



Environmental

EXPERIENCE

- Represented a large municipality in cleanup and development strategies for infamous Whittaker-Bermite site, which had resulted in the closure of drinking water supply wells and necessitated a cleanup in excess of \$250 million.
- Negotiated on behalf of the owners of a large shopping center in Lynwood the requirements for obtaining regulatory closure and compelled prior industrial manufacturers to undertake the required cleanup of extensive soil and groundwater contamination at a cost exceeding \$12 million.
- Represented a landowner in its suit against tenants who caused contamination of soil and groundwater, alleging causes of action under CERCLA and common law.
- Environmental counsel for plaintiff in 3000 E. Imperial, LLC v. Robertshaw Controls Co., CERCLA cost recovery litigation resulting in the first case upholding the bona fide prospective purchaser defense to CERCLA liability (asserted by 3000 E. Imperial, LLC due to successful pre-acquisition environmental due diligence performed by Cox, Castle & Nicholson).
- Obtained settlements in excess of \$13 million from a multi-national chemical manufacturer, a multi-national paint manufacturer, and several other parties in a combined environmental cleanup/ eminent domain action. The litigation, on behalf of a municipal redevelopment agency, involved multiple simultaneous state trial court proceedings, including a five-week jury trial in one action, as well as federal district court litigation in which our client obtained a summary judgment leading to the final settlement. A state appellate ruling validated the client's position on the appropriate interaction of eminent domain and environmental cost recovery proceedings.
- Represented a Northern California municipality and redevelopment agency in cost recovery litigation against several different former operators of city-owned port site contaminated with hydrocarbon and PCE contaminants. Marshaled resources to assist city with extensive review of city records and historical data to locate and pursue former operators from decades earlier. Handled related insurance litigation as part of assisting city in its defense of contribution claims.
- Defended a gasoline distributor in contamination claim for strict liability, negligence, trespass, and nuisance brought by operator of water system for alleged actual and threatened MTBE contamination of the drinking water system arising from releases of gasoline.

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- Represented a company in products liability and toxic torts litigation involving MTBE contamination of groundwater.
- Obtained a settlement in excess of \$15 million from a major oil company on behalf of a municipal redevelopment agency client in a multi-party, multi-jurisdiction case arising out of an environmental cleanup necessary for the second phase of a multi-phase urban redevelopment project. This litigation involved the concurrent handling of common law claims, a statutory environmental cost recovery claim, eminent domain claims, federal appellate litigation over the extent to which a prior federal action partially resolved this state court action, and an extensive administrative process before a state agency.
- Obtained summary judgment for a municipality on claims that its historic management of waterfront areas within the city, its development of road and sewer infrastructure, and its land reclamation activities had contributed to environmental contamination at a site near the historic shoreline of San Francisco Bay.
- Represented an agency and municipality in Polanco Act and nuisance action for cost recover related to remediation of brownfield.
- Obtained settlements, on behalf of a land developer client, in excess of \$10 million from two governmental entities in connection with a 300 acre project site where the governmental entities historic burn dump operations, and their subsequent mismanagement of the cleanup process, damaged the client's development opportunities.
- Defended a chemical-producing subsidiary of a major wood and paper products manufacturer against claims for a multi-million dollar penalty in an enforcement/penalty proceeding under California's Hazardous Waste Control Law.
- Defended a municipality against claims based on alleged violations of the Clean Water Act and Resource Conservation and Recovery Act (RCRA).
- Obtained a settlement in a CEQA action, on behalf of a citizen opposed to a port authority's expansion project, that provided for various project revisions and payment of attorney's fees.
- Co-chaired a 4-week jury trial and subsequent appeal in the acquisition, cleanup, and redevelopment of a 15-acre industrial site. Client recovered in excess of \$13 million of cleanup costs and related expenses. Key decisions reported as [i]Emeryville v. Elementis Pigments, et al.[/i], 101 Cal. App. 4th 1083 (2002) and [i]Emeryville v. Elementis Pigments[/i], 2001 WL 964230 (N.D. Cal.).
- Defended and settled a multi-million dollar penalty proceeding arising out of allegedly illegal disposal of hazardous waste by a Fortune 100 company.
- Defended a municipality in a Clean Water Act citizen enforcement suit and resolved matter without payment of civil penalties.

