

# Emerging Chemical and Mass Torts

## *What's New? What's Next?*

**DRI 2006 Product Liability Conference**  
**February 9, 2006**  
**Las Vegas, NV**

Presented by

**Merton A. Howard**

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP  
425 Market Street  
San Francisco, CA 94105  
(415) 995-5033  
mhoward@hansonbridgett.com

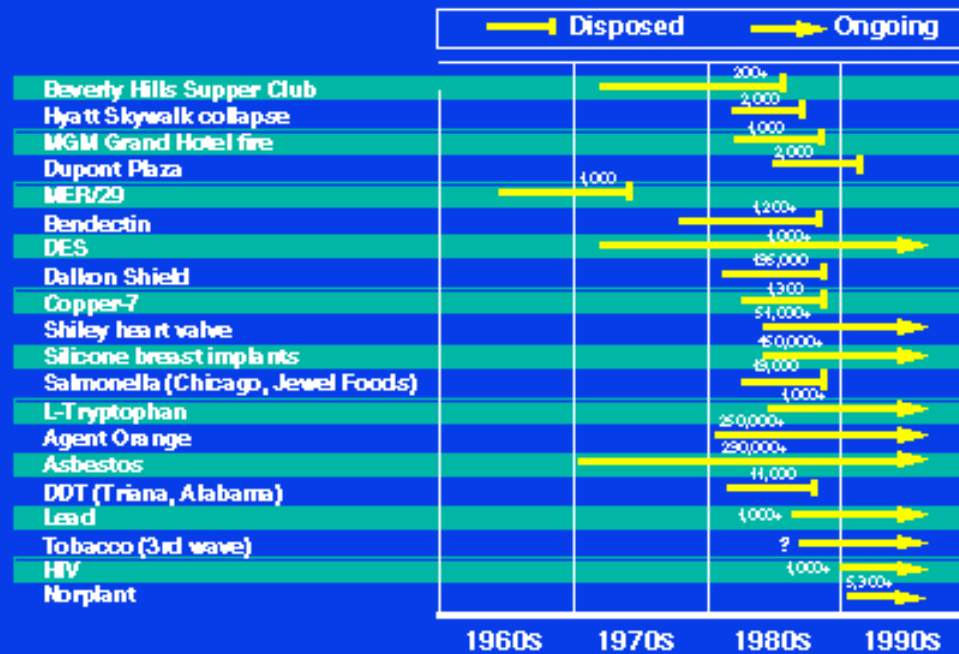
© Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, 2006.

[www.hansonbridgett.com](http://www.hansonbridgett.com)

# What is a Mass Tort?

- Mass torts involve large numbers of claims associated with a single causative element.
- Commonality of factual and legal issues.
- Value interdependence.

## Mass Tort Litigation “Exploded” in the 1980s



SOURCE: RAND Institute for Civil Justice analyses of mass personal injury litigation, 1995-1996.

FIGURE 2006 RAND

**How do we identify:**

**What's new?**

**What's next?**

# Sources of Information

- Publications: Mealey's, BNA, Harris Martin, Findlaw, etc
- ATLA, DRI, ABA, Blawgs
- Government Websites: FDA, EPA, CPSC, OSHA, CDC, Department of Health and Human Services
- Recent Filings
- Experts, Independent Laboratories, Advocacy and Safety Groups
- Internet Research
- Academic Organizations
- Understanding Mass Personal -Injury Litigation – Rand Corp.

# Trendspotting

- This is not the time to cut back on efforts to spot the next big trend—discovering what your customers need. Here are ten low-cost trendspotting tips from the Harvard Management Update Newsletter Industry
- Including (1) Experts, (2) Customers, (3) Networking, (4) KM, (5) Organize & aggregate, (6) “Form a posse on the future”; (7) Diversify; (8) Get off the beaten trail; (9) Beware traditional research; (10) Watch the games people play.

# Focus

- Types of torts; legal arguments; new cases; verdicts?
- Injury Type
- Science
- Geography
- Industry
- Draft Presentation; Past Presentation
- Delegation
- Networking
- Survey

# Goals

- Educate
- Entertain
- Pacing: Move It! Move It!
- Stimulate Discussion
- Committee Growth
- Health & Safety
- Profit



# Question Presented

Please send me your list of emerging areas, trends, or examples of new mass torts or exposure claims (e.g., drugs, chemicals, silica, etc.).

# Sample Responses

- What follows are sample responses and some further insight into a few interesting topics
- Most responders preferred anonymity
- A few will be acknowledged during the presentation

# Responses

More than 50 Substantive Responses

Wide variety of responses

Not many surprises

Some were very helpful

Others not very productive

Final Product: Subscription Service (e.g., the Howard Report, Mert's Mass Torts, etc.)

