



**McGuireWoods**

# CRISIS MANAGEMENT & INCIDENT RESPONSE



## CRISIS MANAGEMENT & INCIDENT RESPONSE



Murphy's law is an adage typically stated as: "Anything that can go wrong will go wrong." Some formulations extend it to: "Anything that can go wrong will go wrong, and at the worst possible time." That perfectly defines a catastrophic incident where the initiating event cascades quickly into many issues with serious legal, operational and other consequences. The diagram below demonstrates the sources of risk that can arise from a catastrophic event – civil and criminal prosecution; shareholder and citizen litigation; insurance disputes; investigations by Congress, the Securities and Exchange Commission or state attorneys general; and impacts to reputation and public opinion. In these critical situations, clients need experienced, savvy lawyers to provide a strategic and integrated approach to guide them through the incident.

### MULTI FRONT INCIDENT RESPONSE STRATEGY

- Government investigations and enforcement actions will be brought under federal and state environmental, safety and health statutes – requiring responses to civil information requests and subpoenas, advising on criminal investigations, defending government enforcement actions in federal or state court or before administrative agencies, including the Environmental Protection Agency (EPA), U.S. Department of Justice (DOJ), Occupational Safety and Health Administration (OSHA) and Chemical Safety and Hazard Investigation Board (CSB), among others.
  - We understand EPA and DOJ policies and procedures, and work closely with EPA and DOJ staff and counsel to negotiate appropriate responses to investigations and enforcement actions.
  - We offer a nationally recognized team of more than 80 attorneys which have been honored twice as a White Collar Practice Group of the Year by *Law360*.
- Congress will investigate and oftentimes require information request responses, public hearings, or testimonies.
  - We have built strong, bipartisan relationships with members and their staff and have earned a reputation for knowing how to navigate the halls of Congress.
- We partner with our insurance recovery experts to provide risk mitigation and other strategic considerations in instances where our clients face declined coverage.
  - Very few firms remain that will defend policyholders, and we have one of the strongest insurance practices in the U.S.
  - The deep bench of our Insurance Recovery Team is particularly suited to assist as they regularly litigate large insurance-coverage actions in state and federal courts nationwide. Our established willingness to pursue claims through trial has led to our recovery of approximately \$1 billion per year each of the past three years on behalf of our policy-holder clients.
- Third parties will sue, alleging environmental violations and damages causing business interruption, loss of property value, and/or personal injury.
  - We have a national reputation for navigating the legal complexities of these cases while developing defense strategies focused on the client's risks and business needs – including coordinating and managing large-scale defense efforts.



- The company board or entities involved in the corporate supply chain may conduct internal investigations or face their own investigations and litigation.
  - We understand the importance of establishing support for a response strategy across the corporate structure and supply chain. Because the in-house environment does not begin and end with the legal team, we strive to work effectively with other critical functions, including human resources, finance and information technology.
- AGs partner with the federal government to bring regulatory and enforcement actions, ranging from United States Attorneys to consumer protection agencies.
  - McGuireWoods attorneys defend corporations in a wide variety of AG matters, including serving as lead counsel in one of the most notable enforcement efforts of the last two decades that included almost every state and territory's AG as well as federal enforcement.
  - We offer two former Chief Deputy Attorneys General of Virginia spanning four administrations, a former New York Assistant Attorney General who served across three administrations, and the former Deputy Enforcement Director of the CFPB.

McGuireWoods' crisis management and incident response practice group combats, navigates and mitigates immediate multifront challenges while anticipating and accounting for longer-term liabilities such as class action lawsuits, congressional investigations and loss of shareholder confidence.

As one of the few law firms in the United States with a nationwide incident response practice, McGuireWoods helps clients respond to a crisis at a moment's notice. We manage the varying interests that arise post-incident and balance these interests while ensuring employee and public safety, limiting a company's litigation and other exposure, and facilitating a company's efforts to restore the affected asset to service.

