

## Jeffrey D. Talbert

Partner

Jeff is a nationally recognized trial attorney and environmental lawyer. Before joining Preti Flaherty, Jeff worked at one of the largest law firms in the world and was a trial lawyer at the U.S. Department of Justice. Over the past two decades, he has worked as lead counsel on numerous commercial litigation matters and trials across the country involving antitrust, securities, intellectual property, anti-terrorism, and environmental law.

As an environmental lawyer, Jeff assists clients in environmental litigation, permitting, due diligence, risk management, and allocation of liability among parties at CERCLA or RCRA sites.

He has broad and extensive experience and has worked on over 50 CERCLA/Superfund or RCRA cases, including sites involving contaminated sediments and natural resource damages. He has also led cases involving the Clean Water Act, the Clean Air Act, the Natural Resources Protection Act, and Endangered Species Act.

Clients have described Jeff as “exceptional,” “very strategic,” an “excellent advocate,” and having a “complete and in-depth understanding of all the issues.”

Jeff was recently recognized by *U.S. News, Best Lawyers*, as the 2019 Lawyer of the Year for Litigation - Environmental in Portland, Maine. He is a recipient of the EPA's Gold Medal for exceptional service and several U.S. DOJ special achievement awards, and is recognized as a leading lawyer by *Chambers U.S.A.*, *New England Super Lawyers*, *Benchmark Litigation*, the *American Registry*, and the *Litigation Council of America*.

In the last five years, Jeff has worked on the following representative cases:

- Lead Counsel in defense of RCRA citizen suit for injunctive relief associated with contamination of sediments in the Penobscot River, one of New England's largest river systems and estuary. Month-long trial in Federal District Court involved testimony from 22 expert witnesses in various technical aspects of contaminated sediment issues including: fate and transport, stable isotope analysis, geochemistry of marsh areas. Case is currently pending decision. *Natural Resources Defense Counsel and Maine People's Alliance v. HoltraChem Manufacturing Company, L.L.C. (CA No. 00-69-BW) (D. Me).*
- Lead Counsel opposing multi-district litigation consolidation on behalf of one of nine parties opposing consolidation with 75 other cases. Jeff argued before the Judicial Panel on Multidistrict Litigation and was successful in opposing the transfer motion. *In Re: Aqueous Film - Forming Foam Products Liability Litigation (MDL No. 2873) (12/7/18).*



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- Lead Counsel in defense of state enforcement action seeking \$250 million remedy to address mercury contaminated soils, sediments, and groundwater at RCRA and Maine Uncontrolled Hazardous Substances Site. Jeff did opening statements and all key directs and cross examinations in two week state administrative hearing that led to modified order saving client \$150 million. *Mallinckrodt US LLC and United States Surgical Corp. v. Maine Department of Environmental Protection*, (CA No. AP-2010-19) (Me Sup. Ct.).
- Co-lead in defense of citizen suit under the Endangered Species Act challenging biological opinion and incidental take status allowing hydropower project to operate. Jeff worked with a team of lawyers to dismiss the action in Federal District Court on jurisdictional grounds. Jeff successfully opposed the appeal to the First Circuit Court of Appeals and prevailed in defeating a related challenge in the D.C. Court of Appeals. *Maine Council of the Atlantic Salmon Fed., et al. v. National Marine Fisheries Service and Brookfield Renewable Services Maine LLC, et al.* ; USDC Maine 2:15-cv-00261-JAW; First Circuit 16-2155; DC Circuit 17-1003.
- Lead counsel in defense of Patent Infringement case brought by manufacturer of Volt Amperes Reactive product. Jeff successfully argued Markman theory and prevailed on 90% of terms argued, including key terms. *Varentec, Inc. v. Gridco Inc.* (CA No. 16-217-RGA) (D. Del).
- Lead counsel in anti-terrorism case against large producer of bananas brought by citizens kidnapped and killed by terrorists in Colombia. *Julin, et al. v. Chiquita Brands International, Inc.* (CA No. 08-20641-CIV-MARRA) (S.D.F.L.).

