

Neal S. Brody
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SUMMARY

Neal Brody has over 30 years of experience as a government enforcement attorney, in-house corporate counsel, and expert consultant on complex environmental, health, and safety (EHS) matters. These have included site remediation, estimation and analysis of potential claims for natural resource damages (NRD), design and implementation of habitat protection and restoration plans, strategic counseling of alternative settlement positions in Superfund and NRD cases, preparing and negotiating EHS provisions for large-scale commercial transactions, conducting and overseeing EHS due diligence activities, and developing best management practices to optimize environmental performance. His expertise encompasses a broad spectrum of EHS issues, including their application in contracts, mergers and acquisitions, and real estate transactions, as well as administrative enforcement, litigation, and alternative dispute resolution.

EDUCATION

Duke University, School of Law, JD 1983

Wesleyan University, B.A., Government, 1980

AFFILIATIONS

- American Bar Association, section of Environment, Energy and Resources

PREVIOUS POSITIONS

- > Cardno (formerly ENTRIX), Vice President and Strategic Director, 2008 – 2016.
- > LECG, Director, 2000 – 2008.
- > Atlantic Richfield Company, Senior Environmental Counsel, 1991 – 2000.
- > State of New Jersey, Deputy Attorney General, 1989 – 1991.
- > State of New Jersey, Department of Environmental Protection, Attorney, 1985 – 1989.
- > Groundwater Restoration, Inc., General Counsel, 1984 – 1985.
- > Liederbach, Rossi, Hahn, Casey & Foy, Associate Attorney, 1983 – 1984.

PROJECT EXPERIENCE

Superfund Remediation and Cost Recovery

From the outset of his career, Mr. Brody has been involved in a wide variety of issues related to Superfund cleanup actions, including similar types of cleanups under other federal, state and local programs. Examples include:

- > For a number of mining companies in the chain of operation of a large mining complex, Mr. Brody developed a model for determining their respective shares of responsibility for cleanup under Superfund.
- > For a leading ship manufacturer, Mr. Brody served as an allocation expert to determine the costs of cleanup of the harbor adjacent to its facility attributable to each of the contributing parties.
- > For a major manufacturer of industrial components, Mr. Brody developed reports of environmental costs recoverable from each of its comprehensive liability insurers.
- > For major contributors to a hazardous waste landfill, Mr. Brody developed a process to identify and cash-out *de minimis* contributors.
- > For an international oil company, Mr. Brody analyzed cost issues and provided strategic advice on cost recovery opportunities at Superfund sites throughout the country.
- > For a leading automotive manufacturer, Mr. Brody analyzed and developed evidence of liability of the United States for contribution to cleanup at a number of contaminated facilities.

Natural Resource Damages

Mr. Brody is routinely retained by outside counsel and corporations to provide advice and/or testimony in matters involving claims for or exposure to suits for natural resource damages. Mr. Brody has addressed these issues in matters ranging from a preliminary scoping of exposure to natural resource damages claims to negotiated settlements in litigated cases. Mr. Brody's work in this area most typically involves the quantification of natural resource damages exposure either in monetary terms or in restoration metrics. Examples include:

- > From the initial days of the incident, Mr. Brody provided BP Exploration & Production Inc. (BP) strategic guidance related to potential environmental claims and NRD arising from the Deepwater Horizon accident and oil spill in the Gulf of Mexico.
- > For a major national railroad carrier, Mr. Brody testified on the ecological value of tens of thousands of acres of forest land severely impacted by forest fire.
- > For a number of large mining companies, Mr. Brody evaluated and quantified NRD claims recoverable by the United States, a number of states, including California, Colorado, Kansas, Missouri, Montana, New Jersey Oklahoma, Texas and Washington, and various Native American tribes.
- > For a large chemical company, Mr. Brody was designated as an expert witness to provide testimony on whether claims for NRD were included in an indemnity contract.
- > For several major oil companies, Mr. Brody has served or is serving as part of their oil spill emergency response team to assist in NRD issues resulting from oil and chemical spills.
- > For numerous clients, Mr. Brody has provided expertise on regulations governing NRD and conducted due diligence evaluations for property and business transactions.

Climate Change, Ecological Valuation and EHS Best Practices

Mr. Brody frequently works with a variety of clients to evaluate best practices, develop proactive approaches, and utilize trading mechanisms to address environmental policies and regulations. Mr. Brody's work in this area most typically includes application of market and non-market methods to recognize and implement trade-offs between business activities and ecological values. Examples include:

- > For global Fortune 50 Company, Mr. Brody evaluated impacts and strategies associated with local, regional, national and international regulation of greenhouse gases and carbon emission causing operations.
- > For American Petroleum Institute, Mr. Brody is led a nationwide analysis of potential endangered species listings including the development of comprehensive annotated bibliographies with biological data and threats information, a web-based GIS tool for storing the information along with species range maps and other information.
- > For international oil company, Mr. Brody develop tools to support best practices regarding permitting and recovery of habitats that have been modified or destroyed by intended and accidental human interactions.
- > For several major electricity utilities, Mr. Brody has provided ecological analysis and expert reports on damages resulting from wildfires including the analysis of the baseline condition of the habitat before the fire, degree of injury from the fire, recovery rate of the habitat, and restoration costs to offset damages.
- > For several major industrial companies, Mr. Brody evaluated internal and external trading mechanisms to understand and maximize ecological value of excess property portfolio throughout the US, including over 400,000 acres in 42 states.
- > For a major financial services firm, Mr. Brody assisted in developing a business model to value and address ecological liabilities and assets.
- > With The Nature Conservancy, USEPA and a former mining company, Mr. Brody developed a Supplemental Environmental Project that resolved potential penalty liability and preserved conservation values in a portion of the Tahoe National Forest.