# Helpful Responses

- Pharma:
  - Vioxx type drugs,
  - the strong pain killers,
  - drugs for ADHD (Ritalin),
  - antidepressants,
  - sexual performance enhancers,
  - some over the counter drugs

# Helpful Responses

- Asbestos will remain maybe the biggest issue by far but people often forget it because it is right in front of them hidden in open view.
- They tried silica but Judge Jack's MDL opinion may have shut down.
- Welding rods is another area, but plaintiffs have generally not had much success there.
- Lead paint will be big if they can find a way to "fingerprint" paint so they can tie claims to a specific mfr.
- Pharmaceuticals was probably on its way to being the next big ATLA push but recent FDA action may have complicated that for the trial bar.

# Helpful Responses

- Silica (acgih just approved lowering TLV this week!)
- Welding fumes, particularly manganese exposure
- Exposures from nanotechnology (just being looked by many including CDC)
- Bioaerosol exposure in biotechnology (just now hitting with some new technologies)

# Helpful Responses

- Toxics:
  - asbestos (trace levels due to products),
  - trace benzene (the biggest thing in 10 years),
  - dioxin (very inactive for the past 15 years),
  - PFOA (teflon additive),
  - small particles (this will be slow in its evolution),
  - MTBE (it will be 3 years before this takes off...but it will be big),
  - mercury,
  - glycol ethers,
  - perchlorate,
  - silica,
  - flame retardants
  - and, maybe, chromium.

# Helpful Responses

- The old adage about what is the next asbestos can usually be answered with “it is asbestos”. The plaintiffs’ bar continues to make asbestos an emerging area by finding new defendants, or making peripheral defendants targets, etc
- Silica has been a hot bed, but after Judge Jack, etc it has serious issues
- Lead Paint is an area which has been more of a focus lately given litigation in RI
- A number of others have been trying to emerge such as Welding Rods, Benzene, Tobacco
- And the newest is perhaps Teflon, with Plaintiffs alleging that cooking utensils release a chemical which could cause cancer



# Responses

- “Benzene, Vinyl Chloride and other "leukemia-related" exposures. As the population ages, we will see more malignancies generally, and more people looking to pin the cause on things other than genetics and the turn of the card;
- Medical Devices. The increase in implanted devices will undoubtedly result in problems when product recalls are made. In contrast to the recent labeling regulations out of the FDA (e.g., protection from state court Failure to Warn claims), devices are fertile ground for Products Liability actions;
- Nanotechnology. In the near future we will see Nanotechnology in a great deal of products. Similar to other "miracles" I suspect that they will not be properly vetted (e.g. as in Asbestos, Thalidomide, and Lead paint) and lawsuits will emerge;
- Privacy Rights. While not truly a product (although we all have a interest in such matters) I would wager that we will see numerous actions vis-a-vis lost personal data, Identity Theft, and RFID usage; and
- Asbestos/Silica. If the FAIR Act does not pass, I am going out on a limb and will say that an explosion of cases that have been withheld from filing will emerge and will be inundating the courts.

# Not So Helpful

- Apple is going to get a gazillion Ipod hearing loss cases. Now that's a tort. Asbestos? Silica? Think outside the box Mert.
- Make sure you tell the DRI folks that they should pay big money all the time . . . .
- I can't support that organization. DRI? Ugh. Tell them that IUDs are the latest product defects! hahahaha

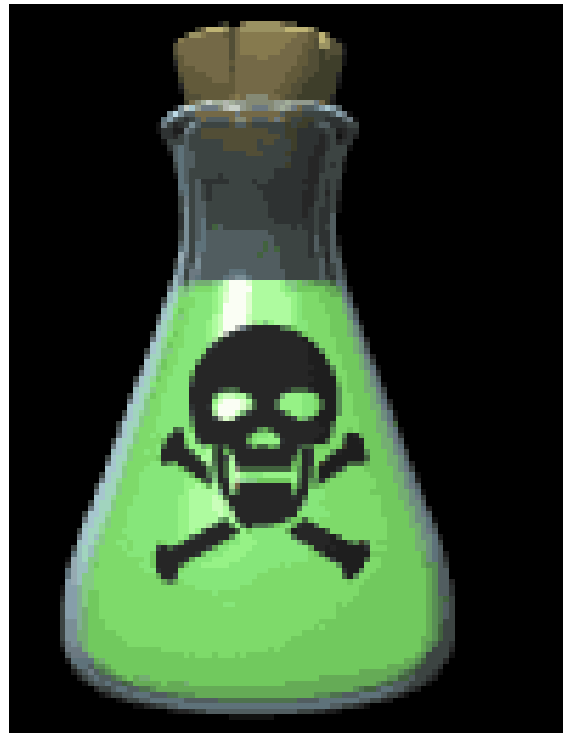
# Not So Helpful

- Emails and marketing materials from lawyers should be banned!!!
- Stop emailing me!!!
- Are you still alive?

