

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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