## U.S. Department of Justice Experience

As a trial attorney in the Environmental Enforcement Section of the U.S. Department of Justice, Environment & Natural Resources Division in Washington, D.C., Jeff led trial teams in federal courts across the country in a wide range of environmental cases. Cases and awards included:

- One of the largest Clean Water Act cases ever brought by the EPA and DOJ
- One of the first Clean Air Act cases under the New Source Performance Standards
- Several significant natural resource damage cases
- Numerous CERCLA and RCRA cost recovery cases

Prior to the DOJ, Jeff worked at White & Case LLP in Washington, D.C., where he worked on complex commercial litigation and arbitration matters involving antitrust, securities, intellectual property and international law.

## Practice Areas

- Cleantech & Renewable Energy
- Climate Strategy
- Environmental
- Environmental Litigation
- Litigation
- Natural Resource Damages
- CERCLA Allocation

## Education

- Kalamazoo College (B.A., cum laude, 1997)
- University of Michigan Law School (J.D., 2000)

## Admissions

- Maine
- Massachusetts
- District of Columbia
- Hawaii
- U.S. Court of Appeals, First Circuit
- U.S. Court of Appeals, D.C. Circuit

## Professional Affiliations

- American Bar Association
  - Member, Natural Resource & Environmental Section
  - Member, Litigation Section
- Fellow, Litigation Counsel of America
- Maine State Bar Association
  - Member, Environment, Energy & Natural Resource Section
- District of Columbia Bar Association

## Honors & Awards

- U.S. Environmental Protection Agency's Gold Medal for Exceptional Service, 2010
- U.S. Department of Justice
  - Special Achievement Awards
  - Special Recognition Awards
  - Nominated by the Environmental Enforcement Section for the Attorney General Award
- Recognized by *Best Lawyers in America*
  - 2019 Lawyer of the Year, Litigation - Environmental (Portland, ME)
- Recognized by the *American Registry*
- Recognized by *New England Super Lawyers*
- Recognized by *Chambers, USA*
- Recognized by *Benchmark Litigation*

## Civic Involvement

- E2Tech, Marketing & Enrollment Committee
- President, Falmouth Youth Soccer Association
- Soccer Maine "D" License Soccer Coach

## Litigation & Trial Experience

Jeff has litigated complex commercial cases across the country. Complex litigation matters have included contract disputes, antitrust, securities, intellectual property, anti-terrorism, environmental, and international law. The value of the cases handled as lead counsel include a billion-plus dollar liability case, multiple cases with claims in the hundreds of millions, and a range of smaller matters.

Representative litigation matters include:

- Lead counsel for \$10 billion-company in multi-million dollar contract dispute regarding remediation of radiological contamination in St. Louis, Missouri. The remediation was overseen by the Nuclear Regulatory Commission. Litigation involved numerous experts in the remediation of radiological contaminated waste sites and fact witnesses located across the country. The case settled two days before trial. *AECOM Technical Services, Inc. v. Mallinckrodt LLC* (CA No. 1:12-CV-11382-PBS) (D. Ma).
- Lead counsel in unsuccessful dismissal of intellectual property infringement complaint brought by winery against retail wine company and hotel. *Smith-Anderson Enterprises, Inc. v. Boston East Tyngsboro Holdings, LLC, et al.* (CA No. 16-CV-01361-EMC) (N.D. Ca) ; (MA No-1:16-CV-11026-JCB) (D.Ma).
- Lead counsel in anti-terrorism case against large producer of bananas brought by citizens kidnapped and killed by terrorists in Colombia. *Julin, et al. v. Chiquita Brands International, Inc.* (CA No. 08-20641-CIV-MARRA) (S.D.F.L.).
- Lead counsel in defense of Patent Infringement case brought by manufacturer of Volt Amperes Reactive product. *Varentec, Inc. v. Gridco Inc.* (CA No. 16-217-RGA) (D. Del).
- Co-counsel representing a multi billion dollar company in defense of Endangered Species Act and Administrative Procedures Act case brought by environmental non-profit groups against National Marine Fisheries Service and hydro project owners. Successfully obtained dismissal. *Marine Counsel of the Atlantic Salmon Federation et. al v. National Marine Fisheries Service and Brookfield Renewable//Reusable Sewers et al.*(CA No. 2:15-CV-00261-JAW) (D. Me); (appeal in First Circuit pending).
- Co-counsel representing Town in litigation against Fortune 500 Company for contamination of town drinking water supply and related costs under CERCLA and state law claims. *City of Lake Elmo v. 3M Company.* (CA 0-16-CV-2557-ADM-SER) (D. Minn) (pending).
- Lead counsel representing Town regarding drinking water contaminated with perfluorochemicals (PFCs) pre-filing. (MA No. 1:16-CV-11026-JCB) (D. Ma).
- Co-counsel in successful defense of a major antitrust action brought by U.S. Federal Trade Commission against pharmaceutical manufacturers relating to settlement of patent litigation. After 40-day trial, won defense verdict. Defended private class actions in Multi-District Litigation. *In the Matter of Schering-Plough, et al.*, (FTC Docket No. 9297).
- Co-counsel in successful defense of various Asian rubber-thread manufacturers against civil allegations of price-fixing in violation of U.S. antitrust laws. Succeeded in defeating \$100 million civil class action, winning jury verdict. *Dee-K Enterprises, Inc. v. Heveafil SDN. BHD*, (CA No. 01-1894) (W.D.N.C.).
- Co-counsel in successful defense of major Saudi bank alleged to have financially supported terrorism. Won pre-trial dismissal of \$1 billion claim. *Thomas Burnett, Sr., et al v. Al Baraka Investment & Development Corporation, et al.*, (CA No. 02-1616(JR) (D.D.C.).
- Co-counsel defending against major antitrust action brought by Department of Justice. In two-week trial, successfully refuted allegations of territorial allocation among competitors in paper industry. *United States v. UPM-Kymmene, OYJ, et al.*, (CA No. 03C2528) (N.D. Ill.).
- Co-counsel defending shipping company accused of conspiratorial conduct. *Stolt-Nielsen, et al. v. United States*, (CA No. 04-CV-00537) (E.D. Pa.).
- Co-counsel defending Discovery Channel in defense of intellectual property. *The Learning Network v. Discovery Communicators*, (CA-00-2565-MJG) (D. Md.).
- Counsel defending litigated merger challenge in SunGard/Comdisco and reaching a negotiated solution to a potential merger challenge in Metso/Svedala. *United States v. Sungard Data Systems, Inc.*, (CA No. 01-2196(ESH) (D.D.C.).
- Lead counsel in a contract dispute regarding a fuel supply agreement with a pulp and paper mill. *Expera Old Town, LLC v. Casella Waste Systems, Inc.*, (BANSCV-2015-217) (Me. Sup. Ct.).