## HOW WE HELP

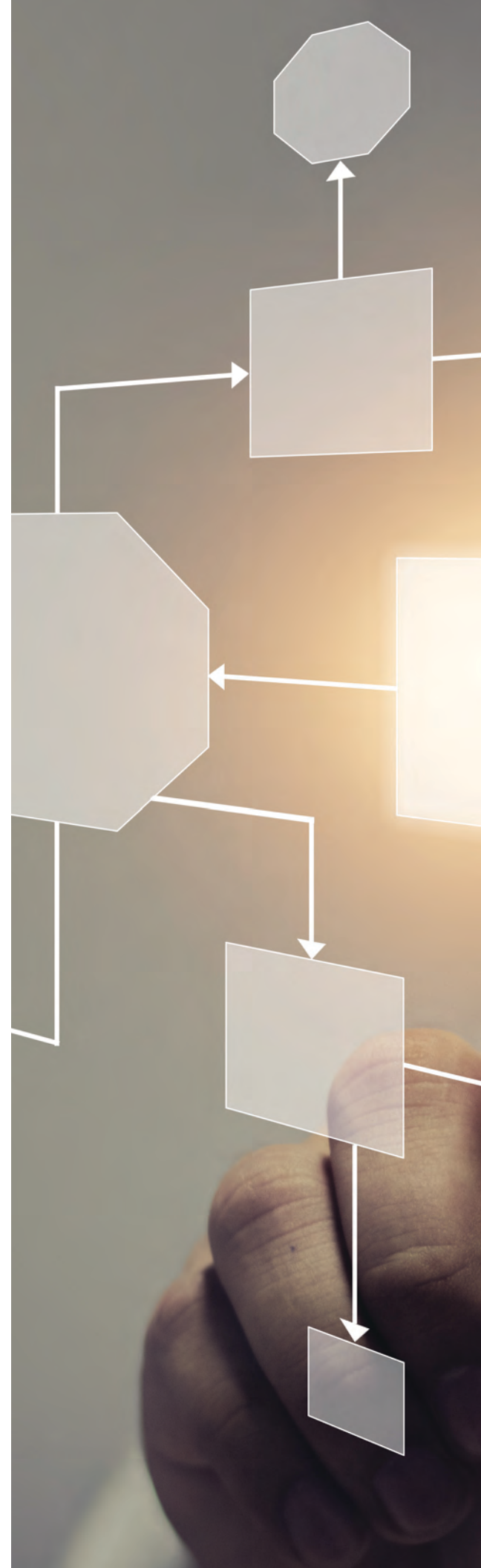
The first 96 hours after an incident often determine ultimate exposure for a client. For example, responding quickly and having air, asbestos, and other forensic monitoring in place immediately after an explosion provides the data necessary to defend an exposure case brought by neighbors two years after the incident. It is too late to gather such critical data even just days after the incident.

Federal and state regulators often show up at the site in a matter of hours, launching their own investigations and making determinations as to the likely cause of the incident. Plaintiffs' lawyers will find clients, file lawsuits and hold press conferences to influence the local community, before the literal dust settles from an incident. In addition, national and local news, along with blogs and social media, will begin suggesting blame without the facts and without waiting for a thorough investigation. McGuireWoods understands the need to act immediately to stay ahead of regulators, plaintiffs' lawyers and the media. We maintain deep relationships with industry forensic experts on whom we can call at a moment's notice.

We have a long history of guiding corporations through crises. Our nationally recognized team of environmental enforcement attorneys, class action/mass action litigators, white collar veterans and media-trained strategic communications specialists have specific, identifiable experience helping corporations face the multipronged onslaught of issues a company faces following a catastrophic incident.

