



## Defending the Toxic Tort of Outrage

By Clifford J. Zatz  
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**P**ractitioners must understand the difficulties involved in the defense of these claims, as well as alternative approaches that may mitigate the downside.

# Intentional Infliction of Emotional Distress Claims

A plaintiff lashes out on the witness stand at expert testimony about her “histrionic personality disorder with narcissistic features.” “I am *not* HIS-TER-ON-IC!” the plaintiff screeches. Another shouts, sobs, and pounds on the table

in her videotaped deposition as she recounts nightmares about her contaminated community. A toxicologist concedes that he can’t connect a plaintiff’s neurologic injury to solvent exposure to a reasonable degree of certainty, yet a court allows him to tell a jury that it’s reasonable for the plaintiff to believe that they’re causally related.

These are all scenes from “tort of outrageous conduct” cases we have defended. Recognized in other contexts for decades, this tort, also known as intentional infliction of emotional distress—or sometimes simply as the “tort of outrage”—is now in vogue as another “no-injury” theory in toxic tort litigation. Outrage claims are brought in toxic tort cases in at least three circumstances: (1) in a jurisdiction in which a physical injury is a prerequisite to a negligence action, a plaintiff has suffered no such injury, *e.g.*, *Capital Holding Corp. v. Bailey*, 873 S.W.2d 187 (Ky. 1994) (only cause of action available to plaintiff who had no present

manifestation of harm from asbestos exposure); (2) a plaintiff’s attorney elects not to assume the burden of proving causation of any physical harm allegedly suffered by the plaintiff; or (3) pleading in the alternative, a plaintiff’s attorney includes both personal injury and tort of outrage counts in a complaint. Plaintiffs’ attorneys assert outrageous conduct claims in single-plaintiff and mass tort cases alike.

It’s tempting to treat tort of outrage cases as routine or low-risk. After all, the plaintiff alleges only emotional distress. Don’t be fooled: defending these cases is treacherous. A finding of liability may estop your client from denying negligence in future personal injury cases. It may also guarantee an award of punitive damages. Case law on the critical issues is sparse. You’ll face tough strategic decisions about how to prevent an opponent from bringing causation evidence in the back door, and about how much of a defense to mount if such evi-



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dence is admitted. And the level of emotion, already high in most toxic tort cases, moves up another notch.

### Elements of the Tort

The second Restatement calls the tort “Outrageous Conduct Causing Severe Emotional Distress.” It states:

One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

Restatement (Second) of Torts §46 (1) (1965).

Jurisdictions recognizing the tort of outrage typically have adopted the Restatement (Second) formulation verbatim. *E.g.*, *Metropolitan Life Ins. Co. v. McCarron*, 467 So. 2d 277 (Fla. 1985); *Craft v. Rice*, 671 S.W.2d 247 (Ky. 1984); *Champlin v. Washington Trust Co.*, 478 A.2d 985 (R.I. 1984); *Harless v. First National Bank in Fairmont*, 289 S.E.2d 692 (W.Va. 1982); *American Road Service Co. v. Inmon*, 394 So. 2d 361 (Ala. 1981); *Moore v. Allied Chemical Corp.*, 480 F. Supp. 364 (E.D. Va. 1979); *Pakos v. Clark*, 453 P.2d 682 (Or. 1969); *Medlin v. Allied Inv. Co.*, 398 S.W.2d 270 (Tenn. 1966).

These courts usually list four elements of a prima facie case:

1. The conduct must be intentional or reckless;
2. The conduct must be outrageous and intolerable in that it offends against the generally accepted standards of decency and morality;
3. There must be a causal connection between the conduct and the plaintiff’s emotional distress; and
4. The emotional distress must be severe.

Comment d to Restatement (Second) §46 establishes a high bar for a plaintiff to prove that a defendant’s conduct has been “extreme and outrageous”:

It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by “malice,” or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort.

Instead, the conduct must be “so outrageous in character, and so extreme in

degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Id.* Cf. *Meagher v. Lamb-Weston, Inc.*, 839 F. Supp. 1403, 1408 (D. Or. 1993) (finding conduct must constitute “an extraordinary transgression of the bounds of socially tolerable conduct”).