- Lead Counsel in defense of RCRA citizen suit for injunctive relief associated with contamination of sediments in the Penobscot River, one of New England's largest river systems and estuary. Month-long trial in Federal District Court involved testimony from 22 expert witnesses in various technical aspects of contaminated sediment issues including: fate and transport, stable isotope analysis, geochemistry of marsh areas. Case is currently pending decision. *Natural Resources Defense Counsel and Maine People's Alliance v. HoltraChem Manufacturing Company, L.L.C.* (CA No. 00-69-BW) (D. Me).
- Lead Counsel in defense of state enforcement action seeking \$250 million remedy to address mercury contaminated soils, sediments, and groundwater at RCRA and Maine Uncontrolled Hazardous Substances Site. Two week state administrative hearing led to modified order saving client \$150 million. *Mallinckrodt US LLC and United States Surgical Corp. v. Maine Department of Environmental Protection*, (CA No. AP-2010-19) (Me Sup. Ct.).
- Lead Counsel in defense of citizen suit against hydro power project owner seeking injunctive relief for alleged violations of the Endangered Species Act (ESA). Plaintiffs alleged that the hydro power project at issue was taking Atlantic Salmon in violation of the ESA. The Court granted defendant's Motion to Dismiss and no claims for attorney fees were awarded. *Friends of Merrymeeting Bay and Environment Maine v. Miller Hydro Group*, (CA No. 2:11-CV-00036-GZS) (D. Me).
- Co-Lead counsel for company managing \$19 billion in assets in defense of citizen suit alleging that National Marine Fisheries approval of Biological Opinions under the Endangered Species Act for several hydro power projects violated the Administrative Procedures Act. *Maine Council of the Atlantic Salmon Federation, et al., v. National Marine Fisheries Service, et al. and Brookfield Renewable Services Maine LLC, et al.*, (CA No. 2:15-CV-00261-JAW) (D. Me) (pending).
- Lead Counsel for company in defense of citizen group challenge to environmental permits associated with \$60 million project. Environmental permits were issued under Maine's Site Location of Development Act and Natural Resources Protection Act. Environmental permits were upheld after administrative hearing. *Androscoggin River Alliance et al., v. Maine Board of Environmental Protection* (CA No. AP -11-44) (Me Sup. Ct.).
- Lead Counsel in defense of CERCLA contribution claim associated with cleanup of former pulp and paper mill in Ohio. Obtained dismissal of Plaintiff's claims. *Garrett Day LLC, et al. v. International Paper Company, et al.* (CA No. 3:15-CV-36-WHR) (S.D. Ohio).
- Lead Counsel in major Clean Water Act case against fourth largest coal company in the United States for penalties and injunctive relief to address thousands of NPDES permit violations spanning several states. Worked with EPA to evaluate environmental compliance of coal company facilities with applicable environmental statutes. Developed case under the Clean Water Act against the parent company and numerous subsidiaries. Obtained company wide injunctive relief valued at \$10 million and a \$20 million penalty, which was the largest civil penalty ever paid for Clean Water Act permit violations at the time and is still one of the largest penalties paid for such violations. *United States v. Massey Energy*, (CA No. 90-5-1-1-08470) (S.D. W. Va.).
- Co-counsel in first Clean Air Act case brought pursuant to EPA's Pulp & Paper Initiative under the federal New Source Review Program. First phase of this case involved a week-long trial in Maryland U.S. District Court regarding the availability of Best Available Control Technology for alleged violations of EPA's Prevention of Significant Deterioration Program. *United States v. Westvaco Corp.*, (CA-MJG 00-CU-2602) (D. Md.).
- Co-counsel representing the U.S. Department of Interior in civil action to recover natural resource damages for harm to Rocky Mountain National Park in Colorado. Case settlement obtained on eve of trial for the largest natural resource damages recovery to date under the Park Services Resource Protection Act. *United States v. Water Supply & Storage Co., et al.*, (CA No. 06-CV-01728-REB-MJW) (D. Colo.).
- Lead and Co-counsel in several natural resource damages cases under CERCLA, including representation of a large oil company in state lead natural resource damage case, representation of the Department of Interior in

settlement negotiations of natural resource damages from mercury in the South River in Virginia, and representation of the Department of Interior in settlement negotiations of natural resource damages at Palmerton Site in Pennsylvania.