# Useless Responses

Why don't you speak about how UCONN recruits ex-convicts to enhance their basketball program, and why there is a missing laptop epidemic on campus?

# Getting Focused





**FindLaw**  
Class Action and Mass Tort Center

FindLaw's Lawyer and Law Firm D

City or Zip  State  Practice

POWERED BY WEST LEGAL

[Class Action Center](#) | [Class Action News](#) | [Class Action Notices](#) | [Class Action Settlements](#) | [Recalls](#) | [Legal Research & Practice](#)

[Home](#)

Find a [class action lawyer](#) in the [FindLaw Lawyer Directory](#). Click [here](#).

[Asbestos](#)

Resource Pages

[Baycol](#)

- [Asbestos - Mesothelioma](#)
- [Baxter Dialyzers](#)
- [Baycol](#)
- [Celebrex](#)
- [Ephedra](#)
- [Fen-Phen](#)
- [Meridia](#)
- [PPA](#)
- [Prempro](#)
- [Propulsid](#)
- [Rezulin](#)
- [Securities](#)
- [Serzone](#)
- [Sulzer Hip Implant](#)
- [Vioxx](#)

[Baxter Dialyzers](#)

[Celebrex](#)

[Ephedra](#)

[Fen-Phen](#)

[Meridia](#)

[PPA](#)

[Prempro](#)

[Propulsid](#)

[Rezulin](#)

[Serzone](#)

[Sulzer Hip Implant](#)

[Vioxx](#)

[Recalls](#)

General Information

- [The Advantages and Disadvantages of Class Actions](#) — from [Cohelan on California Class Actions](#)
- [Mass Torts](#) — from [Class Actions and Other Multi-Party Litigation in a Nutshell](#)

[Consumer Products](#)

Food Safety and Inspection Service (FSIS): Recall Press Releases

- [04/09/2004] [Kansas Firm Recalls Ground Beef For Possible \*E. coli\* O157:H7](#)
- [04/02/2004] [Illinois Firm Recalls Deli Meat And Cheese Trays For Possible \*Listeria\* Contamination](#)
- [04/09/2004] [Massachusetts Firm Recalls Meatballs That May Contain Pieces Of Hard Plastic](#)
- [04/05/2004] [Pennsylvania Firm Recalls Bologna For Possible \*Listeria\* Contamination](#)
- [03/01/2004] [Idaho Firm Recalls Beef Chili Because Of Undeclared Allergens](#)

[Food and Drugs](#)

[Motor Vehicles](#)

Consumer Product Safety Commission (CPSC): Recall Press Releases

- [02/02/2006] [Four Seasons and Cardinal IG Co. Recall to Repair Sunroom Roof Glass](#)
- [02/01/2006] [Weil-McLain Company Recall of Boilers](#)
- [02/08/2006] [Recent Death Prompts Renewed Search for Simplicity Cribs with Graco Logo](#)
- [02/08/2006] [Lasko Recalls Box and Pivoting Floor Fans Posing Fire Hazard](#)
- [02/07/2006] [SFC America Recall to Repair Fire Extinguishers](#)

[News](#)

[Notices](#)

[Settlements](#)

[Legal Research](#)

Food and Drug Administration (FDA): Recall Announcements

NOTE: The recalls on this list are mainly [Class I](#) recalls.

This is a special advertisement from James Rolshouse & Associates, PLLC.

**James Rolshouse  
& Associates, PLLC**

**PFOA Info:**  
<http://www.epa.gov/opptintr/pfoa/pfoatisk.htm>

**Concerta Info:**  
<http://www.cnn.com/2005/HEALTH/conditions/06/29/attention.deficit.drug.ap/index.html>

**Guidant Defibrillator Info:**  
<http://www.cnn.com/2005/HEALTH/06/21/defibrillator.problem.ap/index.html>

## New Mass Tort Advertising Campaign Opportunities

I contacted you in May about advertising for Crestor. Since that time, we have collected more than 650 new pharmaceutical and medical device leads.

In the last month, we began advertising for the ADHD drug Concerta, Guidant defibrillators, and PFOA, a chemical used in the production of Teflon and Gore-Tex which the EPA called a "likely carcinogen."