Given this liability standard, a verdict for a plaintiff obviously assumes a finding well beyond negligence. It raises the spectre of collateral estoppel, and it may permit an award of punitive damages without any additional showing. *E.g.*, *Borden v. Paul Revere Life Ins. Co.*, 935 F.2d 370, 382 (1st Cir. 1991) (citing the majority rule that the “plaintiff must carry no additional burden” to win punitive damages); *Crump v. P & C Food Mkts., Inc.*, 576 A.2d 441, 449 (Vt. 1990). *Contra*, *Knierim v. Izzo*, 174 N.E.2d 157, 165 (Ill. 1961) (holding punitive damages not available for intentional infliction of emotional distress claims); *Tudor v. Charleston Area Medical Ctr., Inc.*, 506 S.E.2d 554, 573–76 (W.Va. 1997) (holding punitive damages unavailable unless emotional distress accompanied by physical trauma or proof of emotional or mental trauma).

The intent that a plaintiff must prove is a specific desire of a defendant to cause the plaintiff severe emotional distress and knowledge that such distress is certain, or substantially certain, to result. Restatement (Second) of Torts §46 cmt. i. The tort applies only if a defendant “intends to invade the interest in freedom from severe emotional distress.” Restatement (Second) of Torts §46 cmt. a. Some courts add that the conduct must be intended to cause *only* emotional distress; conduct intended to cause bodily harm will not give rise to a cause of action for outrage. *See, e.g.*, *Rigazio v. Archdiocese of Louisville*, 853 S.W.2d 295 (Ky. App. 1993).

### Application to Toxic Tort Cases

There are at least two threshold issues for courts to consider in determining whether a plaintiff may pursue a tort of outrage claim in a toxic tort case. These issues may provide you with bases for early defense motions. One is whether the tort of outrage is, in practice, any different from a cause of action for fear of cancer or another future injury. If a plaintiff has no viable cause of action for fear, may he or she assert the same claim under the guise of emotional distress?

May he or she offer evidence of increased risk on the ground that it proves the reasonableness of the alleged emotional distress?

Few cases to date answer these questions. Some courts appear to allow fear—at least when coupled with evidence of a likelihood of developing a disease—to serve as the emotion underlying an intentional infliction claim. *Bonds v. Nicoletti Oil Inc.*,

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2008 WL 281532 (E.D. Cal. Jan. 30, 2008); *Graham v. Vanderzyl*, 802 So. 2d 1077 (Ala. 2001); *Potter v. Firestone Tire and Rubber Co.*, 863 P.2d 795 (Cal. 1992) (en banc); *but see Leaf River Forest Products, Inc. v. Ferguson*, 662 So. 2d 648 (Miss. 1995) (finding that a plaintiff cannot pursue a cause of action for emotional distress based on fear of contracting disease, no matter how reasonable the fear). The only safe course is to assume that a court will admit testimony about fear and risk into evidence. Explore it fully in discovery, and be prepared to rebut it with expert witnesses. Use motions for summary judgment or motions *in limine* to try to define the plaintiff’s outrage claim and limit the evidence that the court may admit in support of the claim.

The second threshold issue, which you will want to use as the basis of your first line of attack, is whether the tort applies at all to the facts of a typical toxic tort case. Successful outrage claims ordinarily involve “individuals acting toward individuals.” *Witherspoon v. Philip Morris Inc.*, 964 F. Supp. 455, 463 (D.D.C. 1997). The tort of outrage is perhaps more accurately described as the “tort of emotional confrontation.” A toxic tort case doesn’t neatly fit the paradigm of conduct directed at a plaintiff’s emotions. In the usual outrage case, the facts make clear that the defendant’s conduct was directed at the plaintiff and calculated to affect his or her emotional well-being. *E.g.*, *Drezja v. Vaccaro*,



650 A.2d 1308 (D.C. 1994) (police detective's ridicule of rape victim); *Brown v. Manning*, 764 F. Supp. 183 (M.D. Ga. 1991) (racial harassment); *Campos v. Oldsmobile Div., General Motors Corp.*, 246 N.W.2d 352 (Mich. App. 1976) (accusations of criminal activity); *Johnson v. Woman's Hospital*, 527 S.W.2d 133 (Tenn. App. 1975) (display of stillborn child in formaldehyde jar

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to mother); *Kroger Co. v. Willgruber*, 920 S.W.2d 61 (Ky. 1996) (fictitious employment evaluations in retaliation for plaintiff's refusal to obtain competitors' price lists); *Williams v. City of Mineola*, 575 So. 2d 683 (Fla. App. 1991) (police paraded videotape of autopsy before loved ones).

