Summary of Contents

Volume 1

PART A. INTRODUCTION

Chapter 1. Organization and Scope of This Book

Chapter 2. What Is a "Toxic Tort"?

APPENDIX 2A. Bureau of Justice Statistics, U.S. Dep't of Justice, Civil Justice Survey of State Courts, 1992 Civil Jury Cases and Verdicts in Large Counties (1995)

APPENDIX 2B. Bureau of Justice Statistics, U.S. Department of Justice, Civil Justice Survey of State Courts, 1996, Civil Trial Cases and Verdicts in Large Counties, 1996 (1999)

APPENDIX 2C. Bureau of Justice Statistics—2005 Civil Trials

APPENDIX 2D. Bureau of Justice Statistics—2001 Civil Trials

Chapter 3. Activity Giving Rise to Toxic Tort Liability Exposure

APPENDIX 3A. Guidance on Landowner Liability under § 107(a)(1) of CERCLA, *De Minimis* Settlements under § 122(g)(1)(B) of CERCLA, and Settlements with Prospective Purchasers of Contaminated Property

APPENDIX 3B. EPA Proposed Rule Defining Lender Liability Under CERCLA (June 24, 1991)

APPENDIX 3C. EPA Final Rule Defining Lender Liability under CERCLA (April 29, 1992)

APPENDIX 3D. Guides for the Use of Environmental Marketing Claims

APPENDIX 3E. EPA Report on Secondary Tobacco Smoke

APPENDIX 3F. 1994 OSHA Proposed Air Quality Rules

APPENDIX 3G. Staff Accounting Bulletin: Loss Contingencies

APPENDIX 3H. Policy on CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntarily (Oct. 6, 1995)

APPENDIX 3I. Underground Storage Tanks—Lender Liability, 60 Fed. Reg. 46692 to 46715 (Sept. 7, 1995)

APPENDIX 3J. Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, Consumer Labeling Initiative (1995) and Notice of Project Initiation, 61 Fed. Reg. 12012 (March 22, 1995)

APPENDIX 3K. EPA Quick Reference Fact Sheet for CERCLA's Effects on Lenders Holding Security Interests in Contaminated Property (August 1996)

APPENDIX 3L. GAO Report on Environmental Disclosure

APPENDIX 3M. Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")

APPENDIX 3N. Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners

APPENDIX 3O. Standards and Practices for All Appropriate Inquiries

APPENDIX 3P. SEC Legal Bulletin Regarding Shareholder Proposals

APPENDIX 3Q. Climate Change Disclosure Guidance

APPENDIX 3R. FDA Draft Guidance re Drug Products Containing Nanomaterials

APPENDIX 3S. Guidance for Industry: Assessing the Effects of Significant Manufacturing Process Changes, Including Emerging Technologies, on the Safety and Regulatory Status of Food Ingredients and Food Contact Substances, Including Food Ingredients that are Color Additives

APPENDIX 3T. Guidance for Industry: Safety of Nanomaterials in Cosmetic Products

APPENDIX 3U. Report on Fracking Fluids

APPENDIX 3V. All Appropriate Inquiry Checklist and Final Rule Summary

APPENDIX 3W. Nanomaterials Fact Sheet

APPENDIX 3X. Table of Contents of Securities and Exchange Commission Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors

PART B. TOXIC TORT LIABILITY THEORIES

Chapter 4. Traditional Liability Theories

Chapter 5. Duty to Warn and Right-to-Know

Chapter 6. New Liability Theories

APPENDIX 6A. RICO Disclosure Order

Chapter 7. New Damage Theories

APPENDIX 7A. Special Report on Environmental Endocrine Disruption: An Effects Assessment and Analysis

APPENDIX 7B. Environmental Protection Agency Endocrine Disrupter Screening Program Report to Congress

APPENDIX 7C. Report of the Expert Panel Workshop on the Psychological Responses to Hazardous Substances

APPENDIX 7D. ATSDR Criteria For Medical Monitoring Programs

Chapter 8. Statutory Claims

APPENDIX 8A. EPA Proposed Rule Governing Recovery of Costs for CERCLA Response Actions (August 6, 1992)

APPENDIX 8B. Department of the Interior's Rule Governing Natural Resource Damage Assessments (May 7, 1996)

