

HOW I WON THE CASE

A Lesson in Focus and Restraint

Yearslong toxic tort case ends
in record \$363M verdict

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*How I Won the Case gives you the
inside scoop on big verdicts and trial
tactics.*

The shortest distance between two points is a straight line. But what if the two points span over 30 years? How do you manage to build that straight line? Through focus and restraint.

And that is exactly how we exposed three decades of misdeeds and obtained a \$363 million verdict—the largest in Illinois history on behalf of a single plaintiff.

In August 2018, a federal report revealed that a small community southwest of Chicago had an elevated cancer risk due to emissions of a carcinogen from two innocuous buildings situated between a Target and a Denny's. Those buildings were operated by the medical device sterilization company Sterigenics, which had been releasing a colorless, odorless human carcinogen since 1985 without any warning to the surrounding community that included homes,



From left: Lance D. Northcutt, Jennifer M. Cascio and Patrick A. Salvi II obtained the largest verdict in Illinois history for a single plaintiff.

schools, businesses and parks—all within a mile.

A toxic history

From the beginning, there were roadblocks. The first few cases were filed in state court but were removed to the Northern District of Illinois. Eventually, the cases were remanded back to Cook County nearly a year later. As discovery commenced, there were tense and protracted disputes, including several that required a mediator in an effort to reduce the frequency with which we would have to be heard by the sitting judge. The defendants sought significant electronic discovery while we requested discovery spanning 35 years of operations. This included millions of pages of documents from electronic discovery as well as significant hard copies—there was a seemingly endless amount of banker's boxes to review. Significant amounts of documents were marked confidential, privileged or work product. With focus and restraint, we pressed on,

relentlessly pursuing the information we believed essential to the case.

Ours was not the only litigation playing out because of the toxic emissions. The Illinois attorney general sued Sterigenics and issued a seal order, closing the facilities in February 2019. Ultimately, Sterigenics chose to leave Illinois, shuttering its Willowbrook facilities. At the same time, Illinois passed the Matt Haller Act, which created some of the strictest limits on ethylene oxide emissions in the country.

Proving causation

In addition to seeking our own discovery from the defendants and monitoring any parallel litigation, we gathered documents via Freedom of Information Act requests and digging through state and federal databases. From the moment we filed our first case in 2018, we started building our evidence by analyzing publicly available information to determine the quantity of emissions the company reported to state and federal agencies,

how the facilities functioned from an engineering standpoint, when the facilities expanded and what type of controls they had on the facilities.

Utilizing publicly available information helped create the outline of our liability case. We knew once we were able to do a deep dive into the defendants' internal documents, the case would only get better. Indeed, the defendants' internal documents told a story of a company ignoring the warning signs, needlessly endangering the community and then using their resources to fight back against science that would support the plaintiffs' theory—that environmental exposure to ethylene oxide posed a cancer risk to individuals living near facilities like this one.

Throughout this time, we worked carefully with top experts in chemical engineering, air modeling, toxicology and cancer biology to immerse ourselves in the science and medicine. We learned that ethylene oxide is a direct-acting human carcinogen that enters the bloodstream when it is inhaled. Ethylene oxide reacts with DNA, leading to damage that can initiate the cancer process.

Concerns about the dangers of ethylene oxide went back decades before the Willowbrook facility began operating in 1985. But what also became abundantly clear was that like most environmental exposure cases, there were no epidemiological studies showing the effect environmental exposures had on individuals in a community. Since no such study could ever be done ethically, our job was to better understand the nuances and details of the body of literature on this chemical in order to explain our causation theory to the jury.

Choose your battles wisely

The same focus and restraint used during discovery was even more important at trial. Though we took dozens of depositions and found many helpful documents, the trial was already going to take more than a month. One surefire way to lose a complicated case is to allow the complexity to distract from the case theory, and as the party with the burden of proof, we could not let that happen.



Plaintiff Sue Kamuda, who was awarded \$363 million, and attorney Patrick Salvi II speak to reporters in 2022.

While the defendants frequently would use a kitchen sink approach (e.g., motions in limine, *Frye* motions to bar our experts), we picked our battles. Despite securing favorable testimony from many witnesses on complex topics, we cut down our witness list. Our trial team had a mantra: “only kill shots.” If a witness, or a document, or a question was not a “kill shot,” then it was not a shot worth taking. This discipline was on full display during the trial, where despite hearing nearly six weeks of evidence, the jury ultimately deliberated to a verdict and was able to carefully articulate their reasons why when asked after the trial.

To build a case that covers decades and involves complicated areas of engineering, epidemiology and government regulations and then effectively present it to a jury, one must resist the urge to go down every rabbit hole. Cases like this easily can be lost by pursuing every document and every argument.

For each document and piece of testimony we considered, we would ask ourselves: “Will this serve an aspect of our case? Does this document serve a new and unique purpose that other doc-

uments do not? Are we overwhelming the jury with information such that they lose sight of truth?”

We spent years creating a foundation for our case based on truth and logic. This continued into our trial. We won a historic verdict by drawing a straight line from the moment the defendants learned about the dangers of ethylene oxide to the moment the jury left to deliberate. By remaining focused and exercising restraint, we found truth in the morass. And by presenting our story in a straight line, the jury was able to separate the truth from the white noise. ■

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This column reflects the opinions of the author and not necessarily the views of the ABA Journal—or the American Bar Association.