We're interested in working with one or more firms to leverage our resources to acquire even more cases. By pooling our advertising dollars and linking up Plaintiff's firms with common interests, we can take advantage of volume discounts on advertising and hit any market nationwide.

Please give me a call to discuss further, 952-224-2141 or toll free at 1-866-247-8232.

**James Rolshouse**

James Rolshouse & Associates  
12226 Nicollet Avenue  
Burnsville, MN 55337

**VISIT WEBSITE**      **SEE SAMPLE ADS**

This is a special advertisement from MCM Services Group, LLC.



**MCM SERVICES GROUP, LLC**

Your Turnkey Solution  
For Mass Tort Advertising

### Expecting a Settlement Check Tomorrow But Want To Advertise Today?

Settlement checks for Zyprexa, Serzone, Rezulin, Fen-Phen and possibly Baycol may all be on the way in the next few months, making it the perfect time for a pre-settlement deferred billing ad campaign.

MCM Services Group is currently offering deferred billing options as well as deep discounts off published rate cards.

Our turn-key marketing package allows you to maximize quality lead generation while keeping costs to a minimum. For one low price, MCM's turnkey solution can:

- Help create and place your print, radio and television ads.
- Capture your leads through MCM's 24/7 call center.
- Manage your leads through MCM's web-based intake system.



**HOW CAN WE HELP YOU?**

MCM covers every aspect of marketing so you can concentrate on what you do best:

**Practice Law.**

We've helped firms across the country generate quality leads in these areas: Baycol, Welding Rods, Stents, Crestor, Asbestos, Avandia, Benzene, Ephedra, Fen-Phen, Ford Rollover, Investment Fraud, Hip and Knee Replacement, Neurontin, Nursing Home Abuse, Paxil, Birth Injuries and many others!

To learn more about how your firm can generate new leads without generating more overhead, call our sales staff at 1-888-507-6262, e-mail us at [info@mcm-servicesgroup.com](mailto:info@mcm-servicesgroup.com), or visit us online at [www.mcm-servicesgroup.com](http://www.mcm-servicesgroup.com).



**MCM SERVICES GROUP**

12226 Nicollet Avenue South, P.O. Box 979, Burnsville, MN 55337  
Telephone: 952.224.2100 Fax: 952.224.2101



This is a special advertisement from MCM Services Group, LLC.

**MCM SERVICES GROUP** Your Turnkey Solution to Mass Tort Advertising 

ADVERTISE. CAPTURE. MANAGE. PROFIT.

## We Take The Calls So You Can Make The Case!

In today's competitive mass tort arena, your window of opportunity is small. Not only can our media campaigns position you in front of the competition, our call center can ensure that you capture every call.

MCM's call center operates 24 hours a day, 7 days a week so you don't miss a single lead. Our intake specialists use customized intake scripts created to gather the detailed information your firm needs to analyze the viability of a claim.

We're not just taking a message; we're creating a detailed profile of each lead. Our experienced call center personnel will ask the right questions and prioritize your leads based on their medical history.

The information contained on the intake script is immediately accessible via your firm's password protected account on MCM's web-based Lead Evaluation and Administration Program (LEAP).

The information contained on the intake script is immediately accessible via your firm's password protected account on MCM's web-based Lead Evaluation and Administration Program (LEAP).

Avoid the hassle and expense of ramping up your call center capability when a new mass tort case breaks.

Call 1-888-507-6262 to learn more about MCM or email us at [info@mcm-servicesgroup.com](mailto:info@mcm-servicesgroup.com)

MCM Services Group, your complete turnkey solution to mass tort advertising.



12226 Nicollet Avenue South, P.O. Box 979, Burnsville, MN 55337  
 Telephone: 952.224.2100 Fax: 952.224.2101  
 Website: [www.mcm-servicesgroup.com](http://www.mcm-servicesgroup.com)

# Drugs

- Accutane
- Bextra
- Clozaril
- Paxil
- PPA
- Risperdal
- Seroquel
- Vioxx
- Zyprexa

# Exposures

- Benzene
- Diesel Exhaust
- Noise
- Indoor Air
- MTBE
- Pesticides
- Teflon
- Bird Flu
- Formaldehyde
- Nanotechnology
- Arsenic - CCA
- Pneumosparklyosis
- Asbestos

# Benzene

- One of the top areas identified in my survey.
- There has been steady and sustained growth in mass tort claims related to benzene expose (e.g., allegations of benzene-related leukemia and lymphoma). The largest grouping of these are employee workplace claims against multi-defendants who made products used by such employees.
- Benzene is also implicated in mass tort claims based on exposure to diesel fumes.
- Even after Fed and state (TX) tort reform, significant numbers of cases remain in Cal, TX, La, Miss and Illinois.