APPENDIX 8C. Model Medicaid Reimbursement Complaint Alleging Tobacco-Related Injuries, Diseases and Illnesses Caused by Various Tobacco Companies
APPENDIX 8D. Proposed Tobacco Settlement
APPENDIX 8E. Guidelines for Joint State/Federal Environmental Enforcement Litigation
APPENDIX 8F. TSCA First Year Implementation Plan
APPENDIX 8G. PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024
APPENDIX 8H. Key EPA Actions to Address PFAS
APPENDIX 8I. PFAS Strategic Roadmap: Second Annual Progress Report
APPENDIX 8J. PFAS Strategic Roadmap Three Years of Progress
Chapter 9. Punitive Damages
Chapter 10. Toxic Tort Complaints
APPENDIX 10A. Model Class Action Complaint with Respect to Toxic Injuries Allegedly Related to Lead Paint Exposure
APPENDIX 10B. Report on Class Action Fairness Act
APPENDIX 10C. Litigation Financing Disclosure Order

PART C. DEFENSE ISSUES

Chapter 11. Substantive Defenses
APPENDIX 11A. Affirmative Defenses
APPENDIX 11B. Cross Claims
APPENDIX 11C. Preemption Memorandum
Chapter 12. Statutes of Limitation
APPENDIX 12A. Tolling Agreement
Chapter 13. Personal Jurisdiction
Chapter 14. Summary Judgment

Volume 2

PART C. DEFENSE ISSUES (CONTINUED)

Chapter 15. Right to a Jury
APPENDIX 15A. Jury Voir Dire Outline to Be Used in Toxic Tort Actions
APPENDIX 15B. Detailed juror questionnaire
APPENDIX 15C. Focused juror questionnaire
APPENDIX 15D. Breast implant questionnaire
APPENDIX 15E. New Jersey Bench Manual on Jury Selection
APPENDIX 15F. Addendum to the New Jersey Judiciary Bench Manual on Jury Selection
Chapter 16. Practical Trial Preparation

APPENDIX 16A. Excerpts from Courtroom Technology Manual
APPENDIX 16B. How to work with the media
APPENDIX 16C. Guidance on the Use of Alternative Dispute Resolution for Litigation in the Federal Courts
APPENDIX 16D. Mediation Agreement

PART D. COORDINATION ISSUES

Chapter 17. Collateral Estoppel
Chapter 18. Contribution and Indemnity
APPENDIX 18A. Indemnity Agreement
Chapter 19. Cooperative Efforts Among Parties
APPENDIX 19A. Funding Agreement
APPENDIX 19B. Pre-Interview Questionnaire
APPENDIX 19C. Pretrial Order
APPENDIX 19D. Agreement to Share Counsel
APPENDIX 19E. Discovery Protocol
APPENDIX 19F. Retainer Agreement
APPENDIX 19G. Attorney Services Agreement
APPENDIX 19H. Consulting Services Agreement
APPENDIX 19I. —Payment Term Restrictions
APPENDIX 19J. Contractor Services Agreement
APPENDIX 19K. Tobacco Litigation Settlement Agreement—Class Action
APPENDIX 19L. —Attorneys General
APPENDIX 19M. Joint Defense Agreement
APPENDIX 19N. Preliminary Case Management Order
APPENDIX 19O. DuPont Value Protection Program
APPENDIX 19P. Counsel Billing Codes and Categories
APPENDIX 19Q. Amended Plan of Reorganization of Dow Corning Corporation
APPENDIX 19R. Vioxx Settlement Agreement
APPENDIX 19S. Deepwater Horizon Emergency Claims Facility Protocol
APPENDIX 19T. Common Benefit Fund Order
APPENDIX 19U. Defence Budget Form
APPENDIX 19V. Trust Distribution Procedures—North American Refractories
Chapter 20. Class Actions and Other Claim Consolidation Procedures
APPENDIX 20A. Federal Judicial Center—Mass Torts Table of Contents
APPENDIX 20B. Federal Judicial Center—Mass Torts Case Management Order

APPENDIX 20C. Case Management Order: Silicone Gel Breast Implant Litigation (N.J. Super. Ct. Law Div.)
APPENDIX 20D. Asbestos Case Order
APPENDIX 20E. Report of New Jersey Mass Tort Advisory Committee
APPENDIX 20F. New Jersey Rejection of Mass Tort Court
APPENDIX 20G. Civil Litigation Manual
APPENDIX 20H. Medical Monitoring Class Action Fairness Hearing
APPENDIX 20I. New Jersey MultiCounty Litigation Resource Book
APPENDIX 20J. Medical Monitoring Class Action Settlement Agreement
APPENDIX 20K. New Jersey Case Management Manual For Asbestos Cases
APPENDIX 20L. Summary Jury Trial CMO
APPENDIX 20M. Summary Jury Trial Discovery CMO
APPENDIX 20N. Trial Plan
APPENDIX 20O. Multicounty Litigation Guidelines