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- Lead litigation and co-lead transactional counsel in municipal owner's cleanup and redevelopment of a bulk terminal/former defense facility. Client obtained over \$3 million in proceeds from its own historic liability policies and a favorable development and disposition agreement including forward-looking pollution liability and cleanup cost cap coverage.
- Defended a plumbing fixture manufacturer sued under RCRA and CERCLA for alleged contamination arising out of a post-World War II ship scrapping operation located on San Francisco Bay and obtained settlements in excess of \$10 million from the United States and various industrial entities.
- Obtained settlements in excess of \$5 million from a multi-national chemical manufacturer, several major oil companies, and various insurance companies in a federal environmental cost covering action. This litigation involved extensive discovery and motion practice to defeat the defendants claims that the plaintiff redevelopment agency was the alter ego of the city that owned the site in question.
- Represented a global REIT in writ litigation against the California Department of Finance over the validity of a \$50 million claim secured by a pledge of tax increment revenue. The claim was ultimately acknowledged by the Department of Finance to be a valid obligation and secured by a pledge of tax increment.
- Represented a major developer in litigation against municipal and county government entities arising out of environmental contamination and the associated impairment of the economic opportunity at a 3000 unit planned development in Chico, California. Obtained a settlement worth approximately \$10 million.
- Represented a clothing manufacturer/property owner in a multi-year, disputed administrative proceeding against three major oil companies and concerning contamination associated with historic bulk termination operations. Client obtained a settlement for full excavation of the residual fuel products and related contamination, which allowed client to close its sale of the site to a major REIT.
- Represented a redevelopment agency in CERCLA and Polanco Act claims action.
- Lead counsel for the successful appellees in [i]City of Emeryville v. Robinson[/i], 621 F. 3d 1251 (9th Cir. 2010), a seminal case clarifying the interplay of the federal Superfund statute and California's good faith settlement mechanism.
- Represented a municipal landowner working with a major developer to convert a 40-acre site heavily impacted by historic MGP operations to a mixed-use development. Client obtained commitment for a full cleanup, estimated at \$25-\$40 million, from a major utility.
- Trial counsel for the Emeryville Redevelopment Agency in a 7-year process of acquiring, cleaning up, and preparing a highly contaminated 4-acre parcel for redevelopment. Obtained \$23 million and fee title through settlements, and a \$3 million trial court judgment following an 8-week bench trial.

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- Assisted in obtaining a favorable settlement and subsequent judgment against non-settling parties on behalf of owners of a commercial/industrial property against prior owners for environmental contamination.
- Successfully defended a public agency before the Ninth Circuit Court of Appeals on issues involving the interplay between contract settlement terms and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
- Represented a lessee of industrial property in CERCLA action against former owners and neighboring property owners to recover clean-up and remediation costs associated with removal of PCE contamination from the properties.
- Represented a developer of mixed-used residential project against former gas station-operator tenant who failed to remediate the property of soil and groundwater contamination at the conclusion of their tenancy.
- Represented a San Fernando Valley property owner in cost recovery litigation against owners of nearby car wash property.
- Represented property management company in dispute brought by tenant over failure to disclose mold remediation in unit prior to lease execution.
- Represented the defendant, a large home developer, in action for recovery for fear of cancer associated with exposure to naturally occurring asbestos.
- Obtained favorable settlement that required the redevelopment agency which sold contaminated property to a client to remediate the site that was contaminated with hydrocarbons.
- Obtained multi-million dollar jury verdict for a New York based developer with plans to build a hotel in Laguna Niguel in an action against oil companies and adjacent landowners arising out of the discovery that the land on which the hotel was to be built was contaminated with petroleum hydrocarbons.
- Obtained summary judgment for a plumbing manufacturer that produced bombs during WWII under an order from the Department of Defense in RCRA and CERCLA action brought by property's current owner.
- Obtained summary judgment for a developer which was sued under the federal Resource Conservation and Recovery Act (RCRA) for burying DDT-laden soil under the streets in a new development.
- Represented developers and landowners against neighboring and upstream landowners alleging that the landowners were responsible for contaminating our clients' property.

