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# TRAILBLAZERS

ENERGY & ENVIRONMENTAL

## DANIEL NELSON

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**PIONEER SPIRIT** Dan Nelson started at Gibson Dunn as a general commercial litigator. He became involved in environmental mass tort litigation when he tried a case to a defense verdict in Florida. "I've remained interested in environmental mass torts because they are intriguing and challenging cases."

**TRAILS BLAZED** One of the big challenges for a defendant in mass tort cases is that the court will not try all the claims at once, instead reviewing a few cases at a time. This creates problems for the defense. "If the plaintiff wins on a legal issue, that win applies to all future groups, because it is the same defendant. But if the defendant wins, the same issue can be tried over and over again, with plaintiffs using new strategies until they find one that works."

Nelson designed a case management construct for environmental mass torts that has important elements to help the defense address this and other challenges. For example, it requires all discovery, including expert discovery, to be completed for the entire case on key issues. "Plaintiffs are not able to choose different experts for future cohorts." The construct basically separates duty and breach from causation and damage. "Duty and breach are teed up for every plaintiff at once, whereas causation and damage are addressed individually." Nelson has used this method successfully in several environmental mass tort cases.

**FUTURE EXPLORATIONS** Nelson expects environmental mass tort litigation to increase, due in part to a change in societal perception of industrial activity. "People who reside around facilities are more inclined to sign on to a mass tort case. In the past people accepted that there were byproducts of industrial activity."

