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## **Client Alert**

### **PSRB Obtains Favorable Settlement in Toxic Tort Litigation**

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Plews Shadley Racher & Braun LLP recently obtained a favorable result for an industrial client in a complex, toxic tort lawsuit. The complaint alleged that contamination from our client's industrial operations migrated onto the plaintiff's property and that strong odors existed in the plaintiff's property from the alleged contamination. The plaintiff sought damages for alleged property damage, personal injuries from the exposure to contamination, mental anguish from fear of diseases, medical monitoring costs for the remainder of the plaintiff's lifetime and attorney's fees for bringing the action.

After filing suit, the plaintiff made a seven-figure settlement demand which allegedly compensated the plaintiff for past damages and future damages, including uncertain future medical problems. PSRB was able to analyze the litigation risks and identify potential flaws in the plaintiff's claims, including causation and statute of limitations issues due to Indiana's two year statute of limitations for personal injuries. Ind. Code § 34-11-2-4 (2009).

Determining whether Indiana's two-year statute of limitations for personal injuries requires an inquiry into when the cause of action accrued. "Under Indiana's discovery rule, a cause of action accrues, and the limitation period begins to run, when a claimant knows or in the exercise of ordinary diligence should have known of the injury." *Cooper Industries, LLC v. City of South Bend*, 899 N.E.2d 1274, 1280 (Ind. 2009). "For claims to accrue, it is not necessary that the full extent of the damage be known or even ascertainable, but only that some ascertainable damage has occurred." *Cooper*, 899 N.E.2d at 1280. Courts "apply an objective standard to the plaintiff's actions, not a subjective one. That is, [courts] determine what a reasonable person would have done under the circumstances." *Martin Oil Marketing LTD. V. Katziotis*, 908 N.E.2d 1183, 1188 (Ind. Ct. App. 2009). Furthermore, "[a] plaintiff has a duty under the discovery rule to exercise reasonable diligence to discover the negligent acts or omissions." *Id.* Under these cases and others, we were able to develop evidence to demonstrate that the plaintiff's personal injury claims were barred by the two year statute of limitations.

As a result, PSRB promptly obtained a settlement for significantly less than the original settlement demand. This was an excellent result for our client. In addition, we were also able to secure insurance coverage as well. Thus, the client was relieved of the burden of funding the settlement and its defense costs incurred in the lawsuit.

PSRB routinely litigates these types of toxic tort cases for defendants and plaintiffs. We have had considerable experience and success on difficult issues such as causation, statutes of limitation and quantification of damages. If you have questions regarding the case described above or would like assistance related to toxic tort litigation and related personal injury or property damage claims or assistance obtaining insurance coverage for such claims, please do not hesitate to contact Chris Braun, Greg Gotwald or Stephanie Eckerle of PSRB.