The conduct in toxic tort cases—contamination of the environment, exposure of workers to hazardous materials, mass marketing of chemical products—typically does not target a particular plaintiff, much less a particular plaintiff's psyche. It is absurd to suggest, for example, that a company contaminates groundwater intending that the contaminant plume migrate in a specific direction, travel a specific distance, reach a specific plaintiff at a specific time, and cause him or her emotional distress when it is discovered. We submit, in fact, that the tort of outrage is simply not applicable to contamination of the environment, particularly if the contamination has been accidental.

The Restatement language does not contain an explicit "directed at" requirement.

But the tort of outrage is quintessentially a personal one. Almost by definition, it must have an intended victim. The comments to Restatement (Second) of Torts §46 refer to a defendant's abuse of his or her authority over "the other" (comment e); his or her knowledge that "the other" is "peculiarly susceptible to emotional distress" (comment f); and a defendant's privilege of self-defense against "the other" (comment g). Taken together, the comments assume that this "other" is an identifiable, individual target of the defendant's conduct. This is also a logical inference from the very existence of §46 (2), which applies separately to "bystander" plaintiffs and conduct directed at third parties.

Several courts have agreed. As the California Supreme Court explained in *Christensen v. Superior Court*, 820 P.2d 181 (Cal. 1991), the "directed at" requirement "is a factor which distinguishes intentional infliction of emotional distress from the negligent infliction of such injury." 820 P.2d at 202. See also *Reid v. Pierce County*, 961 P.2d 333, 337 (Wash. 1998); *Angus v. Shiley*, 989 F.2d 142, 147–48 (3d Cir. 1993); *Meagher v. Lamb-Weston, Inc.*, 839 F. Supp. 1403, 1409 (D. Or. 1993); *Johnson v. Caparelli*, 625 A.2d 668, 671–73 (Pa. 1993); *Upchurch v. N.Y. Times Co.*, 431 S.E.2d 558, 561 (S.C. 1993); *Ryckley v. Callaway*, 412 S.E.2d 826, 829 (Ga. 1992).

In toxic tort cases, at least a few courts have held that the tort of outrageous conduct is viable only if a defendant's conduct was directed at the plaintiff. The most frequently cited case is *Potter v. Firestone Tire and Rubber Co.*, 863 P.2d 795 (Cal. 1992) (en banc). In *Potter*, the California Supreme Court held that Firestone was not liable for improper waste disposal in a landfill "in the absence of a determination that Firestone's extreme and outrageous conduct was directed at plaintiffs or undertaken with knowledge of their presence and consumption of the groundwater..." 863 P.2d at 800 (emphasis added). It was not enough, the court said, for Firestone to realize that its conduct was certain to cause emotional distress to any foreseeable user of the water. *Id.* at 820. See also *Witherspoon*, 964 F. Supp. at 462–63 (finding concealment of hazards of tobacco not directed toward the plaintiff); *Whitlock v. Pepsi Americas*, 681 F. Supp. 2d 1116 (N.D. Cal. 2010) (finding no cause of action

for environmental contamination allegedly directed at "citizens of Willits"); *Smith v. Carbide and Chemicals Corp.*, 298 F. Supp. 2d 561 (W.D. Ky. 2004) (finding the plaintiffs failed to show that defendants released radionuclides "for the purpose of inflicting emotional distress on the surrounding property owners."); *Dusoe v. Mobil Oil Corp.*, 167 F. Supp. 155 (D. Mass. 2001) (finding that petroleum contamination was not directed at neighboring property owners); *Lewis v. General Electric Co.*, 37 F. Supp.2d 55 (D. Mass. 1999) (finding that disposal of PCB-contaminated soil was not directed at the plaintiff, a property owner).

