

Environmental Watch Interview with Kurtis B. Reeg of Leritz, Plunkert & Bruning, P.C. on AA-Getting Started

1. What is the Primary Topic you wish to discuss and a quick summary of the angle?

Partnering Between Corporate America, Government and the Stockholder-Consumer Public.

In these days of Enron, WorldCom, etc., both Government and the public are skeptical, if not downright adverse, to American Business. For the 25 years I have been practicing law, Corporate America generally has been doing business under the same old paradigm: Business is great and absolute; any government regulation is meddling and to be fought; business fights government regulation and litigation to enforce the law, expending millions of dollars, angering government officials, cost their stockholders dividends and goodwill, and at the end of the day, everyone is mad at everyone else, and blames others for the genesis of the problem and the diminished bottom line after the consumption of time, energy, money and talent.

In the New millennium, I believe Corporate America has a unique and timely opportunity to partner with Government (federal state and local) to reach out to Government to be proactive with it and partner in the arena of environmental and toxic tort issues so as to help develop and strengthen the quality of life for all Americans, while simultaneously winning the support, both financial and emotional, of the consuming public which buys our stock, works at our corporations, and judges the actions of American Business in courtrooms around the country. If Business will only step outside the traditional mold, take a fresh look at the ways to win the hearts of Government and the consuming public, Corporate America could garner the support of those who, on the one hand, govern it, and, on the other, purchase and consume its products and buy its stock, thus strengthening the bottom line.

2. Pick 4-5 points of interest talking points that you would like to focus on about our primary topic and a quick summary of each.

A. Look at the Asbestos Debacle. Asbestos is a known mineral used since Roman times. Charlemagne was renowned for his alleged trickery involving the throwing of an asbestos-laden blanket over a fire which did not burn. The Brits and American business have employed asbestos-containing products on a large-scale basis since the late 1800's. Asbestos has been employed in everything from insulation, especially in shipbuilding and industrial use, to roofing material, home-remodeling material, to friction products, to paper. Every major metropolitan city resident or visitor is exposed to asbestos on a daily basis walking down the sidewalk. It is in the ambient (free) air, and every person who dies passes with at least 1,000,000 asbestos fibers in their lungs. Yet most do not die

from asbestos-related disease. But here's the news flash; asbestos is a naturally occurring mineral; it is found in the rocks in the ground at numerous places across the world, and several different locations in the United States. This was not a bogeyman created by American Business. It was a god-made mineral put to fair, good use by hundreds of companies, and millions of individuals, over the ages. Yet, for the last 40 years, American business has been blamed for the Asbestos Scourge, the number of bankruptcies associated with companies that manufactured, sold or distributed asbestos-containing materials exceeds 70, and the values of courtroom verdicts exceed hundreds of millions of dollars in even single individual cases. Why? Because Corporate America first ignored the problem, then fought with dispassionate rancor the accusations that they knew there were human health problems associated with asbestos, then made excuses or blamed others for hiding the "truth" about the dangers of asbestos, until now they beg for mercy in the courtrooms across the land that they should not be punished for their misdeeds, misunderstandings, or missteps associated with asbestos. The vast majority of American juries, now, refuse to believe the position of Corporate America when it comes to their acts and omissions regarding asbestos, tattoo business in their verdicts which favor the individual plaintiff, and on top of it all, they award multiples of punitive damages to punish the corporate defendant, which likely has been punished by multiple awards in the past in different jurisdictions across the land. And here's the funny part—Corporate America continues today to employ ostrich tactics in court, blame others, and make excuses, rather than own up to their shortcomings. Yes, the corporate death march continues.

B. Why is this important? Why tell this story? What's the lesson?

American business has the opportunity to halt this tide in evolving fields of toxic tort litigation and environmental impacts if it will go to school on itself. Let me tell you two examples.