CORPORATE EXPERIENCE

Senior Environmental Counsel, Atlantic Richfield Company, Los Angeles, California

Responsible for structuring, negotiating and implementing legal strategy on complex environmental, health and safety matters, including Superfund sites, acquisitions and divestitures, oil spills, toxic tort claims and natural resource damages cases. Directed and participated in cross-functional teams of scientific, engineering and legal professionals. Responsibilities included supervision of two junior lawyers, developing and coordinating industry positions and counseling business units on specialized areas of health and safety law, international environmental issues, criminal compliance and auditing programs.

- > Chaired industry litigation and lobbying efforts related to natural resource damages issues, including litigation in the D.C. Circuit and substantial reauthorization efforts in Congress on both the Oil Pollution Act and CERCLA.
- > Oversaw environmental issues, including contract drafting, due diligence and operations integration, related to the \$3.3 billion acquisition of an international oil & gas company.

- > Negotiated multi-million dollar removal, remedial action and natural resource damages matters with USEPA and natural resource damages trustees regarding former mining sites in Nevada and California.
- > Coordinated legal strategy and litigation with property owners, property developers, environmental interest groups, state and local health and environmental officials at PCB disposal site in New York, on the banks of the Hudson River.
- > Directed company's participation at dozens of multi-party sites with remedial costs in the tens to hundreds of millions of dollars, with additional claims being asserted by adjoining landowners for toxic torts and property damages.
- > Negotiated and litigated claims associated with fuel oil releases at all terminals, depots and retail service stations owned or operated by the Company throughout the States of Washington and Oregon.
- > Counseled company's global energy business on international environmental, health and safety issues related to acquisitions in Australia, Brazil, China, Ecuador, Romania and Venezuela.
- > Participated on emergency response team for oil spills and hazardous substance releases over a several year period.

Vice-President and General Counsel, GRI, Washington Crossing, Pennsylvania

Served as officer and general counsel to a regional environmental consulting and contracting firm. Responsibilities included reviewing contracts and proposals and assistance on regulatory requirements associated with environmental remediation projects in Pennsylvania, New Jersey and Delaware. Advised clients on OSHA, RCRA, ECRA, and underground storage tank (UST) requirements.

GOVERNMENT EXPERIENCE

Deputy Attorney General, State of New Jersey

Represented the Department of Environmental Protection in federal, state and local forums in hazardous waste, air and water pollution matters. Primary responsibilities included negotiation, enforcement and litigation of response actions and cost recoveries at state-lead Superfund sites.

- > Negotiated largest private party cleanup agreement in state history requiring \$125 million cleanup at former waste disposal sites in Burlington County.
- > Managed cost recovery efforts, including negotiation and litigation, at more than 40 sites involving penalties and/or cost recoveries, each in excess of \$100,000.
- > Participated on multi-state task force for hazardous waste cleanup and enforcement.

Regulatory Officer, New Jersey Department of Environmental Protection

State environmental enforcement lawyer for multi-party hazardous waste sites, including matters brought under state law, Superfund and RCRA. Responsibilities included making initial liability determinations, reviewing and approving administrative records, negotiating the conduct and funding of remedial actions and drafting administrative consent orders and consent decrees.

- > Lead enforcement attorney for the State of New Jersey on 28 Superfund sites; lead support attorney for USEPA on 24 others.
- > Enforced compliance of all state and federally delegated environmental statutes in five county area, including air, waste, water and wetlands cases.
- > Negotiated first *de minimis* NRD consent decree under Superfund.

PUBLICATIONS AND SPEECHES

- > Whispers... On the Web, Business Law News, Fall, 1997 (co-author).
- > Critique of Papers: Measuring and Restoring Lost Human Uses; Using Economic Models to Inform Restoration Decisions; and Restoring Human Uses, the Experience of the Exxon Valdez Oil Spill Trustee Council, Conference Proceedings on Lost Human Uses of the Environment, May 1997.
- > Natural Resource Damages Program Overview: The Unsettled Next Wave of Environmental Liability, American Bar Association, Torts and Insurance Practice Section, August 1995.
- > "New Jersey's Developing Natural Resource Damages Initiatives" Merrill Lynch Conference and Training Center, June 2002.
- > "Contaminated Sediments: Is Remedy Selection the Beginning or the End of the NRDA Process," American Bar Association, Section of Environment, Energy and Resources, September 2000.
- > "Mediation of NRD Cases," Workshop on NRDA Lessons Learned, API, National Oceanic and Atmospheric Administration, Texas General Land Office, Water Quality Insurance Syndicate and the International Group of P&I Clubs, May 2000.
- > "Sound Science – the Use of Toxicology in a Litigious Environment," Society of Environmental Toxicologist and Chemists Annual Meeting, November 1999.
- > "Policy and Politics of Climate Change," American Bar Association, Section of Natural Resources Energy and Environmental Law, October 1998.
- > "Do NOAA's New Rules Allow Trustees to Collect and Spend NRD Recoveries without Meaningful Constraint?" American Bar Association, Section of Natural Resources Energy and Environmental Law, October 1996.