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# WHAT OTHERS SAY

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**Nationally recognized for Energy: Electricity (Regulatory & Litigation), Environmental, and Product Liability & Mass Torts; Environmental practice recognitions in North Carolina, Virginia and Washington, D.C.**

— *Chambers USA*

**Nationally recognized in Energy Litigation: Electric Power, and Energy Litigation: Oil & Gas, Environmental Litigation, and Environmental Regulatory**

— *Legal 500 United States*

**No. 1 law firm to defend Fortune 500 Companies in tort litigation**

— *Corporate Counsel* magazine

**“Litigation Powerhouse”**

— *Law360*

**Partner named “Environmental Law MVP” multiple times**

— *Law360*

**Multiple partners named Environmental Law and Personal Injury Litigation - Defendants “Lawyers of the Year”**

— *Best Lawyers*

**Multiple partners named “Energy & Environmental Trailblazers”**

— *The National Law Journal*

**Multiple partners named “Client Service All-Stars”**

— *BTI Consulting Group*

## REPRESENTATIVE MATTERS

### Explosions and Fires

- Represented an international energy company in response to an explosion and fire in June 2022 that resulted in substantial damage to the company's liquified natural gas exporting facility in Texas, including helping to lead the company's root cause investigation and respond to regulatory inquiries by the Chemical Safety and Hazard Investigation Board (CSB), the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Energy Regulatory Commission.
- Represented an international energy company in response to an explosion and fire in April 2022 that resulted in the total loss of a natural gas production facility in the Southwestern United States.
- Represented a paper manufacturing company in the Northeastern United States in response to a catastrophic explosion in April 2020, including the incident response, internal investigation and response to regulatory inquiries by state and federal OSHA, state and federal environmental agencies, CSB and state boiler inspector, among others.
- Represented a paper manufacturing company in the Northeastern United States in response to a catastrophic fire in January 2019, including the incident response, internal investigation and response to regulatory inquiries by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Response Team, state and federal OSHA, and state and federal environmental agencies, among others.
- Represented a large international chemical manufacturer in the Southern United States in response to an explosion in September 2017 at the company's largest U.S. manufacturing facility, including leading the incident response, internal investigation and defense of regulatory inquiries by state and federal OSHA, state and federal environmental agencies, CSB, ATF and others.
- Represented a gas utility company in class actions and individual claims after an inadvertent release of natural gas occurred in Massachusetts in 2018 during work on a natural gas distribution system. The incident resulted in the destruction of more than 80 homes and businesses, 130 structural fires, at least one death, multiple injuries and the four-day evacuation of 8,600 residents.
- Represented a utility company after a major pipeline explosion in West Virginia in 2012. The team spent weeks at the accident site interfacing with local, state and federal agencies, including PHMSA and the National Transportation

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Safety Board (NTSB), both of which asserted jurisdiction over the accident scene. The team also worked at the command center for the company, interfacing with company personnel, investigators and regulators to protect company interests and get company assets back in operation, and coordinated the NTSB's ban on intercompany communication regarding the agency investigation and directed the walled-off litigation defense of the company. The team was actively involved in responding to preservation of evidence, work product protection and claims defense.

- Represented a utility company after a pipeline explosion in Kentucky in 2021. The team spent approximately a week at the accident site interfacing with local, state and federal agencies, including PHMSA. The NTSB elected not to assert jurisdiction in this matter due to strong communication at the outset of the incident. This representation included working at the command center for the company, interfacing with company personnel, investigators and regulators to coordinate the legal aspects of PHMSA's corrective action order and protecting company interests. The primary goal was to safely and efficiently get company assets back in operation. The firm is still coordinating the company's defense in multiple litigation issues arising out of this incident.
- Represented a natural gas pipeline company in connection with a transmission line explosion in Knifley, Kentucky, that resulted in multiple property damage and personal injury claims in 2014.
- Represented one of the largest fully regulated utility companies in the United States and a leading energy infrastructure company in connection with a natural gas explosion in 2018 at a Chesapeake, Virginia, home. The incident allegedly caused a wrongful death and elicited two personal injury claims.
- Represented one of the largest fully regulated utility companies in the United States in connection with a natural gas explosion and large fire at a shopping center in Harrisonburg, Virginia, in 2020 that injured several people and caused significant property damage.
- Represented one of the largest fully regulated utility companies in the United States in connection with a natural gas explosion in Pippa Passes, Kentucky, in 2021.
- Represented a Pennsylvania natural gas company in two separate single-house explosions in 2020 that resulted in injuries, including the internal investigations of the cause/origin of the explosions and subsequent investigations by the Pennsylvania Public Utility Commission.
- Represented a food company after a natural gas explosion at its Garner, North Carolina, manufacturing facility that killed four and injured more than 75. The team deployed several lawyers to the site within 24 hours of the incident and remained on-site for

