Index

ABBREVIATIONS USED IN TOXIC TORT **CLAIMS** Generally, App 29D ABETTOR LIABILITY See Concert of Action Liability (this index) ABNORMALLY DANGEROUS ACTIVITIES See Dangerous Activities (this index) ACCIDENTS Generally, **31:27** Conduct of insured, 31:29 Distinguishing mass accidents from toxic torts, 2:2, 2:3 Insurance coverage. See Insurance Coverage (this index) Long-term exposure problem, 31:28 ACCOUNTANTS Activity giving rise to liability exposure, **3:38** Staff bulletin on loss contingencies, App 3G ACRONYMS USED IN TOXIC TORT CLAIMS Generally, App 29D ACTIVITY GIVING RISE TO TOXIC TORT LIABILITY EXPOSURE Generally, 3:1 Accountants' services, 3:38, App 3G All appropriate inquiry checklist and final rule summary, App 3V Appropriate inquiries, standards and practices for, App 3O Architects and engineers services, 3:37 Bystander claims, product sales, 3:13 **CERCLA** Defining lender liability under CERCLA, App **3B**, App **3C** Interim guidance regarding criteria landowners must meet, CERCLA liability limitations, App 3M Landowner liability under, App 3A

Lenders and government entities that acquire

CERCLA enforcement against, App 3H

CERCLA's effects on lenders holding,

property involuntarily, policy on

Security interests in contaminated property,

Climate change disclosure guidance, App 3Q

Component parts, product sales, 3:12

App 3K

Chemicals, product sales, 3:4

ACTIVITY GIVING RISE TO TOXIC TORT LIABILITY EXPOSURE—Cont'd Consumer products sales Generally, **3:9** Labeling initiative, App 3J Lead poisoning claims, 3:10 Notice of project initiation, App 3J Contiguous property owner Interim enforcement discretion guidance regarding, App 3N Interim guidance regarding criteria landowners must meet, CERCLA liability limitations, App 3M Disclosure obligations GAO report on environmental disclosure, **App** Securities, 3:43 Disposal of hazardous wastes, 3:24 Electric and magnetic fields (EMF), radiation, product sales, 3:18 Engineers services, 3:37 Environmental marketing claims, Green Guides, App 3D Exposure rule, statute of limitation, 12:2 Financial institutions Generally, 3:33 Defining lender liability under CERCLA, App **3B**, App **3C** Lenders and government entities that acquire property involuntarily, policy on CERCLA enforcement against, App 3H Minimizing liability exposure for, 3:35 Security interests in contaminated property, CERCLA's effects on lenders holding, App 3K Trustees, 3:34 Underground storage tanks, lender liability, App 3I GAO report on environmental disclosure, **App** Generation of hazardous wastes, 3:9, 3:24 Green Guides for use of environmental marketing claims, App 3D Hazardous wastes Generally, 3:23 Generation and disposal of wastes, 3:9, 3:24 Minimizing liability exposure for, 3:27

Sales of waste, 3:26

Treatment and storage of wastes, 3:25, App 3I

ACTIVITY GIVING RISE TO TOXIC TORT	ACTIVITY GIVING RISE TO TOXIC TORT
LIABILITY EXPOSURE—Cont'd	LIABILITY EXPOSURE—Cont'd
Hydraulic fracturing, minimizing liability	Real property ownership—Cont'd
exposure for, 3:22 Indoor air quality, App 3F	Guidance on landowner liability under CERCLA Section 107(a)(1), App 3A
Industrial materials, product sales, 3:6	Lenders and government entities that acquire
Industrial materials, product sales, 3.0 Industry-wide litigation, anticipatory subrogation,	property involuntarily, policy on
3:14	CERCLA enforcement against, App 3H
Innocent landowner limitations on CERCLA	Minimizing liability exposure for, 3:32
liability, interim guidance regarding criteria	Sick building claims, 3:31
landowners must meet, App 3M	Report on Fracking Fluids, App 3U
Inquiries, standards and practices for all appropri-	Safety of Nanomaterials in Cosmetic Products,
ate, App 3O	App 3T
Labeling initiative, product sales, App 3J	Sales. See Product Sales Activity Giving Rise
Lead poisoning claims, product sales, 3:10	to Liability Exposure (this index)
Lender liability. Financial institutions, above	SEC Legal Bulletin, App 3P
Loss contingencies, staff accounting bulletin,	Secondary tobacco smoke, EPA report, App 3E
App 3G	Securities disclosure obligations
Marketing liabilities, Green Guides to	Generally, 3:41
environmental marketing claims, App 3D	Background, 3:42
Minimizing liability exposure for Financial institutions, 3:35	Business description and legal proceedings,
Hazardous wastes, 3:27	Regulation S-K, 3:44
Hydraulic fracturing, 3:22	Disclosure, 3:43
Offshore drilling activities, 3:21	Management, Regulation S-K, 3:45
Product sales, 3:19	Material environmental liabilities
Real property ownership, 3:32	Generally, 3:46
Transportation services, 3:29	Green Guides to use of environmental marketing claims, App 3D
Modernization of Cosmetics Regulation Act, 3:20	Past, present, and future liabilities, 3:47
Mold claims, 3:11	Regulation S-K, 3:44, 3:45
Nanomaterials fact sheet, App 3W	Security interests in contaminated property,
Nanotechnology	CERCLA's effects on lenders holding, App
Nanotechnology-based products, 3:7	3K
Notice of project initiation, App 3J	Settlement, supertort litigation, 3:16
Offshore drilling activities, minimizing liability	Settlements, guidance on, App 3A
exposure for, 3:21	Shareholder proposals, SEC legal bulletin, App
Other responsible parties, generally, 3:40	3P
Pesticides, product sales, 3:5	Sick building claims, 3:31
Pharmaceutical products sales, 3:3	Standards and practices for all appropriate inquir ies, App 30
Power-line frequency. Electric and magnetic	Statute of limitation, exposure rule, 12:2
fields (EMF), above	Storage
Product sales activity giving rise to liability exposure. See Product Sales Activity Giv-	Hazardous wastes, 3:25, App 3I
ing Rise to Liability Exposure (this index)	Tanks underground, lender liability, App 3I
Professional services	Supertorts, 3:15
Generally, 3:36	The enhancement and standardization of climate
Accountants, 3:38, App 3G	related disclosures for investors, App 3X
Architects, 3:37	Toll processing, product sales, 3:7
Engineers, 3:37	Transportation services
Real estate brokers, 3:39	Generally, 3:28
Project initiation notice, consumer products, App	Minimizing liability exposure for, 3:29
3J	Treatment of hazardous wastes, 3:25, App 3I
Real estate brokers services, 3:39	Trustees, 3:34
Real property ownership	Underground storage tanks, lender liability, App
Generally, 3:30	3I

ADMISSIONS, REQUEST FOR

Generally, 22:9

AETNA CASUALTY & SURETY CO., CHEMICAL LEAMAN TANK LINES, INC. v.

See Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co. (this index)

AETNA CASUALTY & SURETY CO., WESTINGHOUSE CORP. v.

See Westinghouse Corp. v. Aetna Casualty & Surety Co. (this index)

AFFIRMATIVE DEFENSES

Generally, **11:13**, **App 11A**

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (ATSDR)

Generally, 29:13

Lead profile, App 29A

Minimum risk levels of ATSDR, App 290

AGREEMENTS

Alternative dispute resolution

Class action arbitration procedures, **16:13**, **20:18**

Mediation agreement, App 16D

Attorney-client relationship

Joint defense agreement, 19:12, App 19M

Retainer agreement, App 19F

Services agreement, App 19G

Share counsel, agreement to, App 19D

Class action arbitration procedures, 16:13, 20:18

Codefendant indemnification agreements in lieu of settlement, 18:23

Confidential discovery information, settlement agreement on confidentiality, **25:7**

Consultant, services agreement, App 19H, App 19I

Contractor services agreement, App 19J

Contribution and indemnity

Generally, 18:20, App 18A

Codefendant indemnification agreements in lieu of settlement, **18:23**

Mary Carter agreements, 18:25

Corporate integrity agreement, App 32R

Deepwater Horizon debarment agreement, App 32U

Defense and standstill agreement, insurance coverage, **31:97**, **App 31D**

Funding agreement, cooperative efforts among parties, App 19A

Indemnity. Contribution and indemnity, above Insurance coverage

Defense agreement, 31:97, App 31E

Insurance settlement and release agreement, App 31G

Nonwaiver agreement, App 31F

AGREEMENTS—Cont'd

Insurance coverage—Cont'd

Release agreement, App 31G

Standstill agreement, 31:97, App 31D

Insurance settlement and release agreement, **App**

Joint defense agreements, 19:12, App 19M

Mary Carter agreements, 18:25

Mediation agreement, App 16D

Releases. See **Releases** (this index)

Settlements. See **Settlements** (this index)

Standstill and defense agreements, insurance coverage, 31:97, App 31D

Statutes of limitation, agreement tolling, App

Tobacco litigation settlement agreement

Attorneys General, App 19L

Class action, App 19K

Statutory claims regarding tobacco-related injuries, diseases and illnesses caused by tobacco companies, **App 8D**

Tolling statutes of limitation, App 12A

Vioxx settlement agreement, App 19R

AIDER AND ABETTOR LIABILITY

See Concert of Action Liability (this index)

AIR QUALITY

Airways disease syndrome, 7:36

Clean Air Act

Criminal liability under, 32:11

Federal toxic substances regulatory schemes, 8:7

Criminal liability, 32:11

Environmental Crimes Handbook—A Guide for Law Enforcement Personnel, **App 32P**

Federal toxic substances regulatory schemes, **8:7** Indoor air quality, activity giving rise to liability, **App 3F**

Reactive airways disease syndrome, 7:36

Regulatory schemes, federal, 8:7

AIRWAYS DISEASE SYNDROME, REACTIVE

Generally, 7:36

ALIEN TORT STATUTE

Liability under statutory claims, **8:14**

ALLOCATION OR PRORATION

Asbestos cases management, App 20K

Burden of proof, 18:18

Causation, **18:16**

Comparative fault, **18:15**

Contribution doctrine

Generally, 18:12

Burden of proof, 18:18

Causation, **18:16**

Comparative fault, 18:15

ALLOCATION OR PRORATION—Cont'd

Contribution doctrine—Cont'd

Gore amendment, 18:13

Per capita, 18:17

Statutory, 18:7

Volumetric allocation, 18:14

Gore amendment, 18:13

Insurance coverage ("other insurance" clauses), 31:66

Per capita, 18:17

Statutory contribution, 18:7

Volumetric allocation, 18:14

ALTERNATIVE DISPUTE RESOLUTION

Class action arbitration procedures, **16:13, 20:18**Guide for using in federal court litigation, **App 16C**

Mediation agreement, App 16D

Using, generally, 16:12

ALTERNATIVES

Class action, alternatives to, 20:19

Criminal liability sanctions, alternative fines, 32:21

Dispute resolution. See **Alternative Dispute Resolution** (this index)

Liability theories, alternative liability, 6:4

AMENDMENTS

First Amendment, discovery issues, 25:4

FRCP 1993 amendments, expert discovery under, 23:8

Gore amendment, contribution doctrine, **18:13** Seventh Amendment, right to jury, **15:3**

AMERICAN HOME ASSURANCE CO., TOWNSHIP OF JACKSON V.

See Township of Jackson v. American Home Assurance Co. (this index)

APPEALS

Class action certification appeals, **20:13** Multidistrict consolidation, **21:4**

ARCHITECTS

Activity giving rise to toxic tort liability exposure, **3:37**

ARSON

RICO action, 6:20

ASBESTOS

Class actions, case management manual, **App**

Consolidation of claims, case order, **App 20D** Insurance coverage cases

California Court of Appeals decision in, **App**

Supreme Court decision in, App 31C

ASBESTOS INSURANCE COVERAGE CASES

Court of Appeals decision in, **App 31M** Supreme Court decision in, **App 31C**

ASSAULT LIABILITY

Generally, 4:11

ASSUMPTION OF RISK

Generally, 11:2

ATSDR

See Agency for Toxic Substances and Disease Registry (ATSDR) (this index)

ATTORNEY-CLIENT PRIVILEGE

Generally, 24:1

Crime fraud exception, 24:2

In camera review, 24:4

Limitations on waiver, proposed revised Rule 502, **24:11**

New York Privilege Log Rule, adoption, **App 24A**

Procedure for resolving privilege and waiver questions

In camera review, 24:4

Rule 26(b)(5), 24:3

Rule 26(b)(5), **24:3**

Scope of, **24:5**

Waiver, 24:11

ATTORNEY-CLIENT RELATIONSHIP

Class action, adequate representation, 20:7

Joint defense agreement, 19:12, App 19M

Retainer agreement, App 19F

Services agreement, App 19G

Sharing counsel agreement, App 19D

ATTORNEYS

Misconduct complaints under RICO, **App 26B** Supervision of trial counsel's preparation, **16:5**

ATTORNEY'S FEES

Retainer agreement, **App 19F** RICO claims, **6:31**

ATTORNEY WORK PRODUCT

Generally, 24:6

Critical self-examination, 24:7

Investigations conducted by counsel, disclosure of, **24:8**

AUTHORIZATION FOR RELEASE

Employment and background information, 22:21, App 22I

BACKGROUND INFORMATION ON CLAIMANT

Medical questionnaire provision, 22:18

BANKRUPTCY

Asbestos case management, App 20K

BANKRUPTCY—Cont'd

Class actions, options other than, 20:20 Insurance coverage, 31:75

BATTERY LIABILITY

Generally, 4:11

BELLWETHER CASES

Use of, **20:20**

BIAS OF EPIDEMIOLOGICAL EVIDENCE

Generally, 28:10, 28:15 Confounding bias, 28:11 Information bias, 28:13 Reporting bias, 28:14 Selection bias, 28:12

BIFURCATION

Consolidated claims, generally, **20:22**Increased risk of future injury cause of action, **7:15**Punitive damages, **9:14**

BIOASSAYS

Long-term, 28:8 Short term, 29:9

BONA FIDE PROSPECTIVE PURCHASER

Interim guidance regarding criteria landowners must meet, CERCLA liability, App 3M

BRADFORD HILL CRITERIA

Epidemiological evidence analysis, 28:27

BREACH OF WARRANTY

Duty to warn failure, 5:4

BREAST IMPLANTS

National Science Panel's Breast Implant Report, App 30A

Questionnaire, App 15D

Silicone gel breast implant litigation, case management order, $App\ 20C$

BROKERS

Real estate brokers' activity, liability exposure, 3:39

BUILDINGS

Sick building claims, ownership liability, 3:31

BULK PRODUCT SUPPLIERS

Warning intermediaries, 5:16

BURDEN OF PROOF

Causation, 27:2

Contribution, allocation factor, 18:18

Insurance coverage

Insurance industry statements, 31:45 Lost insurance policies, 31:15

Punitive damages, 9:12

BUSINESS DAMAGES

RICO claims, environmental and toxic tort litigation, **6:33**

BUSINESS DESCRIPTION

Securities disclosure obligations, 3:44

BUSINESS ORGANIZATIONS

Criminal liability, principles of federal prosecution, **App 32K**, **App 32O**

BUSINESS RECORDS

Discovery stipulation, App 22D

BUSINESS RISK INSURANCE COVERAGE EXCLUSION

Generally, 31:49

BYSTANDER CLAIMS

Product sales activity giving rise to toxic tort liability exposure, **3:13**

CALIFORNIA

Asbestos, California Court of Appeals decision in insurance coverage case, **App 31M**

CANCER

Cancerphobia emotional distress, 7:9, 7:25

Policy, generis, 29:4

Promotion claims. See Cancer Promotion Claims (this index)

Risk assessment

Carcinogens, guidance or guidelines, **App 29L**Working paper for draft revisions to EPA's guidelines, **App 29J**

CANCERPHOBIA

Generally, 7:9, 7:25

CANCER PROMOTION CLAIMS

Generally, 7:16

Advantages to claimants, 7:18

Answering specifics of promotion claim, 7:23

Attacking legal sufficiency of claim, 7:26

Challenging legal sufficiency of human cancer promotion theories, **7:20**

Compelling explanation of basic mechanism of promotion, 7:22

Emotional distress, cancerphobia, 7:9, 7:25

Emphasizing lack of epidemiological support, 7:25

EPA guidelines on risk assessment, **App 29J** Epidemiological support, emphasizing lack of, **7:25**

Expert witness qualification, challenging, **7:21**, **30:4**

Explanation of basic mechanism of promotion, compelling, 7:22

Guidelines on risk assessment, App 29L

Identifying legal weaknesses of promotion claim, 7:24

CANCER PROMOTION CLAIMS—Cont'd

Insurance policy, cancer, 29:4

Legal sufficiency of

Claim, attacking, 7:26

Human cancer promotion theories, challenging, 7:20

Legal weaknesses of promotion claim, identifying, 7:24

Nature of claims, 7:17

Recognizing the claim, 7:19

Risk assessment

Carcinogens, guidelines, App 29L

EPA guidelines, App 29J

Strategies for combating claims, generally, 7:19 to 7:26

CARCINOGENS

See also **Cancer** (this index)

Risk assessment—carcinogens, guidelines or guidance, App 29L

CASE LAW

Asbestos Insurance Coverage Cases

Court of Appeals decision in, **App 31M** Supreme Court decision in, **App 31C**

Bellwether cases, use of, 20:20

Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co.