Volume 3

PART D. COORDINATION ISSUES (CONTINUED)

Chapter 21. Multidistrict Consolidation
APPENDIX 21A. Multidistrict Litigation Guide
APPENDIX 21B. Multidistrict Litigation Product Liability Guide

PART E. DISCOVERY ISSUES

Chapter 22. Special Problems in Toxic Tort Discovery
APPENDIX 22A. Lone Pine Decision
APPENDIX 22B. Outline of Report From Medical Causation and Medical Surveillance Expert—Based on Exposure To Hazardous Substances
APPENDIX 22C. Federal Rules of Civil Procedure Form 52—Report of the Parties' Planning Meeting
APPENDIX 22D. Form Stipulation As to Business Records Produced in Discovery
APPENDIX 22E. Form Notice of Deposition Regarding Plaintiffs' Discovery Responses
APPENDIX 22F. Deposition Guidelines
APPENDIX 22G. Deposition Outline—Claimant
APPENDIX 22H. Authorization for the Release of Medical Information
APPENDIX 22I. Authorization for the Release of Employment and Other Background Information
APPENDIX 22J. Department of Justice Guidelines for Searching and Seizing Computers

APPENDIX 22K. Sample Interrogatories with Respect to Electronic Data
APPENDIX 22L. Rule 16 Electronic Discovery Supplement
APPENDIX 22M. Document Production Protocol
APPENDIX 22N. Instruction for Preservation of Corporate Documents
APPENDIX 22O. Deposition Protocol
Chapter 23. Discovery of Experts
APPENDIX 23A. Deposition Outline—Medical Causation Expert
APPENDIX 23B. Deposition Outline—Psychological Expert
APPENDIX 23C. Deposition Outline—Hydrogeological Expert
APPENDIX 23D. Notice re Tutorial
Chapter 24. Privilege and Work Product
APPENDIX 24A. New York Privilege Log Rule
Chapter 25. Confidentiality Orders
APPENDIX 25A. Form Confidentiality Stipulations: Simple Form
APPENDIX 25B. Form Confidentiality Stipulations: More Complex Form
APPENDIX 25C. Detailed Confidentiality Order with Provision for Security of Data
APPENDIX 25D. Multi-Tiered Confidentiality Order Providing for Different Levels of Protection for Different Types of Information
APPENDIX 25E. Opiate Litigation Confidentiality Order
Chapter 26. Attorney Sanctions
APPENDIX 26A. Verified Adversary Complaint
APPENDIX 26B. RICO "Attorney Misconduct" Complaint
APPENDIX 26C. General Motors Ignition Switch Litigation RICO Claims
APPENDIX 26D. RICO Complaint Against Asbestos Plaintiffs' Firm

PART F. PROOF OF TOXIC TORT CLAIMS

Chapter 27. Causation
APPENDIX 27A. Reference Guide on Exposure Assessment
Chapter 28. Epidemiological Evidence
APPENDIX 28A. Reference Guide on Epidemiology
APPENDIX 28B. Reference Guide on Statistics
Chapter 29. Other Methods of Proving Toxic Injury
APPENDIX 29A. Toxicological Profile for Lead—Agency for Toxic Substances and Disease Registry (ATSDR)
APPENDIX 29B. Proposed Guidelines for Exposure-Related Measurements
APPENDIX 29C. Conversion Factors
APPENDIX 29D. List of Acronyms and Abbreviations
APPENDIX 29E. Risk Assessment Guidance Document for Superfund

APPENDIX 29F. Preliminary Draft Cleanup Standards—New Jersey Dept. of Environmental Protection
APPENDIX 29G. EPA Workshop Report on Toxicity Equivalency Factors for Polychlorinated Biphenyl Congeners, June 1991
APPENDIX 29H. Guidelines for Developmental Toxicity Risk Assessment
APPENDIX 29I. Guidelines for Exposure Assessment (May 29, 1992)
APPENDIX 29J. Working Paper for Considering Draft Revisions to the U.S. EPA Guidelines for Cancer Risk Assessment (November 1992)
APPENDIX 29K. Reference Guide on Toxicology
APPENDIX 29L. Guidelines for Carcinogen Risk Assessment
APPENDIX 29M. EPA Dioxin Reassessment Report
APPENDIX 29N. Report on Peer Review of Dioxin Reassessment Documents
APPENDIX 29O. ATSDR Minimal Risk Levels
APPENDIX 29P. EPA Interim Genomics Policy