It is important to remember that Restatement (Second) of Torts §46 also applies to one who "recklessly" causes emotional distress. Plaintiffs often contend that a "directed at" requirement is inconsistent with the notion of reckless infliction. The few court decisions on this issue have gone both ways. Compare *Christensen*, 820 P.2d at 202–03 (finding no cause of action for reckless infliction unless the plaintiff was present at the time of the outrageous conduct and the defendant was aware of the plaintiff's presence), with *Doe v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22 (Tenn. 2005) (finding reckless infliction of emotional distress need not be directed at the plaintiff), and *Baldonado v. El Paso Natural Gas Co.*, 176 P.3d 286 (N.M. App. 2006) (adopting the Tennessee Supreme Court's view).

### Defending the Allegation of "Extreme and Outrageous Conduct"

The second line of defense is to challenge the claim that your client's conduct was "extreme and outrageous." To be sure, many judges will reflexively treat this as an issue of fact for a jury. The Restatement, however, makes clear that outrage cases are well-suited for summary judgment: "It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, or whether it is necessarily so." Restatement (Second) of Torts §46 cmt h.

Begin by identifying the precise conduct that the plaintiff contends has been outrageous. In environmental contamination cases, for example, plaintiffs often do not point to the act of contamination itself,

but to a defendant's alleged disregard for its neighbors—failing to promptly notify residents of the contamination, failing to thoroughly investigate whether onsite groundwater contamination is moving off-site, or failing to cross the street to ask whether neighbors use private well water.

To this end, it is essential to reframe, for the judge or the jury, the conduct that the plaintiff calls “beyond all possible bounds of decency.” Emphasize that your client acted in good faith and did not intend to harm the plaintiff. On the facts of a particular case, the conduct may appear negligent, or even “cold, callous, and lacking sensitivity,” *Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d. 1, 4 (Ky. 1990), but that does not make it “outrageous.” The conduct may even be antithetical to intentional infliction of emotional distress. For example, a claim that a defendant has knowingly concealed hazards from a plaintiff is arguably inconsistent with the tort of outrage. A company that really intends to cause emotional distress wants to make its conduct fully known, recognized, and felt.

Testimony of experts on “state of the art” or industrial hygiene is key to defending allegations of extreme and outrageous conduct. The adjective “extreme” implies “at one end of a range,” or perhaps “farthest from the mainstream.” In the usual toxic tort case, however, a defendant's conduct is no different from that of thousands of other chemical handlers, including the United States government. Offer, if possible, expert testimony that your client's handling and disposal practices were in keeping with prevailing industry standards and then-applicable laws and regulations; that the chemicals at issue were common materials, widely used in the industry for beneficial purposes; that worker exposure was monitored and your client took precautionary measures to control it; that the chemicals were disposed of as the manufacturers recommended, not in a malicious or surreptitious way; that the same contaminants have been found at thousands of similar sites around the country; and that any release was accidental, unknown, and perhaps even undiscoverable at the time.

### Challenging the Claim of “Severe” Distress

The third line of defense is based on the tort

of outrage's severity requirement. A plaintiff must prove that his or her alleged emotional distress has been truly “severe.”

As defined in comment j to Restatement (Second) of Torts §46, “[i]t is only where [emotional distress] is extreme that liability arises. . . . The law intervenes only where the distress inflicted is *so severe that no reasonable man could be expected to endure it.*” (emphasis added). The word “severe” is not extraneous; it places a fundamental restriction on the kinds of emotional distress claims that are actionable. Rarely can a plaintiff produce admissible evidence that satisfies this definition in a toxic tort case. On this issue, and in all aspects of your defense of an outrage case, the language of the Restatement can be one of your best weapons. You should propose a jury instruction that quotes §46 and includes as much of the relevant comments as possible.

Challenge an allegation of “severe” emotional distress early in the discovery stage. Insist that the plaintiff produce his or her medical and psychological records. A plaintiff's attorney will likely resist producing medical records, arguing they are irrelevant without a physical injury claim. Fortunately, many courts have held that a plaintiff's medical records are discoverable in outrage cases. *E.g., Brown v. Telerep, Inc.*, 263 A.D.2d 378, 379 (N.Y. App. Div. 1999). Others have required a plaintiff to produce corroborating evidence that he or she actually had suffered severe emotional distress. *See Ford v. Zalco Realty, Inc.*, 2010 WL 378521, at \*6 (E.D. Va. Feb. 1, 2010); *Byrd v. Hopson*, 265 F. Supp. 2d 594, 605 (W.D.N.C. 2003).