three weeks overseeing corporate responses to government investigations and subpoenas, and coordinating cause and origin investigations. The team also handled a formal contest of OSHA citations, limited certain aspects of investigation by CSB, and managed every aspect of litigation in seven lawsuits resulting from the explosion, including representing the company at trial.

- Currently represent a natural gas transmission company in the response to and related issues resulting from the rupture and explosion of a 26-inch natural gas pipeline near Strasburg, Virginia, in July 2023.

### Spills and Chemical Releases

- Represented a large international chemical manufacturer in the Southern United States in response to a chemical release in November 2020 that resulted in a fatality, including the incident response, internal investigation and response to regulatory inquiries by the CSB, state OSHA and state environmental agencies, among others.

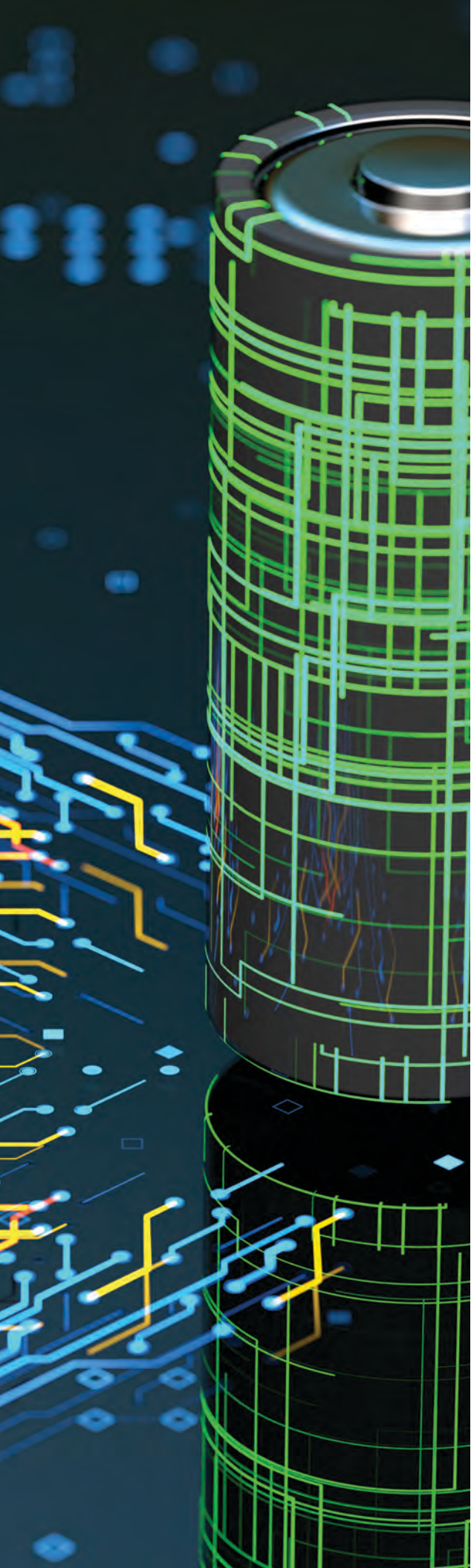
### Fatalities

- Represented a utility services company that had a trenching accident in December 2022 that resulted in a fatality and significant injury to its employees. The team managed the subsequent investigation and enforcement by OSHA.
- Represented a chemical manufacturer in Houston, Texas, in response to an industrial accident resulting in a fatality in February 2020, including defending investigations by OSHA and Environmental Protection Agency and defending the company in resulting litigation by third parties.
- Represented an international oil and gas company following a contractor fatality on a vessel in the Gulf of Mexico, including Bureau of Safety and Environmental Enforcement and Coast Guard investigations and civil litigation.
- Represented an amusement park after a fatality occurred at the company's Virginia location. The team interfaced with local regulatory and law enforcement agencies, and hired and coordinated consulting experts, evidence preservation, witness statements and media relations.