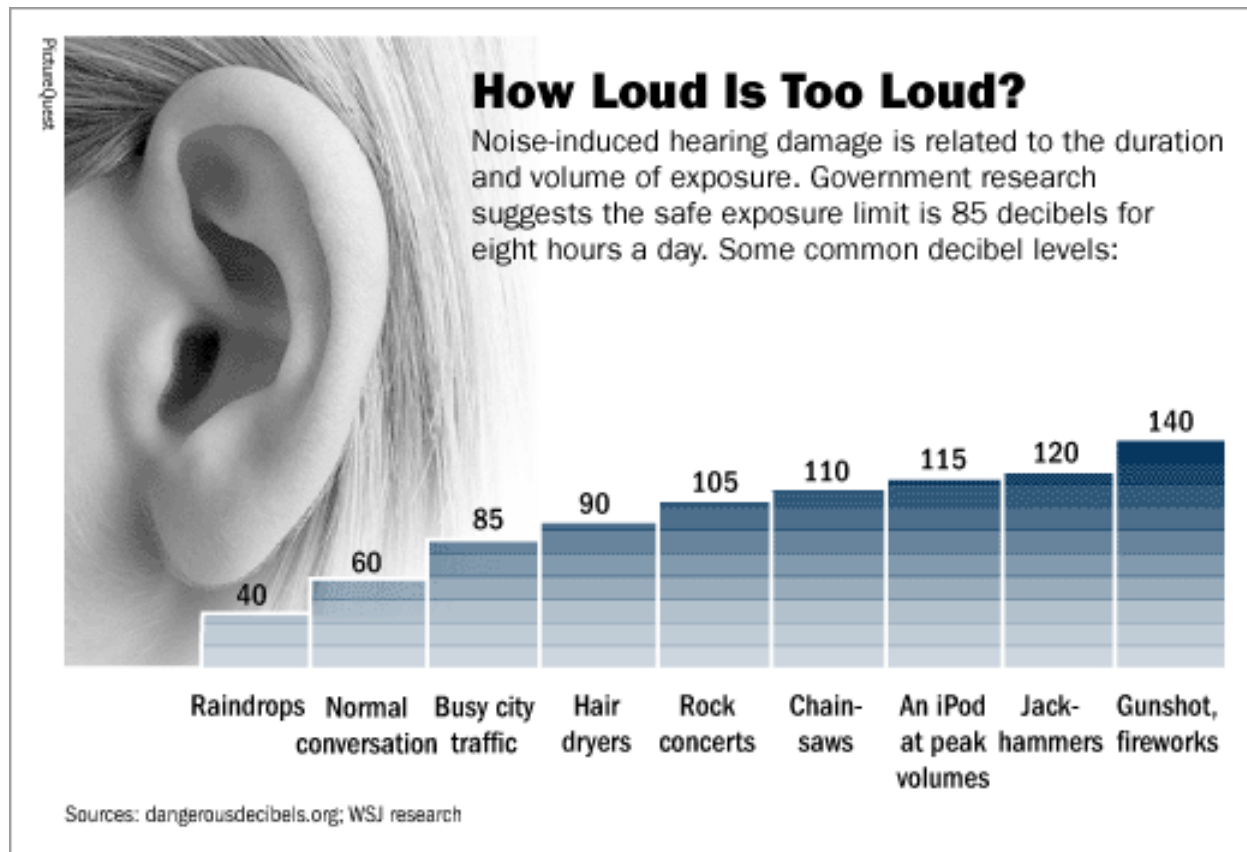
# Diesel Exhaust

- November 2005 FTD Article by David Lutz
- Implicated as a cause of lung cancer
- WHO identified DE as carcinogen in 1986; NIOSH (1989); International Agency for research on Cancer – probable carcinogen in 1989.
- Non-malignant lung disease: Variety of symptoms and complications
- Exhaust contains gas constituents and particulate matter

# Noise

- John Kiel Patterson, individually and on behalf of all others similarly situated v. Apple Computer, Inc.  
1/31/2006 C06-0699 PVT(San Jose)
- Class Action alleging breach of implied warranty regarding defendant's manufacturing, marketing and distributing portable digital music players, including the iPod, and their components which are inherently defective in design and are not sufficiently adorned with adequate warnings regarding the likelihood of hearing loss and specifically the onset of noise-induced hearing loss, a condition which has no cure.

