

BENZENE LITIGATION:

AN OVERVIEW

beasley
allen

LAW FIRM

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WHAT IS BENZENE?

- Benzene, also known as benzol, is a hydrocarbon liquid and an effective solvent. Highly flammable, colorless, with a sweet odor. Benzene evaporates quickly and dissolves slightly in water. Benzene comes from both industrial and natural sources and is a carcinogen.
- Various industries use benzene to make other chemicals, such as styrene (for plastics), cumene (for various resins), and cyclohexane (for nylon and synthetic fibers). Also used in manufacturing of some types of solvents, rubbers, lubricants, dyes, detergents, drugs, and pesticides.
- Because of its wide use, benzene ranks in the top 20 in production volume for chemicals produced in the United States.
- Benzene is a natural constituent of crude oil, but it is usually synthesized from either compounds present in petroleum.
- Used as a substitute for lead, benzene now makes up 1 to 2 percent of every gallon of gasoline and it is released as a by-product of fuel combustion.

SOME CURRENT OR HISTORICAL BENZENE PRODUCTS

crude oil

inks

charcoal lighter fluid

paints and coatings (some)

contact elements

solvents

hydraulic fluids

asphalts

mineral spirits

cleaners

rubber cement

glues

refined petroleum products

lacquer thinner

cigarette lighter fluid

pesticides

gasoline

- The USEPA and the International Agency for Research on Cancer (IARC) classify benzene as a Group A or Group 1 human carcinogen.
- OSHA has set a permissible exposure limit of 1 part of benzene per million parts of air (1 ppm) in the workplace during an 8-hour workday, 40-hour workweek. (1978), down from 10 ppm in 1971. The short term exposure limit for airborne benzene is 5 ppm for 15 minutes.

OCCUPATIONS WITH CURRENT OR HISTORICAL BENZENE EXPOSURE POTENTIAL

- Mechanics
- Painters
- Railroad Workers (FELA)
- Rubber Workers/Production
- Refinery Workers
- Adhesive production
- Chemical Workers
- Barge and Dock Workers
- Gasoline distribution workers
- Industrial plant workers who use solvents
- Installers using glues, solvents
- Newspaper Press/Printer Workers
- Offshore Oilrig Workers
- Paper and Pulp
- Pesticide Manufacturing
- Plumbers Pipefitters
- Shoe /Leather Workers
- Truck Drivers

WHAT'S THE EXPOSURE IN PEOPLE TERMS?

- As many as 238,000 people may be occupationally exposed to benzene in the United States currently. Source: NIOSH
- Although benzene is far less common than it once was, just as with asbestos, there is a latency period between exposure and disease manifestation and a case presenting today may come from a worker who was exposed to historically higher workplace levels.
- The total number of current and former workers with appreciable occupation exposures is no doubt far over the current estimates.

Significant Number of Potential Clients

DISEASES FROM BENZENE EXPOSURE

- AML (Acute Myeloid Leukemia)
- MDS (Multi-Dysplastic Syndrome)
- Multiple Myeloma
- Non-Hodgkin Lymphoma
- Aplastic Anemia
- Other

ACUTE MYELOID LEUKEMIA (AML)

- AML is a blood cancer in which stem cells (myeloid cells) produce abnormal blood cells known as “myeloblasts” or leukemia cells. These do not mature into healthy white blood cells, instead these abnormal “blast” cells multiply out of control displacing or crowding out healthy blood cells, thus causing low numbers of red and white blood cells, and platelets.
- Approximately 13,400 new cases of AML diagnosed annually accounting for less than 1% of all cancers and 34% of all leukemias. AML has a slight male predominance (1.2:1.0). AML median patient age at diagnosis is 65 years. Incidence of AML is rare below the age of 40 but increases progressively with age. Overall, the 5-year survival rate in adults under 65 is about 33%.

AML is the Signature Disease in the Litigation

REASONS BENZENE LITIGATION IS VIABLE

- Industrial Exposures-Large pool of potential Litigants
- Common compound
- Scientific Support on Causation
- Signature Disease-Acute Myeloid Leukemia (AML)
- History of Work Comp case awards
- Latency Period
- Some 7 figure verdicts
- Multiple defendants
- Mealeys & Harris Martin's have Litigation Reports on it