Interrogatories provided to jury in, **App 31J**Jury charges used in, **App 31I**

Hoechst Celanese Corp. v. National Union Fire Insurance Co., jury instructions in, **App 310**

Silicone gel breast implant litigation, case management order, **App 20C**

Texas Eastern Transmission Corp. v. Fidelity & Casualty Co. of New York, **App 31B**

Township of Jackson v. American Home Assurance Co. (multiple occurrences insurance coverage), **App 31H**

Westinghouse Corp. v. Aetna Casualty & Surety Co., **App 31A**

CAUSATION

Generally, 27:1

Application of traditional cause-in-fact analysis Generally, **27:4**

Product identification, 27:5

Burden of proof, 27:2

Circumventing causation difficulties, modern methods, 27:3

Contribution statutes, allocation factor, 18:16
Deposition outline for medical causation expert,
App 23A

Duty to warn and right-to-know laws

Demonstration requirement, 5:22

Difference between inadequate warning and other product defects, 5:21

Heeding presumption, 5:23

CAUSATION-Cont'd

Emotional distress defense, 7:5

Epidemiological studies, 28:28, 28:29

Medical causation expert

Deposition outline, **App 23A**

Report based on exposure to hazardous substances, **App 22B**

Scientific evidence method, 27:6

CERCLA

See Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (this index)

CERTIFICATION

Attorney certification of documents, imposing sanctions

Rule 11, attorney certification, 26:4

Rule 26(g), discovery certification, 26:2

Class actions. See **Class Actions** (this index)

Discovery certification, Rule 26(g), 26:2

CGL POLICY

See Comprehensive General Liability (CGL)
Policy (this index)

CHARACTERISTICS OF TOXIC TORTS

Generally, 2:2

Bureau of Justice statistics

1992 civil jury cases and verdicts in large counties, **App 2A**

1996 civil jury cases and verdicts in large counties, **App 2B**

2005 civil trials, App 2C

Mass accidents distinguished, 2:2, 2:3

CHEMICAL LEAMAN TANK LINES, INC. v. AETNA CASUALTY & SURETY CO.

Jury charges used in, App 31I

Jury interrogatories in, App 31J

CHEMICALS

Activity giving rise to toxic tort liability exposure, product sales, **3:4**

Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co.

Jury charges used in, App 31I

Jury interrogatories in, App 31J

Damage theories

Immune system disregulation and dysfunction claims, chemically induced, **7:27**

Multiple chemical sensitivity, 7:28

Dioxins

EPA report of reassessment, App 29M

Peers review of documents report, App 29N

Immune system disregulation and dysfunction claims, chemically induced, 7:27

CHEMICALS—Cont'd

Jury charges used in Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co., App 31I

Jury interrogatories used in Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co., App 31J

Multiple chemical sensitivity, 7:28

Pesticides, product sales activity giving rise to toxic liability exposure, **3:5**

Polychlorinated biphenyl congeners (PBCs), EPA workshop report, **App 29G**

Sales, activity giving rise to toxic tort liability exposure, **3:4**

Sensitivity to chemicals, 7:28

CHOICE OF LAW

Insurance coverage claims, 31:76

CIGARETTE CASES

See **Tobacco Litigation** (this index)

CIVIL LITIGATION MANUAL

Generally, App 20G

CIVIL RULE 11

Generally, 26:7

Avoiding imposition, **26:11**

Basis for imposition, 26:4, 26:8

Procedural considerations under pre-1993 Rule 11, **26:9**

Special issues in toxic tort litigation, **26:10** Verified adversary complaint, **26:4**, **App 26A**

CIVIL RULE 26(G)

Certification of documents, 26:2

CIVIL RULE 37

Discovery abuses sanctions, 26:1

CLASS ACTION FAIRNESS ACT OF 2005 Generally, 20:17, App 10B

CLASS ACTIONS

Generally, 20:3

See also Consolidation of Claims (this index)

Adequate representation, 20:7

Alternatives to class actions, 20:19

Appeals, class action certification, 20:13

Arbitration procedures, 16:13, 20:18

Asbestos case management manual, App 20K

Bankruptcy option, 20:20

Binding effect of decisions denying class certification, 20:14

Certification

Appeals, 20:13

Binding effect of decisions denying class certification, 20:14

Resolution of disputes, 20:10

Certification appeals, 20:13

CLASS ACTIONS—Cont'd

Class Action Fairness Act, **App 10B**Common questions, generally, **20:3**, **20:5**Complaints

Asbestos cases management, **App 20K** Lead paint exposure injuries, **App 10A** Removal of state class actions, **10:3**

Consolidation. See Consolidation of Claims (this index)

Decisions, toxic tort class action, 20:15

Fairness hearing, medical monitoring, **App 20H** Hearings, medical monitoring, **App 20H**

Injunctions, Rule 23(b)(2) injunction classes, 20:12

Limited fund class actions, 10:11

Medical monitoring

Fairness hearing, App 20H

Rule 23(b)(2) injunction classes, 20:12

Settlement agreement, App 20J

New Jersey rejection of mass tort claim, **App 20F**

Numerosity, 20:4

Predomination of common questions, 20:8

Removal of state class actions, 10:3, 20:17

Rule 23(b)(2) injunction classes, medical monitoring, **20:12**

Settlement agreement, medical monitoring, App20J

Standard for resolving certification disputes, **20:10**

Superiority of class action, 20:9

Tobacco litigation settlement agreement, \mathbf{App} 19 \mathbf{K}

Tolling statute of limitation, 12:11

Trial plan, App 20N

Typicality, 20:6

CLEAN AIR ACT

Criminal liability under, 32:11

Federal toxic substances regulatory schemes, 8:7

CLEANUP

CERCLA actions. See Comprehensive

Environmental Response Compensation and **Liability Act (CERCLA)** (this index)

Contribution doctrine, 18:8, 18:9

Expenses

CERCLA response actions, EPA rule on costs recovery, **App 8A**

Contribution doctrine, 18:8, 18:9

Government expenses, 31:52

Insurance coverage, 31:52, 31:53

Government expenses, 31:52

Insurance coverage, 31:52, 31:53

NJ Dept. Environmental Protection, risk assessment standards preliminary draft, App 29F

CLEANUP—Cont'd

Risk assessment standards

Preliminary draft NJ Dept. Environmental Protection, App 29F

Superfund guidelines, App 29E

Superfund

Common law contribution doctrine, 18:8, 18:9
Federal toxic tort statutes, claims basis, 8:2
Right to jury in superfund actions, 15:2
Risk assessment guidelines, App 29E
Voluntary efforts, 31:53, 32:20, App 32C

CLEAN WATER ACT

Criminal liability, Deepwater Horizon debarment agreement, App 32U

CLIMATE CHANGE

Disclosure guidance, toxic tort liability exposure, App 3Q

CLINICAL TRIALS

Epidemiological evidence, 28:3

COLLATERAL ESTOPPEL

Generally, 17:1

Applicable rules, 17:4

Duty to warn cases, 17:7

Full and fair opportunity to litigate prior judgment, 17:8

Future of in toxic tort litigation, 17:9

Identity of issues, 17:6, 17:7

Offensive collateral estoppel, 17:3

Res judicata distinguished, 17:2

Special considerations in toxic tort litigation, generally, **17:5 to 17:8**

COMMON BENEFIT FUND

Order, cooperative efforts among parties, **App**19T

COMMON LAW CONTRIBUTION DOCTRINE

Limitations on contribution, **18:4** Superfund, contribution under, **18:8**, **18:9**

COMMUNITY TRIALS

Epidemiological evidence, 28:3

COMPARATIVE FAULT

Generally, 18:15

COMPARATIVE NEGLIGENCE

Generally, 11:1

COMPEL

Cancer promotion claims, compelling explanation of basic mechanism of promotion, **7:22**

COMPLAINTS

Class actions. See Class Actions (this index) Cross claims, generally, 11:14, App 11B

COMPLAINTS—Cont'd

Defense issues. See **Defense Issues** (this index)

Drafting tips, 10:1

Duty to defend allegations in complaint, comparison test, **31:20**

Lead paint exposure injuries, class action, \mathbf{App} $\mathbf{10A}$

Litigation funding, 10:4

Medicaid reimbursement on tobacco-related injuries' diseases and illnesses, **App 8C**

Removal of action. See **Removal** (this index)

"Attorney Misconduct," App 26B

Pleadings. See **RICO** (this index)

Verified adversary complaint, Rule 11 sanctions, **26:4**, **App 26A**

COMPLIANCE

Monitors, selection and use in deferred prosecution and non-prosecution agreements with corporations, **App 32Q**

COMPONENT PARTS

Activity giving rise to toxic tort liability exposure, **3:12**

COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (CERCLA)

Costs recovery in CERCLA response actions, EPA rule on, **App 8A**

Criminal liability, 32:10

De minimis settlements under CERCLA Section 122(g)(1)(B), **App 3A**

 $\begin{array}{c} \text{Interim guidance regarding criteria landowners} \\ \text{must meet, CERCLA liability limitations,} \\ \textbf{App 3M} \end{array}$

Involuntarily acquiring property, policy on enforcement against lenders and government entities, **App 3H**

Landowner liability, App 3A

Lender liability, defining, App 3B, App 3C

Lenders and government entities that acquire property involuntarily, policy on CERCLA enforcement against, App 3H

Medical surveillance damage claims recovery, 7:12

Security interests in contaminated property, CERCLA's effects on lenders holding, **App 3K**

COMPREHENSIVE GENERAL LIABILITY (CGL) POLICY

Generally, 31:5, 31:7

Duty to indemnify and defend, limitation on, 31:10

Named insured, 31:8

Standard CGL language, 31:11

COMPREHENSIVE GENERAL LIABILITY (CGL) POLICY—Cont'd

Summary judgment, judicial attitudes toward, 31:6

Time period for coverage, 31:9

COMPUTERS

Discovery of information on and seizure of computers, 22:7, App 22J

CONCERT OF ACTION LIABILITY

Generally, 6:2

Aider and abettor, 6:2

Contribution doctrine. See Contribution Doctrine (this index)

Criminal liability for conspiracy, 32:16

Indemnity. See **Indemnity** (this index)

Joint liability. See **Joint and Several Liability** (this index)

Several liability. See **Joint and Several Liability** (this index)

CONFERENCE

Discovery conference, 22:4, App 22C

CONFIDENTIALITY

Cooperative efforts among parties, 19:18

Discovery of confidential information

Generally, 25:1

Arguments against, 25:3

Arguments favoring, 25:2

First amendment issues, 25:4

Multi-tiered confidentiality order, App 25D

Need for judicial intervention, 25:5

Order regarding discovery confidentiality, below

Settlement agreements, confidential, 25:7

Standards for confidentiality orders, 25:6

Stipulation as to business records produced in discovery, App 22D

Stipulation of confidentiality of discovery information, below

First amendment issues, 25:4

Insurance coverage, determining whether to maintain an coverage action, **31:88**

Multi-tiered discovery order providing different levels of protection for different types of information, App 25D

Need for judicial intervention, 25:5

Order regarding discovery confidentiality

Arguments against, 25:3

Arguments favoring, 25:2

Detailed with security of data provision, **App**

Multi-tiered order, App 25D

Need for judicial intervention, 25:5

Opiate litigation, App 25E

Standards for judicial approval, 25:6

CONFIDENTIALITY—Cont'd

Standards for confidentiality order, **25:6**

Stipulation of confidentiality of discovery information

Complex form, App 25B

Simple form, App 25A

Trial, confidentiality and privilege issues, 16:11

CONSOLIDATION OF CLAIMS

Generally, 20:1

Appeals, class action certification, 20:13

Asbestos case order, App 20D

Bellwether cases, use of, 20:20

Bifurcation

Generally, 20:22

Increased risk of future injury cause of action,

Punitive damages, 9:14

Civil litigation manual, App 20G

Class action

As to class actions, generally. See **Class Action** (this index)

Generally, 20:3

Adequate representation, 20:7

Alternatives to class actions, 20:19

Binding effect of decisions denying class certification, **20:14**

Certification appeals, 20:13

Common question class actions, 20:3 to 20:9

Common questions, generally, 20:5

Injunctions, Rule 23(b)(2) injunction classes, **20:12**

Limited fund class actions, 10:11

Numerosity, 20:4

Predomination of common questions, 20:8

Statutory claims, actions based on, 20:16

Superiority of class action, 20:9

Toxic tort class action decisions, 20:15

Typicality, 20:6

Complex case management procedures

Generally, **20:25**

Mass torts

Case management order, App 20B

Table of contents, App 20A

Consolidation, 20:26

Federal rules applicable, 20:2

Injunctions, Rule 23(b)(2) injunction classes, **20:12**

Liaison committees

Report of New Jersey Mass Tort Advisory Committee, **App 20E**

Use of, generally, 20:24

Limited fund class actions, 10:11

Mass torts

Case management order, App 20B

Table of contents, App 20A

CONSOLIDATION OF CLAIMS—Cont'd

Multicounty litigation guidelines, App 20O

Multidistrict consolidation

Appeal, trial consolidation, 21:4

Guide to Multidistrict Litigation, App 21A

Guide to Multidistrict Product Liability Litigation, App 21B

Judicial Panel on Multidistrict Litigation, 21:1

Litigation practice, multidistrict, 21:3

Standards for consolidation, 21:2

Trial consolidation, 21:4

New Jersey rejection of mass tort claim, App

Orders

Asbestos case order, App 20D

Silicone gel breast implant litigation, case management order, App 20C

Report of New Jersey Mass Tort Advisory Committee, App 20E

Rule 23(b)(2) injunction classes, 20:12

Silicone gel breast implant litigation, case management order, App 20C

Summary jury trials, 20:23

Trial plan, App 20N

CONSPIRACY

Concert of action liability, generally, 6:2 Criminal liability, 32:16

CONSTITUTIONAL LAW

Due process

Personal jurisdiction standard, 18:3

Right to jury, 15:5

First Amendment, discovery issues, 25:4

Seventh Amendment, right to jury, 15:3

CONSULTANTS

Services agreement, App 19H, App 19I

CONSUMER FRAUD

Negligence, diminished value claims, 6:38

CONSUMER PRODUCTS SALES

Generally, 3:9

Labeling initiative, App 3J

Lead poisoning claims, 3:10

Notice of project initiation, App 3J

CONTIGUOUS PROPERTY OWNER

Interim enforcement discretion guidance regarding, App 3N

Interim guidance regarding criteria landowners must meet, CERCLA liability, App 3M

CONTRACTORS

Services agreement, App 19J

CONTRIBUTION DOCTRINE

Allocation factors

Generally, **18:12**

CONTRIBUTION DOCTRINE—Cont'd

Allocation factors-Cont'd

Burden of proof, 18:18

Causation, 18:16

Comparative fault, 18:15

Gore amendment, 18:13

Per capita, 18:17

Statutory, 18:7

Volumetric allocation, 18:14

Availability to joint tortfeasors, 18:5

Burden of proof, 18:18

Causation, allocation factors, 18:16

Common law

Limitations on contribution, 18:4

Superfund, contribution under, 18:8, 18:9

Comparative fault allocation, 18:15

Contractual contribution, 18:20

Distinguished from indemnity, 18:3

Gore amendment, allocation, 18:13

Impact of contribution protection, 18:11

Joint and several liability

Generally, 18:1

Availability to joint tortfeasors, 18:5, 18:21

Releases, effect of, 18:21, 18:22

Limitations on contribution, common law, 18:4

Mary Carter agreements, 18:25

Medicare liens, satisfaction requirements, 18:26

Per capita allocation, 18:17

Protection, 18:10, 18:11

Punitive damages, 18:24

Rationale for, 18:2

Releases, effect of, 18:21, 18:22

Statutes regarding contribution, 18:6 to 18:9

Superfund, contribution under, 18:8, 18:9

Volumetric allocation, 18:14

CONVERSION OR EQUIVALENCY RISK ASSESSMENT FACTORS

Generally, 29:3, App 29C

COOPERATIVE EFFORTS AMONG PARTIES

Generally, 19:1

Alternative dispute resolution

Class action arbitration procedures, 16:13, 20:18

Guide for using in federal court litigation, App 16C

Mediation agreement, App 16D

Using, generally, 16:12

Areas of cooperation, 19:3

Attorney

Billing codes and categories, App 19P

Division of responsibility among, 19:21

Funding agreement, App 19A

Joint defense agreement, 19:12, App 19M

Retainer agreement, App 19F

Attorneys General, App 19L

COOPERATIVE EFFORTS AMONG PARTIES —Cont'd	COOPERATIVE EFFORTS AMONG PARTIES —Cont'd
Attorney—Cont'd	Tobacco litigation settlement agreement—Cont'd
Retaining, generally, 19:9	Class action, App 19K
Services agreement, App 19G	Trial coordination, 19:27
Share counsel, agreement, App 19D	Trial logistics, 19:28
Billing, 19:10	Trust distribution procedures, North American
Budgeting	refractories, App 19V
Billing, and expense activities, 19:25	CORONAVIRUS
Defence budget form, App 19U	Claims, insurance coverage, 31:3
Common Benefit Fund order, App 19T	
Confidentiality, 19:18	CORPORATIONS
Consultant	Criminal liability
Payment term restrictions, App 19I	Corporate liability, 32:18
Retaining, generally, 19:17	Corporate officer, individual liability, 32:19
Services agreement, App 19H, App 19I	Federal prosecution of corporations, App 32J
Contractor services agreement, App 19J	Selection and use of monitors in deferred pros-
Crossclaims, 19:19	ecution and non-prosecution agreements with corporations, App 32Q
Deepwater Horizon Emergency Claims Facility	Directors and officers liability
protocol, App 19S	Generally, 32:19
Defence budget form, App 19U Discovery	Insurance policy coverage, 31:71
Cross-party discovery, 19:23	Dow Corning Corporation, amended plan of reor-
Protocol, App 19E	ganization, App 19Q
Dow Corning Corporation, amended plan of reor-	Federal criminal prosecution of corporations,
ganization, App 19Q	App 32J
DuPont Value Protection Program, App 190	Individual liability, 31:71, 32:19
Experts, selection of, 19:16	Integrity agreement, App 32R
Funding	Internal corporate investigations, 24:10
Generally, 19:11	Investigations, privilege, 24:10
Agreement, App 19A	Liability
Common Benefit Fund order, App 19T	Corporate, 32:18
Identification of additional parties, 19:13	Insurance policy, 31:71
Joint defense agreements, 19:12, App 19M	Officer, 31:71, 32:19
Orders	Preservation of corporate documents, instruction,
Case management order, preliminary, App	App 22N
19N	Privilege, internal corporate investigations, 24:10
Sample pretrial order, App 19C	Reorganization plan, Dow Corning Corporation,
Special orders, obtaining, 19:20	App 19Q
Parties cooperating, 19:2	Revised corporate charging guidelines, App 32S
Planning for the future, the issue book, 19:26	Wrongdoing, individual accountability for, Yates Memo, App 32T
Pretrial research efforts	
Coordinated legal research, 19:14	COSMETICS
Pre-interview questionnaire, 19:15, App 19B	Modernization of Cosmetics Regulation Act, 3:20
Selection of experts, 19:16	COSTS
Recalcitrants, dealing with	See Expenses (this index)
Direct efforts, 19:5	See Expenses (this macx)
Judicial intervention, 19:8	COURT-APPOINTED EXPERTS
Nature of the problem, 19:4	Generally, 30:11
Settlement option, 19:7	Testimony, 30:11
Withholding of benefits, 19:6	·
Remedial activity, value protection plans, 19:24	COURT-APPOINTED SPECIAL MASTERS
Settlement, 19:7 , 19:21	Generally, 22:25
Tobacco litigation settlement agreement	COURTOOM TECHNOLOGY MANUAL