# iPod Hearing Loss



# Noise

- New research suggests that years of repeated exposure to loud noise increases the risk of developing a non-cancerous tumor that could cause hearing loss.
- An acoustic neuroma tumor slowly presses the cranial nerve that is responsible for sensing sound and helping with balance. Symptoms include hearing loss and a constant ringing in the ears, or tinnitus.
- The two types of loud noise posing the highest risk of acoustic neuroma development were exposure to machines, power tools and/or construction (1.8 times more likely to develop the tumor) and exposure to music, including employment in the music industry (2.25 times more likely to develop the tumor.)



# Noise

- The tumor is fairly rare, accounting for only about 6 to 10 percent of tumors that develop inside the skull. Depending on the population, anywhere from one to 20 people per 100,000 develop acoustic neuroma each year. The people with the tumor in this study had the most common type - unilateral acoustic neuroma. About 95 percent of all cases of acoustic neuroma affect only one ear. The other kind, bilateral acoustic neuroma, is inherited and affects both ears.
- If the tumor is caught early enough through a thorough examination and hearing tests, a physician may be able to surgically remove it. But as the tumor grows larger, it may become attached to the nerves that control facial movement, balance and hearing, making it far more difficult to remove the entire tumor.

# Noise

- Solvents worsen hearing ability.
- A report shows that exposure to the solvent styrene can lead to hearing loss. Workers in the plastic industry, who work with styrene in noisy surroundings have a higher risk of suffering hearing loss than people exposed only to excessive noise.
- The report was written by the National Institute for Working Life in Sweden. The study involved 300 people from 14 different work places. Approximately 150 worked in the plastic industry.

# Noise

## Sources:

<http://aje.oxfordjournals.org/cgi/content/abstract/kwj044v1>

<http://www.hearinglossweb.com/Medical/Causes/an.htm>

<http://www.sciencenewsdaily.org/story-9551.html>

<http://www.hear-it.org/page.dsp?page=655>

# Indoor Air

- California Air Resources Board (CARB) - the California Environmental Protection Agency (Cal/EPA).
- CARB, in partnership with local air districts, oversees all air pollution control efforts to attain and maintain health-based air quality standards in California.
- July 2005, published a 363 page report, reviewed by a panel of University of California scientists with expertise in various aspects of indoor air quality and air pollution exposure.
- It purports to summarize the best scientific information available on indoor air pollution

# Indoor Air

The CARB Report is divided into 10 major sections: (1) Introduction and Background; (2) Health Effects, Sources and Concentrations of Indoor Air Pollutants; (3) Costs of Indoor Air Pollution; (4) Existing Regulations, Guidelines and Practices; (5) Methods to Prevent and Reduce Indoor Air Pollution; (6) Prioritization of Sources and Pollutants Based on Exposure and Adverse Impacts; (7) Options to Mitigate Indoor Air Pollution; (8) Summary; (9) References; and (10) Glossary.

# Indoor Air

- CARB is currently focused on two areas of concern:
- (1) air cleaners and purifiers, particularly those that emit ozone;
- and (2) volatile organic compounds (VOCs) that are emitted from consumer products.

# Indoor Air

General mitigation options:

- (1) create a management system for indoor air quality;
- (2) establish emission limits (e.g., for air cleaners);
- (3) require manufacturers to submit consumer products for emission testing;
- (4) make children's health in schools, homes and care institutions a top priority;
- (5) develop indoor air quality guidelines and best practices;

# Indoor Air

General mitigation options (cont.):

- (6) amend building codes, with a focus on assuring adequate ventilation under all circumstances;
- (7) fund and outreach and education program focused on professionals;
- (8) conduct more research on indoor air quality; and
- (9) fund an Innovative Clean Air Technology Program.



# Teflon

- Perfluorooctanoic acid (PFOA)
- January 30, 2006, a panel of outside experts gave draft comments to the Environmental Protection Agency (EPA) saying that an indestructible, toxic chemical that pollutes nearly every American's blood is a "likely human carcinogen." The panel urged the agency to adopt stricter guidelines to protect human health, according to a majority of its members. This announcement follows news just last week that the EPA signed a voluntary agreement with the chemical's maker, DuPont, and seven other companies to reduce the chemical's use in products by 95 percent over the next five years and aim for total elimination of its use by 2015.
- Most of the experts on the panel called PFOA a "likely human carcinogen," not a "suggested human carcinogen," as the EPA had proposed.

February 9, 2006

**HANSON  
BRIDGETT**  
MARCUS  
VLACHOS  
RUDY-LLP

[www.hansonbridgett.com](http://www.hansonbridgett.com)

# Bird Flu

????????