BENZENE CASES PLAINTIFF WINS

- *Ryan v. BP Amoco* NoCV223271 Mo Cir Jackson : **\$13.3 million** in compensatory damages. Sept 2005 Environmental case. Resident next to Spring Creek Refinery died from **leukemia**.
- *Camizza v. Akso Products Inc. et. al.* BC 289503, Calif Super, Los Angeles County: Missionary and part time aircraft painter awarded **\$2.2 million** for **leukemia** alleged from benzene in paint.
- *Mason v. Texaco*, 948 F.2d 1546 (10th Cir. 1991). Otis Mason died of leukemia caused by exposure to benzene, an industrial solvent and gasoline component, for which the jury awarded **\$34 million**.
- *Watts et.al. v. Radiator Specialty* No. 2002–364 Miss Cir Ct 2004 **\$2 million** NHL Liquid Wrench.
- *Mobil Oil v. Ellender* 968 S.W. 2d 917 (Tex 1998) **\$6 million** AML failure to warn/conscious indifference to the safety of contract workers Beaumont Refinery
- *Dahlin v. Lyondell Chem. Co.*, No. 314CV00085SMRHCA, 2016 WL 4136769 (S.D. Iowa July 12, 2016) **\$3.5 million** AML; commercial truck driver who loaded and transported benzene-containing products.

IMPORTANT CASE INVESTIGATION FACTORS

- Diagnosis (AML the best)
- Date of Diagnosis (depending on jurisdiction, this could trigger the start of Statute of Limitations)
- Detailed Benzene exposure history/Benzene containing product identification (victim worked at company A with x, y, z products x number of days a week for, etc.)
- Alternative/Confounding factors which could have caused disease (smoking, obesity, age, previous cancers, prior exposure to radiation/chemotherapy)

CONCLUSIONS

- Large numbers of potential litigants: some 85,000 AML and other hematopoietic/lymphomatic cancers develop annually. If just 2% +/- have suitable occupational exposures that could produce 1000 to 2000 potential cases annually.
- There is scientific support to causation and a grave and often fatal disease(s) is involved. It is unlikely to see unimpaired plaintiffs, only certifiably diagnosed cancer victims as plaintiffs.
- History of Favorable Verdicts in the right jurisdictions/venues
- We're going to see more of it (Latency Period of Disease)

WHAT IS ROUNDUP?

- The active ingredient in Roundup is a chemical called glyphosate.
- Roundup is a broad spectrum, non-selective herbicide used primarily for weed control.
- It was created by Monsanto in 1970 and released for commercial use in 1974. Monsanto's last Roundup patent expired in 2000, and now generic glyphosate is also available.
- Roundup is one of the most widely used herbicides in the United States.
- While it is widely used as a lawn and garden weed killer, the primary use is agriculture.

GLYPHOSATE TOXICITY IN HUMANS

- In March 2015, the World Health Organization's International Agency for Research on Cancer classified glyphosate as a "probable human carcinogen" based on epidemiological studies, animal studies, and in vitro studies.
- The IARC found that glyphosate is linked to the development of Non-Hodgkins Lymphoma.
- California toxicity designation - Glyphosate is listed as "known to the State of California to cause cancer" as of 2017.

MONSANTO HAS MEDDLED IN STUDIES OF ROUNDUP'S TOXICITY

- Internal Monsanto emails and papers, released by lawyers suing Monsanto in federal court, reveal that Monsanto worked with outside consulting firms to publish studies refuting Roundup's toxicity.
- Monsanto scientists were shown to have been heavily involved in organizing, reviewing, and editing studies designed to refute the 2015 IARC toxicity designation.
- Monsanto has also been accused of conspiring with an EPA staff member to conduct a biased review of the scientific literature concerning glyphosate, thereby influencing the EPA's classification of the chemical.

ROUNDUP MDL

- Hundreds of lawsuits are pending against Monsanto Co. in U.S. District Court in San Francisco, California (and this doesn't count the 1 100+ lawsuits that have been filed in state courts).
- These cases allege that exposure to Roundup caused the plaintiffs to develop non-Hodgkins lymphoma, and that Monsanto covered up the risks of exposure.
- Summary judgment motions (and plaintiff responses) have been filed, and Daubert hearings are currently scheduled to take place this December.

CASE REVIEW ELEMENTS

- Diagnosis - Need diagnosis of non-Hodgkins lymphoma
- Exposure Levels -Strongest cases are agricultural workers who have large-scale industrial exposure to Roundup.
- Client age at diagnosis - The younger the age at diagnosis, the stronger the case, as NHL is naturally more prevalent among senior citizens.
- Type of Formulation -Use of the Roundup concentrate likely a stronger case.
- Statute of Limitations - In some states, the SOL will begin to run at the time of diagnosis (Alabama). In other states, the discovery rule will toll the statute until the Plaintiff learns that their NHL diagnosis may have resulted from exposure to Roundup.
- Do not take cases where the plaintiff has: Prior autoimmune diagnosis, Prior cancer diagnosis or prior chemotherapy treatment