An outrage plaintiff's medical history is relevant to several issues. Was the plaintiff healthy and psychologically sound to begin with? Does he or she have other risk factors—lifestyle, heredity, preexisting medical conditions—of more concern than a low-dose chemical exposure? Has the plaintiff been worried enough to report his or her health concerns to a family physician? Did the emotional distress cause any physical symptoms? *See Borden v. Paul Revere Life Ins. Co.*, 935 F.2d at 380 (finding that severity requirement “in Rhode Island means that the psychic trauma must have some physical manifestation”). Does the plaintiff respond rationally to other health issues, such as minor medical conditions

or screening tests? *See Bradford v. Gleason*, 2009 WL 2461270, at \*8 (N.J. Super. Aug. 13, 2009) (finding that a plaintiff may not recover for “idiosyncratic emotional distress that would not be experienced by average persons”).

Use the plaintiff's deposition to explore his or her understanding of the emotional distress claim and the impact of the emo-

## Testimony of experts

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tional distress on his or her daily life. How does the plaintiff describe the emotional distress—as fear, anxiety, anger, or uncertainty? Does the plaintiff display anything more than a typical, tolerable reaction to health concerns? What would it take to allay his or her distress? Has the plaintiff seen a psychiatrist, psychologist, counselor, social worker, or clergyman? Is the plaintiff impaired or disabled by the emotional distress? Is there anything that the plaintiff can no longer do because of his or her emotional state? Does the plaintiff continue to function well socially and in his or her family life? Has the plaintiff's attendance or performance at work or in school been affected? Does the plaintiff take or require medication for any emotional condition? Does he or she report nightmares, loss of sleep, or other indicia of trouble enduring the emotional distress? What does the plaintiff do to alleviate the distress? Does the plaintiff keep a diary, journal, or other real-time record of his or her emotional complaints?

Probe, in your deposition questioning, to find out what might trigger the plaintiff to show emotion on the witness stand and how it might play to a jury. Explore, too, all possible alternative causes of recent emotional distress: employment or financial troubles, marital discord, legal prob-



lems, alcohol or drug abuse, parenting issues, loss of loved ones, and so on. A court should admit evidence of these as relevant to the causation prong of the four-part Restatement (Second) of Torts formulation.

The plaintiff will inevitably offer expert opinion highlighting the magic word “severe” to describe his or her emotional distress. Press the expert to admit that

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“severe” is not a term of art in psychiatry or psychology, it has no objective meaning in his or her daily practice, and he or she has not used the term as is defined in the comments to Restatement §46.

Make use of both psychiatrists and psychologists as key defense witnesses in trials of outrage claims. They sometimes argue that you need only one or the other, but a pair that works well together is usually ideal. Their interview and testing of a plaintiff is critical to ferreting out the nature, extent, and causes of emotional distress. A plaintiff will often reveal the most intimate facts to these experts, facts that you were unable to elicit yourself in discovery. As a medical doctor, a psychiatrist can evaluate all relevant medical history. Using the bible of psychiatric diagnosis, the Diagnostic and Statistical Manual of Mental Disorders (DSM)—the current version is DSM-IV-TR (2000)—the experts can also rule out a “mental disorder.” Since the DSM’s current definition of “mental disorder” requires a finding of, among other things, painful symptoms or impairment in functioning, the absence of such a diagnosis can assist in

demonstrating that a plaintiff’s emotional distress is not “severe.”

Standardized psychological tests can objectively assess allegations of anxiety and depression. They can also smoke out exaggeration or faking and reveal co-morbid emotional conditions such as the “histrionic personality disorder” mentioned above. Tests typically include the Minnesota Multiphasic Personality Inventory-2, tests of cognitive function, and self-reports of a plaintiff’s emotional state. Recognize that state and local practices may govern such issues as whether counsel or third parties may attend a psychiatric or psychological exam, whether the plaintiff’s attorney may audiotape or videotape it, and whether particular tests are permissible. See Michael J. Larin & Mark I. Levy, *The Team Approach: Assessing Emotional Damages*, For The Defense (Dec. 2010) (explaining at length how to use forensic psychiatrists and psychologists and describing a typical battery of psychological tests).