- Lead and Co-counsel in several Superfund and RCRA Sites across the nation including: *United States v. Thoro Products Co.*, (CA No. 04-M-2330) (D. Colo.) (Rocky Flats Industrial Park Site); *United States v. Highview Gardens, Inc.*, (CA No. 2109-CV-02827-PD) (E.D. Pa.); *United States v. Wellsford*, (CA No. 054158) (E.D. Pa.); Taylor Borough Superfund Site in Pennsylvania; American Drum and Pallet Site in Tennessee; Beede Waste Oil Site in New Hampshire; *Beede Site Group v. Federal Home Mortgage Corp., et al.* (CA No. 1:09-CV-00370) (D.N.H.).
- Co-counsel in Clean Water Act case against sanitary sewer district serving 1.6 million people to obtain penalties and injunctive relief for hundreds of sanitary sewer overflows. *United States v. Hampton Roads Sanitation Dist.*, (CA No. 2:09-CV-481). (E.D. Va.).
- Lead Counsel in EPA multi-media investigations of mining and pharmaceutical facilities pursuant to the Clean Air Act, Clean Water Act, RCRA, EPCRA, TSCA.
- Lead Counsel in defense of CERCLA cost recovery case in Southern District of Ohio brought by Brownfields redevelopment company. Case is pending.
- Lead counsel for Plaintiffs in toxic tort litigation in California involving exposure to high levels of copper in drinking water. *James Vogeler, et al. v. Culligan Water of Orange County, et al.* (Case No. 30-2012-00588355) (Superior Court, Orange County, Ca)(pending).
- Lead counsel in toxic tort case regarding uranium contamination exposure. Case settled after completion of fact discovery. *Theodore and Stacey Sawyer v. Water Treatment Equipment, Inc., and Culligan International Company*, (CA No. CV2011216) (Me Sup. Ct.).
- Lead counsel in oil spill contamination case in Maine regarding property damage and diminution of property value. (settlement reached pre-filing).
- Lead counsel in oil spill contamination case in New Hampshire regarding property damage and diminution of property value. (Settlement reacted pre-filing).
- Co-counsel in defense of CERCLA cost recovery case in Federal District Court in Maine brought by US DOJ. Case settled for 30% off of demand.
- Lead counsel in multi-million dollar contract dispute regarding the need for repairs to two dam projects in Maine. Case settled after motions practice. *FPL Energy Maine Hydro LLC v. Great Lakes Hydro America, LLC et al.*, (CA No. CV-12-266) (Me Sup. Ct.).

## Environmental Experience

### Environmental Litigation

Environmental cases have included federal and state environmental cases involving the Clean Air Act, the Clean Water Act (including NPDES permits, SPCC, wetlands issues, and Combined and Sanitary Sewer Overflow cases), CERCLA/Superfund (including natural resource damage cases, multi-party PRP sites, urban impaired waterways, and contaminated sediment sites), RCRA, TSCA, the Surface Mining Control and Reclamation Act (SMCRA), EPCRA, Safe Drinking Water Act, the Natural Resources Protection Act, and the Endangered Species Act.

Representative litigation matters include:

- Lead Counsel in defense of RCRA citizen suit for injunctive relief associated with contamination of sediments in the Penobscot River, one of New England's largest river systems and estuary. Month-long trial in Federal

District Court involved testimony from 22 expert witnesses in various technical aspects of contaminated sediment issues including: fate and transport, stable isotope analysis, geochemistry of marsh areas. Case is currently pending decision. *Natural Resources Defense Counsel and Maine People's Alliance v. HoltraChem Manufacturing Company, L.L.C.* (CA No. 00-69-BW) (D. Me).

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- Co-counsel in Clean Water Act case against sanitary sewer district serving 1.6 million people to obtain penalties and injunctive relief for hundreds of sanitary sewer overflows. *United States v. Hampton Roads Sanitation Dist.*, (CA No. 2:09-CV-481). (E.D. Va.).
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- Lead Counsel in defense of CERCLA cost recovery case in Southern District of Ohio brought by Brownfields redevelopment company. Case is pending.
- Lead counsel for Plaintiffs in toxic tort litigation in California involving exposure to high levels of copper in drinking water. *James Vogeler, et al. v. Culligan Water of Orange County, et al.* (Case No. 30-2012-00588355) (Superior Court, Orange County, Ca)(pending).
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## Allocation of Environmental Liability and Cost

Representative litigation matters include:

- Member of team selected by the Cooperating Parties Group to perform an allocation relative to the Lower Passaic River Study Area CERCLA site (dioxins, mercury, PCB's and other contaminants of concern).

## Environmental Risk & Due Diligence

At the DOJ, Jeff led several multimedia investigations to determine whether facilities were in compliance with environmental laws. Jeff regularly uses his government experience to advise clients on environmental compliance issues and environmental aspects of corporate transactions. Representative projects include:

- Represent purchaser in environmental and litigation due diligence review involving a \$750 million deal to purchase more than 20 hydro power projects.
- Serving as general outside in-house counsel on environmental issues for a large multinational corporation.
- Advising pulp & paper client regarding Clean Air Act implications of corporate transactions involving change in facility use and operations.
- Advising private investment firm regarding Clean Air Act aspects of power plant acquisition and operation.