Selected excerpts, App 16A

COVID-19 CRIMINAL LIABILITY—Cont'd Enforcement of federal criminal laws-Cont'd Claims, insurance coverage, 31:3 Justice Department Guidelines, Factors in Federal toxic substance regulatory schemes, 8:11 Decisions on Criminal Prosecution for CRIME VICITIMS' RIGHTS ACT Environmental Violations regarding sig-Enforcement of federal criminal laws, 32:28 nificant voluntary compliance or disclosure efforts of violator, App 32C **CRIMINAL LIABILITY** Monitors, selection and use in deferred prose-Generally, 32:1, 32:2 cution and non-prosecution agreements Advisory Panel Recommendations to US with corporations, App 32Q Sentencing Commission on Environmental Parallel proceedings policy, App 32I Crimes, App 32E U.S. Attorney's Manual on Environmental Applicable statutes Crimes Generally, 32:2 Bluesheet Revision to, App 32G Environmental statutes, below Justice Department's Directive Amending, Federal criminal laws App 32D Generally, 32:14 Environmental Crimes Handbook—A Guide for Conspiracy, 32:16 Law Enforcement Personnel, App 32P Mail fraud, 6:19, 32:15 Environmental statutes RICO, 32:16 Generally, 32:6 Food and drug statutes, 32:5 CERCLA, 32:10 Nuisance statutes, 32:3 Clean Air Act, 32:11 Reckless endangerment statutes, 32:4 Clean Water Act, Deepwater Horizon debar-Attorney-client privilege, crime fraud exception, ment agreement, App 32U 24:2 Criminal provisions of environmental laws, Bluesheet Revision to U.S. Attorney's Manual on App 32B Environmental Crimes, App 32G Federal Water Pollution Control Act, 32:8 Business organizations, principles of federal Occupational Safety and Health Act (OSHA), prosecution, App 32K, App 32O 32:13 CERCLA, 32:10 Refuse Act of 1899, 32:7 Clean Air Act, 32:11 Resource Conservation Recovery Act (RCRA), Conspiracy, 32:16 Corporate liability, 32:18 Toxic Substances Control Act (TSCA), 32:12 Corporate officer, individual liability, 32:19 EPA Staff Guidelines on Criminal Enforcement, Corporate wrongdoing, individual accountability App 32F for, Yates Memo, App 32T Federal criminal laws Corporations, federal prosecution of, App 32.I Generally, 32:14 Debarment, 32:24 Conspiracy, 32:16 Deferred prosecution, 32:25, App 32M Mail fraud, 6:19, 32:15 Disclosure efforts of violator RICO, 32:16 Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Federal prosecution of corporations, App 32J Violations, App 32H Federal sentencing guidelines, 32:22, App 32A, Justice Department Guidelines, Factors in App 32E, App 32L Decisions on Criminal Prosecution for Federal Water Pollution Control Act, 32:8 Environmental Violations regarding sig-Fines, 32:21 nificant voluntary compliance or Food and drug statutes, 32:5 disclosure efforts of violator, App 32C Incentives for Self-Policing: Discovery, Double jeopardy, 32:23 Disclosure, Correction and Prevention of Enforcement of federal criminal laws Violations, App 32H Generally, 32:27 Individual liability, 32:19 Business organizations, principles of federal Judicial review of plea bargains, 32:26 prosecution, App 32K, App 32O Justice Department Guidelines: Factors in Deci-Environmental Crimes Handbook—A Guide sions on Criminal Prosecution for for Law Enforcement Personnel, App 32P Environmental Violations regarding signifi-

cant voluntary compliance or disclosure

efforts of violator, App 32C

EPA Staff Guidelines on Criminal Enforce-

ment, App 32F

CRIMINAL LIABILITY—Cont'd	CRIMINAL LIABILITY—Cont'd
Justice Department's Directive Amending U.S.	Sanctions—Cont'd
Attorney's Manual on Environmental	Plea bargains, judicial review, 32:26
Crimes, App 32D	Sentencing, below
Mail fraud, 6:19 , 32:15	Self-Policing Incentives, App 32H
Manual on Environmental Crimes, U.S.	Sentencing
Attorney's	Generally, 32:22
Bluesheet Revision to, App 32G	Advisory Panel Recommendations to US
Justice Department's Directive Amending,	Sentencing Commission on
App 32D	Environmental Crimes, App 32E
Mens rea requirements, 32:17	Federal sentencing guidelines, 32:22, App
Monitors, selection and use in deferred prosecu-	32A, App 32E, App 32L
tion and non-prosecution agreements with	Toxic Substances Control Act (TSCA), 32:12
corporations, App 32Q	U.S. Attorney's Manual on Environmental
Murder, RICO claims, 6:21	Crimes
Nuisance statutes, 32:3	Bluesheet Revision to, App 32G
OSHA provisions, 32:13	Justice Department's Directive Amending,
Parallel proceedings policy, enforcement of	App 32D
federal criminal laws, App 32I	Voluntary compliance
Parties liable	Effect of, 32:20
Corporate liability, 32:18	Justice Department Guidelines, Factors in
Corporate officer, individual liability, 32:19	Decisions on Criminal Prosecution for
Individual liability, 32:19	Environmental Violations regarding sig-
Mens rea requirements, 32:17	nificant voluntary compliance or
Voluntary compliance, effect of, 32:20, App	disclosure efforts of violator, App 32C
32C	W.R. Grace indictment, App 32N
Plea bargains, judicial review, 32:26	Yates Memo, individual accountability for
Portions of organizational sentencing guidelines	corporate wrongdoing, App 32T
applicable to environmental offenses. A nn	~~ ~~ ~~ ~~ . ~~ ~~
applicable to environmental offenses, App	CROSS CLAIMS
32L	Generally, 11:14, App 11B
32L Prosecution	Generally, 11:14, App 11B
32L Prosecution Business organizations, principles of federal	Generally, 11:14, App 11B DAMAGES
32L Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O	Generally, 11:14, App 11B DAMAGES Generally, 7:1
32L Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33
32L Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promo-
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index)
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregula-
32L Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doc-
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index)
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred pros-	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index)
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA),	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index)
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA), 32:9	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index) Fear of future injury, 7:8
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA), 32:9 RICO, 32:16	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index) Fear of future injury, 7:8 Immune system disregulation and disjunction
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA), 32:9 RICO, 32:16 Sanctions	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index) Fear of future injury, 7:8 Immune system disregulation and disjunction claims, chemically induced, 7:27
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA), 32:9 RICO, 32:16 Sanctions Alternative fines, 32:21	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index) Fear of future injury, 7:8 Immune system disregulation and disjunction claims, chemically induced, 7:27 Increased risk of future injury
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA), 32:9 RICO, 32:16 Sanctions Alternative fines, 32:21 Debarment, 32:24	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index) Fear of future injury, 7:8 Immune system disregulation and disjunction claims, chemically induced, 7:27 Increased risk of future injury Generally, 7:14
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA), 32:9 RICO, 32:16 Sanctions Alternative fines, 32:21 Debarment, 32:24 Deferred prosecution, 32:25, App 32M	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index) Fear of future injury, 7:8 Immune system disregulation and disjunction claims, chemically induced, 7:27 Increased risk of future injury Generally, 7:14 Emotional distress, 7:8
Prosecution Business organizations, principles of federal prosecution, App 32K, App 32O Corporations, federal prosecution of, App 32J Deferred prosecution, sanctions, 32:25, App 32M Enforcement of federal criminal laws, above Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding significant voluntary compliance or disclosure efforts of violator, App 32C Selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, App 32Q Provisions of environmental laws, App 32B Reckless endangerment statutes, 32:4 Refuse Act of 1899, 32:7 Resource Conservation Recovery Act (RCRA), 32:9 RICO, 32:16 Sanctions Alternative fines, 32:21 Debarment, 32:24	Generally, 11:14, App 11B DAMAGES Generally, 7:1 Business damages, RICO claims, 6:33 Cancer promotion claims. See Cancer Promotion Claims (this index) Chemically induced Immune system disregulation and dysfunction claims, 7:27 Class action limited fund, 10:11 Contribution doctrine. See Contribution Doctrine (this index) Emotional distress Increased risk of future injury, 7:8 Mitigation of damages, 7:6 Emotional distress. See Emotional Distress (this index) Endocrine disruption claims. See Endocrine Disruption Claims (this index) Fear of future injury, 7:8 Immune system disregulation and disjunction claims, chemically induced, 7:27 Increased risk of future injury Generally, 7:14

DAMAGES—Cont'd

Joint liability. See **Joint and Several Liability** (this index)

Limitations

Class action limited fund, 10:11

RICO claims, business or property damages, **6:33**

Medical monitoring claims, duty to defend, 31:25

Medical questionnaire, 22:23

Medical surveillance

Generally, 7:10

CERCLA, recovery under, 7:12

Defense issues, 7:11

Mitigation of damages, 7:6

Multiple chemical sensitivity, 7:28

Promoters, generally, 7:29

Property damages, RICO claims, 6:33

Punitive damages. See **Punitive Damages** (this index)

Quality of life, 7:13

Reactive airways disease syndrome, generally, 7:36

RICO claims

Business or property damages, limited, 6:33

Treble damages, 6:30

Several liability. See **Joint and Several Liability** (this index)

Stigma damages, 7:30

Treble damages, RICO claims, 6:30

DANGEROUS ACTIVITIES

Reckless endangerment, criminal liability, **32:4** Strict liability, **4:10**

Ultrahazardous or abnormally dangerous activities, **4:9**, **4:10**

DEBARMENT

Criminal liability sanctions, 32:24

DECEIT

See Fraud or Deceit (this index)

DEEPWATER HORIZON DEBARMENT AGREEMENT

Environmental statutes, criminal liability, App 32U

DEEPWATER HORIZON EMERGENCY CLAIMS FACILITY PROTOCOL

Cooperative efforts among parties, App 19S

DEFENSE ISSUES

Affirmative defenses, 11:13, App 11A

Assumption of risk, 11:2

Comparative negligence, 11:1

Compliance with statutes and regulations, 11:6

Contribution doctrine. See Contribution Doctrine (this index)

Cross claims, 11:14, App 11B

DEFENSE ISSUES—Cont'd

Federal preemption

Generally, 11:8

Express, 11:9

Implied, 11:10

Government specification, 11:5

Idiosyncratic defense, duty to warn and right-toknow. **5:3**

Joint defense agreements, 19:12, App 19M

Jurisdiction

Personal jurisdiction. See Personal jurisdic-

tion (this index)

Primary jurisdiction, 11:11

Jury entitlement. See **Jury** (this index)

Personal jurisdiction. See **Personal Jurisdiction** (this index)

Preemption. Federal preemption, above

Preemption memorandum, App 11C

Primary jurisdiction, 11:11

Product identification, 11:3

Product specification, 11:4

Remoteness, 11:12

Standing, 11:12

Statutory defenses, 11:6, 11:7

Summary judgment

Availability, 14:2

Standard, 14:1

DEFERRED PROSECUTION

Criminal liability, sanctions, 32:25, App 32M, App 32Q

DEFINITIONS

Acronyms and abbreviations, toxic tort claims, App 29D

Collateral estoppel, 17:2

Landowner liability under CERCLA, **App 3A**Lender liability under CERCLA, **App 3B, App**3C

Res judicata, 17:2

Statistical significance, 28:17

Toxic tort, 2:1 to 2:3

DEMAND LETTERS

Duty to defend, 31:24

DE MINIMIS

Settlements under CERCLA Section 122(g)(1)(B), **App 3A**

DEPARTMENT OF INTERIOR

Rule on natural resource damage assessments, App 8B

DEPARTMENT OF JUSTICE

Computer searches and seizures guide, App 22J Disclosure efforts of violator, guide, App 32C Manual on Environmental Crimes, Directive Amending, App 32D

DEPOSITION	DISCOVERY—Cont'd
Generally, 22:8	Applicable rules—Cont'd
Carriers, notice of taking deposition of, App 31L	Special orders, 22:3
Claimant/plaintiff discovery responses, App 22E,	Asbestos case management manual, App 20K
App 22G	Background information
Experts	Generally, 22:18
Hydrogeological expert, App 23C	Authorization for release of employment and
Medical causation expert, App 23A	background information, 22:21, App 22I
Psychological expert, App 23B	Concurrent, expert witnesses, 23:10
Guidelines, App 22F	Conference, 22:4, App 22C
Hydrogeological expert, App 23C	Confidential information. See Confidentiality
Insurance coverage questions, App 31K, App	(this index)
31L	Deposition. See Deposition (this index)
Insureds, notice of taking deposition, App 31K	Document production and inspection, 22:6, 22:7,
Medical causation expert, App 23A	App 22M
Notice of taking deposition	Electronic discovery supplement, App 22L
Carriers, coverage questions for, App 31L	Electronic materials
Insureds, coverage questions for, App 31K	Generally, 22:7
Plaintiffs' discovery responses, App 22E	Department of Justice Guidelines for searching
Rule 30(b)(6) forms, App 31K , App 31L	and seizing computers, App 22J
Outline of deposition	Electronic discovery supplement, App 22L Wire fraud, RICO claims, 6:19
Claimant, App 22G	
Hydrogeological expert, App 23C	Employees Generally, 22:21
Medical causation expert, App 23A	Authorization for release of employment and
Psychological expert, App 23B	background information, App 22I
Protocol, App 220	Expert employees and fact witnesses, 23:4
Psychological expert, App 23B	Former employee, 22:11
Rule 30(b)(6) forms on notice, App 31K, App	Medical questionnaires, employment history,
31L	22:21
DETAILED JUROR QUESTIONNAIRE	Experts. See Expert Witnesses (this index)
Generally, App 15B	Exposure history
DIMINISHED VALUE CLAIMS	Medical questionnaire, 22:22
	Report (outline) from medical causation and
Negligence, consumer fraud, 6:38	medical surveillance expert, based on
DIOXINS	exposure to hazardous substances, App
EPA report of reassessment, App 29M	22B
Peers' review of documents, report, App 29N	First amendment issues, 25:4
DISCLOSURE	Former employee discovery, 22:11
Confidentiality. See Confidentiality (this index)	FRCP Form 52, Report of parties' planning meet-
Discovery. See Discovery (this index)	ing, App 22C
Investigations conducted by counsel, 24:8	Inspection of documents
Liability exposure. See Activity Giving Rise to	Generally, 22:6 , 22:7
Toxic Tort Liability (this index)	Electronic materials, above
RICO claims, disclosure order, App 6A	Interrogatories, 22:5
Securities. See Securities Disclosure Obliga-	Lone pine decision, App 22A
tions (this index)	Lone pine orders, 22:26
,	Mandatory disclosure, 22:4
DISCOVERY	Masters, use of special, 22:25
Admissions, request for, 22:9	Medical authorizations
Applicable rules	Generally, 22:24
Generally, 22:1	Authorization for release of medical informa-
Local rules, 22:2	tion, 22:24, App 22H
Rule 26 conference and mandatory disclosure,	Medical questionnaires
22:4	Generally, 22:16
Sanctions, above	Background information, 22:18

DISCOVERY-Cont'd

Medical questionnaires—Cont'd

Damage claims, 22:23

Employment history, 22:21

Exposure history, 22:22

Format, generally, 22:17 to 22:24

Instructions, 22:17

Medical authorizations, 22:24, App 22H

Medical claim, 22:19

Treatment history, 22:20

Need for judicial intervention, 25:5

Notice of deposition regarding plaintiffs'

discovery responses, App 22E

Order regarding confidentiality. See **Confidentiality** (this index)

Outline deposition queries. See **Deposition** (this index)

Outline of report from medical causation and medical surveillance expert, based on exposure to hazardous substances, **App 22B**

