

THE AM LAW LITIGATION DAILY

Litigator of the Week: A Landmark Multibillion Dollar ‘Forever Chemicals’ Settlement for the State of New Jersey

By Ross Todd

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Our Litigator of the Week is **William J. Jackson** of **Kelley Drye & Warren**, who represented the State of New Jersey against DuPont and 3M in litigation involving so-called forever chemicals.

After more than six years of hard-fought litigation, the state’s effort to hold the companies accountable for PFAS contamination conclude with what U.S. District Chief Judge Renée Marie Bumb described as a “fair and reasonable” compromise. Last week, Bumb approved judicial consent orders involving more than \$2 billion in payouts from DuPont and about \$450 million from 3M settlement. “The North Star of this litigation is and always has been whether the Proposed JCOs protect the public interest,” the judge wrote, adding that she concluded that they “strike that balance.”

Lit Daily: What was at stake for the State of New Jersey in this litigation?

Bill Jackson: New Jersey was facing billions of dollars in costs to remediate, restore and abate the PFAS and other hazardous substances at issue. For over a century, DuPont owned, operated and used a number of industrial and other facilities in New Jersey that discharged a wide-variety of hazardous substances—including PFAS, colloquially known as “forever chemicals”—into the environment and natural resources of New Jersey. 3M was not known to be a “discharger” in New Jersey, but for almost 50 years, 3M was DuPont’s

main supplier of PFOA, a particularly toxic form of PFAS, in New Jersey and nationally. Both 3M and DuPont also sold a wide variety of PFAS-containing products in New Jersey that contaminated drinking water resources across the state. DuPont’s efforts to restructure and transfer assets and business lines away from these PFAS liabilities was also a significant risk and hotly litigated throughout the case.

How did this matter come to you and your firm? And what sort of investment was it for Kelley Drye to take on a plaintiff-side representation of this size and scope for the state?

When we were hired by New Jersey, Kelley Drye had already filed suit for the State of Ohio, asserting claims against DuPont for PFAS contamination from another notorious DuPont facility in West Virginia, so we had unique experience and knowledge that was applicable to the Chambers Works facility on the Delaware River and with regard to PFAS issues more broadly. Moreover, several of us at Kelley Drye had had the honor of representing the State of New Jersey in its Passaic River litigation from 2005 to 2015, so we had a good handle on New Jersey law and a



William J. Jackson of Kelley Drye & Warren.

Courtesy photo

strong track-record of representing the New Jersey Department of Environmental Protection in significant natural resource damages matters. Kelley Drye is proud to make significant investments in efforts such as this, protecting the public interest, the environment and natural resources in New Jersey and other states, as well as public entities around the country.

Who all has been part of your team and how have you divided the work?

As you noted, representing New Jersey in these statewide PFAS matters has been a huge investment of time and effort. The team was large and included the **New Jersey AG/Division of Law**, co-counsel firms **Taft Stettinius & Hollister**, the **Dema Law** firm, and **Cohn Lifland Pearlman Herrmann & Knopf**, and a large team from Kelley Drye. At Kelley Drye, we created several teams (consisting of over 20 lawyers in all) to address the PFAS production, knowledge and liabilities of 3M and DuPont, the environmental impacts and remediation costs of PFAS and other hazardous substances at issue, the economic and natural resource damages suffered by the public, and the fraudulent transfer and restructuring claims against “Old” DuPont and its related entities holding PFAS liabilities: Chemours, Corteva and “New” DuPont.

The state filed these suits in 2019, and the litigation stretched across multiple sites, defendants and legal theories. What were the biggest challenges in building a cohesive, sustainable case?

With well over a century of industrial discharges in New Jersey—and a 75-year history with PFAS in New Jersey and around the country—the breadth and scope of the issues were absolutely sweeping in nature. There were millions of documents, over 100 fact witnesses and over 75 designated experts in the Chambers Works case alone. Judge Joel Schneider, our special master and mediator, was remarkable in shaping discovery, ruling on disputes, and keeping all parties on track for the May 2025 trial. In April of 2025, Chief Judge Bumb shaped the case and ordered the parties to try a series of six “mini-trials” to the bench commencing on May 19, 2025 (to address certain statutory liabilities of DuPont and Chemours and a series of defensive issues), with a jury trial on common law liability and all damages to follow that fall.

The defendants ultimately settled as that mini-trial process unfolded. How did preparing for those trials change the leverage dynamic in the case?

