

Team Chemistry

Cytec Industries Inc. and Spilman Thomas & Battle, PLLC

By Steven Andersen



Photography by Greg Weiner

From left, Kevin L. Carr, Spilman Thomas & Battle, PLLC; Jeffrey H. Koenig, Cytec Industries Inc.; Heather Heiskell Jones and Edward W. “Ned” Rugeley III, Spilman Thomas & Battle, PLLC

Every day companies find themselves up against situations that are adverse, intimidating and even downright unfair. They're faced with a universal choice: Expend a lot of time, energy and money fighting a harsh reality, or just roll up the sleeves and get to work. Jeffrey H. Koenig, for one, favors the latter path.

Koenig is chief litigation counsel; safety, health, and environmental counsel; and heads the compliance office for the chemical and materials company Cytec Industries Inc. One of the objective risks of that industry is a lot of litigation, particularly toxic torts. Moreover, the New Jersey-based company

operates a plant in Willow Island, W.Va., exposing it to one of the most difficult litigation jurisdictions in the country. That's a pretty significant double-whammy.

“Legally, it's challenging,” Koenig says. “There's a large reliance on the legal department at Cytec because of the risks associated with operating a global chemical and materials company, so there's a good amount of pressure. Every chemical company has a target on their back when it comes to litigation. It's just a way of life.”

You might expect a lawyer in Koenig's position to be gravely serious—he's up against daunting challenges day in and

day out, after all—but nothing could be further from the truth. Koenig is upbeat and engaging. He negotiates the objective hazards of the industry with good humor, and takes a clear-eyed approach to the litigation perils of West Virginia.

“Look, margins in the chemical industry tend to not be that great,” he says. “It's a competitive business. The last thing you want to do is to go into your CEO's office and say, ‘Hey, I just got hit for \$10 million, but I feel really good about the appeal.’ You have to pay attention to the jurisdiction that you're in, and as a chemical company, we're unfortunately in the worst jurisdiction.”

West Virginia is widely known as a plaintiff-friendly venue with a penchant for particularly large verdicts. That means a company like Cytec, with various operations scattered about the country, is more likely to be sued there. It's also a small state, with a familiar, even fraternal local bar—a place where megafirm litigators can be fish out of water.

For all these reasons Koenig chooses to handle all his West Virginia cases through local counsel.

"I want to understand the jurisdiction I'm in," he says, "and I want the best trial attorneys in that jurisdiction."

For Koenig, that means the lawyers of [Spilman Thomas & Battle, PLLC](#).

Toxic Torts

"The great thing about Jeff is you know exactly where he stands," says [Heather Heiskell Jones](#), chair of the litigation department at Spilman. "It's easy to carry out his wishes because he's so clear-minded and logical. I've never had to talk him into anything. He gets it. He's just so smart about litigating in West Virginia, and that's a real bonus for me."

Jones handles toxic tort cases for Cytec, and for the last eight years she's been engaged in a complex medical monitoring case involving polyacrylamides—chemicals used in this case to separate out solids in the preparation of coal.

Multi-state classes of coal-prep plant workers allege exposure to polyacrylamide products puts them at risk of developing latent diseases. The rub is, the chemicals are not known to be human carcinogens and are considered safe and non-toxic. Polyacrylamides are fairly ubiquitous, used, among other things, to separate solids from liquids, used in cosmetics and to treat drinking water. The plaintiffs, however, suspect the trace amount of acrylamide in the polyacrylamide product might be harmful. Acrylamide, however, is a naturally occurring substance found in fried and other foods, like french fries, potato chips, coffee, and is also in tobacco products.

"These classes are looking for the manufacturing defendants to fund medical monitoring for these workers—that is, we would basically provide them with medical testing and exams," Koenig says.

Cytec, which actually sold the polyacrylamide business a few years back, is taking a firm stance. The company doesn't

want to compromise and open the door to a new type of liability.

"This case has been the best in my career because this company is very principled," Jones says. "They have a safe product, and they're going to defend it. It's every lawyer's dream to represent a company that is being sued for baseless reasons, which I truly believe in my heart is the case here. It is an honor to defend them."

The sentiment is mutual. Koenig values the energy and local savvy Jones brings to the case.

"Heather has an amazing grasp of the details of a very substantial case, and that is so helpful for me," he says. "As opposed to a lot of other defendants that have national counsel or New York firms, Heather has a good relationship with plaintiff's counsel. It's



an adversarial relationship, but productive. She can call them up, ask questions and engage in a dialogue, and those are things that I really like to see."

Asbestos Ambush

Like just about every large industry, the chemical business has had to contend with its share of asbestos liability.

"Cytec, like all large chemical corporations, at some point had asbestos-containing products on its premises—pipe covering, things like that," says [Edward W. "Ned" Rugeley III](#), the Spilman member who handles the company's asbestos litigation. "As the asbestos litigation in the country

partnership at a glance

Cytec Industries Inc.

Cytec Industries Inc. is a global manufacturer of specialty chemicals and materials. Based in Woodland Park, N.J., Cytec is a public company listed in the NYSE. Cytec makes composite materials for use in aviation and industry, environmentally friendly coating resins and in-process separation specialty chemicals.

Jeffrey H. Koenig is chief litigation counsel; safety, health, and

environmental counsel; and corporate compliance officer for Cytec, based in Woodland Park.