Penalties for noncompliance, 22:12

Preservation of corporate documents, instruction, App 22N

Privilege. See **Privilege** (this index)

Purpose of toxic tort discovery

Defendant's perspective, 22:14

Plaintiff's perspective, 22:13

Release of medical information, 22:24, App 22H

Report (outline) from medical causation and medical surveillance expert, based on exposure to hazardous substances, **App 22B**

Report of parties' planning meeting, FRCP Form 52, App 22C

Requests to admit, 22:9

Rule 26 conference and mandatory disclosure, **22:4**, **App 22C**

Sanctions

Attorney certification, 26:4, App 26A

Avoiding Rule 11 sanctions, **26:11**

Basis for Rule 11 sanctions, 26:4, 26:8

Comparable state rules, 26:5

Inherent power of the court, **26:6**

Multiplication of proceedings, 22 USC 1927, **26:3**

Penalties for noncompliance, 22:12

Procedural considerations under pre-1993 Rule 11, **26:9**

Rule 11 sanctions, generally, **26:7**

Rule 26(g), discovery certification, **26:2**

Rule 37, discovery abuses, 26:1

Sources for imposition of sanctions, generally, **26:1 to 26:6**

Special Rule 11 issues in toxic tort litigation, **26:10**

Verified adversary complaint, **26:4**, **App 26A** Settlement agreements, confidential, **25:7**

DISCOVERY-Cont'd

Sources of information, 22:15

Special masters, use of, 22:25

Spoliation of evidence, 22:27

Standards for judicial approval of confidentiality orders, 25:6

Statute of limitations, discovery rule, **12:4 to 12:7**

Statutes of limitation, discovery rule, **12:4 to 12:7**

Stipulation as to business records produced in discovery, **App 22D**

Stipulation of confidentiality

Complex form, App 25B

Simple form, **App 25A**

Summary jury trial discovery case management order, **App 20M**

Third party discovery, 22:10

Wire fraud, 6:19

Work product. See **Work Product** (this index)

DISCRETION OF COURT

Discovery sanctions, 26:6

DISEASE OR ILLNESS

Cancer. See Cancer (this index)

Endocrine disruption. See **Endocrine Disruption Claims** (this index)

Epidemiological evidence. See **Epidemiological Evidence** (this index)

Reactive airways disease syndrome, 7:36

Registry. See Agency for Toxic Substances and Disease Registry (ATSDR) (this index)

Sick building claims, ownership liability, 3:31

DISPOSAL OF HAZARDOUS WASTES

Activity giving rise to toxic tort liability exposure, **3:24**

Epidemiological evidence, use in litigation, **28:36** Personal jurisdiction, **18:8**

DISTINGUISHING BETWEEN TOXIC TORTS AND MASS ACCIDENTS

Generally, 2:2, 2:3

DISTRESS

See **Emotional Distress** (this index)

DIVERSITY IN DEFENDANTS

Asbestos cases management, App 20K

DIVERSITY OF CITIZENSHIP

Removal of state case to federal court, 10:2

DOUBLE JEOPARDY

Generally, 32:23

DOW CORNING CORPORATION

Amended plan of reorganization, App 19Q

DRAFTING TIPS

Cancer risk assessment, working paper for draft revisions to EPA's guidelines, **App 29J**Complaint, **10:1**

DRINKING WATER

Safe Drinking Water Act, generally, 8:6

DRUGS

Criminal liability, food and drug statutes, **32:5** Pharmaceutics, activity giving rise to toxic tort liability exposure, **3:3**

DUE PROCESS

Personal jurisdiction standard, **18:3**Right to jury trial, personal injury action, **15:5**

DUTY TO DEFEND

Generally, 31:18

Affirmative claims, insurer obligation to pay, 31:26

Allegations in complaint, comparison test, **31:20** Comparison test, generally, **31:19**, **31:20** Demand letters, governmental, **31:24**

Environmental investigation costs as defense expenses, **31:23**

Extrinsic evidence, 31:21

Medical monitoring claims, 31:25

Policy limits, 31:10, 31:22

DUTY TO WARN AND RIGHT-TO-KNOW

Generally, 5:1

Adequacy of warning, 5:10, 5:21

Basis for imposing duty. Basis for imposing duty to warn, above

Basis for imposing duty to warn

Breach of warranty, 5:4

Idiosyncratic defense, 5:3

Innocent misrepresentation, 5:5

Negligence, 5:6

Right-to-know laws, 5:7

Strict products liability, 5:2

Breach of warranty, 5:4

Bulk product suppliers, 5:16

Causation issue

Demonstration requirement, 5:22

Difference between inadequate warning and other product defects, **5:21**

Heeding presumption, 5:23

Content of warning, 5:10

Continuing duty, 5:9

Defense, state of the art, 5:17 to 5:20

Demonstration requirement, 5:22

Disclosure obligations under state laws, 5:32

Expert standard, 5:8

Federal standard, impact of right-to-know laws, 5:30

Heeding presumption, 5:23

DUTY TO WARN AND RIGHT-TO-KNOW —Cont'd

Idiosyncratic defense, **5:3**

Impact of right-to-know laws

Disclosure obligations under state laws, 5:32

Duty to warn litigation, impact on, 5:34

Federal standard, 5:30

Preemption, 5:33

State laws, 5:31

Impact of right-to-know laws on duty to warn litigation, **5:34**

Inadequate warning distinguished from other product defects, **5:21**

Innocent misrepresentation, 5:5

Intermediaries, warning

Generally, 5:12

Bulk product suppliers, **5:16**

Learned intermediary doctrine, 5:13 to 5:15

Learned intermediary doctrine, **5:13 to 5:15** Negligence

Basis for imposing duty to warn, 5:6

Strict liability and negligence, applying, 5:27

Subsequent remedial measures, 5:25, 5:27

Preemption, impact of right-to-know laws, 5:33

Presumption, 5:23

Remedial measures. Subsequent remedial measures, below

Rule 407's effect on duty to warn cases, 5:28

State laws on impact of right-to-know laws, **5:31** Strict liability

Generally, 5:2

Applying both negligence and, 5:27

Subsequent remedial measures, 5:26, 5:27

Subsequent remedial measures

Applicable rule, 5:24

Cases where both strict liability and negligence alleged, **5:27**

Negligence actions, 5:25, 5:27

Other basis for excluding, 5:29

Rule 407's effect on duty to warn cases, 5:28

Strict liability actions, 5:26, 5:27

Summary judgment availability, 5:11

Warranty, breach of, 5:4

ELECTRIC AND MAGNETIC FIELDS (EMF)

Radiation, product sales liability, 3:18

ELECTRONIC DISCOVERY SUPPLEMENT

Generally, **App 22L**

ELECTRONIC MATERIALS

Discovery Guidelines of Justice Department, **App 22J**

Discovery of, generally, 22:7

Electronic discovery supplement, App 22L

Seizure of computers for discovery purposes,

22:7, App 22J

ELECTRONIC MATERIALS—Cont'd

Supplement, electronic discovery supplement, **App 22L**

Wire fraud, RICO claim, 6:19

EME

See Electric and Magnetic Fields (EMF) (this index)

EMOTIONAL DISTRESS

Generally, 7:2

Cancerphobia, 7:9, 7:25

Causation defense, 7:5

Fear of future injury, 7:8

Mitigation, 7:6

Nature of claim, 7:3

Physical impact or injury requirement, 7:4

Post-traumatic stress disorder, 7:7

EMPLOYERS AND EMPLOYEES

Authorization for release of employment and background information, 22:21, App 22I

Employment history questionnaire, 22:21

Expert employee witness, 23:4

Former employee, 22:11

Judicial use of epidemiological evidence, workplace and product exposure. **28:33**

OSHA. See Occupational Safety and Health Act (this index)

ENDOCRINE DISRUPTION CLAIMS

Generally, 7:31

Chemically induced immune system disregulation and disjunction claims, 7:27

Legal issues, 7:35

Nature of claims, 7:32

Reports of EPA on environmental disruption An effects assessment and analysis, **App 7A**

Screening program, App 7B

Scientific issues, 7:34

Toxic tort implications, 7:33

ENFORCEMENT OF CERCLA

Lenders and government entities acquiring property involuntarily, **App 3H**

ENFORCEMENT OF FEDERAL CRIMINAL LAWS

Generally, 32:27

Business organizations, principles of federal prosecution, **App 32K**, **App 32O**

Coordinated federal/state civil enforcement proceedings, **8:10, App 8E**

Crime Victims' Rights Act, 32:28

EPA Staff Guidelines on Criminal Enforcement, App 32F

Justice Department Guidelines, Factors in Decisions on Criminal Prosecution for Environmental Violations regarding signifi-

ENFORCEMENT OF FEDERAL CRIMINAL LAWS—Cont'd

cant voluntary compliance or disclosure efforts of violator, App 32C

Parallel proceedings policy, App 32I

U.S. Attorney's Manual on Environmental Crimes

Bluesheet Revision to, App 32G

Justice Department's Directive Amending, App 32D

ENGINEERS

Activity giving rise to toxic tort liability exposure, **3:37**

ENTERPRISE LIABILITY UNDER RICO

See **RICO Claims** (this index)

ENVIRONMENTAL COVERAGE ACTION

See Insurance Coverage (this index)

ENVIRONMENTAL CRIMES HANDBOOK

Guide for Law Enforcement Personnel, App 32P

ENVIRONMENTAL IMPAIRMENT POLICIES

Generally, 31:70

ENVIRONMENTAL STATUTES, CRIMINAL LIABILITY

Generally, 32:6

CERCLA, 32:10

Clean Air Act, 32:11

Clean Water Act, Deepwater Horizon debarment agreement, **App 32U**

Federal Water Pollution Control Act, 32:8

Occupational Safety and Health Act (OSHA), 32:13

Provisions of environmental laws, App 32B

Refuse Act of 1899, 32:7

Resource Conservation Recovery Act (RCRA), 32:9

Toxic Substances Control Act (TSCA), 32:12

EPIDEMIOLOGICAL EVIDENCE

Generally, 28:1, 28:23, 29:5

Analytical issues

Generally, 28:23

Attributable risk, 28:25

Bradford hill criteria, 28:27

Henle koch postulates, 28:26

Purpose for which study is offered, 28:23

Relative risk, 28:24

Attributable risk, 28:25

Bias issues

Generally, 28:10, 28:15

Confounding bias, 28:11

Information bias, 28:13

Reporting bias, 28:14

Selection bias, 28:12

EPIDEMIOLOGICAL EVIDENCE—Cont'd	EPIDEMIOLOGICAL EVIDENCE—Cont'd
Bradford hill criteria, 28:27	Restrictions on use of epidemiological evidence,
Cancer promotion claims, 7:25	28:29
Cigarette cases, 28:32	Retrospective/prospective studies debate, 28:9
Clinical trials, 28:3	Retrospective studies, generally, 28:7
Community trials, 28:3	Selection bias, 28:12 Statistical issues
Concurrent prospective studies, 28:5	Generally, 28:16
Confounding bias, 28:11	How statistical significance is measured, 28:18
Cross-sectional studies, 28:8	Importance of statistical significance, 28:19 ,
Disposal of hazardous wastes, 28:36 Epidemiological studies, meta-analysis of, 28:22	28:20
Epidemiology reference guides, App 28A	Null hypothesis, 28:21
Evaluation of studies on causation, 28:28, 28:29	P values, 28:20
Experimental and observational studies, 28:2	Reference guide on statistics, App 28B
Henle koch postulates, 28:26	What statistical significance is, 28:17
How statistical significance is measured, 28:18	Swine flu cases, 28:34
Importance of statistical significance, 28:19,	Tobacco cases, 28:32
28:20	Use in waste disposal cases, generally, 28:36
Information bias, 28:13	Utilization of studies on causation
Judicial use of epidemiological evidence	Evaluation of studies, 28:28
Generally, 28:31	Restrictions on use of epidemiological evi-
Recent trends, 28:35	dence, 28:29
Swine flu cases, 28:34	What statistical significance is, 28:17
Tobacco cases, 28:32	Workplace and product exposure, 28:33
Workplace and product exposure, 28:33	EPIDEMIOLOGICAL STUDIES
Meta-analysis of epidemiological studies, 28:22	Meta-analysis, 28:22
Methodological issues	·
Clinical and community trials, 28:3	EQUIVALENCY FACTORS FOR TOXICITY
Cross-sectional studies, 28:8	Generally, 29:3, App 29C
Experimental and observational studies, 28:2	ESTOPPEL, COLLATERAL
Prospective/retrospective debate, 28:9	See Collateral Estoppel (this index)
Prospective studies	ETHICS OF EXPERT WITNESSES
Generally, 28:4	Occupational and environmental medicine
Concurrent, 28:5	experts, App 30B
Non-concurrent, 28:6	Testimony, professional obligations of experts,
Prospective/retrospective debate, 28:9	30:12
Reference guides, below	EVIDENCE
Retrospective studies	EVIDENCE
Generally, 28:7	Generally, 29:1
Prospective/retrospective debate, 28:9	Acronyms and abbreviations list, App 29D
Non-concurrent prospective studies, 28:6	Agency for Toxic Substances and Disease Registry (ATSDR), toxicological profiles
Null hypothesis, statistics, 28:21	Generally, 29:13
Observational studies, 28:2	Lead, App 29A
Presentation issues, generally, 28:30	Minimum risk levels of ATSDR, App 290
Prospective/retrospective studies debate, 28:9	Aggregate evidence, use to prove particular facts,
Prospective studies, generally, 28:4 to 28:9	29:15
Purpose for which study is offered, 28:23	Bioassays
P values, statistics, 28:20	Long-term bioassays, 29:8
Recent trends, 28:35	Short term bioassays, 28:9
Reference guides	Breast implant, National Science Panel's report,
Epidemiology, App 28A	App 30A
Statistics, App 28B	Cancer policy, generis, 29:4
Relative risk, 28:24	Cancer promotion claims. See Cancer Promo-
Reporting bias, 28:14	tion Claims (this index)

EVIDENCE—Cont'd EVIDENCE—Cont'd Cancer risk assessment, EPA's guidelines, App Reference guide-Cont'd **29.**I Toxicity, App 29K Causation Reports of government Generally, 27:1 Generally, 28:14 Application of traditional cause-in-fact analy-Breast implant report, National Science Panel's, App 30A Generally, 27:4 Dioxin reassessment, documents review by Product identification, 27:5 peers report, App 29N Dioxin reassessment report of EPA, App 29M Burden of proof, 27:2 Polychlorinated biphenyl congeners (PBCs), Circumventing causation difficulties, modern methods, 27:3 EPA workshop report, App 29G Spoliation of evidence, 22:27 Scientific evidence method, 27:6 Superfund guidelines, App 29E Cleanup standards Preliminary draft NJ Dept. Environmental Survey evidence, use to prove particular facts, 28:15 Protection, App 29F Superfund guidelines, risk assessment, App Toxicogenomics, 28:13, 29:7 EX PARTE CONTACTS Conversion or equivalency factors, 29:3, App Expert witnesses, 23:1 Cumulative risk/exposure assessments, 29:11 **EXPENSES** Developmental toxicity guidelines, App 29H Attorneys. See Attorney's Fee and Costs (this Dioxin reassessment index) Documents review by peers, report on, App CERCLA response actions, EPA rule on costs 29N recovery, App 8A Report of EPA, App 29M Cleanup expenses Duty to defend, extrinsic evidence, 31:21 CERCLA response actions, EPA rule on costs Epidemiological evidence. See Epidemiological recovery, App 8A **Evidence** (this index) Contribution doctrine, 18:8, 18:9 Equivalency factors for toxicity, 29:3, App 29C Government expenses, 31:52 Expert witnesses. See Expert Witnesses (this Insurance coverage, 31:52, 31:53 index) Contribution doctrine, cleanup Expenses, 18:8, Exposure assessments 18:9 Generally, 29:10 Duty to defend, environmental investigation costs Cumulative risk/exposure assessments, 29:11 as defense expenses, 31:23 Proposed guidelines for exposure-related Funding, litigation, 10:4 measurements, App 29B Government expenses for cleanup, 31:52 Extrinsic evidence, duty to defend, 31:21 Insurance coverage for cleanup, 31:52, 31:53 Genetic evidence Insurance defense investigation costs, 31:23 Individual genetic testing, 29:6 Litigation funding, 10:4 Medicaid costs reimbursement Toxicogenomics, 28:13, 29:7 Complaint on tobacco-related injuries, App 8C Guidelines. See Guides or Guidelines (this State toxic tort law, 8:13 index) Reimbursement Health risk assessment. See Risk Assessment (this index) CERCLA response actions, EPA rule on costs Interim genomics policy, App 29P recovery, App 8A Medicaid costs reimbursement, above Judicial notice of statutes and regulations, 29:12 Lead, toxicological profile, App 29A

EXPERT PANEL WORKSHOP

Report on psychological responses to hazardous substances, **App 7C**

EXPERT WITNESSES

Asbestos case management, App 20K
Basis for testimony, 30:6
Breast implant report, National Science Panel's,
App 30A

