

Daily Journal

FEBRUARY 21, 2024

TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS
AND APPELLATE REVERSALS IN CALIFORNIA IN 2023

City of Modesto et al. v. The Dow Chemical Co. et al.

Sprawling omnibus litigation was filed by the city of Modesto back in 1998 over alleged contamination of drinking water, groundwater and soil by the toxic solvent perchloroethylene (PCE). In one segment of the case, a major win came last year as the court considered the liability of 39 accused dry cleaner businesses.

In the trial at issue, the business accused of spilling PCE was Modesto's former Acme Cleaners — but the outcome was critical to the prospect that a plaintiff win could have led to copycat suits in cities nationwide, attempting to hold PCE makers liable for hundreds of millions of dollars in damages.

Defendant Dow Chemical in 2018 turned to Latham & Watkins LLP as lead trial counsel, where a team headed by partners Mary Rose Alexander and Robert C. Collins III obtained for the first time a full defense verdict for Dow and PPG Industries Inc., a supplier of the chemical. PPG was defended by lawyers from Alston & Bird LLP, led by Jason Levin. Also on the defense team were Shook, Hardy & Bacon LLP partners Andrew D. Carpenter and Patrick J. Gregory.



MARY ROSE ALEXANDER

"The judge determined that we'd try each dry cleaner separately, so we focused the jury on Acme's role," said Alexander, who, with Levin, gave opening statements. "It was really important to show that during the 12 years Acme was open, it caused no harm to the city of Modesto."

Levin added that another emphasis was that this was not a personal injury case. "We put it into the correct framework. No one likes environmental harm, but this was not that case. After trial, we learned that the jurors fought their impulse to believe that any chemical is harmful."



ANDREW CARPENTER

An economic driver of many such cases is the threat of punitive damages if it can be shown that the defendants acted with malice. "After the evidence was in, we convinced the judge not to give a malice instruction because there simply was no basis for it," Alexander said.

Carpenter, the legal issues counsel, wrote briefs and argued motions. "I did the nerd work," he said. "Several of the jurors had advanced degrees, and we saw that they grappled with the science effectively."

The jury was out for three days. "It went by slowly. We drank many



JASON LEVIN

lattes," Levin said. "It was worth the wait," Alexander said.

Modesto's lawyer, Michael D. Axline of Miller & Axline emailed, "The case involves multiple former dry cleaning sites in Modesto, which are being tried one site at a time. Last year, the city prevailed in a trial involving the 'Vogue' site when a jury awarded \$4 million in damages and \$56.3 million in punitive damages. At each site that has been tried to date, juries have found that the conduct of Dow and PPG with respect to PCE and dry cleaners has been tortious."

—JOHN ROEMER

CASE DETAILS	DOLLAR AMOUNT	\$173.5 million
	CASE NAME	City of Modesto et al. v. The Dow Chemical Co. et al.
	TYPE OF CASE	Products liability
	COURT	Los Angeles County Superior Court
	JUDGE(S)	Judge Garrett L. Wong
	PLAINTIFFS' LAWYERS	Latham & Watkins LLP, Mary Rose Alexander, Robert Collins III, Shannon Lankenau, Dylan Glenn, Joseph Thomas, Katherine Rouse, Nils Gilbertson; Shook, Hardy & Bacon LLP, Andrew Carpenter, Patrick Gregory, Andre Tinoco; Alston & Bird LLP, Jason Levin, Deborah Jones, Jay Smith, Jennifer Hergenrother; Dow Chemical Co., Michael Glackin, Chris Bowman, Alex Nguyen
	DEFENSE LAWYERS	Miller & Axline, Michael Axline, Daniel Boone; Adler Law PC, C. Michael Adler