed in summer 2021), each brought by 10-15 plaintiffs who allege cancer caused by exposure to ethylene oxide (EO) emissions from our clients' EO manufacturing plants in Louisiana.
- **Elias Jorge "George" Ictech-Bendeck v. Progressive Waste Solutions of LA, Inc., et al.,** Case No. 18-7889 (E.D. La., filed July 25, 2018) (and 15 related cases). Consolidated mass actions and putative class action claiming property and personal injury damages and seeking monetary and injunctive relief based on alleged noxious odors from the Jefferson Parish Landfill in Louisiana, next to New Orleans. Plaintiffs propose a class area of all residents within Jefferson Parish, Louisiana. Defendants successfully removed and consolidated 4 putative class actions and 10 mass actions to federal court and consolidated the cases for purposes of discovery. An early motion to dismiss disposed of the class action Plaintiffs' negligence, gross negligence, and potential premises liability claims with prejudice. The Court has since required Plaintiffs to demonstrate causation between the alleged landfill emissions and Plaintiffs' damages prior to considering a motion on class certification. The parties are currently in discovery on the causation issue, which has included document discovery, depositions, third-party discovery on alternative odors sources, fact investigation and community research, and expert discovery. The issue of causation will be subject to a full evidentiary hearing before the Court in October 2021. B&D leads the joint defense group and the courtroom work for this case, which involves over 800 individual Plaintiffs and four class actions.
- **Britton v. Seneca Meadows,** Index No. 50649/2016 (Sup. Ct. Seneca Cty., N.Y., filed Nov. 4, 2016). Putative class action alleging nuisance, negligence, and gross negligence claims against the

Seneca Meadows Landfill in upstate New York based on allegations of noxious odors from the landfill. Plaintiff proposed a class area of 1.5 miles from the landfill's property boundary. During pre-class certification discovery in this matter, B&D learned that Liddle & Dubin was engaging in improper client solicitation and attorney advertising practices in violation of New York State attorney ethical rules. Defendant brought a motion to disqualify Liddle & Dubin as counsel based on these violations, and the motion was subject to a full evidentiary hearing before the court. On April 16, 2021, the trial court issued its ruling allowing Liddle & Dubin to remain in the case, but found two of the firm's lawyers had violated the New York Rules of Professional Conduct.

- **Dudley v. API Industries d/b/a ALUF Plastics**, Index No. 030905/2018 (Sup. Ct. Rockland Cty., N.Y., filed Feb. 20, 2018). Putative class action alleging nuisance and negligence claims against a plastic products manufacturer in the New York City suburbs based on allegations of noxious odors from the facility. Plaintiffs propose a class area of 1.5 miles from the facility, with over 3,000 households. B&D became lead counsel during discovery on class certification issues. Defendant vigorously opposed the motion for class certification, presenting strong expert evidence that class treatment is inappropriate for odor nuisance claims and bringing cross-motions to strike Plaintiffs' evidence and for dismissal of Plaintiffs' claims as a matter of law. In November 2020, the Court agreed with Defendant that Plaintiffs had not demonstrated their claims were suitable for class certification. The Court granted leave for Plaintiffs to engage in additional discovery on the issue of class certification, asking Plaintiffs to revisit the size of the proposed class area, and reserved decision on the motions. B&D is also defending odor-related enforcement actions brought by the Town of Orangetown and working with the New York State Department on Environmental Conservation on permitting issues.
- **Davies v. S.A. Dunn & Company, LLC**, Index No. EF2019-262993 (Sup. Ct. Rensselaer Cty., N.Y., filed Apr. 22, 2019). Putative class action alleging nuisance, negligence, and gross negligence claims against the S.A. Dunn Landfill in Rensselaer, New York, and seeking punitive damages and injunctive relief based on allegations of noxious odors from the landfill. Plaintiffs proposed a class area of 1.5 miles from the landfill's property boundary. Defendant successfully achieved dismissal of Plaintiffs' public and private nuisance, gross negligence, and punitive damages claims in December 2019. Plaintiffs subsequently filed an Amended Complaint re-pleading their public nuisance claim and Defendant again moved to dismiss, which motion the Court denied. The denial of Defendant's motions to dismiss Plaintiffs' public nuisance and negligence claims are now pending appeal. B&D recruited the U.S. Chamber of Commerce and the National Waste & Recycling Association to file amici briefs supporting Defendant's position. Proceedings in the trial court are effectively stayed after Liddle & Dubin lost contact with the named Plaintiffs.
- **Duncan v. Capital Region Landfills, Inc.**, Index No. 904768-19 (Sup. Ct. Albany Cty., New York, filed July 30, 2019). Putative class action alleging private and public nuisance, negligence, and gross negligence claims and seeking punitive damages and injunctive relief against the municipally-owned Colonie Landfill in suburban Albany, New York based on allegations of noxious odors from the landfill. Plaintiff proposed a class area of two miles from the landfill's property boundary. Defendant moved to dismiss the case prior to class certification for failure to state a claim. In June 2020, the Court dismissed Plaintiffs' private nuisance, gross negligence, and punitive damages claims, but otherwise denied the motion. The Court's denial of the motion with respect to public nuisance and negligence is currently pending appeal. The trial court has stayed the case