A sizeable body of literature has reported an elevated incidence of post-traumatic stress disorder, anxiety disorders, and other psychological effects in populations living near landfills, oil spills, and other hazardous waste sites. Related studies have been published involving the Three Mile Island nuclear accident, other technological failures, and natural disasters. You and your experts must distinguish these kinds of generalized, population-based findings from the circumstances of the individual plaintiff in your case. Do not allow a jury to assume that this plaintiff has suffered severe emotional distress merely because other persons in other situations may have shown measurable psychological effects.

Perhaps your most difficult strategic decision is the extent to which you argue that a plaintiff’s distress is unwarranted or disproportionate because it has no valid basis in science or medicine. See Restatement (Second) of Torts §46 cmt. f (“The distress must be reasonable and justified under the circumstances, and there is no liability where the plaintiff has suffered exaggerated and unreasonable emotional distress, unless it results from a peculiar susceptibility to such distress of which the actor has knowledge.”). A plaintiff’s attorney may decide this issue for you, offering toxicological or epidemiological

experts, regulatory exposure limits, or government agency pronouncements affirmatively to argue that the plaintiff has good reason to be distressed. Either way, you’ll need to make a judgment call about how far to enter this debate. The typical full-scale, causation-like defense can diminish the foundation for an emotional distress claim, but it can also dignify it, suggesting to a jury that a defendant “doth protest too much.” You should consider how strong your scientific defense is, whether you have a basis for *Daubert* or *Frye* motions, how well your experts match up with the plaintiff’s experts, how long it will take to present this evidence, and how consistent it is with your most persuasive jury argument.

Here again, you have much to address in discovery and at trial. Has any expert—either a litigation expert or some independent expert—advised the plaintiff that he or she is at significant risk? If not, what are the sources of information underlying the plaintiff’s distress? Are those sources reliable? Has the plaintiff investigated his or her health concerns, read or discussed the medical literature, searched the Internet? Has the plaintiff been unduly influenced by misinformation in the community or biased coverage in the news media? Is he or she well-informed about the causes of cancer and other medical conditions?

### Consider Alternative Dispute Resolution

You should seriously consider ADR methods in tort of outrageous conduct cases. An emotionally distressed plaintiff may sincerely need some kind of “day in court”—an audience to tell his or her story to, a chance to confront the alleged wrongdoer. From your client’s perspective, mediation, arbitration, or summary jury trial can avoid the time and expense devoted to a long trial, and the risks of collateral estoppel and punitive damages, all for a plaintiff who does not allege a personal injury.

We have found a “baseball arbitration” format particularly useful. Each side presents a final settlement figure to an arbitrator, who is authorized only to award one or the other. The incentive in this form of arbitration is for each party to present the more reasonable settlement figure to the arbitrator. It might temper an angry or vin-

**Emotional**, continued on page 76

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**Emotional**, from page 38  
dictive plaintiff's expectations about settlement value.

In one such arbitration case, we agreed with a plaintiff's counsel on a time limit and a maximum number of witnesses, avoiding a trial scheduled to last several weeks. Insisting that no transcript be made and no findings of fact or conclusions of law be issued, we faced no risk of collateral estoppel. Although we brought favorable prior rulings on motions in limine to the arbitrator's attention, we agreed that the

plaintiff could testify as she pleased in arbitration. The plaintiff had written in an affidavit that she "could choke on the hatred" that she felt for the company and "even wished there was a way for those responsible to get the death penalty." The arbitration hearing gave her a forum for these powerful emotions. The arbitrator's award brought our client finality.

### **Conclusion**

As creative plaintiffs' lawyers increasingly pursue the "outrage" theory in toxic tort

litigation, defense counsel must plan to match them with diligence and imagination in these highly charged, emotional, and often irrational cases. We offer here a strategy for achieving victory on this dangerous battlefield, but every case will present unique facts and circumstances. Only one thing is certain: with emotion at the heart of the case and the only basis for damages, you can expect to encounter plenty of it. 