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morphed and changed, the primary defendants went bankrupt and the plaintiffs started turning their focus to premises where individuals worked with or around asbestos-containing products."

In West Virginia's mass tort system, unlike traditional class actions, judges don't certify classes based on common factors for trial.

Rather, mesothelioma and other cancer cases are simply consolidated into trial groups of twenty plaintiffs with no common factors other than disease. These cases are tried three times a year before a single judge. For Cytec that means 40 to 60 cases a year.

That type of defense is difficult at best, and requires a solid working relationship between the company and outside counsel.

"No question about that, and that's where Jeff has been great," Rugeley says. "The bottom line is that Jeff really understands the lay of the land down here and what we're up against, and that doesn't scare him. He allows us to vigorously defend the cases, knowing full well what our challenges are."

partnership at a glance

Spilman Thomas & Battle, PLLC

Formed in 1864, [Spilman Thomas & Battle, PLLC](#) is a full-service firm serving the mid-Atlantic region. The firm has 129 attorneys in Pennsylvania, Virginia, West Virginia and North Carolina.

[Heather Heiskell Jones](#) is a member and the chair of the litigation department in Spilman's Charleston, W.Va., office. She is [Peer Review Rated](#) and can be reached at hheiskell@spilmanlaw.com.

[Edward W. "Ned" Rugeley III](#) is a member and the chair of recruiting in Spilman's Charleston, W.Va., office. He is [Peer Review Rated](#) and can be reached at erugeley@spilmanlaw.com.

[Kevin L. Carr](#) is a member and co-chair of the labor and employment practice group in Spilman's Charleston, W.Va., office. He is [Peer Review Rated](#) and can be reached at kcarr@spilmanlaw.com.

Koenig says that a thorough knowledge of all the local legal permutations is absolutely essential in asbestos cases.

"In asbestos litigation, understanding the jurisdiction is probably more important than anything else," he says. "Ned does an outstanding job of advising us of those risks and rewards. Ned is a very thoughtful lawyer who moves the ball very well."

That kind of trust pays dividends when the unexpected strikes. Rugeley recalls a case where Cytec was amended into a lawsuit just three weeks before trial. The case involved a facility in another state that the company had owned briefly in the 1970s, and they had missed the discovery process. It's a situation that would give most counsel fits.

"Jeff just sort of laughed and said, 'Let's see what we can do,'" Rugeley says. "He didn't

question how this could have happened; he just laughed and got down to business. We took off running, and fortunately we were able to get a good resolution."

Hard Labor

All the things that make West Virginia a difficult jurisdiction for defendants in general apply to labor and employment cases, but with additional wrinkles. West Virginia has state statutes that mirror federal employment laws such as the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964. That means cases can't simply be appealed to more favorable federal courts. Also, because of local demographics, jury pools skew toward older, more experienced citizens.

"In my mind, that makes every juror an employment expert," says [Kevin L. Carr](#), co-chair of the labor and employment practice group at Spilman. "They've all been employed, they all know someone in a union."

"We don't argue any law, we don't argue burdens of proof. We try cases to convince jurors that what we did may have been a tough decision, but a fair one. West Virginia is probably unique in that regard."

Older jurors tend to weigh allegations against their own experiences in the work force, and the more experience they have, the harder it is to sway them with strictly legal arguments. They don't want to know whether a layoff, for example, was legally permissible; they want to know whether it was fair, Carr says. For him that fact guides the structure of the entire case.

"We don't argue any law, we don't argue burdens of proof," he says. "We try cases to convince jurors that what we did may have been a tough decision, but a fair one. West Virginia is probably unique in that regard."

That's the kind of local nuance that is often overlooked by out-of-state litigators, and just one of the things Koenig values about Carr.

"From the first conversation with him, you can tell how good of a trial lawyer he is and how comfortable he is in front of people," Koenig says. "Kevin's a born litigator; he knows his craft really well and always gives me really up-front, good advice."

Koenig cites a case where the plaintiff sought high seven figures that Carr was able to settle for a relative pittance.

"After we blew them out on summary judgment and they were left standing with one pretty weak claim, we settled it for nuisance value," Koenig says. "But Kevin was perfectly prepared to try the case, and that means so much to me. His strategy worked to a tee in this case, and my management and I were incredibly happy with the results."

Looking Good

Talking to Koenig and the Spilman lawyers, it doesn't take long to figure out that they share an unusual chemistry. Their conversation is laced with good-natured ribbing and self-deprecating wit. It's clear that they not only have mutual professional respect, they genuinely like each other, and that enables an uncommon level of service.

"I'm just telling you in all candor: Jeff is one of the best people I work with on a regular basis, and I work with about fifty other people in his position," Carr says. "On top of that, they are outstanding corporate

citizens: They run a safe plant, they have long-tenured, sophisticated managers in place, and the plant on Willow Island is an employer of choice in West Virginia."

For Koenig, the relationship hinges on value and consistency.

"Their billing rates are quite fair, but the real value I get is knowing that each person in charge of a case will be trying that case, will be integrally involved all the way through, and that they all know their way around the courtroom," he says.

With a bit of a laugh, Koenig also acknowledges he has a more, well, selfish interest in the partnership.

"As an in-house lawyer—as opposed to private practice where marketing and business-generation are really how you're judged—in an in-house environment, it's all about your results," he says. "You know what? Spilman makes me look good. Can you ask for much more than that?"

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