

Overview

Dentons is at the forefront of the Proposition 65 defense bar. The Firm represents a broad range of manufacturers, refiners, distributors and retailers and has brought about some of the most significant developments in the law. We have defended many of the leading Proposition 65 “failure-to-warn” suits—including those alleging “consumer product,” “occupational” and “environmental” exposures—and are defending many of the leading “discharge-to-drinking-water” cases that will become landmarks for the future enforcement of the law. We have also successfully opposed the listing of certain chemicals under Proposition 65.

- *Consumer Defense Group v. Shell Oil, et al.*, California Court of Appeal, Fourth Appellate Dist., Div. 3 Case No. G034935 (2006) (unpublished opinion). Following a successful challenge to the complaint, plaintiff’s appeal resulted in a ruling favorable to defendants—entities undertaking remedial activities at contaminated sites generally cannot be liable under the Proposition 65 discharge prohibition, absent allegation that contaminants were contained before or during remediation and then were knowingly discharged by the remediator.
- *Environmental Law Foundation v. Wykle Research Inc.*, 134 Cal.App.4th 60 (2005). Following a successful motion for summary judgment in the trial court by the legacy firm of McKenna Long & Aldridge, the Court of Appeals affirmed and held that a dental amalgam manufacturer discharged its duty under Proposition 65 to provide mercury warnings to dental patients when it provided Proposition 65 safe harbor warnings on dental amalgam package inserts.
- *Mateel Environmental Justice Foundation v. Edmund A. Gray Company*, 115 Cal.App.4th 8 (2003). This appellate opinion clarified the effect of former California Code of Regulations section 12901 on plaintiff’s burden of proving a Proposition 65 violation.

Our defense and counseling of Proposition 65 clients is enhanced by ready access to superior scientific and technical resources provided by Technology Sciences Group Inc. (TSG), a subsidiary of our law firm. TSG toxicologists, chemists and regulatory specialists regularly counsel clients in the chemical, food additive, pesticide and other manufacturing industries regarding compliance with Proposition 65, prepare exposure and risk assessments and evaluate hazards of chemical substances. TSG has assisted us in our defense of many of the matters described above and in numerous other cases directed against single companies.

Dentons has defended many of the more significant multi-defendant “industry” cases, including:

- The “asphalt cases,” brought against approximately 1,500 companies that apply asphalt roofing materials
- The “auto touch-up paint cases,” brought against the leading manufacturer of auto touch-up paints and all of the major automobile manufacturers
- The “DEHP cases,” brought against manufacturers and distributors of intravenous feeding materials
- The “mercury fillings case,” brought against manufacturers and distributors of dental amalgam
- The “lead bullets case,” brought against manufacturers of firearms and accessories
- Numerous “spray-paint cases” brought against manufacturers and distributors of spray paints containing methylene-chloride
- In the “discharge-to-drinking-water” area, we represented one of the nation’s leading petroleum refiners and

distributors in the multi-party and multi-jurisdictional “Gas Station Cases.” These cases, brought under the captions *Consumer Advocacy Group v. ARCO, et al.*, *Communities for a Better Environment (“CBE”) v. TOSCO, et al.* and other actions initiated by district attorneys in Solano and Orange counties, arise from claims that leaks, accidental releases and underground migration of petroleum products from over 2000 service stations and other facilities constitute violations of Prop 65. The cases have established precedent for all manufacturers who own or operate facilities in California, or have done so in recent decades, at which there is contamination of soil or groundwater with chemicals that are listed under Proposition 65.

We represent manufacturers and distributors of a diverse range of products, including the following:

- Arts and crafts materials
- Automotive paints
- Brass keys and locks
- Candles
- Cement products
- Cigarette matches
- Cleaning products
- Cosmetics
- Decorative sand
- Diesel trucks
- Hand tool
- Electric cords
- Food crops, products, additives and containers
- Industrial chemicals
- Irrigation equipment
- Kitty litter additives
- Medical devices
- Model glue
- Orthodontic devices
- Paint
- Pesticides and crop protection chemicals
- Pharmaceuticals
- Plastics
- Plumbing products
- Printing products
- Propane
- PVC cabling
- Smoking cessation products
- Soaps and detergents
- Wood finishing products

Representative Experience

- **Leading manufacturer of water filters:** Representing in an action brought by Center for Environmental Health, that resulted in an industry-wide settlement.
- **Shell Oil Co.:** Successfully defending in the case of *As You Sow v. Shell Oil Company* is one of the few defense judgments in a contested Proposition 65 case. Rulings by the Superior Court in San Francisco confirmed the principle that Proposition 65 warning requirements may not be enforced against manufacturers and distributors of products manufactured outside California for use in the workplace.
- **Coalition of Manufacturers for the Responsible Administration of Proposition 65:** Our representation laid the groundwork for the decisions in *As You Sow v. Shell Oil Company*. In the course of this representation we successfully petitioned the US.

Your Key Contacts

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