2006 DRI Product Liability Conference

# Nanotechnology

Thank you Bruce Parker, Venable LLP (Baltimore, MD)  
[brparker@venable.com](mailto:brparker@venable.com); (410) 244-7534

- It is the utilization of “nanoscience” to design and manufacture nanoscale-sized materials and products.
- Nanoscience is the study of how properties of materials at the atomic and molecular scale differ from those at larger scales.
- Nanotechnology involves building products by manipulating individual atoms into macromolecular structures rather than miniaturizing larger sized materials.

# Nanotechnology

## A NANOMETER IS VERY SMALL

- 1 nm = 1 BILLIONTH OF A METER
- To approximate a particle 1 nm wide, split a human hair 80,000 times
- A human red blood cell is 7000 nm wide
- A nanomaterial is one that is less than 100 nm in at least one dimension. A nanoparticle is less than 100 nm in three dimensions

# Nanotechnology

## NANOTECHNOLOGY WILL BE BIG BUSINESS

- In 2000, the U.S. government created the National Nanotechnology Initiative (“NNI”)
  - Consortium of 19 agencies to oversee research funding
- Appropriations for NNI in 2005 were approximate \$1 billion.
- Worldwide, \$8.6 billion was spent in 2004 for R&D by governments, corporations and venture capitalists.

# Nanotechnology

## USE OF NANOTECHNOLOGY FOR MEDICAL PRODUCTS

- Creation of nanoceramics (zirconia) that are stronger and more durable than metals currently used in medical implants.
  - nanoelectric systems may permit the development of artificial retina
- Gene and drug delivery systems (i.e., blood-brain barrier transplant).
- Creation of biosensors that will alert physicians to the onset of disease at the cell level.
- Medical treatments such as;
  - using nanocrystalline silver in wound dressings for their antimicrobial properties.
  - Cancer treatments
- Improved imaging technology for intracellular imaging by using nanoparticles attached to specific proteins.
- Will allow research performed of drug-receptor interactions at the molecular level.

Source: Report of the Royal Society & The Royal Academy of Engineering.

# Nanotechnology

## BIOLOGICAL EFFECTS OF NANOPARTICLES

- Exceptionally large surface area relative to their mass makes nanoparticles very reactive.
- Nanoparticles could enter the blood stream via inhalation through contact with alveoli.
- Undesired passage through the blood-brain barrier.
- Dermal penetration through the use of cosmetics.
- Once absorbed, nanoparticles may operate as “free radicals” and cause undesired oxidative stress on cells.
- Absorbed through the gut.
- Due to their size, nanoparticles may not be recognized by the immune system.
- Possible effects on enzymatic regulation of biologic processes

# Pneumosparklyosis

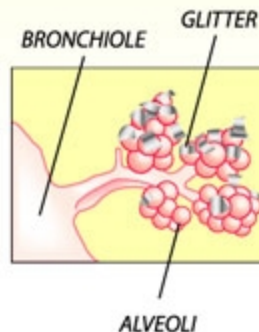
February 9, 2006

## What Is Glitter Lung?

Glitter lung, or pneumosparklyosis, is a respiratory disease caused by the chronic inhalation of precision-cut, iridescent, metallized particles. Elementary-school art teachers and transgendered "drag queen" entertainers are the populations most at risk.

- 1 Airborne glitter enters through the nose and mouth. First attracted to glue-like mucous membranes, the glitter then settles into the lungs.

- 2 Glitter deposits cause scarring, inflammation, and twinkliness of the lungs, leading to bedazzleemia—a condition in which alveoli are so sparkly that oxygen molecules are reflected away from the bloodstream.



- 3 Eventually, the alveoli become completely decorated and are unable to function, leading to massive system failure due to oxygen starvation. Although the dangers of glitter lung are just now becoming known, the body's intolerance of shiny substances has been studied for decades (see "Symptoms and treatments of goldfingeritis," *New England Journal Of Medicine*, 1964).