List of acronyms and abbreviations, App 29D

Probabilistic evidence, use to prove particular

Polychlorinated biphenyl congeners (PBCs), EPA

Minimum risk levels of ATSDR, App 290

workshop report, App 29G

facts, 29:15

Statistics, App 29B

Reference guide

EXPERT WITNESSES—Cont'd	EXPERT WITNESSES—Cont'd
Cancer promotion claims, challenging expert witness qualification, 7:21, 30:4	Medical causation and medical surveillance expert, App 22B
Conclusion, testimony, 30:13	Medical causation expert, App 23A
Concurrent discovery, 23:10	Not retained in anticipation of litigation, 23:5
Conflict and screening questionnaire, App 30C	Opinions "upon the subject," 30:7
Court-appointed experts, testimony, 30:11 Deposition outline	Permissive judicial attitudes toward introduction of expert testimony, 30:10
Hydrogeological expert, App 23C	Professional obligations of experts, testimony,
Medical causation expert, App 23A	30:12, App 30B
Psychological expert, App 23B	Proof of toxic tort claims, generally, 30:1 to
Discovery	30:13, App 30A
Generally, 23:1	Psychological expert, App 23B
•	Qualifications of expert
Deposition outline, above	Generally, 30:4
Duty to supplement answers, 23:7	Challenging, 7:21
Ex parte contacts, 23:1	Report (outline) from medical causation and
Expected to be called at trial, duty to supplement answers 22.7	medical surveillance expert, based on
ment answers, 23:7	exposure to hazardous substances, App 22B
Expert employees and fact witnesses, 23:4	Retained but not expected to be called as wit-
Former Rule 26(b)(4), 23:2 , 23:3	nesses, 23:6
FRCP 1993 amendments, expert discovery	Right-to-know standard, 5:8 Screening questionnaire, App 30 C
under, 23:8	Selection of experts, pretrial research efforts,
Hydrogeological expert, App 23C	19:16
Medical causation expert, App 23A	Summary testimony, 30:5
Not retained in anticipation of litigation, 23:5	Testimony
Psychological expert, App 23B	Generally, 30:1
Report (outline) from medical causation and	Basis for, 30:6
medical surveillance expert, based on	Breast implant report, National Science
exposure to hazardous substances, App 22B	Panel's, App 30A
Retained but not expected to be called as wit-	Conclusion, 30:13
nesses, 23:6	Court-appointed experts, 30:11
Duty to supplement answers, 23:7	Ethical guidelines for occupational and
Duty to warn standard, 5:8	environmental medicine expert witness,
Employees and fact witnesses, 23:4	App 30B
Environmental coverage action, factor considered	Formation of opinions "upon the subject,"
in maintaining, 31:87	30:7
Ethics	Helpfulness, 30:2 , 30:3
Guidelines for occupational and environmental medicine expert witness, App 30B	Judicial control of expert testimony, 30:8 to 30:10
Testimony of experts, professional obligations of experts, 30:12	Permissive judicial attitudes toward introduction of expert testimony, 30:10
Ex parte contacts, 23:1	Professional obligations of experts, 30:12, App
Expected to be called at trial, duty to supplement	30B
answers, 23:7	Qualifications of expert, 7:21, 30:4
Former Rule 26(b)(4), 23:2, 23:3	Summary testimony, 30:5
FRCP 1993 amendments, expert discovery under,	Use restrictions, 30:9
23:8	Tutorials, judicial use, 23:9
Helpfulness of testimony, 30:2, 30:3	Use restrictions, 30:9
Hydrogeological expert, App 23C	EVDOCUDE A CONTON
Insurance coverage, expert witness identification,	EXPOSURE ACTIVITY
31:87	See Activity Giving Rise to Exposure (this
Judicial control of expert testimony, 30:8 to 30:10	index) EXPOSURE ASSESSMENTS GUIDES

Generally, **29:10**

Judicial use of expert tutorials, 23:9

EXPOSURE ASSESSMENTS GUIDES—Cont'd

Cumulative risk/exposure assessments, **29:11**Proposed guidelines for exposure-related measurements, **App 29B**

EXPOSURE HISTORY

Medical questionnaire provision, 22:22

EXPOSURE RULE

Statutes of limitation, 12:2

EXTENT OF DUTY TO WARN

Continuing duty, **5:9** Expert standard, **5:8**

EXTRINSIC EVIDENCE

Duty to defend, 31:21

FAIRNESS HEARING

Class actions, medical monitoring class action fairness hearing, **App 20H**

FEAR OF FUTURE INJURY

Emotional distress, **7:8**Increased risk, **7:14**, **7:15**Solition of the first factors for the first factors for the factors of the factors for the factors fo

Splitting cause of action for future injury, 7:15

FEDERAL PREEMPTION

Generally, 11:8

Defense memorandum, App 11C

Duty to warn and right-to-know laws, 5:33

Express, **11:9** Implied, **11:10**

FEDERAL WATER POLLUTION CONTROL ACT

Generally, 8:5

FIDELITY & CASUALTY CO. OF NEW YORK, TEXAS EASTERN TRANSMISSION CORP v.

See Texas Eastern Transmission Corp. v. Fidelity & Casualty Co. of New York (this index)

FILIP MEMO

Revised corporate charging guidelines, App 32S

FINANCIAL INSTITUTIONS

Generally, 3:33

Defining lender liability under CERCLA, App 3B, App 3C

Lenders and government entities that acquire property involuntarily, policy on CERCLA enforcement against, **App 3H**

Minimizing liability exposure for, 3:35

Security interests in contaminated property, CERCLA's effects on lenders holding, **App 3K**

Trustees liability, 3:34

Underground storage tanks, lender liability, **App** 31

FINES

Criminal liability sanctions, alternative fines, 32:21

FIRST AMENDMENT

Discovery of confidential information, First Amendment issues, 25:4

FOCUSED JUROR QUESTIONNAIRE

Generally, App 15C

FOOD

Criminal liability, food and drug statutes, 32:5

FOREIGN PARTY

Conduct, sufficiency for personal jurisdiction, **18:6**

Forum non conveniens, 18:11

FORMER EMPLOYEES

Discovery, 22:11

FORUM NON CONVENIENS

Generally, **18:10**

Choosing the forum, 31:38

Foreign parties, 18:11

Insurance coverage disputes, 31:38, 31:72

FRAUD OR DECEIT

Generally, 4:11

Attorney-client privilege, crime fraud exception, 24:2

Consumer fraud, diminished value claims—negligence, **6:38**

Innocent misrepresentation, duty to warn, 5:5

Mail fraud, 6:19, 32:15

RICO claims, mail or wire fraud, 6:19

Wire fraud, 6:19

FUNDING

Generally, 19:11

Agreement, App 19A

Common Benefit Fund order, App 19T

Litigation, 10:4

FUTURE

Collateral estoppel, future of in toxic tort litigation, 17:9

Cooperative efforts among parties, the issue book, **19:26**

Emotional distress damages, fear of future injury, 7:8

Increased risk of future injury, damage theory, 7:14, 7:15

Securities disclosure obligations, future liabilities, **3:47**

Splitting causes of action, increased risk of future injury, **7:15**

GENERATION OF HAZARDOUS WASTES

Activity giving rise to toxic tort liability exposure, **3:24**

Personal jurisdiction, 18:8

GENETICS

Individual genetic testing, **29:6** Toxicogenomics, **28:13, 29:7**

GENOMICS

Interim genomics policy, App 29P

GEOLOGY

Hydrogeological expert, deposition outline, **App 23**C

GORE AMENDMENT

Contribution doctrine, allocation, 18:13

GUIDES OR GUIDELINES

Acronyms and abbreviations, App 29D

Alternative dispute resolution, guide for using in federal court litigation, App 16C

Cancer risk assessment

Carcinogens, exposure, App 29L

Working paper for draft revisions to EPA's guidelines, **App 29J**

Complex litigation. Manual for Complex Litigation, below

Computer searches and seizures, Department of Justice guidelines, App 22J

Contiguous owners

Interim enforcement discretion guidance regarding, App 3N

Interim guidance regarding criteria landowners must meet, CERCLA liability, **App 3M**

Criminal liability

Environmental law provisions, **App 32B** EPA guidelines on enforcement of federal criminal laws, **App 32F**

Federal sentencing guidelines, 32:22, App 32A, App 32E, App 32L

Justice Department Guidelines on voluntary compliance or disclosure efforts of violator, **App 32C**

Manual on Environmental Crimes, U.S. Attorney's, **App 32D**, **App 32G**

Depositions, guidelines, App 22F

Developmental toxicity guidelines, App 29H

Disclosure efforts of violator, Justice Department Guidelines, **App 32C**

Discovery

Depositions, guidelines, App 22F

Electronic materials, Department of Justice Guidelines for searching and seizing computers, **App 22J**

Electronic materials, Department of Justice guidelines for searching and seizing computers, **App 22J**

GUIDES OR GUIDELINES-Cont'd

Environmental marketing claims, Green Guides, App 3D

Epidemiology reference guides, App 28A

Ethical guidelines for occupational and environmental medicine expert witness, **App 30B**

Expert witnesses testimony, ethical guidelines for occupational and environmental medicine expert witness, **App 30B**

Exposure assessments

Generally, 29:10

Cumulative risk/exposure assessments, 29:11

Proposed guidelines for exposure-related measurements, **App 29B**

Federal sentencing guidelines, 32:22, App 32A, App 32E, App 32L

Green Guides for use of environmental marketing claims, App 3D

Interim enforcement discretion guidance regarding, App 3N

Justice Department

Computer searches and seizures, App 22J

Disclosure efforts of violator, App 32C

Manual on Environmental Crimes, Directive Amending, **App 32D**

Landowner liability under CERCLA Section 107(a)(1), guidance on, **App 3A**

Manual on Environmental Crimes, U.S. Attorney's

Bluesheet Revision to, App 32G

Justice Department's Directive Amending, App 32D

Marketing liabilities, guides for use of environmental marketing claims, App 3D

Mass torts

Case management order, App 20B

Table of contents, App 20A

MultiCounty Litigation Guidelines, App 20O

MultiCounty Litigation Resource Book of New Jersey, App 20I

Multidistrict litigation

Litigation, generally, App 21A

Product liability litigation, App 21B

Occupational and environmental medicine expert witness, ethical guidelines, **App 30B**

Reference guides

Criminal liability enforcement, App 32F

Epidemiology, App 28A

Manual on Environmental Crimes, App 32D, App 32G

Mass torts, App 20A, App 20B

Statistics, App 28B

Toxicity risk assessment, App 29K

Revised corporate charging guidelines, App 32S

GUIDES OR GUIDELINES—Cont'd

Sentencing guidelines, federal, 32:22, App 32A, App 32E, App 32L

Settlements of toxic tort liability exposure, guidance on, App 3A

Statistics reference guides, App 28B

Superfund guidelines, risk assessment, App 29E Toxicity. See Toxicity Risk Assessment Guides (this index)

Voluntary compliance or disclosure efforts of violator, Justice Department Guidelines, App 32C

GULF OF MEXICO

Deepwater Horizon debarment agreement, **App** 32U

HAZARDOUS WASTES OR SUBSTANCES

Activity giving rise to toxic tort liability exposure Generally, **3:23**

Generation and disposal of wastes, **3:9**, **3:24** Minimizing liability exposure for, **3:27** Sales of waste. **3:26**

Treatment and storage of wastes, 3:25, App 3I

Discovery of report (outline) from medical causation and medical surveillance expert, based on exposure to hazardous substances, **App** 22B

Disposal of hazardous wastes

Activity giving rise to toxic tort liability exposure, **3:24**

Epidemiological evidence, use in litigation, **28:36**

Personal jurisdiction, 18:8

Environmental Crimes Handbook—A Guide for Law Enforcement Personnel, **App 32P**

Epidemiological evidence, use in litigation, **28:36** Evidence

Epidemiological evidence, 28:36

Medical causation and medical surveillance expert, App 22B

Expert, medical causation and medical surveillance, App 22B

Expert Panel Workshop's report on psychological responses to hazardous substances, **App 7C**

Generation of hazardous wastes

Activity giving rise to toxic tort liability exposure, **3:24**

Personal jurisdiction, 18:8

Medical causation and medical surveillance expert, App 22B

Minimizing liability exposure for, 3:27

Personal jurisdiction for liability claims, 18:8

Psychological responses to hazardous substances, Expert Panel Workshop's report on, **App 7C**

Sales of hazardous wastes, liability, 3:26

Storage activity liability, 3:25, App 3I

Treatment activity liability, 3:25, App 3I

HAZARDOUS WASTES OR SUBSTANCES —Cont'd

Ultrahazardous and abnormally dangerous activities, strict liability, **4:9**, **4:10**

Underground storage tanks, lender liability, **App**

HEARINGS

Class actions, medical monitoring class action fairness hearing, **App 20H**

HENLE KOCH POSTULATES

Epidemiological evidence analysis, 28:26

HOECHST CELANESE CORP. v. NATIONAL UNION FIRE INSURANCE CO.

Jury instructions in, App 310

HYDRAULIC FRACTURING

Minimizing liability exposure for, 3:22

HYDROGEOLOGICAL EXPERT

Deposition outline, App 23C

HYPOTHESIS, NULL

Epidemiological statistics, 28:21

IDENTIFICATION OF PRODUCT

Defense issue, 11:3, 11:4

IDIOSYNCRATIC DEFENSE

Duty to warn and right-to-know, 5:4

IMMUNE SYSTEM

See **Endocrine Disruption Claims** (this index)

IMPLANTS

Breast. See **Breast Implants** (this index)

IMPLIED FEDERAL PREEMPTION

Generally, **11:10**

INADEQUATE WARNING

Adequacy of warning, **5:10**

Distinguished from other product defects, 5:21

IN CAMERA REVIEW

Privilege disputes, 24:4

INCREASED RISK OF FUTURE INJURY

Generally, 7:14

Emotional distress damages, **7:8** Splitting causes of action, **7:15**

INDEMNITY

Availability to joint tortfeasors, 18:19

Contractual indemnity

Generally, 18:20

In lieu of settlement, 18:23

Mary Carter agreements, 18:25

Medicare liens, satisfaction requirements, 18:26

Distinguished from contribution, 18:3

INDEMNITY—Cont'd

Indemnity agreement, App 18A

In lieu of settlement, codefendant indemnification agreements, 18:23

Joint and several liability

Generally, 18:1

Availability to joint tortfeasors, 18:19

Release, effect of. 18:21

Mary Carter agreements, 18:25

Medicare liens, satisfaction requirements, 18:26

Rationale for, 18:2

Releases, effect of, 18:21, 18:22

INDEPENDENT THIRD PARTY

Criminal liability, selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, **App 32Q**

INDICTMENTS

Criminal liability, W.R. Grace indictment, App 32N

INDOOR AIR QUALITY

Activity giving rise to toxic tort liability exposure, **App 3F**

INDUSTRIAL MATERIALS

Product sales activity giving rise to toxic tort liability exposure, **3:6**

INJUNCTIVE RELIEF

Consolidation of claims, Rule 23(b)(2) injunction classes, **20:12**

Insurance coverage, property damage, 31:54 RICO claims, uncertain injunctive relief, 6:34

INNOCENT LANDOWNER

Interim guidance regarding criteria landowners must meet, CERCLA liability, App 3M

INNOCENT MISREPRESENTATION

Duty to warn, 5:5

INSPECTION OF DOCUMENTS

Generally, 22:6, 22:7

Electronic materials. See **Electronic Materials** (this index)

INSURANCE COVERAGE

Generally, 31:1, 31:2

Accidents, coverage for

Generally, 31:27

Conduct of insured, 31:29

Distinguishing mass accidents from toxic torts, 2:2, 2:3

Long-term exposure problem, 31:28

Affirmative claims, insurer obligation to pay, 31:26

Asbestos insurance coverage cases

California Court of Appeals decision in, **App**31M

INSURANCE COVERAGE—Cont'd

Asbestos insurance coverage cases—Cont'd Supreme Court decision in, **App 31C**

Bankruptcy, 31:75

Bodily injury

Generally, 31:56

Exposure, **31:58**

Injury in fact, 31:61

Manifestation, 31:59

Procedure for determining triggers, 31:62

Triggers for coverage, generally, **31:57 to 31:62**

Triple trigger, 31:60

Burden of proof

Insurance industry statements, 31:45

Lost policies, amount of secondary evidence needed to sustain burden, 31:15

Cancer policy, generis, 29:4

CGL policy, judicial attitudes toward

Generally, 31:5, 31:7

Named insured, 31:8

Standard CGL language, 31:11

Summary judgment, 31:6

Time period for coverage, 31:9

Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co.