Mold. Many consider mold litigation the next Asbestos. Mold is everywhere. 25% of the world's biological mass consists of mold. If you live in various parts of the country, the San Joaquin Valley, the Ohio River Valley, or the Midwest, mold counts are a fact of daily life. Every night on the news, you get the mold count on the evening weather report—36,000 spores. No wonder people have hay fever, coughing, sneezing, and colds. Yet, people are suing homebuilders, architects, and condominium associations, due to mold problems. Listen, when you open the windows, let your dog out to the back yard, take a walk, into your home comes mold—on the feet of your pets, on your shoes, through the air that passes your window screen. If you have a dark colored vehicle, you wash it in the spring to get the yellow pollen off of it. That's mold, folks.

But you only have to turn on the television, or read the paper, to see idols like Erin Brockovich or Ed McMann, suing because their house has mold. Or the local courthouse is closed because people are complaining of headaches, nausea, runny noses, etc. Worse yet, the local school is closed, and our kids are put in trailers in the parking lot, because water leaks in the roofs and in the bathrooms behind the sink permitted “black mold,” often referred to as “toxic mold,” to grow. The most absurd—we burn down the building to get rid of the mold. Believe it. And we all think we are at risk.

The truth is that the phrase “toxic mold” is an oxy-moron. Almost every substance on earth is toxic if you are exposed to enough of it. If you drink enough water, your bodily systems will shut down and you will die. Yet, we voluntarily drink water everyday. But most of us do not consider water to be a toxic substance. So where’s the lesson.

- C. Legislatures across the land are considering mold standards. How much is too much? What do we do to stem the tide of the mold scourge? The reality is that there is not a sufficient amount of science or engineering data to appropriately define a legitimate standard for mold. Hundreds of thousands of Russians died during World War II and the German blitz of Stalingrad because they ate moldy grain which wintered under the snow, or stuffed their mattresses with moldy hay, and breathed excessive levels of pollen and spores. Again, if you are exposed to enough of anything, it can have harmful effects.

But what’s the lesson for American business? Get pro-active, instead of just bad-mouthing and fighting pro-active governments which are trying to enact mold legislation. Voice the fact far and wide that there is insufficient data to support mold standards. But don’t just gripe, moan and complain. Volunteer to do something about it. The insurance industry, which is asked repeatedly to foot the bill for mold remediation, should be among those leading the research, testing and studies. They hire remediation contractors to clean up mold messes. They should have their contractors and industrial hygiene experts test each property, whether commercial or residential, for mold levels upon entry, during clean up, and after remediation, so base-lines can be developed. The architects, general contractors, home builders, and developers, should have industrial hygienists on staff to monitor mold levels at all phases of construction, should test during all phases of construction, and should publish their findings in peer-reviewed journals. Simultaneously, American Industry should employ epidemiologists to study medical records, and follow construction workers and residents, over time, to develop the kind of medical and scientific data necessary to determine the differing levels of hazards. All this work should be undertaken, and the results published and shared with government, so that regulation can have some scientific basis

and legitimacy. The alternative is what we have observed for decades—reaction instead of probation; millions of dollars spent to re-engineer tools, equipment and reporting requirements instead of investment in science and legitimate regulation and testing, and millions expended for attorneys and settlements or verdicts, instead of research and development which is deductible, at least, and great PR, at worst.

Look, I am not an environmental do-gooder, a guy who climbs trees to save the owl, or floats my boat in front of oil tankers on the high seas. I represent, defend and support American business with my whole heart. It's just that business hasn't learned the lesson the way I think it should, and could so easily, to the benefit of itself, to the applause of government, and to the flag-waving support of the American consumer.

Business is going to expend the funds in PR, lobbying, lawyers, settlements and judgments anyway. I am merely advocating a shift in resources to research and development, marketing and PR. It's a shift in resources. But more importantly, it's a shift in the thought process of business. Don't think of government regulation as a death knell but an opportunity. Don't reject and avoid it but embrace it as an opportunity for PR and growth and development. Don't wait for the mountain to come to you but chase after the climb. And I submit to you that you will reap the benefits financially, your shareholders will support and love you, your oversight governing bodies will champion you, your critics will be muffled, and your profits will soar. All because you view the glass as half full, instead of half empty.