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- Obtained favorable jury verdict for a bank and a hotel developer suing a neighboring landowner and tenant for polluting our clients' property. The appellate decision arising out of the verdict continues to set the standard for the liability of a landlord for pollution caused by a tenant.
- Represented a corner bead manufacturer in superfund clean up action regarding proportionate contribution to the costs of clean up of a land fill.
- Represented an oil company in an action over leaching of petroleum products into the aquifer.
- Represented a large landowner client in a CERCLA cost recovery action involving a complex multi-year, multi-party mediation where the parties worked collaboratively on the site cleanup while simultaneously negotiating a settlement.
- Represented a large residential subdivision developer in a lawsuit alleging grading exposed neighbors to naturally occurring asbestos. Obtained very favorable settlement for client.
- Represented a municipal entity plaintiff in \$30 million environmental cost recovery action against multiple defendants. Case settled with all but one defendant. After a seven-week bench trial, obtained a favorable judgment against the remaining defendant.
- Assisted an energy company in complex compliance matter related to the handling and disposal of hazardous waste under federal and state law.
- Represented a large pharmaceutical company client in multi-party Proposition 65 lawsuit. Client successfully defeated the lawsuit on demurrer, which was upheld on appeal.
- Represented dozens of different retailers, distributors, and manufacturers to obtain favorable settlements of Proposition 65 lawsuits, and to avoid liability under Proposition 65 in the first instance.
- Led a multi-party cleanup of land heavily contaminated by an industrial accident, including negotiation of financial responsibility among responsible parties, engaging environmental consulting firms in an arduous remediation process, and obtaining "No Further Action" determination from the United States Environmental Protection Agency (EPA).
- Represented a commercial lender in environmental due diligence associated with billions of dollars of loans made on hundreds of separate properties across the United States.
- Represented an institutional investor in acquisition of 75-property portfolio, including multiple industrial properties at sites across the United States, for a purchase price exceeding \$1 billion.
- Represented an institutional investor in acquisition of majority stake in LCOR Inc., from Lehman Brothers Holdings Inc., including 14 rental-apartment properties with nearly 5,000 apartments for a purchase price exceeding \$820 million.

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- Represented an institutional investor in acquisition of multiple sites in South Gate, California, with site-wide redevelopment and ongoing remediation of extensive petroleum hydrocarbon contamination caused by underground storage tanks.
- Represented commercial landlords with multiple ongoing environmental cleanups at multiple sites, obtaining "No Further Action" status for numerous sites either through completion of environmental remediation or through ongoing management of risks posed by residual contamination.
- Represented commercial landlords in obtaining portfolio environmental insurance policy covering hundreds of properties and numerous covered ownership entities.
- Served as regulatory compliance counsel for commercial landlords with properties across the United States, with an emphasis on obtaining regulatory closure for former and active dry cleaner and gasoline service station sites.
- Counseled developers during the complicated process of remediating highly-contaminated military bases and subsequently redeveloping the sites with multi-use purposes.
- Counseled numerous major public and private residential developers engaged in purchasing, remediating, and redeveloping former industrial and urban infill sites with single- and multi-family housing.
- Counseled public institutional investors with respect to the redevelopment of fallow sites in dense, intense use urban markets.
- Counseled a large municipality in the investigation, remediation, and development of multiple environmentally-impacted properties (and cost recovery for the resulting expenses).
- Negotiated the acquisition of dozens of industrial and manufacturing sites across the country and the allocation of liability and responsibility for addressing extensive environmental impacts to soil, soil vapor, and groundwater.
- Represented a metropolitan transit authority in acquisition of environmental impacted property as part of rail line expansion project.
- Negotiated hundreds of environmental insurance policies and expert handling of claims tendered pursuant to the policies.
- Counseled an institutional investor in connection with pre-acquisition due diligence for hundreds of properties in nearly every state in the country.
- Counseled major residential and commercial developers in acquisitions of hundreds of sites across the country.
- Defended a developer sued under CERCLA and RCRA by a homeowners association for placement of materials beneath a roadway (under DTSC supervision).