Interrogatories provided to jury in, App 31J

Jury charges used in, App 31I

Choice of law, generally, 31:76

Choosing the forum, 31:38

Comprehensive general liability policy. CGL policy, above

Coronavirus claims, 31:3

COVID-19 claims, 31:3

Defense agreement, 31:97, App 31E

Demand letters, duty to defend, 31:24

Deposition notices, Rule 30(b)(6) forms

Carriers, coverage questions for, App 31L

Insureds, coverage questions for, App 31K

Determining whether to maintain an environmental coverage action

Generally, 31:77

Choosing the forum, 31:38

Confidentiality issues, 31:88

Data assembly process, 31:80

Data organization, 31:85

Expert witness identification, 31:87

Goals of litigation, determining, 31:79

Key witnesses, 31:86

Obtaining necessary data, 31:83, 31:84

Personnel and budgeting issues, 31:83

Policies, 31:81

Risks involved, 31:78

Sites, 31:82

INSURANCE COVERAGE—Cont'd	INSURANCE COVERAGE—Cont'd
Directors and officers liability policies, generally, 31:71	Interrogatories provided to jury in Chemical Leaman Tank Lines, Inc. v. Aetna Casualty &
Distinguishing mass accidents from toxic torts, 2:2, 2:3	Surety Co., App 31J Investigation costs as defense expenses, 31:23
Duty to defend	Jury charges used in Chemical Leaman Tank
Generally, 31:18	Lines, Inc. v. Aetna Casualty & Surety Co.,
Affirmative claims, insurer obligation to pay,	App 31I
31:26	Jury instructions in Hoechst Celanese Corp. v.
Allegations in complaint, comparison test, 31:20	National Union Fire Insurance Co., App 310
Comparison test, generally, 31:19, 31:20	Jury interrogatories in Chemical Leaman Tank
Demand letters, governmental, 31:24	Lines, Inc. v. Aetna Casualty & Surety Co.,
Environmental investigation costs as defense	App 31J
expenses, 31:23	Known loss doctrine
Extrinsic evidence, 31:21	Generally, 31:33
Medical monitoring claims, 31:25	Application of doctrine, 31:36
Policy limits, 31:10, 31:22	Known risk doctrine, 31:35
Environmental impairment policies, generally,	Loss in progress, doctrine, 31:34
31:70	Known risk doctrine, 31:35 Limitations
Exclusions	
Business risk/product withdrawal exclusion, 31:49	CGL policy limitation on duty to indemnify and defend, 31:10
Care, custody, or control ("Owned property")	Duty to indemnify and defend, 31:10, 31:22
exclusion, 31:47	Policy limits, 31:10 , 31:22 Stacking of coverage limits, 31:67
Completed operations/product hazard exclu-	Litigation issues
sion, 31:48	Bankruptcy impact, 31:75
Pollution exclusion, below	Direct actions, 31:74
Expert witness identification, 31:87	Discovery, 31:73
Extent of coverage triggers	Forum non conveniens, 31:72
Generally, 31:64	Lost policies
Number of occurrences, 31:65	Generally, 31:12
Proration/allocation of coverage (other insurance clauses), 31:66	Amount of secondary evidence needed to sustain burden, 31:15
Self-insured periods, liability for, 31:68	Best evidence, 31:12
Stacking of limits, 31:67	Permissible secondary evidence, 31:14
Extrinsic evidence, 31:21	Sources of secondary evidence, 31:16
Forum non conveniens	Standard of proof, 31:13
Generally, 31:72	Managing an environmental coverage action
Choosing the forum, 31:38	Case management orders
General comprehensive liability (GCL) policy	Generally, 31:90
Generally, 31:5	Carrier discovery, 31:92
Summary judgment, 31:6	Exemplar sites, 31:91
Hoechst Celanese Corp. v. National Union Fire	Settlement issues, 31:93
Insurance Co. (jury instructions in), App	Medical monitoring claims, duty to defend, 31:25
310	Nonwaiver agreement, App 31F
Impairment policies, generally, 31:70	Notice
Insurance industry statements	Generally, 31:17
Generally, 31:41	Claim notice letter, App 31N
Absolute pollution exclusion, 31:46	Deposition notices, above
Briefs, 31:44	Occurrences, coverage for
Burden of proof, 31:45	Generally, 31:30
Newspaper reports, 31:42	Expected or intended from insured's
Representations to governmental authorities,	standpoint, 31:31
insurer's, 31:43	Meaning of occurrence, 31:32

INSURANCE COVERAGE—Cont'd INSURANCE INDUSTRY STATEMENTS —Cont'd Personal injury, generally, 31:50 Burden of proof, 31:45 Policy limits, 31:10, 31:22 Pollution exclusion Newspaper reports, 31:42 Representations to governmental authorities, Generally, 31:37 insurer's, 31:43 Absolute exclusion, 31:46 Judicial attitudes. 31:38 INTEGRITY Judicial interpretations Corporate integrity agreement, App 32R Cases finding coverage, 31:39 INTENT Cases finding no coverage, 31:40 Mens rea, criminal liability requirement, 32:17 Property damage Generally, 31:51 INTERIM GENOMICS POLICY Cleanup expenses of government, 31:52 Evidence, App 29P Injunctions, 31:54 INTERIOR DEPARTMENT Toxic tort/environmental damage, 31:55 See **Department of Interior** (this index) Triggers for coverage, 31:63 Voluntary cleanup efforts, 31:53 INTERMEDIARIES, DUTY TO WARN Punitive damages, insurability, 9:16 Generally, 5:12 Release agreement, App 31G Bulk product suppliers, **5:16** Self-insured periods, liability for, 31:68 Learned intermediary doctrine, 5:13 to 5:15 Settlement issues INTERNAL CORPORATE INVESTIGATIONS Generally, 31:93, 31:94 Privilege, **24:10** Agreement, insurance settlement and release, App 31G **INTERROGATORIES** Sites or location Discovery method, 22:5 Case management orders, exemplar sites, Juror interrogatories used in Chemical Leaman 31:91 Tank Lines, Inc. v. Aetna Casualty & Surety Consideration in maintaining an environmental Co., **App 31J** coverage action INTERVENTION BY COURT Sites, 31:82 Special problems of toxic tort coverage claims, See **Judicial Intervention** (this index) 31:2 **INVESTIGATIONS** Standard of policy interpretation, generally, Attorney work product, 24:8 31:69 Duty to defend, investigation costs as defense Standstill agreement, 31:97, App 31D expenses, 31:23 Summary judgment, judicial attitudes toward Internal corporate investigations, privilege, 24:10 CGL policy, 31:6 Texas Eastern Transmission Corp. v. Fidelity & **INVESTMENTS** Casualty Co. of New York, App 31B Racketeering derived income, 6:14 Township of Jackson v. American Home Assur-INVOLUNTARILY ACTS ance Co. (multiple occurrences), App 31H Acquiring property, policy on CERCLA enforce-Trial issues ment against lenders and government enti-Generally, 31:95 ties, App 3H Opening statements, 31:96 Standstill and defense agreements, 31:97 JOINT AND SEVERAL LIABILITY Triggers for coverage Contribution doctrine Bodily injury, 31:57 to 31:62 Generally, 18:1 Availability to joint tortfeasors, 18:5, 18:21 Extent of coverage triggers, above Releases, effect of, 18:21, 18:22 Property damage, 31:63 Indemnity Westinghouse Corp. v. Aetna Casualty & Surety Company, App 31A Generally, 18:1

INSURANCE INDUSTRY STATEMENTS

Generally, 31:41

Absolute pollution exclusion, 31:46

Briefs, 31:44

Release, effect of, 18:21

Availability to joint tortfeasors, 18:19

JUDGES

Expert tutorials, judicial use, 23:9

JUDGMENT

Prior judgment, collateral estoppel, **17:8**Summary judgment. See **Summary Judgment**(this index)

JUDICIAL CHAMBERS

Procedure for resolving privilege and waiver questions, in camera review, **24:4**

JUDICIAL DISCRETION

Discovery sanctions, 26:6

JUDICIAL INTERVENTION

Discovery of confidential information, 25:5 Recalcitrants, dealing with, 19:8

JUDICIAL NOTICE

Proof of toxic tort claims, judicial notice of statutes and regulations, **29:12**

JUDICIAL REVIEW

Plea bargains, criminal liability, 32:26

JUDICIAL USE OF EPIDEMIOLOGICAL EVIDENCE

Generally, 28:31

Recent trends, 28:35

Swine flu cases, 28:34

Tobacco cases, 28:32

Workplace and product exposure, 28:33

JURISDICTION

Defense issues, primary jurisdiction, 11:11

Diversity of citizenship, removal of state case to federal court, **10:2**

Forum non conveniens. See Forum non Conveniens (this index)

Multiparty, Multiforum Trial Jurisdiction Act of 2002, 8:3

Personal jurisdiction. See **Personal Jurisdiction** (this index)

JURY TRIAL

Charges to jury in Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co., **App** 31I

Detailed juror questionnaire, App 15B

Entitlement. Right to jury trial, below

Focused juror questionnaire, App 15C

Interrogatories to jurors in Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co., App 31J

New Jersey bench manual on jury selection, **App** 15E

Questionnaires

Detailed questionnaire, prospective jurors, App 15B

Focused juror questionnaire, App 15C

JURY TRIAL—Cont'd

Right to jury trial

Generally, 15:1

Complexity exception, 15:4

Due process exception, **15:5**

Other jury issues, **15:7**

Personal injury actions, 15:3 to 15:5

Seventh amendment, 15:3

Superfund actions, 15:2

Toxic tort actions, 15:6

Voir dire of jurors, 15:8

Superfund actions, right to jury, 15:2

Toxic tort actions

Generally, 15:6

Outline for juror voir dire, App 15A

Voir dire of jurors

Generally, 15:8

Outline, App 15A

JUSTICE DEPARTMENT

See **Department of Justice** (this index)

KNOWN LOSS DOCTRINE

See **Insurance Coverage** (this index)

KNOWN RISK DOCTRINE

Insurance coverage, 31:35

LABELS AND LABELING

Activity giving rise to toxic tort liability exposure, **App 3**J

LANDOWNER LIABILITY

See **Real Property Ownership** (this index)

LAW ENFORCEMENT PERSONNEL

Environmental Crimes Handbook—A Guide for Law Enforcement Personnel, App 32P

LEAD

Activity giving rise to liability exposure, lead poisoning claims, **3:10**

Class action complaint regarding lead paint exposure injuries, **App 10A**

Toxicological profiles of the Agency for Toxic Substances and Disease Registry (ATSDR), proving lead toxic tort claim, **App 29A**

LEARNED INTERMEDIARY DOCTRINE

Generally, **5:13 to 5:15**

LENDER LIABILITY

See Financial Institutions (this index)

LIABILITY EXPOSURE

Generally. See **Activity Giving Rise to Toxic Tort Liability Exposure** (this index)

LIABILITY THEORIES

Aider and abettor liability, **6:2** Alternative liability, **6:4**

LIABILITY THEORIES—Cont'd

Assault and battery, 4:11

Concert of action liability, 6:2

Contribution of risk, 6:3

Duty to warn. See **Duty to Warn and Right-toknow** (this index)

Enterprise liability. **RICO Claims** (this index)

Fraud. See **Fraud or Deceit** (this index)

Joint liability. See **Joint and Several Liability** (this index)

Market share liability, 6:1

Multiple chemical sensitivity, 7:28

Negligence. See **Negligence** (this index)

Nuisance, 4:5, 4:6, 32:3

RICO claims. See **RICO Claims** (this index)

Several liability. See **Joint and Several Liability** (this index)

Special toxic tort considerations, 6:6

Statutory claims. See **Statutory Claims** (this index)

Strict liability. See **Strict Liability** (this index)

Successor liability, 4:12

Trespass, 4:1, 4:2

Vicarious liability, punitive damages, 9:11

LIMITATION OF LIABILITY

Interim guidance regarding criteria landowners must meet, innocent landowner limitations, App 3M

LIMITATIONS

Action or suit. See **Statutes of Limitation** (this index)

Class action limited fund, 10:11

Contribution doctrine, common law, 18:4

Damages

Class action limited fund, 10:11

RICO claims, business or property damages, **6:33**

Insurance coverage

CGL policy limitation on duty to indemnify and defend, 31:10

Policy limits, 31:22

Stacking of coverage limits, 31:67

LISTS

Acronyms and abbreviations list, toxic tort claims, **App 29D**

LITIGATION FUNDING

Tort complaints, 10:4

LOCATION

See **Site or Location** (this index)

LONE PINE

Decision, App 22A Orders, 22:26

LOSS CONTINGENCIES

Staff accounting bulletin, App 3G

LOST DOCUMENTS

Insurance policy lost, burden of proof to sustain coverage, 31:15

MAGNETIC FIELDS

See Electric and Magnetic Fields (EMF) (this index)

MAIL FRAUD

Criminal liability, generally, **32:15** RICO claim, **6:19**

MANIFESTATION RULE

Statutes of limitation, 12:3

MANUAL FOR ASBESTOS CASES MANAGEMENT

Generally, App 20K

MANUAL FOR CIVIL LITIGATION

Generally, App 20G

MANUAL ON ENVIRONMENTAL CRIMES, U.S. ATTORNEY'S

Bluesheet Revision to, App 32G

Justice Department's Directive Amending, **App** 32D

MARKETING LIABILITIES

Green Guides for use of environmental marketing claims, App 3D

MARKET SHARE LIABILITY

Generally, 6:1

MARY CARTER AGREEMENTS

Generally, 18:25

MASS ACCIDENTS

Distinguished from toxic tort, 2:2, 2:3

MASS TORT COURT

New Jersey's rejection of, App 20F

MASS TORTS

Case management order, App 20B Table of contents, App 20A

MASTERS

Use of special masters, 22:25

MEDIA

Trial, how to work with media, App 16B

MEDICAID COSTS REIMBURSEMENT

Complaint regarding tobacco-related injuries, App 8C

State toxic tort statutes, 8:13

MEDICAL AUTHORIZATIONS

Generally, **22:24**, **App 22H**

MEDICAL CAUSATION AND MEDICAL SURVEILLANCE EXPERT

Generally, App 22B

MEDICAL CAUSATION EXPERT

Generally, App 23A

MEDICAL CLAIM

Generally, 22:19

MEDICAL MONITORING

Class actions, 20:12, App 20H, App 20J Duty to defend, 31:25

Fairness hearing, App 20H

Rule 23(b)(2) injunction classes, 20:12

MEDICAL QUESTIONNAIRES

Generally, 22:16

Background information, 22:18

Damage claims, 22:23

Employment history, 22:21

Exposure history, 22:22

Format, generally, 22:17 to 22:24

Instructions, 22:17

Medical authorizations, 22:24, App 22H

Medical claim, 22:19

Treatment history, 22:20

MEDICAL SURVEILLANCE DAMAGES

Generally, 7:10

CERCLA, recovery under, 7:12

Defense issues, 7:11

MEDICAL TREATMENT HISTORY

Generally, 22:20

MEDICAL WASTE

Environmental Crimes Handbook—A Guide for Law Enforcement Personnel, **App 32P**

MEDICARE

Indemnity, satisfaction of Medicare liens, 18:26

MENS REA

Criminal liability requirement, 32:17

META-ANALYSIS

Epidemiological studies, 28:22

MINIMIZING LIABILITY EXPOSURE

Financial institutions, 3:35

Hazardous wastes, 3:27

Hydraulic fracturing, 3:22

Offshore drilling activities, 3:21

Product sales, 3:19

Real property ownership, 3:32

Transportation services, 3:29

MISCONDUCT

Attorney misconduct complaints under RICO, App 26B

MISREPRESENTATION

See **Fraud or Deceit** (this index)

MITIGATION OF DAMAGES

Emotional distress, 7:6

MODERNIZATION OF COSMETICS REGULATION ACT

2022, **3:20**

MOLD CLAIMS

Product sales activity giving rise to liability exposure, **3:11**

MONITORS

Criminal liability, selection and use of monitors in deferred prosecution and non-prosecution agreements with corporations, **App 32Q**

MULTICOUNTY LITIGATION

New Jersey MultiCounty Litigation Resource Book, App 20I

MULTIDISTRICT LITIGATION

Appeal, trial consolidation, 21:4

Guide for multidistrict litigation, App 21A

Judicial Panel on Multidistrict Litigation, 21:1

Practice and procedure, 21:3

Product liability litigation guide, App 21B

Standards for consolidation, 21:2

Trial consolidation, 21:4

MULTIPARTY, MULTIFORUM TRIAL JURISDICTION ACT OF 2002

Generally, 8:3

MULTIPLE CHEMICAL SENSITIVITY

Damage theory, 7:28

MULTIPLE OCCURRENCES

Insurance coverage, Township of Jackson v. American Home Assurance Co., **App 31H**

MULTIPLICATION OF PROCEEDINGS, 22 USC 1927

Attorney sanctions, 26:3

MULTI-TIERED CONFIDENTIALITY

Discovery order, App 25D

MURDER

RICO claims, 6:21

NANOTECHNOLOGY BASED PRODUCTS

Activity giving rise to toxic tort liability exposure, **3:7**

NATIONAL SCIENCE PANEL'S BREAST IMPLANT REPORT

Generally, App 30A

NATIONAL UNION FIRE INSURANCE CO., HOECHST CELANESE CORP. v.