### Rail/Derailment

- Served as punitive damage counsel in connection with a train derailment in 2015 in Mount Carbon, West Virginia, involving a train hauling 107 tank cars of crude oil from North Dakota to Virginia. Post-incident, the team secured summary judgment of punitive damages claims resulting in favorable settlement of meritorious individual claims.





- Represented a leading supplier of rail-based freight transportation in a lawsuit filed against a waste management company and its driver related to the failure of due caution at train tracks that resulted in a massive explosion.
- Served as punitive damage counsel in connection with a train derailment in 2015 in Maryville, Tennessee, involving a train carrying toxic chemicals that led to an evacuation of over 5,000 people. Post-incident, the team secured denial of a motion to amend to add class allegations; secured dismissal of punitive damage claims resulting in favorable settlement of meritorious individual claims; and secured full dismissal of nonmeritorious claims, including all bodily injury claims from individuals in opposite directions from the plume.

### Batteries

- Represented a Western utility in a lithium-ion energy storage system thermal event in 2019 that resulted in an explosion that injured several first responders.
- Currently represent a Western utility in a storage facility event in Chandler, Arizona, that involved a thermal runaway event of more than 1,000 lithium-ion batteries in 2022.

### Cyber

- Represented a large chemical manufacturing company in response to a cyberattack in November 2022 on its chemical plants by a foreign actor that implicated national security issues. The team coordinated the response with the Federal Bureau of Investigation and the U.S. Coast Guard.
- Advised an international oil and gas company in connection with an employee's revelation of serious, violent criminal conduct, disclosed in a "confession letter" saved to a company computer.

### Regulatory/Litigation

- Represented a utility services company alleged to have falsified records involving its wastewater operations, including leading an internal investigation and defense of a search warrant executed in February 2023.
- Led a virtual firm in sprawling California state court litigation against numerous claims, including first-of-its kind claims for lost tax revenue, by a municipality as well as personal injury, property damage and lost wages claims by 35,000+ area residents following an incident and large fire at a Bay Area refinery, including repeated and successful rounds of motion practice prohibiting the use of internal TapRoot and CSB reports in follow-on civil litigation.