- Creating an industry-specific environmental due diligence program for one of the largest banks in the world.
- Advising clients for purposes of strategic planning regarding federal and state regulation of greenhouse gases.
- Advising developers regarding environmental due diligence and Brownfield redevelopment projects.

## Environmental Aspects of Permitting Projects

Jeff has represented clients seeking federal and state environmental permits on numerous projects, including:

- Co-counsel representing Calais LNG in its effort to obtain state and federal permits to build and operate a liquefied natural gas receiving terminal in Calais, Maine. Permits for the project were required under the Clean Water Act, Clean Air Act, Site Location of Development Act, and Natural Resources Protection Act and required, among other things, an analysis of the projects impacts on sensitive habitat, marine life, noise, light, visual, and air impacts on Class I areas.
- Lead Counsel representing private company in obtaining and defending environmental permits for \$60 million development project. Permits obtained under Maine's Site Location of Development Act and Natural Resources Protection Act.
- Lead Counsel advising several companies seeking state air and water licenses.

## Publications

November 1, 2017

### **Hurricanes & Superfund: Has the Act of God Defense Been Washed Out to Sea?**

*ABA Tort Trial and Insurance Practice Committee News: Toxic Torts and Environmental Law, Fall 2017*

February 1, 2015

### **Federal Environmental Enforcement--Can EPA Do More With Less?**

*In-House Counsel Committee Newsletter, Vol. 16, No. 1. Section of Environment, Energy, and Resources, American Bar Association*

July 30, 2014

### **Environmental Alert: EPA Will Not Require or Enforce Air Permits Solely for GHGs**

April 29, 2014

### **Supreme Court Finds Cross-State Air Pollution Rule Did Not Violate the Clean Air Act**

*Environmental Alert*

July 23, 2013

### **Court Remands EPA Secondary Ozone Standard**

*Environmental Alert*

## Speaking Engagements

- "Trends in Environmental Construction Regulations and Litigation" - ABA Tort Trial & Insurance Practice Section Toxic Torts & Environmental Law Committee 25th Annual Spring CLE Meeting, (Presented April 2016).

## News

August 15, 2018

**46 Preti Flaherty Attorneys Selected by Peers for Inclusion in Best Lawyers in America 2019, Including 4 “Lawyers of the Year”**

August 15, 2018

**Attorney Jeffrey D. Talbert Selected by Peers as “Lawyer of the Year” in the 2019 Best Lawyers in America**

May 3, 2018

**Twenty-two Preti Flaherty Attorneys Selected as Chambers USA Leaders in Their Field**

August 15, 2017

**42 Preti Flaherty Attorneys Selected by Peers for Inclusion in Best Lawyers in America® 2018**

May 26, 2017

**Twenty-three Preti Flaherty Attorneys Selected as Chambers USA Leaders in Their Field**

May 27, 2016

**Nineteen Preti Flaherty Attorneys Selected as Chambers USA Leaders in their Field**

May 23, 2016

**Town of Litchfield, NH Selects Preti Flaherty as Legal Counsel**

May 13, 2016

**Jeff Talbert Named Fellow of Litigation Counsel of America**

October 19, 2015

**21 Preti Flaherty Attorneys Recognized by New England Super Lawyers**

May 28, 2015

**Twenty Preti Flaherty Attorneys Selected as Chambers USA Leaders in their Field**

## Press Coverage

February 5, 2018

**Chiquita Settles Antiterrorism Act Case Involving Six U.S. Deaths**

February 11, 2014

**Maine Supreme Court to hear case on Orrington hazardous waste site cleanup**

## Events

**Jeffrey Talbert to Speak at Annual ABA CLE Spring Meeting**

April 7, 2017

Arizona Biltmore Hotel & Spa

**Jeff Talbert Speaking at Toxic Tort and Environmental Law's 25th Annual CLE Meeting**

April 9, 2016 at 8:00am – 8:45am

Arizona Biltmore Resort & Spa