

# STEVE GROSSMARK | Artfully Tackling the Science of Environmental Defense

by Melissa Birks



One-hundred and forty residents in a northern Illinois community sued several manufacturers, distributors and the end-user of a cleaning solvent, claiming the material had so polluted their water for so long that they suffered everything from chemically-induced AIDS to psychological ailments.

Steve Grossmark, representing one of the manufacturers, took on the lion's share of the work among the defending attorneys, as colleague Thomas Ruud remembers. In the end, Ruud says, it was Grossmark's strategic arguments that allowed the defense team to submit "bulletproof" briefs that protected them against some of the claims, such as the psychological woes.

"He really, more than anybody else, came up with the lines of arguments and issues, different strategies and well-thought out arguments, and it made a huge difference," Ruud says. "In my opinion, he bore the labor; he was the person doing a lot of the work. If there was a big brief, he would get into that, I'd review it, other people reviewed it. I have so much respect for him and his knowledge the law."

For Grossmark, of **Tressler Soderstrom**

**Maloney & Priess LLP**, that complex case from the 1990s may be among the largest he's handled but, at its core, represents one fundamental part of his practice: Defending against novel personal injury claims, in which a plaintiff argues that exposure to a certain material injured him or her.

Grossmark's practice, however, also includes defending in the area of environmental law, for instance, if a client is charged with pollution-related issues.

Both types of cases test not so much Grossmark's knowledge of science but rather his ability to tap into expert witnesses and his mastery of the law. While the science of pollution and toxins is always interesting to Grossmark, the real thrill of the practice is the connections he makes with people.

"I like trying to figure out how a case should turn out, trying to get at it in great detail," he says. "I like to do the kind of evaluation a client deserves so they can decide how to proceed."

## **Of Statutes, Superfunds and Science**

Grossmark, 56, grew up in Chicago's north side and studied engineering briefly as an

undergraduate at the University of Illinois. He realized, after his first year, that he didn't want to be an engineer and switched his major to liberal arts and economics.

Out of the Washington University School of Law in 1977, Grossmark "got lucky" and got a job at the Environmental Control Division of the Illinois Attorney General's Office. So began his baptism in environmental law.

As an assistant attorney general, Grossmark handled mostly statutory enforcement cases and permit reviews and variances. The significant enforcement cases included issues in the 1980s when headlines blared about Lake Michigan beaches closed due to pollution. Grossmark managed two unrelated cases in which the wastewater treatment systems of Hammond, Indiana, and East Chicago, for different reasons, were found to be polluting the lake. His efforts helped the cities improve the facilities and put an end to improper discharge.

Along with becoming entrenched in the law during his time at the attorney general's office, Grossmark absorbed significant nuances about the practice. He remembers a forensic engineer teaching him the importance of letting experts tell the story.

"The expert can tell you things, but the lay person should not try to extrapolate from what the expert says," Grossmark says. "I think what that means is to let the expert communicate the science, and if you have more questions, you just keep going back to the experts to get the even bigger picture."

Grossmark calls upon different types of experts depending on the breed of the case. Environmental consulting firms, for instance, are vital in pollution cases.

"What's really interesting are issues regarding soil, groundwater, how they act, and what kind of remedy is possible. They (experts) have to identify the pollutants, the extent of contamination, figure out what it is and where it's at, and after they figure that out, what the remedy would be," he says.

In the 1980s and '90s, environmentally-based cases were probably best represented by the federal Superfund legislation that targeted not only the people who transported

and disposed of hazardous waste but the waste manufacturers as well.

“The Superfund statute made liable the people who created the waste but did not pollute, did not dispose of it,” Grossmark says. “When I got out of AG’s office and into private practice, in 1984, those were the cases being brought. That was pretty interesting.”

### Sorting Out the Issues

Experts notwithstanding, Grossmark found that defending clients in Superfund cases also involved working with other attorneys, as Superfund cases tend to include many parties—sometimes into the hundreds.

“I liked working with other defendants,” Grossmark says.

He recalled being called in to a conference with scores of defense attorneys who were being told by the government to pay for or clean up a particular site. By chance, he struck up a friendship with an attorney who sat next to him at the meeting.

Grossmark determined that his client was a minor player; if he could find other smaller players—called *de minimis* Potentially Responsible Parties (PRPs)—they could join together and work to resolve their part of the case. He called the EPA repeatedly, asking if any other *de minimis* PRPs had organized. Repeatedly, he was told “no.”

Eventually, Grossmark realized he was asking the wrong question. He called the EPA again, this time asking if any other *de minimis* PRPs had called to ask *about* organizing. As it turned out, the attorney he sat next to at the earlier conference had done just that. Grossmark and that attorney organized 135 of the smaller players and were hired as common counsel for the group, enabling the cost of their part of the case to be spread over many instead of being borne by a few.

Today, Grossmark still finds himself involved with Superfund cases but in a different capacity. As the law has become better understood through the years, the federal government has become a smaller player. Now, Grossmark’s (*Continued on Page 114*) practice tends to focus on how the private parties involved will carve up responsibility—and payment—of site clean-up.

Grossmark’s practice also delves into real estate transactions, because often, property at the focus of a transaction will have environmental issues.

Personal injury cases, of course, rely more on medical expertise, including not only doctors but also epidemiologists, toxicologists and certified industrial hygienists, whose specialty involves quantifying exposure to a pollutant and giving an opinion on whether exposure caused an injury.

“Personal injury is tricky, because there can be many defendants in a case and it’s unclear as to how each defendant is involved,” Grossmark says. “Let’s say you’re in a car accident. You’re driving a car, there’s an accident, your leg is broken. There’s no question that the accident caused the broken leg. In a toxic tort case, it’s very typical for there to be questions about whether the claimed exposure caused the claimed injury.”

For Grossmark, defense strategies in personal injury cases typically focus on the amount of alleged exposure to the pollutant and the question of whether that particular material caused the particular injury.

Science, he says, indicates that there must be significant exposure to the pollutant over a significant period of time to cause an injury. And “there have been attempts to argue in court cases that very little if any contact with a material can cause wide variety of injuries... We don’t think that’s what science tells us.”

Ruud, who defended another party in the northern Illinois case, praises Grossmark’s efforts in taming that “monumental” case “when you’re dealing with people claiming to be affected in all these different ways.”

A “really nice guy” who is never abusive, Grossmark’s niceness on the job makes him no less effective, according to Ruud.

“He’s always professional, but he responds well and he can intellectually cut the legs from under (an opponent),” Ruud says. “There are people who huff and puff and yell and scream. Steve is really even-keeled.”

Grossmark is already looking ahead to how the Obama administration’s environmental policies will affect his practice. He expects that he’ll find himself helping clients navigate policies that, for instance, put new regulations on greenhouse gas emissions.

That tendency to look ahead, to be prepared, makes sense when considering how Ruud characterizes Grossmark: “He’s by far the most diligent, hard-working attorney I’ve ever worked with.” ■