By March 2025, the state’s trial team was working around the clock to get ready for a series of April pre-trial hearings before Judge Bumb and the anticipated commencement of the May 19, 2025, trial. The state settled its claims against 3M for \$400 to \$450 million on May 12, 2025 (after literally negotiating final issues and terms up until the eve of trial). We tried the first five “mini-trials” against DuPont and Chemours during May and into June 2025, establishing DuPont’s and Chemours’s liability under the New Jersey Spill Act for a large area extending out from the Chamber Works Site and under the Water Pollution Control Act for unauthorized discharges of PFAS into the Delaware and waters of the state, and defeating numerous defensive arguments under the Spill Act, prior agreements with the state, and the Government Contractor Defense. We were back in Camden to try the sixth mini-trial—on the fraudulent transfer and ISRA claims against DuPont—when the state reached a settlement with DuPont.

You told my colleague Charlie Toutant that the ability to tell both the liability story and the damages story at trial had a tremendous impact on the outcome. How did your team approach pulling those two narratives together?

There is no question that being able to put on the state’s case before Judge Bumb—demonstrating the defendants’ understanding of the risks and harms of PFAS and the scope of contamination and impacts in and to New Jersey—allowed all of the parties and the court to better evaluate the extent of liabilities and risks at issue. That only happened because of the court’s dedication and commitment to set aside a month of her calendar last summer to try this case, which also enabled the parties to simultaneously mediate under the expert guidance of Judge Schneider and, ultimately, resolve the matters statewide for the benefit of all of the citizens of New Jersey.

PFAS litigation often involves complicated scientific, environmental and public-health issues. How did you translate those issues into a story that would resonate in court?

We had excellent experts and lawyers directing them who were able to boil down extremely complex issues and convey them in a way that even I can understand! Gratefully, we also had an exceptional jurist who quickly grasped the issues and often questioned the experts directly herself.

Judge Bumb's approval order repeatedly emphasizes the public interest and New Jersey's authority to act in its sovereign and parens patriae capacities. How significant were those state-power issues to the overall strategy of the case?

The issues of the state's power and authority to protect the public health, environment, and natural resources of the state—through state statutory authorities and common law doctrines such as parens patriae, the public trust, and public nuisance—were foundational to every aspect of these litigations and settlements. The State of New Jersey is empowered to bring claims to protect its citizens from hazardous substances such as PFAS, to remediate and restore its natural resources, and to protect its drinking water from this kind of contamination. We had to fight through challenges to these powers, doctrines and claims every step of the way, and we are incredibly proud of the result the state achieved here, enforcing and enshrining those powers.

The settlements include both monetary recoveries and remediation commitments. From the state's perspective, how did you balance the desire for immediate compensation against the need for long-term environmental cleanup?

The guiding star of this litigation was to ensure that 3M and DuPont pay to address their PFAS contamination, not the citizens of New Jersey. So, the breadth and scope of the relief obtained through the JCOs—including Old DuPont's uncapped remediation obligations at and from all of its sites, layers of financial assurance mechanisms to ensure the defendants (not the public) pay for this work, natural resource damage funds to restore New Jersey's water and other natural resources, and PFAS abatement funds to test, treat and address PFAS throughout the water cycle across the state—were all designed to protect the public and New Jersey's environment. All of this work will take place over many years, so the settlements were structured to provide long-term funding and lasting protections for all of it.

The court noted that the settlements include protections designed to ensure the state is not disadvantaged if a DuPont entity later enters bankruptcy.

How difficult was it to negotiate safeguards around future financial risk?

As noted, protecting the taxpayers and ratepayers from these costs, and ensuring the DuPont defendants, in particular, pay to address the contamination they caused, was always a priority of the state. So, utilizing statutory schemes and adding layers of protection that spread the responsibility to pay for and remediate this contamination among Old DuPont, New DuPont, Corteva and Chemours were essential terms for the state. There are layers of third-party financial assurance mechanisms put in place. On top of that, if any one of the DuPont defendants is unable or unwilling to pay their share of the obligations under the JCOs, the others must step forward and pay.

You've described the New Jersey PFAS settlement as a model that could influence other states and claimants. What are the most important lessons from this litigation that other governments pursuing PFAS claims should take away?

I believe that the State of New Jersey's unwavering commitment to protecting public health and restoring its water resources, in particular, provides a model for structural resolution nationally. The state's all-of-government approach to resolution—and its creation of PFAS abatement funds and use of preexisting NRD funding mechanisms—also allowed for a comprehensive and durable settlement structure. The long-time horizon of the settlements—recognizing the reality that remediation and water treatment work will go on for many decades—also allows for payment structures and a scope of release that gives the PFAS defendants and sources an opportunity to resolve through a structured format that also allows them to resolve their liability and move forward.

What will you remember most about this matter?

Personally, I will most remember our summer in Camden! The state's trial team was large, with many lawyers, paralegals, and other team members ranging from their first year of practice to several more experienced lawyers and team members. Although we were all working around the clock, the team was as cohesive as I have ever seen, all having fun and fighting for a common goal. It was a great experience for the Kelley Drye team and our esteemed co-counsel.