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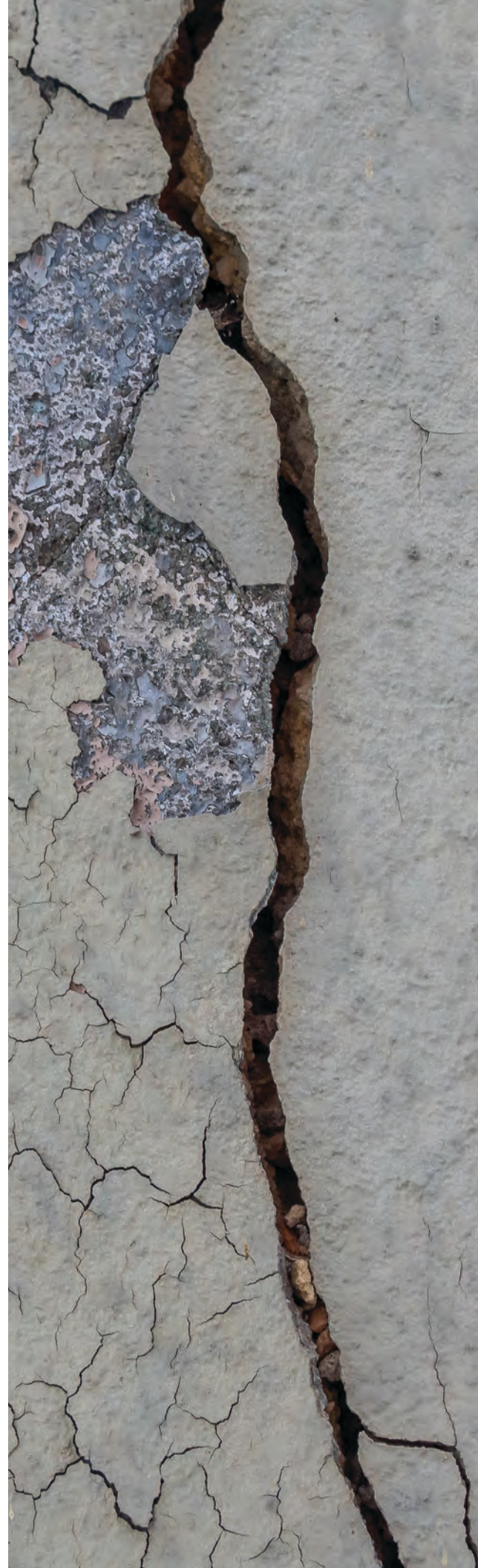
- Won a multimillion-dollar lawsuit on a motion during the scheduled first day of trial for Maryland's largest gas and electric utility. This litigation arose from a natural gas explosion that leveled four row homes, killed two people and injured many others, and damaged property more than a block away.
- Represented a financial institution as coordinating and lead counsel in defense of personal injury and wrongful death lawsuits related to the aftermath of the 9/11 terrorist attacks. Lawsuits were brought by workers hired by the company's contractors and stemmed from the cleanup effort in company-owned or -leased facilities adjacent to the site of the World Trade Center collapse.

## Insurance

- Represented a utility company in the successful recovery of over \$200 million in insurance coverage for losses sustained following the 2017 abandonment of the V. C. Summer Nuclear Facility in South Carolina.
- Represented a German multinational chemical company following a polysilicon plant explosion in Tennessee, in connection with the recovery of property damage and business interruption insurance under local U.S. and master German policies. The team obtained an initial nine-figure advance payment within three months of loss and negotiated an additional nine-figure payment despite substantial changes to the facility's rebuild plan and fluctuations in market price for its product post-loss.
- Represented a multinational manufacturing company in an insurance recovery matter seeking over half a billion dollars for property damage and business income losses stemming from a catastrophic digester explosion at its facility in Maine. The team obtained multiple multimillion-dollar advances within the first few months of the loss and secured a final nine-figure settlement within eight months of the loss. This matter involved multiple experts and complex and unique valuation issues, including: (1) the scope and application of a capital expenditures election clause in the context of a potential acquisition; (2) the calculation of business income losses amid market forces during the COVID-19 pandemic; and (3) the measure of useful life and obsolescence for destroyed digesters that had been in service for several decades.
- Represented a multinational oil corporation in disputes with insurers relating to insurance coverage for property damage and business interruption losses arising out of construction problems on deepwater development projects in the Gulf of Mexico.
- Represented a multinational oil corporation in the pursuit of insurance coverage for toxic tort cases alleging bodily injuries and property damage allegedly arising out of NORM pipe cleaning operations.

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## POST-INCIDENT RESPONSE CHECKLIST