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- Defended a major residential developer in CERCLA and RCRA litigation.
- Represented a landowner whose property was contaminated by activity on a neighboring property, where the principal claim was stigma damages. *Bixby Ranch Co. v. Spectrol Electronics*, the seminal California case involving stigma damages.
- Represented a public utility before the State Water Resources Control Board regarding appropriate orders issues in connection with groundwater contamination.
- Represented a biotech company in cost recovery action that compelled former railroad companies to address extensive environmental contamination through expedited remedial methods.
- Represented a commercial developer in cost recovery action against former gasoline service station and dry cleaning operators, obtaining recovery ten times higher than the amount of attorney's fees incurred in litigation.
- Represented a commercial landlord plaintiff suing a neighboring property owner and operator under RCRA for contamination arising out of lumber treatment processes.
- Represented a developer in recovery of \$3.5 million dollars in settlement with oil company for damages arising predominantly from the loss of value to a Los Angeles residential project caused by the delay resulting from implementing a slow form of remediation.
- Represented major commercial developers in defending numerous suits for mold-related claims, including cases with alleged damages exceeding \$10 million.
- Represented a retail developer in recovery of \$1.3 million in settlement with oil company responsible for contamination from a former gasoline service station. The settlement more than sufficiently funded the complete remediation of the subject property.
- Represented the lender and developer plaintiffs in *RTC v. Rossmoor*, 34 Cal. App. 4th 771 (1995), one of the few environmental cost recovery actions tried to a jury.
- Defended large commercial building owners and managers in Proposition 65 lawsuit.
- Defended a large manufacturer in Proposition 65 lawsuit.
- Defended a major concert venue owner and retailer in Proposition 65 lawsuit.
- Counseled an energy company in complex compliance matter related to the handling and disposal of hazardous waste under federal and state law.
- Represented major commercial and residential developers in obtaining "No Further Action" status for dozens of site located throughout the United States. The environmental impacts at issue include volatile and semi-volatile organic compounds such as chlorinated solvents (e.g., PCE, TCE, DCE, and DCA), petroleum hydrocarbons and fuel additives (e.g., MTBE and TBA), polychlorinated biphenyls, heavy metals, and a wide variety of other toxic constituents.

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- Represented a municipality in matters stemming from release of hazardous materials from public sewer lines.
- Involved in the first major CEQA lawsuit in California in which climate change impacts were being asserted against the adoption of a major land use plan and negotiated the first climate change settlement with the California Attorney General's office.
- Represented clients with climate change and alternative energy issues on a multitude of different projects.
- Counseled property owners, developers, lenders, municipalities, pension funds, and other parties on environmental risk management and renewable energy strategies.
- Assisted in permitting hundreds of megawatts of wind, solar, geothermal, and biodiesel plants throughout California.
- Solved problems related to radar interference and avian mortality, induced seismicity, visual and noise impacts, as well as transmission capacity.
- Performed environmental due diligence with respect to numerous sites being redeveloped as large solar development projects.
- Negotiated the purchase and terms of hundreds of environmental insurance policies for real estate ranging from single assets to portfolios consisting of hundreds of assets worth billions of dollars. Specific examples include (i) negotiating the terms of a portfolio environmental insurance policy for real estate holdings purchased for over \$820 million; (ii) negotiating the terms of a portfolio environmental insurance policy for commercial real estate valued at over \$1 billion; and (iii) negotiating the terms of environmental policies designed specifically for lenders.
- Counseled Real Estate Investment Trusts (REITs) on the acquisition of environmentally-impacted property, including the negotiation of risk management tools such as environmental portfolio policies, indemnities, and environmental escrow accounts.
- Negotiated Guaranteed Fixed Price Remediation Agreements for the remediation of sites across the state of California and other states, with remediation expenses exceeding \$100 million.
- Represented a large metal recycler with respect to a wide variety of SWPPP compliance matters.
- Represented commercial and residential developers in creating and implementing overall SWPPP compliance procedures.
- Represented commercial developers with respect to negotiating substantial reductions in penalties assessed for SWPPP violations.