pending the determination of the appeal. B&D cultivated a close relationship with the host community, and the Town of Colonie filed an amicus briefing supporting the Landfill's position.

- **Celis v. Madera Disposal Systems, Inc.**, Case No. 20C-0228 (Super. Ct., Kings Cty., California, filed Aug. 25, 2020). Putative class action alleging public and private nuisance and negligence claims against the Avenal Regional Landfill in California's Central Valley based on allegations of noxious odors from the landfill. Plaintiff proposed a class area of 1.5 miles from the landfill's property boundary. This litigation has remained in the initial phases.
- **Lloyd v. Covanta Plymouth Renewable Energy, LLC**, Case No. 20-cv-04330 (E.D. Pa., filed Sept. 3, 2020). Putative class action alleging nuisance and negligence claims and seeking punitive damages and injunctive relief against a waste-to-energy facility in suburban Philadelphia based on allegations of noxious odors from the facility. Plaintiff proposed a class area of 1.5 miles from the facility's property boundary. Defendant moved to dismiss Plaintiff's claims for negligence, punitive damages, and injunctive relief prior to class certification or discovery. In February 2021, the Court dismissed the negligence claim but upheld the requests for punitive damages and injunctive relief. Then in April 2021, the Court granted Defendant's motion to interview putative class members—clarifying that in proposed class actions brought in federal court, the putative class members are not represented parties and may be interviewed by defense counsel and their investigators. Discovery on class certification issues is ongoing.
- **Wright v. International Flavors & Fragrances Inc. and IFF Chemical Holdings, Inc.**, Case No. 21-cv-00012 (M.D. Fla., filed Jan. 6, 2021). Putative class action alleging nuisance and negligence claims and seeking injunctive relief against a flavor and fragrance manufacturer in Jacksonville, Florida, based on allegations of noxious odors from the facility. Plaintiffs proposed a class area of up to about five miles from the facility. B&D serves as consulting counsel in this litigation and liaises closely with the expert team.
- **1,4-Dioxane Toxic Tort Litigation.** We represent a petroleum refiner in three related toxic tort/product liability cases brought by public water providers in New York seeking hundreds of millions of dollars due to the alleged presence of 1,4-dioxane in their water supply systems. Our client manufactures surfactants that are used in consumer products that plaintiffs allege release 1,4-dioxane to groundwater.

Selected completed class action and putative class action matters

- **Baptiste v. Bethlehem Landfill Company**, Case No. 18-2691 (E.D. Pa., dismissed Mar. 30, 2021). Putative class action alleging public and private nuisance and negligence claims against the Bethlehem Landfill in Bethlehem, Pennsylvania, based on allegations of noxious odors from the landfill. Plaintiffs proposed a class area of 2.5 miles from the landfill's property boundary, with over 8,400 households. The district court granted our motion to dismiss Plaintiffs' public and private nuisance and negligence claims in March 2019. On appeal to the Third Circuit, the Court reversed the decision. The case was dismissed with prejudice on March 30, 2021, prior to briefing on class certification, after B&D secured deposition testimony from the named Plaintiffs that the landfill was not the source of the alleged odors.
- **Defense of City of Newark in high-profile Safe Drinking Water Act citizen suit led by the Natural Resources Defense Council.** Before the federal court in the District of New Jersey, the

plaintiffs sought to leverage national concern regarding lead in drinking water in Flint, MI to force Newark to undertake massive and unnecessary measures modeled on Flint. After the B&D team defeated two preliminary injunction efforts by the NRDC – a major player in the environmental bar – the plaintiffs settled for Newark’s agreement to continue lead remediation efforts that were already underway or completed, and NRDC received no attorney fees for over two years of work, a highly unusual result. B&D attorneys’ initial defense of Newark began with the complaint and massive preliminary injunction request by the NRDC and its local partner, the Newark Education Workers Caucus, a group of Newark public school teachers. *NEW Caucus, et al. v. City of Newark, et al.*, No. 18-cv-11025 (D.N.J.) (Salas, J.). NRDC demanded that the federal court enter an order – as in Flint – requiring door-to-door bottled water delivery in Newark, at a cost of somewhere between \$30 million (NRDC’s estimate) and \$80 million (Newark’s estimate). The Newark lawsuit and injunction demand was a near carbon copy of NRDC’s approach in Flint.