### *Managing Risk, Protecting Your Brand, and Communicating with Stakeholders*

#### FIRST 24 HOURS POST-INCIDENT ARE KEY

##### **In partnership with legal counsel:**

- Determine that everyone is accounted for following the incident.
- Notify and coordinate with proper federal, state and local authorities related to releases to the environment (e.g., NRC, OSHA for fatalities, and CSB for significant damage).
  - Decide point of contact for regulatory agencies
- Establish procedures for conducting the privileged investigation to preserve attorney-client privilege and attorney-work product protections.
- Establish boots on the ground to respond to the emergency (including members of the rapid response team), which may include third-party response experts.
- Conduct environmental monitoring as needed (e.g., air, water sampling, asbestos, etc.), potentially through a third party.
- Limit ongoing exposure and document all mitigation efforts.
- Capture information on total exposure to better assess response.
- Develop a communication plan (potentially retaining a communication expert), review outward-facing communications, develop a process for approval of all communications regarding the incident, and remind employees to limit unnecessary communications and route all communications through legal.
- Preserve evidence (DCS data and security videos often overwrite within 24 hours) and issue legal holds.
- Review all potentially applicable insurance policies.
- Review vendor/counterparty contracts that may provide potential indemnifications and which may require notice.

#### FIRST SEVERAL DAYS POST-INCIDENT

##### **Ideally, all of these activities would be conducted through outside counsel to preserve the attorney-client privilege and attorney-work product protections:**

- Retain experts and other third-party vendors.
- Document relevant evidence at the scene.
- Interview employees/third parties and document such interviews.
- Perform necessary and time-sensitive testing and/or data collection.
- Give notice of claims/circumstances to all potentially applicable insurers and contractual indemnitors.



## WEEKS AND MONTHS POST-INCIDENT

- Conduct broader audits and implement corrective actions at the same or related facilities to reduce potential liabilities.
- Continue to gather evidence from the scene and from other means, including documents.
- Perform necessary nondestructive testing.
- Develop defenses to potential legal theories.
- Develop a strategy for potential civil lawsuits.
- Consider interplay of civil, criminal and regulatory actions.
- Continue to pursue applicable insurance and indemnifications.
- Work with regulatory agencies to reduce the impacts of incident-related investigations (e.g., EPA, OSHA) and reports (CSB).
- Be mindful of, and preserve potential subrogation rights of, insurers and indemnitors.

## LAWSUIT FILED POST-INCIDENT

- Determine the type of lawsuit filed: individual, mass action, or class action
  - Theme development is key
- Develop a responsive pleading approach based on the type of lawsuit filed, and consider how such approach could impact future nonfiled lawsuits and/or criminal or regulatory action.
- Give notice of lawsuits and investigations to applicable insurers or seek consent to incur costs and settlements as required under policies.
- Discovery
  - Use fact discovery to support the theme, including written discovery and depositions.
  - Use expert discovery to prove the technical aspects of the case and to undermine the plaintiff's experts.
- Dispositive Motions
  - Depending on the type of matter, dispositive motions should be used to obtain favorable legal rulings, narrow the issues that will be tried, and/or continue to put forth the theme of the matter.
- Trial
  - Once the matter is properly narrowed, experienced trial attorneys will use the themes developed throughout the litigation to argue the most credible case before the jury.

## KEY CONTACTS



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## **ABOUT OUR ENVIRONMENTAL ENFORCEMENT AND REGULATORY COUNSELING PRACTICE GROUP**

McGuireWoods' national environmental enforcement and regulatory counseling practitioners draw on their varied backgrounds as former regulators and practicing engineers while representing clients before Congress and state legislatures and environmental and natural resources agencies. Our lawyers have decades of experience and deep contacts with regulatory agencies — including the EPA, U.S. Department of Justice (DOJ), Occupational Safety and Health Administration, and CSB, among others. They defend environmental enforcement proceedings, counsel clients on environmental compliance, advise clients on development of contaminated property, close deals, and participate in the administrative process. They also coordinate with colleagues from lobbying and public affairs subsidiary McGuireWoods Consulting to facilitate greater access to decision-makers in legislative bodies and administrative agencies.

## **ABOUT OUR ENVIRONMENTAL LITIGATION PRACTICE GROUP**

McGuireWoods' environmental litigators draw on legal and industry experience to deliver strategic counsel to clients where they do business. We successfully litigate environmental and toxic tort cases in state and federal courts throughout the United States, including nearly all federal appellate courts and the U.S. Supreme Court. They lead vast and overlapping discovery, navigate novel legal theories, defeat class certification, tackle complex technical and scientific issues, and manage difficult facts. Drawing on extensive familiarity with EPA and DOJ policies and procedures, they work closely with the agencies' staff and counsel to negotiate appropriate responses to investigations and enforcement actions.