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- Represented real estate management companies with respect to developing and implementing SWPPP compliance procedures.
- Evaluated potential liabilities associated with contaminated property and developing and implementing strategies to control and minimize liability.
- Completed highly technical environmental due diligence on acquisitions ranging from a single property to portfolios valued at over \$1 billion, for properties located across the United States.
- Guided clients through the arcane and complicated process of complying with federal, state and local environmental laws and governmental agency requirements, and for achieving "No Further Action" status for environmentally-impaired properties (or compelling responsible parties to achieve the same result).
- Negotiated and documented environmental risk management provisions in established and emerging forms of environmental insurance policies, loan documents, purchase and sale agreements, deed restrictions, operation and maintenance agreements, leases, construction contracts, abstracts of settlements, building rules and regulations, and tenant communications.
- Obtained funding for site investigations and cleanup through alternative sources such as California's Underground Storage Tank Fund, the Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Program, the California Environmental Redevelopment Fund (CERF), the federal Brownfield Revitalization Act, and historical liability insurance policies.
- Litigated a wide range of environmental matters before state and federal courts (including both trial and appellate matters) and through administrative enforcement proceedings before local, regional, state, and federal regulatory agencies, with particular emphasis on cost recovery in connection with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), including the seminal case of 3000 E. Imperial, LLC v. Robertshaw Controls Co. (confirming a bona fide prospective purchaser's ability to avoid CERCLA liability), Resource Conservation and Recovery Act (RCRA), the Federal Tort Claims Act, the Polanco Redevelopment Act, the Hazardous Substances Account Act, the Porter-Cologne Act, and common law doctrines such as nuisance, trespass, negligence, and strict liability.
- Counseled clients on the climate change aspects of energy and natural resources development, residential and commercial developments, industrial projects, energy use, renewable energy, and energy infrastructure projects.
- Counseled clients in connection with cleanup plans, environmental audits, and disclosure requirements under state and federal Right-to-Know laws, including California's Proposition 65.
- Processed land use, environmental and regulatory approvals to develop the "Porsche Experience Center" at 53-acre Brownfield site located in the City of Carson.
- Obtained environmental clearances and approvals to develop a 2,000-unit master-planned community on 161-acres of former sugar cane fields on Oahu, Hawaii.

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- Defended hotel and apartment owners and operators in Proposition 65 litigation involving secondhand tobacco smoke.
- Defended a restaurant chain in Proposition 65 litigation involving claimed exposures to mercury in fish and seafood.
- Defended a variety of Proposition 65 matters involving importation and sale of vinyl lunchboxes and sale of glassware containing colored artwork.
- Prosecuted a RCRA citizen's suit for injunctive relief against the County of Orange at a closed landfill site.
- Represented a company in dispute with County of Orange regarding responsibility for implementation of landfill gas control systems and other landfill environmental monitoring systems.
- Prosecuted a CERCLA cost recovery action against a lessee of former gun range facility located in the City of Huntington Beach.
- Defended 29 municipalities in cost recovery litigation under CERCLA involving the Operating Industries, Inc. Superfund site.
- Performed transactional due diligence on portfolio of 250 golf course properties in connection with the sale of National Golf Property assets.
- Represented a cemetery and mortuary owner and operator on storm water permitting and compliance proceedings.
- Represented a property owner in cost recovery litigation against adjacent service station owner based on migration of petroleum contamination from leaking underground fuel storage tanks.
- Defended an importer of vinyl miniblinds in Proposition 65 lead litigation initiated by the Attorney General of California.
- Represented a property owner in dispute with Los Angeles County Sanitation Districts involving the adequacy of landfill's environmental control systems.
- Represented numerous clients seeking "no further action" status before state and local regulatory agencies regulating groundwater quality.
- Represented numerous clients in structured acquisitions of environmentally contaminated sites using third party environmental insurance and risk management products.

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- Represented various plaintiffs – including private party developers, municipalities, and redevelopment agencies – in numerous successful federal cost recovery actions asserting causes of action under CERCLA (and its state counterpart, the Hazardous Substances Account Act) and the Resource Conservation and Recovery Act, and tort claims for negligence, nuisance, trespass, and negligent interference with prospective economic advantage, including 3000 E. Imperial, LLC v. Robertshaw Controls Co.
- Represented a municipality in action against owners and operators of contaminated property in connection with redevelopment efforts.
- Provided critical research to support the State's successful argument in a case concerning the interpretation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), resulting in a published decision, California Department of Toxic Substances v. Hearthside Residential Corp., 613 F.3d 910 (9th Cir. 2010).
- Represented major oil pipeline operator in matters related to oil contamination and easement disputes.
- Represented and advised major healthcare REIT regarding all litigation and asset management issues for nation-wide portfolio.
- Represented national homebuilders through the investigation, acquisition and remediation of environmental impaired properties to be developed for residential use.
- Represented major retailer in the acquisition and remediation of property to be used as a distribution center that was historically used to store and test artillery for the military.
- Represented land owner in cost recovery action against Chevron to recover lost profits and diminution in value as a result of historic release of gas station contamination.
- Represented numerous property owners and management companies in disputes related to the presence of mold and related toxins.
- Defended national renewable energy company in multi-million dollar suit concerning its energy transmission line easement rights in Solano County. Obtained summary judgement in favor of client, causing dismissal of plaintiff's suit and exposure to attorney's fees and costs.

Prior results do not guarantee similar results

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