See Hoechst Celanese Corp. v. National Union Fire Insurance Co. (this index)

NATURAL RESOURCE DAMAGE ASSESSMENTS

Department of Interior's rule on, App 8B

NATURE OF CLAIM

Cancer promotion claims, 7:17

Emotional distress, 7:3

Endocrine disruption claims, 7:32

Personal jurisdiction, 18:4

Publicity, nature of litigation information to be disclosed, **16:9**

Recalcitrants, dealing with, 19:4

NEGLIGENCE

Generally, 4:3, 4:4

Basis for imposing duty to warn, 5:6

Comparative negligence defense, 11:1

Consumer fraud/diminished value claims, 6:38

Diminished value claims, 6:38

Duty to warn and right-to-know

Basis for imposing duty, 5:6

Strict liability and negligence, applying both, 5:27

Subsequent remedial measures, 5:25, 5:27

Elements, 4:3

Marketing claims, 6:37

Strict liability and negligence, applying both, 5:27

Subsequent remedial measures, 5:25, 5:27

NEW JERSEY

Asbestos case management manual, App 20K Jury trial, New Jersey bench manual on jury selection, App 15E

Mass tort court, New Jersey's rejection of, App 20F

MultiCounty Litigation Resource Book, App 20I

NEWS MEDIA

See **Publicity about Litigation** (this index)

NEW YORK

Adoption of New York Privilege Log Rule, **App**24A

NEXUS

RICO claims, nexus between enterprise and pattern of racketeering activity, **6:11**

NOTICE

Claim notice letter, App 31N

Deposition notices

Carriers, coverage questions for, **App 31L** Insureds, coverage questions for, **App 31K** Plaintiffs' discovery responses, **App 22E**

NOTICE—Cont'd

Deposition notices—Cont'd

Rule 30(b)(6), **App 31K**, **App 31L**

Insurance coverage

Generally, **31:17**

Claim notice letter, App 31N

Deposition notices under Rule 30(b)(6), **App**

31K, App 31L

Judicial notice of statutes and regulations, **29:12** Plaintiffs' discovery responses, deposition notice, **App 22E**

Project initiation, App 3J

NUISANCE LIABILITY

Application, **4:6**

Criminal liability, 32:3

Elements, 4:5

NULL HYPOTHESIS

Epidemiological statistics, 28:21

NUMEROSITY

Class action, 20:4

OBSERVATIONAL STUDIES

Epidemiological evidence, 28:2

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

Generally, 8:8

Criminal liability, 32:13

Expert witness's ethics, App 30B

OFFSHORE DRILLING

Minimizing liability exposure for, 3:21

OPENING STATEMENTS

Generally, 31:96

OPIATES

Litigation confidentiality order, App 25E

OPINIONS

Expert witnesses, opinions "upon the subject," 30:7

ORDERS

Case management orders

Generally, 31:90

Carrier discovery, 31:92

Exemplar sites, 31:91

Silicone gel breast implant litigation, App 20C

Discovery confidentiality. See **Confidentiality** (this index)

Lone pine order, 22:26

PCBS

See Polychlorinated Biphenyl Congeners (PBCs) (this index)

PENALTIES

Discovery noncompliance, 22:12

PER CAPITA ALLOCATION

Contribution doctrine, 18:17

PERSONAL INJURY

Emotional distress requirement, 7:4

Insurance coverage

Generally, 31:56

Exposure, 31:58

Injury in fact, 31:61

Manifestation, 31:59

Procedure for determining triggers, 31:62

Triggers for coverage, generally, 31:57 to 31:62

Triple trigger, 31:60

Right to jury

Complexity exception, 15:4

Due process exception, 15:5

Seventh amendment, 15:3

PERSONAL JURISDICTION

Generally, 18:1

Disposal of hazardous waste, 18:8

Due process standard, 18:3

Foreign party

Conduct, sufficiency of, 18:6

Forum non conveniens, 18:11

Forum non conveniens

Generally, 18:10

Choosing the forum, 31:38

Foreign parties, 18:11

Insurance coverage disputes, 31:38, 31:72

General jurisdiction, 18:5

Generation of hazardous waste, 18:8

Hazardous waste, 18:8

Method of analysis, 18:2

Nature of claims, 18:4

New liability theories, 18:9

Product suppliers, 18:7

Special jurisdiction, 18:5

PESTICIDES

Product sales activity giving rise to toxic tort liability exposure, **3:5**

PHARMACEUTICS

Activity giving rise to toxic tort liability exposure, **3:3**

PLACE OR LOCATION

See Site or Location (this index)

PLEA BARGAINS

Judicial review, criminal liability, 32:26

PLEADINGS

Complaint. See Complaint (this index)

RICO claims. See **RICO Claims** (this index)

POLYCHLORINATED BIPHENYL CONGENERS (PBCS)

EPA workshop report, App 29G

POST-TRAUMATIC STRESS DISORDER

Generally, 7:7

POWER-LINE FREQUENCY

See **Electric and Magnetic Fields (EMF)** (this index)

PREEMPTION

See **Federal Preemption** (this index)

PRESUMPTION

Duty to warn and right-to-know laws, 5:23

PRETRIAL PREPARATION

See **Trial** (this index)

PRIOR JUDGMENT

Full and fair opportunity to litigate, 17:8

PRIVILEGE

Generally, 24:1

Attorney-client privilege

Crime fraud exception, 24:2

Scope of, **24:5**

Waiver, 24:11

Crime fraud exception, 24:2

In camera review, 24:4

Insurance coverage, 24:9

Internal corporate investigations, 24:10

Limitations on waiver of attorney-client privilege, proposed revision of Rule 502, **24:11**

Procedure for resolving privilege and waiver questions

In camera review, 24:4

Rule 26(b)(5), **24:3**

Trial, confidentiality and privilege issues, 16:11

Waiver of attorney-client privilege, 24:11

PRIVILEGE LOG

New York Privilege Log Rule, adoption, **App** 24A

PRODUCT IDENTIFICATION

Defense issue, 11:3

PRODUCT SALES ACTIVITY GIVING RISE TO LIABILITY EXPOSURE

Generally, 3:2

Bystander claims, 3:13

Chemicals, 3:4

Component parts, 3:12

Consumer products

Generally, 3:9

Labeling initiative, App 3J

Lead poisoning claims, 3:10

Notice of project initiation, App 3J

PRODUCT SALES ACTIVITY GIVING RISE TO LIABILITY EXPOSURE—Cont'd

EMF radiation claims, **3:18** Hazardous wastes, **3:26**

Industrial materials, 3:6

Industry-wide litigation, anticipatory subrogation, 3:14

Labeling initiative, App 3J

Lead poisoning claims, 3:10

Litigation guide for product liability, App 21B

Minimizing liability exposure for, 3:19

Mold claims, 3:11

Notice of project initiation, App 3J

Pesticides, 3:5

Pharmaceutical products, 3:3

Project initiation notice, consumer products, App

3J

Supertorts, 3:15

Toll processing, **3:8**

PRODUCT SPECIFICATION

Defense issue, 11:4

PROFESSIONAL SERVICES LIABILITY

Generally, 3:36

Accountants, 3:38, App 3G

Architects, 3:37

Engineers, 3:37

Real estate brokers, 3:39

PROJECT INITIATION NOTICE

Form, App 3J

PROMOTERS

Damages, generally, 7:29

PROMOTION OF CANCER CLAIMS

See Cancer Promotion Claims (this index)

PROOF OF TOXIC INJURY

See **Evidence** (this index)

PROOF OF TOXIC TORT CLAIMS

See **Evidence** (this index)

PROPERTY DAMAGES

RICO claims, 6:33

PRORATION

See Allocation or Proration (this index)

PROSECUTION

See Criminal Liability (this index)

PROSPECTIVE STUDIES

Epidemiological evidence, 28:4 to 28:9

PSYCHOLOGICAL EXPERT

Deposition outline, App 23B

PSYCHOLOGICAL RESPONSES

Expert Panel Workshop's report on psychological responses to hazardous substances, **App 7C**

PUBLICITY ABOUT LITIGATION

Generally, 16:6

Communicating with the public, 16:8

Insurance industry statements, newspaper reports, 31:42

Nature of information to be disclosed, 16:9

Risks involved in toxic tort litigation, public

perception, 16:7

Useful public communication techniques, 16:10

PUBLIC RELATIONS

See **Publicity about Litigation** (this index)

PUNITIVE DAMAGES

Generally, 9:1

Academic and judicial criticism of, 9:7

Bifurcation, 9:14

Burden of proof, 9:12

Contribution for punitive damages, 18:24

Deterrence of defendant, 9:4

Deterrence of third parties, 9:5

Imposition of punitive damages

Standard of liability, 9:10

Vicarious and other new liability theories, 9:11

Insurability, 9:16

Judicial acceptance of, 9:8

Judicial control of awards

Bifurcation, 9:14

Miscellaneous techniques, 9:13

Relationship rules, 9:15

Judicial criticism of, 9:7

Other new liability theories, **9:11**

Punishment of wrongdoer, 9:3

Rationale

Generally, 9:2

Deterrence of defendant, **9:4**

Deterrence of third parties, 9:5

Other rationales, 9:6

Punishment of wrongdoer, 9:3

Relationship rules, 9:15

Standard of liability, 9:10

Vicarious and other new liability theories, 9:11

P VALUES

Epidemiological evidence, statistics, 28:20

QUALIFICATIONS OF EXPERTS

Generally, 30:4

Challenging, 7:21

QUALITY OF LIFE

Damage theory, 7:13

QUESTIONNAIRES

Generally, 22:16

QUESTIONNAIRES—Cont'd

Background information, 22:18

Breast implant questionnaire, App 15D

Cooperative efforts among parties, pre-interview questionnaire, 19:15, App 19B

Damage claims, 22:23

Employment history, 22:21

Expert witnesses, conflict and screening questionnaire, App 30C

Exposure history, 22:22

Format, generally, 22:17 to 22:24

Instructions, 22:17

Jurors. See **Jury Trial** (this index)

Medical authorizations, 22:24, App 22H

Medical claim, 22:19

Medical treatment history, 22:20

Particular facts, proving through use of aggregate evidence, 28:15

RACKETEERING

See **RICO Claims** (this index)

RADIATION

Electric and magnetic fields (EMF), 3:18

RCRA

See Resource Conservation Recovery Act (RCRA) (this index)

REACTIVE AIRWAYS DISEASE SYNDROME

Generally, 7:36

REAL ESTATE BROKERS

Activity giving rise to toxic tort liability exposure, **3:39**

REAL PROPERTY

Brokers' activity, liability exposure, **3:39**Ownership liability. See **Real Property Ownership** (this index)

REAL PROPERTY OWNERSHIP

Generally, 3:30

Guidance on landowner liability under CERCLA Section 107(a)(1), App 3A

Lenders and government entities that acquire property involuntarily, policy on CERCLA enforcement against, **App 3H**

Minimizing liability exposure for landowners, 3:32

Sick building claims, 3:31

RECALCITRANTS

Judicial intervention, 19:8

RECKLESS ENDANGERMENT

Criminal liability statutes, 32:4

RECOMMENDATIONS

Monitors, selection and use in deferred prosecution and non-prosecution agreements with

RECOMMENDATIONS—Cont'd

corporations, App 32Q

REFERENCE GUIDES

Criminal liability enforcement, App 32F

Epidemiology, App 28A

Manual on Environmental Crimes, App 32D,

App 32G

Mass torts, App 20A, App 20B

Statistics, App 28B

Toxicity risk assessment, App 29K

REFRACTORIES

Cooperative efforts among parties, trust distribution procedures, App 19V

REFUSE ACT OF 1899

Criminal liability, 32:7

REGISTRY, TOXIC SUBSTANCES AND DISEASE

See Agency for Toxic Substances and Disease Registry (ATSDR) (this index)

REGULATION S-K

Securities disclosure obligations, 3:44, 3:45

REIMBURSEMENT

CERCLA response actions, EPA rule on costs recovery, **App 8A**

Medicaid reimbursement

Complaint on tobacco-related injuries, **App 8C** State toxic tort law, **8:13**

RELEASES

Contribution or indemnity claims, **18:21**, **18:22**Employment and background information, authorization for release of, **22:21**, **App 22I**

Insurance settlement and release agreement, **App**

Medical information, authorization for release of, 22:24, App 22H

Plaintiff's claims against joint tortfeasors, 18:21

REMEDIAL MEASURES

Injunctions. See **Injunctive Relief** (this index)
Subsequent measures. See **Subsequent Remedial Measures** (this index)

REMOTENESS

Defense issue, 11:12

REMOVAL

Complaints

State case removed to federal court, diversity of citizenship, **10:2**

State class actions, 10:3

Diversity of citizenship, removal of state case to federal court, 10:2

State class actions, 10:3, 20:17

\mathbf{p}	F	D	n	\mathbf{p}^{r}	rc

Breast implant report, National Science Panel's, App 30A

Consolidation of claims, Report of New Jersey Mass Tort Advisory Committee, **App 20E**

Dioxin reassessment

Documents review by peers report, **App 29N** Report of EPA, **App 29M**

Disclosure, GAO report on environmental, **App** 3L

Discovery

FRCP Form 52, Report of parties' planning meeting, **App 22C**

Report (outline) from medical causation and medical surveillance expert, based on exposure to hazardous substances, **App** 22B

Endocrine disruption claims reports

An effects assessment and analysis, **App 7A** Screening program, **App 7B**

EPA reports

Endocrine disruption claims, **App 7A**, **App 7B**Polychlorinated biphenyl congeners (PBCs), **App 29G**

Secondary tobacco smoke, App 3E

Epidemiological evidence, reporting bias, **28:14**Expert Panel Workshop's report on psychological responses to hazardous substances, **App 7C**

Insurance industry statements on coverage, newspaper reports, **31:42**

Loss contingencies, staff accounting bulletin, App 3G

Monitors, selection and use in deferred prosecution and non-prosecution agreements with corporations, App 32Q

New Jersey Mass Tort Advisory Committee, report on consolidation of claims, **App 20E**

Polychlorinated biphenyl congeners (PBCs), EPA workshop report, **App 29G**

Secondary tobacco smoke, EPA report, App 3E

REPOSE, STATUTES OF

Generally, **12:12**

RES JUDICATA

Distinguished from collateral estoppel, 17:2

RESOURCE CONSERVATION RECOVERY ACT (RCRA)

Criminal liability, 32:9

RESOURCE (NATURAL) DAMAGE ASSESSMENTS

Department of Interior's rule on, App 8B

RETROSPECTIVE STUDIES

Epidemiological evidence, 28:7, 28:9

RICO CLAIMS

Generally, 6:7

Acquiring interest in enterprise through racketeering activity, **6:15**

Advantages for using RICO in environmental and toxic tort litigation

Generally, 6:29

Attorney's fee and costs, 6:31

Avoidance of tort theory, 6:32

Treble damages, 6:30

Arson, **6:20**

Attorney misconduct complaint, App 26B

Attorney's fee and costs, 6:31

Business or property damages, limited damages, **6:33**

Concurrent jurisdiction, 6:28

Conducting affairs of enterprise through pattern of racketeering activity, **6:16**

Conspiring to violate subsections (a), (b) or (c), **6:17**

Control of enterprise through racketeering activity, **6:15**

Criminal liability, 32:16

Damages

Limited business or property damages, 6:33

Treble damages, 6:30

Disadvantages for using RICO in environmental and toxic tort litigation

Generally, 6:29

Judicial hostility, **6:35**

Limited damages, business or property damages, **6:33**

Rule 11, **6:36**

Uncertain injunctive relief, 6:34

Disclosure order, App 6A

Elements of cause of action

Generally, 6:8

Existence of enterprise, 6:10

Illegal activities under RICO, below

Injury, **6:12**

Nexus between enterprise and pattern of racketeering activity, **6:11**

Pattern of racketeering, 6:9, 6:11

Enterprise

Existence requirement, 6:10

Illegal activities, below

Liability, generally, 6:5

Nexus to pattern of racketeering activity, **6:11**

Existence of enterprise, requirement, **6:10**

Fraud, mail or wire, 6:19

Illegal activities under RICO

Generally, **6:13**

Acquiring interest in enterprise through racketeering activity, **6:15**

Conducting affairs of enterprise through pattern of racketeering activity, **6:16**

RICO CLAIMS—Cont'd RISK ASSESSMENT—Cont'd Illegal activities under RICO-Cont'd Cancer risk assessment, working paper for considering draft revisions to EPA's Conspiring to violate subsections (a), (b) or guidelines, App 29J (c), **6:17** Carcinogen risk assessment, App 29L Control of enterprise through racketeering activity, 6:15 Causation. See Causation (this index) Criminal liability, 32:16 Cleanup standards Investing in enterprise with racketeering Preliminary draft NJ Dept. Environmental derived income, 6:14 Protection, App 29F Injury requirement, 6:12 Superfund guidelines, risk assessment, App Investing in enterprise with racketeering derived income, 6:14 Conversion or equivalency factors, 29:3, App Jurisdiction, concurrent, 6:28 Mail fraud, 6:19 Cumulative risk/exposure assessments, 29:11 Murder, 6:21 Developmental toxicity guidelines, App 29H Nexus between enterprise and pattern of Dioxin reassessment racketeering activity, 6:11 Documents review by peers, report on, App Pattern of racketeering, 6:9, 6:11 29N Pleading environmental RICO action Report of EPA, App 29M Generally, 6:18 Epidemiological evidence. See Epidemiological **Evidence** (this index) Arson, 6:20 Equivalency factors for toxicity, 29:3, App 29C Fraud, mail or wire, 6:19 Exposure assessments Jurisdiction, 6:28 Generally, 29:10 Murder, 6:21 Cumulative risk/exposure assessments, 29:11 Other predicate acts, 6:22 Proposed guidelines for exposure-related Restrictions, 6:23 et seq. measurements, App 29B Standing, 6:24 Genetics. See **Genetics** (this index) Statutes of limitations, 6:23 Guidelines. See Guides or Guidelines (this Property damages, limited, 6:33 index) Restrictions on pleading environmental RICO Polychlorinated biphenyl congeners (PBCs), EPA action workshop report, App 29G Concurrent jurisdiction, 6:28 Superfund guidelines, App 29E Pleading, 6:26, 6:27 Toxicity equivalency factors, 29:3, App 29C Standing, 6:24 Toxicity reference guide, App 29K Rule 11 as disadvantage for using RICO, 6:36 Standing, 6:24 SAFE DRINKING WATER ACT (SDWA) Statutes of limitations, 6:23 Generally, 8:6 Treble damages, 6:30 SAFETY OF NANOMATERIALS IN Uncertain injunctive relief, 6:34 **COSMETIC PRODUCTS** Wire fraud, 6:19 Applications, FDA guidance, App 3T RICO DISCLOSURE ORDER SALES OF PRODUCTS Generally, App 6A See Product Sales Activity Giving Rise to Toxic RIGHT TO JURY TRIAL **Tort Liability Exposure** (this index) See Jury Trial (this index) **SANCTIONS** Alternative fines, criminal liability, 32:21 RISK ASSESSMENT Avoiding Rule 11 sanctions, 26:11 Generally, 29:2 Basis for Rule 11 sanctions, 26:4, 26:8 Agency for Toxic Substances and Disease Regis-Certification of documents try (ATSDR), toxicological profiles Rule 11, attorney certification, 26:4 Generally, 29:13 Rule 26(g), discovery certification, 26:2 Lead, App 29A Comparable state rules, 26:5 Minimum risk levels of ATSDR, App 290 Criminal liability Bioassays, 28:9, 29:8 Alternative fines, 32:21 Breast implant, National Science Panel's report, App 30A Debarment, 32:24