# Pneumosparklyosis



## ***Cases Of Glitter Lung On The Rise Among Elementary-School Art Teachers***

- November 23, 2005 | [Issue 41•47](#)
- CHICAGO—The Occupational Safety And Health Administration released figures Monday indicating that record numbers of elementary-school art teachers are falling victim to pneumosparklyosis, commonly known as glitter lung.
- Nearly 8,000 cases were reported in 2004, the most recent year for which statistics are available. This is the highest number since the arts-and-crafts industry was deregulated in 1988.
- Characterized by a lack of creative energy and shortness of breath, and accompanied by sneezing or coughing up flakes of twinkly, reflective matter, glitter lung typically strikes teachers between the ages of 29 to 60 who spend 20 hours per week in an art-class setting during the school year.
- Until heavier, less toxic forms of glitter are developed, physicians recommend using alternative media to enhance children's artwork.
- Source: <http://www.theonion.com/content/node/42814>

# Asbestos

- *Elleree Jones v. John Crane, Inc.* (2005) 132 Cal.App.4th 990 (as modified 9/21/05)
- “Rutherford does not require that each exposure be sufficient to independently cause lung cancer. To the contrary, the exposure need only be "a substantial factor in contributing to the aggregate dose of asbestos the plaintiff ... inhaled." (Rutherford, *supra*, 16 Cal.4th at p. 976.) The mere fact that comparable levels could be found in ambient air does not render the exposure "negligible or theoretical." (Id. at p. 978.)”

# Products

- Medical Devices (Defibrillator)
- Toys
- PVC
- Firearms
- Public Nuisance

# Food

- Obesity
- Acrylimide
- Tuna
- Supplements
- Cold Remedies
- Water

# Economic Loss

- Privacy/Identity
- Loss in Value

## Prescription Drug Traces Found in Recycled Los Angeles-Area Water

- "Water quality officials have found traces of resilient prescription drugs in waste water that has been filtered and recycled into a Southern California aquifer for eventual use as drinking water, but the amounts are so small that the health effects are unclear, the Los Angeles Times reported Monday. Drugs including antibiotics, antipsychotics, birth-control hormones, Viagra and Valium routinely turn up in wastewater all over the world because people flush them down their toilets. But medications have also ended up in Los Angeles County's water supplies because of the region's aggressive efforts to turn treated sewage into drinking water."
- Associated Press, The Mercury News, 1/30/06

# Calif. Classifies Second-Hand Smoke a Toxic Risk

- "A California environmental agency voted on Thursday to classify tobacco smoke as a "toxic air contaminant," a first-in-the-nation move that could toughen state regulations on cigarette smoke. The designation by California's Air Resources Board starts a process that could lead to further smoking bans in a state that has often led the nation in health and ecological regulation."
- Reuters, 1/26/06

# Former Popcorn Worker Settles Case

- "A former popcorn factory worker has settled a lawsuit blaming his lung disease on fumes from a butter flavoring used in a microwave variety. Terms of the out-of-court settlement with Eric and Cassandra Peoples were not released. The settlement ends the company's appeal of a \$20 million jury verdict awarded the couple. The agreement, revealed Monday in a court order, was reached with International Flavors & Fragrances Inc. and its subsidiary, Bush Boake Allen Inc. Eric Peoples, 34, was among 30 current or former workers at a Jasper popcorn factory who sued the companies, claiming they suffered lung damage because they breathed fumes from the butter flavoring used to make microwave popcorn."
- Associated Press, Seattle Post-Intelligencer, 1/25/06



## Maker of Cold Spray Settles Lawsuits for \$12 Million but Denies Claim That Zinc Product Ruined Users' Sense of Smell

- "The manufacturer of Zicam Cold Remedy has agreed to pay \$12 million to settle 340 lawsuits brought by consumers who claim the popular over-the-counter zinc nasal gel damaged or destroyed their sense of smell. The Phoenix-based manufacturer, Matrixx Initiatives, says the agreement announced Jan. 19 is not an admission of liability, but rather an effort to end most of the litigation over the homeopathic remedy. 'The company still stands by the product, but this made good business sense,' said Matrixx spokesman Robert J. Murphy. The agreement was announced jointly by the company and Arizona lawyer Charles S. Zimmerman [ATLA Member], on behalf of a consortium of lawyers representing plaintiffs around the country."
- Sandra G. Boodman, Washington Post, 1/30/06

## How Safe Are Diet Supplements?

"...The stories raise a host of issues about the safety and quality of products sold by the \$20.3 billion dietary supplement industry and the seeming failure to regulate them. ConsumerLab, which, for a fee, also offers seals of approval for companies whose products pass the tests, has found that 25% of the products it tests fail in some way. Some lack the claimed ingredients or levels of ingredients. Others are laced with contaminants. Cooperman has found lead in ginkgo and magnesium supplements, toxic chromium in a weight-loss product, and lacking active ingredients in others (table). BusinessWeek has learned that key lawmakers led by Senator Dick Durbin (D-Ill.) are near a deal for a new law requiring companies to report to the Food & Drug Administration serious adverse events involving supplements. That would limit harm from a dangerous product."

- John Carey, Business Week, 1/30/06