- **Dismissal of Putative Class Action in South Carolina Federal Court.** On July 17, the U.S. District Court in South Carolina dismissed a putative class action against firm client Waste Connections, Inc. and two of its U.S. subsidiaries on the grounds that the class claims were barred by a standalone class action waiver in the parties’ commercial contract. *Two Dogs, Inc. v. Waste Connections Inc.*, No. 6:19-cv-02660-DCC (D.S.C.) The Plaintiff alleged that Waste Connections had breached a commercial waste disposal contract by assessing certain fees improperly and sought a nationwide class. The Court enforced a class action waiver in the contract and dismissed the class allegations under Rule 12, and then – without any remaining allegations of diversity or a federal question – dismissed the entire case for lack of subject matter jurisdiction.
- **Lead Counsel for Coke Manufacturing Company.** We represented one of two defendants in a class action brought by five named plaintiffs on behalf of a class of roughly 2,500 residents living within a mile of the two facilities. Plaintiffs made a variety of claims based on nuisance, negligence, and trespass, asserting that air emissions from the two facilities impacted the residents’ health and contaminated their property. Plaintiffs sought \$76 million in damages, medical monitoring, and injunctive relief. After some discovery and several mediation sessions, the case settled, with our client paying \$2,300,000 (residents received between \$5,000 and \$2,500, depending on their distance from the plant).
- **National Counsel in MDL Toxic Tort Litigation on Chemical Compound (MTBE).** We serve as national counsel for Sunoco in all litigation related to the presence in water supplies of the gasoline additive MTBE. To date, this has included over 140 suits brought by states, municipalities, public water systems, and private well owners, including putative class action claims, the majority of which B&D helped its client and the industry settle. The damages claimed by the various plaintiffs total in the billions of dollars.
- **Litigation Counsel to a Utility in Alleged Vapor Exposure Case.** We represented a major utility in litigation in the District of Columbia Superior Court alleging that vapors from buried manufactured gas plant waste caused multiple adult plaintiffs, who had used a nearby recreational area, to contract leukemia. Plaintiffs alleged \$110 million in damages. We achieved a highly favorable settlement for our client early in discovery after we deposed the lead plaintiff and prepared rebuttal expert opinions.
- **Lead Counsel for City Defending Multiple Lead (Pb) Drinking Water Cases, Including Defeat of Putative Class Action.** We represented a major city’s water utility in numerous lawsuits alleging developmental injuries caused by lead in drinking water. First, we defeated

plaintiffs' proposed class. Second, in the five ensuing individual lawsuits, we developed theories to limit the plaintiffs' claims and eventually settled, after a *Frye/Daubert* hearing to restrict the scope of plaintiffs' expert, on terms favorable to our client.

- **Defeat of Class Certification in Putative Federal Class Action.** We successfully defeated class certification on behalf of an oil refiner in a proposed statewide class action in federal court against numerous refiners involving alleged damage to boats from certain fuels.
- **Trial Counsel to Dry Cleaning Solvent Manufacturer – No Damages.** We served as trial counsel for a major chemical company when it was sued under various product liability and hazardous waste remediation theories related to the sale of a dry cleaning solvent it manufactured. Plaintiffs alleged that over \$195 million in groundwater contamination was caused by releases of this solvent from these stores. We tried two jury and three bench trial phases of the case. After numerous evidentiary hearings totaling 14 months over five years, we obtained defense verdicts at 43 out of 45 dry cleaning sites and settlement credits for all remaining liability against our client, resulting in no damages being owed by our client.
- **Dismissal of Perchlorate Contamination Citizen Suits/Putative Class Action.** We prevailed on a motion to dismiss on primary jurisdiction grounds in a putative class action brought by approximately 100 property owners alleging perchlorate contamination of drinking water.
- **Defense Counsel in Ash Leachate Case.** We defended a major utility company against lawsuits alleging damage from ash placement, including assertions of damage from groundwater impacts from ash leachate. One lawsuit was dismissed on summary judgment that was later upheld on appeal.
- **Defending Nuisance and Toxic Tort Claims Regarding Biosolids.** We secured a defense summary judgment on nuisance and toxic tort claims regarding land application of biosolids at a Pennsylvania farm. The judgment was appealed to the Pennsylvania Supreme Court, where we prevailed. *Gilbert v. Synagro Central*, Case No. 08-cv-01460 (M.D. Pa., filed Aug. 5, 2008)