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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.

### **“Pollutant” Not Covered in Florida...**

*Chestnut Associates v. Assurance Company of America*: This case involving the “pollution exclusion” was heard in the Middle District of Florida in April 2014. The Court was asked to determine whether or not a policy’s “pollution exclusion” (“bodily injury” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants”) applied in this case where the “pollutant” was a “natural bodily substance” that the defendant discharged in the plaintiff’s pool (which was caught on a surveillance camera). The Court, based on prior Florida court decisions, held that the natural bodily substance was a “pollutant,” and that the “pollution exclusion” applied to exclude coverage for clean up costs, etc.

### **Asbestos Defense Costs Subject to Arbitration (NJ Fed.)**

*Flowserve v. United States Fire Ins. Co.*, The United States District Court for the District of New Jersey was asked whether a mandatory arbitration clause in a policy issued by defendant, United States Fire Ins. Co., was valid and enforceable for asbestos claims filed against Flowserve. The District Court ruled that under a Settlement and Cost Sharing Agreement entered into by Flowserve and United States Fire Ins. Co., their disputes over defense and indemnity costs were subject to binding arbitration.

### **Green Card Service Proofs = Sufficient for Service of Process (MDL 875)**

MDL 875 Court Order: A recent Order entered by Magistrate Judge Elizabeth T. Hey in the Multi-District Litigation for Federal Asbestos cases (MDL 875) stated that service of all complaints is deemed proper where the plaintiff is able to produce a green card showing service of process from a specific plaintiff to a defendant. In those cases where the plaintiff cannot produce a green card, Judge Hey ruled that those defendants should be dismissed without prejudice from their respective cases.

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