SANCTIONS—Cont'd	SECURITIES DISCLOSURE OBLIGATIONS
Criminal liability—Cont'd	—Cont'd
Double jeopardy, 32:23	Business description and legal proceedings,
Monitors, App 32Q	Regulation S-K, 3:44
Sentencing, below	Disclosure, generally, 3:43
Debarment, 32:24	Management, Regulation S-K, 3:45
Discovery (this index)	Material environmental liabilities
Double jeopardy, 32:23	Generally, 3:46
Inherent power of the court, 26:6	Past, present, and future liabilities, 3:47
Multiplication of proceedings, 22 USC 1927, 26:3	Regulation S-K, 3:44 , 3:45 Shareholder proposals, legal bulletin, App 3P
Penalties for discovery noncompliance, 22:12	SECURITY
RICO claims, Rule 11 as disadvantage for using RICO, 6:36	CERCLA's effects on lenders holding security interests in contaminated property, App 3K
Rule 11 sanctions	Discovery, order of confidentiality with security
Generally, 26:7	of data provision, App 25C
Avoiding imposition, 26:11	Lender liability. See Financial Institutions (this
Basis for imposition, 26:4, 26:8	index)
Procedural considerations under pre-1993 Rule	,
11, 26:9	SEIZURE
Special issues in toxic tort litigation, 26:10 Verified adversary complaint, 26:4 , App 26A	Computers, seizure for discovery purposes, 22:7 , App 22J
Rule 26(g), discovery certification, 26:2	SELECTION OF EXPERTS
Rule 37, discovery abuses, 26:1	Expert witnesses, pretrial research efforts, 19:16
Sentencing	Expert withesses, pictrial research efforts, 17.10
Advisory Panel Recommendations to US	SELF-INSURED
Sentencing Commission on	Liability, 31:68
Environmental Crimes, App 32E	CELE DOLLGING INCENTING
Federal sentencing guidelines, 32:22, App	SELF-POLICING INCENTIVES
32A, App 32E, App 32L	Criminal liability, App 32H
Guidelines, generally, 32:22	SENSITIVITY TO CHEMICALS
Sources for imposition of sanctions	Damage theory, 7:28
Comparable state rules, 26:5	Dumage theory, 7.20
Inherent power of the court, 26:6	SENTENCING
Multiplication of proceedings, 22 USC 1927, 26:3	Generally, 32:22
	Advisory Panel Recommendations to US
Rule 11, attorney certification, 26:4 Rule 26(g), discovery certification, 26:2	Sentencing Commission on Environmental
Rule 37, discovery abuses, 26:1	Crimes, App 32E
Verification of adversary complaint, 26:4 , App 26A	Federal sentencing guidelines, 32:22, App 32A, App 32E, App 32L
Verified adversary complaint, 26:4, App 26A	SETTLEMENTS
SCIENTIFIC EVIDENCE	Agreement of settlement
Causation determination, 27:6	Codefendant indemnification agreements in
Endocrine disruption claims, 7:34	lieu of settlement, 18:23
Epidemiological evidence. See Epidemiological	Discovery of confidential information, 25:7
Evidence (this index)	Insurance coverage disputes, insurance settlement and release agreement, App 31G
SCREENING QUESTIONNAIRE	Medical monitoring, class action, App 20J
Expert witnesses, App 30C	Tobacco litigation settlement agreement, below
SECONDARY TOBACCO SMOKE	CERCLA Section 122(g)(1)(B), de minimis
EPA report, App 3E	settlements under, App 3A
1 / 11	0 1 6 1 1

SECURITIES DISCLOSURE OBLIGATIONS

Generally, 3:41, 3:43

Background, 3:42

Codefendant indemnification agreements in lieu

of settlement, 18:23

Cooperative efforts among parties Generally, **19:7**, **19:21**

SETTLEMENTS—Cont'd

Cooperative efforts among parties—Cont'd Recalcitrants, dealing with by settlement option, 19:7

De minimis settlements under CERCLA Section 122(g)(1)(B), **App 3A**

Discovery of confidential information, settlement agreements, 25:7

Guidance on, App 3A

Insurance coverage disputes

Generally, 31:93, 31:94

Agreement, insurance settlement and release, App 31G

Medical monitoring, class action settlement agreement, App 20J

Medicare liens, requirements for satisfaction, 18:26

Prospective purchasers of contaminated property, App 3A

Supertort litigation, 3:16

Texas Two Step, 3:17

Tobacco litigation settlement agreement

Attorneys General, App 19L

Class action, App 19K

Statutory claims regarding tobacco-related injuries, diseases and illnesses caused by tobacco companies, **App 8D**

Vioxx settlement agreement, App 19R

SEVENTH AMENDMENT

Right to jury in personal injury actions, 15:3

SICK BUILDING CLAIMS

Real property ownership liability, 3:31

SILICONE GEL BREAST IMPLANT LITIGATION

Case management order, App 20C

SITE OR LOCATION

Case management orders, exemplar sites, **31:91** Consideration in maintaining an environmental coverage action, **31:82**

Exemplar sites, 31:91

Insurance coverage factors, 31:82, 31:91

Trial supplies and services, 16:3

Workplace exposure, epidemiological evidence, 28:33

SOLID WASTE

Environmental Crimes Handbook—A Guide for Law Enforcement Personnel, **App 32P**

SPECIAL MASTERS

Asbestos case management, duties, **App 20K** Use of, **22:25**

SPECIFICATION OF PRODUCT

Defense issue, 11:3, 11:4

SPOLIATION OF EVIDENCE

Generally, 22:27

STANDARDS

Activity giving rise to toxic tort liability exposure, standards and practices for all appropriate inquiries, **App 30**

Class actions, resolution of certification disputes, **20:10**

Cleanup standards

Preliminary draft NJ Dept. Environmental Protection, **App 29F**

Superfund guidelines, risk assessment, **App** 29E

Consolidation of claims, multidistrict, 21:2

Discovery of confidential information. judicial approval of confidentiality orders, **25:6**

Due process, personal jurisdiction standard, 18:3

Duty to warn, expert standard, 5:8

Insurance policy interpretation, generally, 31:69

Lost policies, standard of proof of insurance coverage, 31:13

Multidistrict litigation, standards for consolidation, 21:2

Personal jurisdiction, due process standard, 18:3

Punitive damages, imposition of, **9:10**

Right-to-know laws' impact, federal standard, 5:30

Summary judgment standard, 14:1

STANDING

Defense issue, 11:12

RICO claims, restrictions on pleading, **6:24** Causation, **6:25**

STANDSTILL AND DEFENSE AGREEMENTS (INSURANCE COVERAGE)

Generally, 31:97, App 31D

STATISTICS

Generally, 28:16

How statistical significance is measured, **28:18** Importance of statistical significance, **28:19**, **28:20**

Null hypothesis, 28:21

P values. 28:20

Reference guide, App 28B

What statistical significance is, **28:17**

STATUTES OF LIMITATION

Generally, 12:1

Agreement tolling statute, **App 12A**Application and interpretation of, **12:10**

Class action, tolling statute, 12:11

Discovery rule, **12:4 to 12:7**

Exposure rule, 12:2

Federal statutes, 12:9

STATUTES OF LIMITATION—Cont'd

Injury, cause, and parties liable, discovery of, 12:7

Injury, discovery of, 12:5

Injury and cause, discovery of, 12:6

Manifestation rule, 12:3

Repose, statutes of, 12:12

RICO claims, 6:23

State statutes, 12:8

Tolling statute of limitation

Agreement of tolling, App 12A

Class action, 12:11

STATUTORY CLAIMS

Generally, 8:1

Alien Tort Statute, liability under, 8:14

CERCLA response actions, EPA rule on costs recovery, **App 8A**

Clean Air Act, 8:7, 32:11

Coordinated federal/state civil enforcement proceedings, **8:10**, **App 8E**

Federal toxic substances regulatory schemes

Generally, 8:4

Clean Air Act, 8:7, 32:11

Coordinated federal/state civil enforcement proceedings, 8:10, App 8E

COVID-19 claims, 8:11

Federal Water Pollution Control Act, 8:5

Occupational Safety and Health Act, 8:8

Safe Drinking Water Act, 8:6

Toxic Substances Control Act, 8:9

Federal toxic tort statutes

Generally, 8:1

Multiparty, Multiforum Trial Jurisdiction Act of 2002, **8:3**

Superfund, 8:2

Federal Water Pollution Control Act, 8:5

Joint state/federal environmental enforcement litigation, guidelines for, **App 8E**

Medicaid cost recovery, state toxic tort statutes, 8:13

Multiparty, Multiforum Trial Jurisdiction Act of 2002, **8:3**

Natural resource damage assessments, Department of Interior's rule on, **App 8B**

Occupational Safety and Health Act (OSHA), 8:8

Safe Drinking Water Act, 8:6

State toxic tort statutes

Generally, 8:12

Medicaid cost recovery, 8:13

Superfund, 8:2

Tobacco-related injuries, diseases and illnesses caused by tobacco companies

Medicaid reimbursement complaint, App 8C

Settlement, proposed, App 8D

STATUTORY CLAIMS—Cont'd

Toxic Substances Control Act (TSCA), 8:9, 32:12

STATUTORY DEFENSES

Generally, 11:7

Compliance with statutes and regulations, 11:6

STIGMA DAMAGE THEORY

Generally, 7:30

STIPULATIONS

Business records produced in discovery, **App** 22D

Confidentiality of discovery information Complex form, App 25B Simple form, App 25A

STORAGE, UNDERGROUND TANKS

Lender liability, App 3I

STORAGE OF HAZARDOUS WASTES

Activity giving rise to toxic tort liability exposure, **3:25**

Lender liability for underground storage tanks, App 3I

STRESS

See Emotional Distress (this index)

STRICT LIABILITY

Duty to warn violations

Generally, 5:2

Applying both negligence and, **5:27**

Subsequent remedial measures, 5:26, 5:27

Product sales, generally, 4:7, 4:8

Subsequent remedial measures, 5:26, 5:27

Ultrahazardous and abnormally dangerous activities, generally, **4:9**, **4:10**

SUBSEQUENT REMEDIAL MEASURES

Applicable rule, 5:24

Cases where both strict liability and negligence alleged, **5:27**

Negligence actions, 5:25, 5:27

Other basis for excluding, 5:29

Strict liability actions, 5:26, 5:27

Rule 407's effect on duty to warn cases, **5:28**

SUCCESSOR LIABILITY

Generally, 4:12

SUMMARY JUDGMENT

Availability, 14:2

Duty to warn and right-to-know, 5:11

Judicial attitudes toward CGL insurance policy, 31:6

Standard, 14:1

SUMMARY JURY TRIAL

Case management order, App 20L

SUMMARY JURY TRIAL—Cont'd

Discovery, case management order, App 20M

SUMMARY TESTIMONY

Expert witnesses, 30:5

SUPERFUND

Common law contribution doctrine, **18:8**, **18:9** Federal toxic tort statutes, claims basis, **8:2** Right to jury in superfund actions, **15:2** Risk assessment guidelines, **App 29E**

SUPERTORTS

Activity giving rise to toxic tort liability exposure, **3:17**Settlements, **3:16**Texas Two Step, **3:17**

SWINE FLU

Epidemiological evidence, swine flu cases, 28:34

TESTIMONY OF EXPERT WITNESSES

See Expert Witnesses (this index)

TEXAS EASTERN TRANSMISSION CORP. V. FIDELITY & CASUALTY CO. OF NEW YORK

Generally, App 31B

TEXAS TWO STEP

Supertorts, settlements, 3:17

THEORIES OF LIABILITY

See Liability Theories (this index)

THIRD PARTIES

Discovery, 22:10

Monitors, selection and use in deferred prosecution and non-prosecution agreements with corporations, **App 32Q**

Punitive damages deterrence, 9:5

TOBACCO LITIGATION

Attorneys General settlement agreement, App 19L

Class action, settlement agreement, App 19K
Complaint for Medicaid reimbursement on
tobacco-related injuries, diseases and illnesses caused by tobacco companies, App
8C

Epidemiological evidence, 28:32

Medicaid reimbursement

Complaint on tobacco-related injuries, **App 8C** State toxic tort law, **8:13**

Secondary tobacco smoke, EPA report, **App 3E** Settlements. See **Settlements** (this index) Statutory claims settlement agreement, **App 8D**

TOLLING STATUTE OF LIMITATION

Agreement of tolling, App 12A Class action, 12:11

TOLL PROCESSING

Activity giving rise to toxic tort liability exposure, **3:8**

TORT COURT

New Jersey's rejection of mass tort court, **App 20F**

TOWNSHIP OF JACKSON v. AMERICAN HOME ASSURANCE CO.

Multiple occurrences insurance coverage, **App**31H

TOXICITY RISK ASSESSMENT GUIDES

Carcinogens guidelines, App 29J, App 29L
Development toxicity guidelines, App 29H
Epidemiology reference guides, App 28A
Exposure assessments guidelines, App 29B
Landowner liability under CERCLA Section
107(a)(1), guidance on, App 3A
Reference guide, App 29K
Statistics reference guides, App 28B
Superfund guidelines, App 29E

TOXICOGENOMICS

Generally, 28:13, 29:7

TOXIC SUBSTANCES AND DISEASE REGISTRY

See Agency for Toxic Substances and Disease Registry (ATSDR) (this index)

TOXIC SUBSTANCES CONTROL ACT (TSCA)

Generally, 8:9

Criminal liability, 32:12

First year implementation plan, App 8F

TRANSPORTATION SERVICES

Activity giving rise to toxic tort liability exposure, generally, **3:28**Minimizing liability exposure, **3:29**

TREATMENT OF WASTES

Activity giving rise to toxic tort liability exposure, **3:25**, **App 3I**

TREBLE DAMAGES

RICO claims, 6:30

TRESPASS LIABILITY

Application, **4:2** Elements. **4:1**

TRIAL

Bifurcation, 9:14, 20:22

Confidentiality and privilege issues, **16:11**Courtoom Technology Manual, excerpts, **App 16A**

Insurance coverage issues, generally, **31:95**, **31:96**

TRIAL—Cont'd

Jurisdiction. See **Personal Jurisdiction** (this index)

Jury trials. See Jury Trial (this index)

Logistics

Generally, 16:2

Staff preparation, 16:4

Supervision of trial counsel's preparation, **16:5** Trial site supplies and services, **16:3**

Media relations, how to work with media, **App** 16B

Multiparty, Multiforum Trial Jurisdiction Act of 2002, 8:3

Opening statements, 31:96

Plan, App 20N

Preparation, importance of case theory and direct approach, **16:1**

Public relations concerns

Generally, 16:6

Communicating with the public, 16:8

Confidentiality and privilege issues, 16:11

Media relations, how to work with media, **App**16B

Nature of information to be disclosed, **16:9** Risks involved in toxic tort litigation, public perception, **16:7**

Useful public communication techniques, 16:10

Site supplies and services, 16:3

Staff preparation, 16:4

Supervision of trial counsel's preparation, 16:5

TRUSTEES

Activity giving rise to toxic tort liability exposure, **3:34**

TSCA

See Toxic Substances Control Act (TSCA) (this index)

TUTORIALS

Judicial use of expert tutorials, 23:9

ULTRAHAZARDOUS AND ABNORMALLY DANGEROUS ACTIVITIES

See Dangerous Activities (this index)

UNDERGROUND STORAGE TANKS

Lender liability, App 3I

USE RESTRICTIONS

Disposal of hazardous wastes epidemiological evidence, 28:36

Epidemiological evidence, **28:29**, **28:36** Expert witnesses testimony, **30:9**

VERIFICATION

Adversary complaint, Rule 11 sanctions, **26:4**, **App 26A**

VICARIOUS LIABILITY

Punitive damages, 9:11

VIOXX

Settlement agreement, App 19R

VOIR DIRE OF JURORS

Generally, 15:8

Outline for toxic tort actions, App 15A

VOLUMETRIC ALLOCATION

Contribution doctrine, 18:14

VOLUNTARY CLEANUP EFFORTS

Generally, 31:53, 32:20, App 32C

WAIVER

Attorney-client privilege

Generally, 24:11

In camera review, procedure for resolving privilege and waiver questions, **24:4**

Limitations on waiver, proposed revised Rule 502, **24:11**

Rule 26(b)(5), procedure for resolving privilege and waiver questions, **24:3**

Insurance coverage, nonwaiver agreement, **App** 31F

WARRANTY, BREACH OF

Duty to warn failure, 5:4

WATER

Environmental Crimes Handbook—A Guide for Law Enforcement Personnel, **App 32P**

Federal Water Pollution Control Act, 8:5

Hydrogeological expert, deposition outline, **App** 23C

Safe Drinking Water Act, 8:6

WESTINGHOUSE CORP. v. AETNA CASUALTY & SURETY CO.

Generally, App 31A

WETLANDS

Environmental Crimes Handbook—A Guide for Law Enforcement Personnel, **App 32P**

WIRE FRAUD

RICO claim, 6:19

WORKPLACE

Epidemiological evidence, workplace and product exposure, **28:33**

WORK PRODUCT OF ATTORNEY

See Attorney Work Product (this index)

YATES MEMO

Criminal liability, individual accountability for corporate wrongdoing, **App 32T**