- D. Where are other opportunities? Look at the tobacco litigation. If this approach would have been adopted, the tobacco lobby would be counting its coffers instead of measuring verdicts and the costs of appeal bonds, state settlements, and the future of the business from the tobacco farmer to the CEO. Gun litigation—same old story, with a twist. A serious number of the Average Joes love, have and use their guns for sport. Yet, City after City has tried to silence the muzzle blast with litigation, when the gun manufacturers, had they employed the Partnering Approach could have instilled in most Americans the value of the militia tradition, the shooting sports, and, heaven forbid, law enforcement and safety. On the toxic tort front, the same story has been repeated with lead paint. The paint manufacturers have been faced with an onslaught of civil litigation by cities and states for remediation, medical monitoring, and lead paint clean up. If only they had refocused the studies, engaged in progressive testing, and established funds and grants for engineering studies, medical studies and, if necessary, remediation and clean-up, I believe that industry could have deflected the now spiraling litigation it faces. As of late, the chemical bisphenol A, or BPA, an artificial estrogen used to make plastic poly-carbonate which is used to line some metal cans and in certain dental

sealants, has been associated with chromosomal changes that can lead to birth defects in some animals. With the junk science of the plaintiffs' trial bar at work, it is only a matter of time until those laboratory mice are converted to Mrs. Smith, the plaintiff in the lawsuit against Company X, the manufacturer of this product. Every day, new scares, product catastrophes, and litigation challenges, are thrown open to Corporate America. Instead of running scared, they should embrace these opportunities.

- E. Business need only hearken back to EMF (electro-magnetic field) litigation, to see the benefits of this partnering approach. The invisible charge from overhead, highly charged, electrical lines was suggested to cause cancer, and a whole host of disfiguring, mind-bending maladies. Yet, industry said no. It embraced the challenge and financed studies, monitored electrical fields, tested, studied and wrote about the mis-perceptions of junk science and the plaintiffs' bar. Low and behold, EMF litigation disappeared. The organized plaintiffs' bar, and their specialty groups, evaporated. The litigation went nowhere. And energy industry stocks and corporate value soared.
- F. Pressure-treated wood is another example. Industry used arsenic and copper to impregnate wood to make it last longer, diminish the use of valuable natural resources, and fight termites. Yet, arsenic is fatal in small amounts, and studies demonstrated arsenic was leaching from the wood on playgrounds, from boat docks into water, and harming people who were goofy enough to burn this wood in their fireplaces. Industry studied the problem in tandem with government. Low and behold, both came to the same conclusion. There was a problem. So the USEPA, and Industry, in tandem, announced a voluntary withdrawal of all such products from new sales by the end of 2003. Horrible, says business? Not exactly. Instead, they promoted their plastic wood, or alternative substitutes, which sell for multiples more. And as there are precious few alternatives, the rebounding financial effects are still evolving. Since the consuming public is used to pressure-treated wood, and both industry and the governments have endorsed these alternatives, the consuming public is buying into the switch. It is the classic story of making a silk purse out of a sow's ear.
- G. The Morale of the Story. Do not knee-jerk in the negative to litigation, or government regulation. Embrace it. Join the fight. Accept the challenge. Learn from either the mistakes or the support. Ask for community and stockholder support. Take the fight to the legislature. Tell them you welcome the challenge, will play ball, and will expend your own funds to see what the ruckus is all about. You will be surprised. You will earn their support. Your legislators will be clamoring for your support. Your stockholders will introduce resolutions at your stockholders meetings congratulating you, rather

than seeking to off you. Carpe diem! It seems so hard, given the historically feisty nature of Corporate America. But I say accept and welcome the challenge, and you will win the day! I say it's not a leap of faith; it's just good business!