

OUR PRACTICE

Water Treatment and Legionella

Baker Donelson's Water Treatment and Legionella Team advises on a wide range of matters relating to water borne pathogens, water handling systems and water treatment throughout the United States and in international venues. Our team has provided representation in all phases of these topics from contract negotiation, preparation, specification review and bidding, insurance coverage and claims, dispute avoidance and resolution.

Our clients include virtually every type of participant involved with water handling systems including owners and owners' associations, design professionals, engineers, developers, suppliers, manufacturers, contractors, subcontractors, insurers, property managers and water treaters.

Our team includes attorneys with degrees in chemical engineering and more than 100 years of combined experience in construction, toxic torts and premises liability. Over the years, our attorneys have developed a unique understanding of issues involving water technology and water treatment. The Firm is a member and regular participant in industry groups including the Cooling Technology Institute and the Association of Water Technologies, where our chairman serves on technical committees, has authored and peer reviewed technical publications and is a regular speaker.



Representative Matters

Water Technology and Water Treatment

- Defended \$3.8 million personal injury negligence and toxic tort claims arising from water chemistry induced exposures involving claims of Spasmodic Dysphonia, Spasmodic Dysphagia and Thrombocytic Thrombocytopenic Purpura. The defense resulted in complete dismissal in the trial court based on defenses developed through toxicology, chemistry and epidemiologic evidence.
- Defense of multi-million-dollar construction claims arising from corrosion-related failures of mechanical equipment and condenser water systems.
- Consulted and defended disputes relating to a litany of failure modes and causes, including operational errors, design issues, improper commissioning and passivation, inadequate cycling, over-firing, inadequate hydraulic balancing, improper layup, inadequate water flow, dead legs, and stagnation.
- Secured complete dismissal and an award of attorney's fees in corrosion-based failures of system water piping in HVAC, process cooling, and fire water systems.
- Lead counsel in successful defense of claims arising from failures incident to caustic gouging, flame impingement, erosion corrosion, improper material selection, and lack of legacy knowledge.
- Served as counsel in construction litigation involving personal injuries and wrongful death claims, including defense of alleged OSHA, NIOSH, and ANSI violations; risk management assessment; delay claims; indemnification disputes; and premises defects.
- Defended complex disputes, including contractual indemnity claims involving general contractors, HVAC mechanical subcontractors, architects, engineers, pipe suppliers, building maintenance, and water treaters.
- Authored and negotiated performance-based and health-based water treatment service agreements.
- Consulted about and defended issues incident to lead contamination and E. coli bacteria.
- Lead counsel in counsel in water treatment related non-competition, non-disclosure, and non-solicitation disputes.
- Authored and represented parties in non-competition disputes.

Cooling Technology and Corrosion Science

- Represented one of 15 different defendants involved in the design, construction and commissioning of luxury high-rise condenser water system that catastrophically failed from insidious corrosion, under-deposit corrosion, scale and microbiological fouling. The client was the target defendant in a claim exceeding \$8 million. The case against the client was disproven and completely dismissed through defenses involving metallurgy, engineering and chemical science. The client was awarded recovery of all attorney's fees incurred.
- Lead counsel in cooling technology cases involving the catastrophic failure of condenser water systems and mechanical equipment.
- Lead counsel in matters relating to industrial and commercial cooling through open- and closed-loop systems, large- and small-bore condenser water pipes, boiler water, and heat exchangers.
- Obtained outright dismissal and an award of attorney's fees after serving as lead counsel in multi-million-dollar claims incident to chemical water treatment.

Legionella and Legionnaire's Disease

- Successfully defended the first reported Legionella wrongful death case against a chemical water treater and the first known Legionella lawsuit in the state of Mississippi. This multi-fatality action involved alleged damages exceeding \$20 million. The case was defended at the federal trial court level resulting in complete dismissal and then again successfully defended in the United States Fifth Circuit Court of Appeals.
- Successfully cross-examined experts in epidemiology, public health, mechanical engineering, water chemistry, and microbiology regarding *Legionella* outbreaks, causation, control, testing, treatment, and remediation.
- Extensive knowledge and experience with the history, development, and context of ASHRAE 188, the 2017 CMS Memorandum, "Requirement to Reduce *Legionella* Risk in Healthcare Facility Systems to Prevent Cases and Outbreaks of Legionnaires' Disease (LD)", the CDC Toolkits and related guidance documents.
- Conducted extensive work with world-renowned experts in the fields of infectious disease, pulmonology, water chemistry, cooling systems, microbiology, industrial hygiene, chemical engineering, mechanical engineering, and public health.
- Provided knowledge and experience with public health authorities, including the Centers for Disease Control and Prevention (CDC).
- Extensive knowledge of guidance documents from the Cooling Technology Institute (CTI), Association of Water Technologies (AWT), the American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE), the American Society of Plumbing Engineers (ASPE), the Centers for Disease Control and Prevention (CDC), and World Health Organization (WHO).