Volume 4

PART F. PROOF OF TOXIC TORT CLAIMS (CONTINUED)

Chapter 30. Standards for Expert Testimony

APPENDIX 30A. National Science Panel Breast Implant Report
APPENDIX 30B. Ethical Guidelines for Occupational and Environmental Medicine Expert Witnesses
APPENDIX 30C. Conflict and Bias Screening Questionnaire

PART G. INSURANCE COVERAGE

Chapter 31. Insurance Coverage

APPENDIX 31A. Decision in *Westinghouse Corp. v. Aetna Casualty and Surety Company*
APPENDIX 31B. Decision in *Texas Eastern Transmission Corp. v. Fidelity and Casualty Company of New York*
APPENDIX 31C. Decision in *Asbestos Insurance Coverage Cases*
APPENDIX 31D. Insurance Standstill Agreement
APPENDIX 31E. Defense Agreement
APPENDIX 31F. Non-Waiver Agreement
APPENDIX 31G. Insurance Settlement Agreement and Release
APPENDIX 31H. Multiple Occurrences: *Township of Jackson v. American Home Assurance Co.*
APPENDIX 31I. Jury Charges Used in *Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co.*
APPENDIX 31J. Interrogatories Provided to the Jury in *Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co.*

APPENDIX 31K. Forms for Rule 30(b)(6) Deposition Notices: Coverage Questions for Insureds

APPENDIX 31L. Forms for Rule 30(b)(6) Deposition Notices: Coverage Questions for Carriers

APPENDIX 31M. California Court of Appeals Decision in *Asbestos Insurance Coverage Cases*

APPENDIX 31N. Insurance Claim Notice Letter

APPENDIX 31O. Jury Instructions from *Hoechst Celanese Corp. v. National Union Fire Insurance Co.*

PART H. CRIMINAL LIABILITY

Chapter 32. Criminal Liability

APPENDIX 32A. Federal Sentencing Guidelines

APPENDIX 32B. Criminal Provisions of Environmental Laws

APPENDIX 32C. Department of Justice Guidelines: Factors in Decisions on Criminal Prosecution for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator

APPENDIX 32D. Justice Department Directive Amending United States Attorney's Manual (January 12, 1993)

APPENDIX 32E. Advisory Panel Recommendations to the United States Sentencing Commission on Environmental Crimes

APPENDIX 32F. EPA Staff Guidelines on Criminal Enforcement

APPENDIX 32G. Bluesheet Revision to the U.S. Attorney's Manual on Environmental Crimes, August 23, 1994

APPENDIX 32H. Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19617 to 19627 (Apr. 11, 2000)

APPENDIX 32I. Parallel Proceedings Policy

APPENDIX 32J. Federal Prosecution of Corporations

APPENDIX 32K. Principles of Federal Prosecution of Business Organizations

APPENDIX 32L. Portions of Organizational Sentencing Guidelines Applicable to Environmental Offenses

APPENDIX 32M. Deferred Prosecution Agreement

APPENDIX 32N. W.R. Grace Indictment

APPENDIX 32O. Principles of Federal Prosecution of Business Organizations

APPENDIX 32P. Environmental Crimes Handbook—A Guide For Law Enforcement Personnel

APPENDIX 32Q. Selection and Use of Monitors in Deferred Prosecution Agreements

APPENDIX 32R. Corporate Integrity Agreement

APPENDIX 32S. Filip Memo - Revised Corporate Charging Guidelines
APPENDIX 32T. Individual Accountability for Corporate Wrongdoing (Yates Memo)
APPENDIX 32U. Deepwater Horizon Debarment Agreement
APPENDIX 32V. Federal Victim Assistance Guidelines
APPENDIX 32W. Memorandum—Prohibition of Settlement Payments To Third Parties
APPENDIX 32X. Supplemental Deferred Prosecution Agreement Memo
APPENDIX 32Y. Index to the Department of Justice's DOJ's Principles of Federal Prosecution of Business Organizations, and full text of section 9-28.700 (The Value of Cooperation).

Table of Cases

Index