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Case Updates

Below are recent rulings in environmental/toxic tort cases. If you have questions about any of these matters and how they may affect your business, feel free to contact Weber Gallagher's Environmental/Toxic Tort Group.

Plaintiff's Mold Expert Proofs Too Weak To Stop Landlord Summary Judgment in New York

A tenant sued a landlord for personal injuries “due to prolonged mold exposure.” New York Court of Appeals considered whether sufficient expert proofs to at least show prima facie that mold caused injuries, to switch burden to defendants to refute causation. The court found the plaintiff failed and granted Summary Judgment that was upheld on appeal. The plaintiff's expert's “possible association” did not qualify as causation and failure to show causal connection bars claim. The Court also focused on “differential diagnosis,” where known possible causes for symptoms are considered and by using diagnostic tests, causes are eliminated until most likely cause remains. However, the New York Court of Appeals found that “ruling-in/ruling-out process” is not proper basis for “differential diagnosis,” especially in the context of proving a causal connection.

Garlock Bankruptcy Filings Records Release Order Stayed Pending Claimants' Appeal

Garlock Federal Bankruptcy Case: In a follow-up to last month's newsletter from us on this issue, Judge Hodges (overseeing Garlock's Bankruptcy case) has stayed an order issued the day before that would have allowed the defendant, Ford access to claimant's bankruptcy trust filings. Ford required access to this information to determine if, and to what extent, Ford, had been victimized by potentially false or misleading bankruptcy trust filings. The stay was granted by Judge Hodges because of a pending appeal of his order to be filed by the Official Committee of Asbestos Personal Injury Claimants.

Defense Experts' “Inconsistencies” Support Upholding \$1 Million Verdict (Philadelphia)

Rost v. Ford, the Superior Court of Pennsylvania has affirmed a \$1 million jury verdict for a former auto mechanic in a case tried in Philadelphia County, because of inconsistencies with the defendant, Ford's expert witnesses. The Superior Court noted that Ford's experts had not published any research on asbestos in their careers, and had not performed any research on the pathology of asbestos. The Superior Court concluded Ford's experts' opinions were not based on beliefs that had been subject to peer-review. Therefore, the jury verdict was not improper.

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