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## **ABOUT OUR PRODUCT LIABILITY AND MASS TORT PRACTICE GROUP**

McGuireWoods' talented product liability and mass tort litigators have decades of experience successfully defending leading companies in complex, high-stakes litigation. We represent clients in cases involving automobiles and automotive products, food and beverage products, electronic devices, lithium-ion batteries, medical devices, power tools, outdoor power equipment, recreational products, chemicals, tobacco products, pharmaceuticals, aircrafts, trains, building products, and other consumer and industrial products. The team defends cases arising from alleged exposure to toxic substances including PFAS, asbestos, lead, silica, latex, mold, formaldehyde, benzene, solvents, PCBs, VOCs and other chemicals. McGuireWoods guides clients through recalls, labeling disputes and investigations by the Consumer Product Safety Commission, EPA, California Air Resources Board, and other regulatory and law enforcement agencies. In addition, we handle comprehensive risk management issues from state, national and global perspectives.

## **ABOUT OUR INSURANCE RECOVERY PRACTICE GROUP**

McGuireWoods has a long history of representing corporate policyholders on insurance matters and helping clients get the most from their insurance programs and policies. The firm's insurance recovery lawyers know every aspect of insurance, from advising clients on appropriate coverage and risk management strategies, to pursuing and managing claims, to litigating coverage disputes wherever and whenever necessary. The team combines its insurance recovery experience with the premier trial and litigation capabilities for which McGuireWoods is well known. These lawyers litigate high-profile, large-exposure insurance coverage actions in state and federal courts nationwide. They also have substantial experience representing policyholders in high-stakes international insurance arbitrations in Bermuda, and litigation and arbitration in London regarding policies subject to English and U.S. law.

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## ABOUT OUR GOVERNMENT INVESTIGATIONS AND WHITE COLLAR LITIGATION DEPARTMENT

McGuireWoods' Government Investigations and White Collar Litigation Department is a nationally recognized team of more than 80 attorneys representing Fortune 100 and other companies and individuals in civil and criminal investigations and enforcement matters at federal and state levels. Our senior team includes a former deputy attorney general of the United States, former U.S. attorneys, more than a dozen federal prosecutors, and an associate counsel to the president of the United States. Strategically centered in Washington, D.C., McGuireWoods' government investigations and white collar litigation team is an elite practice, most recently honored in *Chambers USA* with a highly regarded nationwide ranking for corporate crime and investigations, honored twice as a White Collar Practice Group of the Year by Law360, and consistently ranked among the world's leading investigations firms in the Global Investigations Review 100 guide to top cross-border investigations practices. *The Legal 500 United States*, a premier list of the country's best law firms, also commended McGuireWoods for the "exceptional quality" of its powerhouse white collar litigation practice.

## ABOUT MCGUIREWOODS

McGuireWoods has 1,100 lawyers in 21 offices across the United States and other countries. Over its 189-year history, the firm has earned the loyalty of its many longstanding clients with a deep understanding of their businesses and broad skills in complex regulatory and compliance matters, high-stakes disputes and transactional matters. For more than a decade, McGuireWoods has been ranked on BTI Consulting Group's "Client Service 30" list of law firms serving Fortune 1,000 companies — elite firms singled out for client service excellence based on unprompted feedback from corporate counsel. For more information, visit [www.mcguirewoods.com](http://www.mcguirewoods.com).

## ABOUT MCGUIREWOODS CONSULTING

McGuireWoods Consulting is a full-service public affairs firm offering federal, state and local government relations, infrastructure and economic development, strategic communications and grassroots mobilization services. McGuireWoods Consulting is a subsidiary of the McGuireWoods law firm, and since 2010, has been ranked in the top 20 among the 1,900 government relations firms in Washington, D.C., by *The National Law Journal*.

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