

# The Melito & Adolfsen Law Firm

## Pollution Exclusion

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### THE POLLUTION EXCLUSION

Having addressed the meaning of “accidental” in the “sudden and accidental” pollution exclusion in 1989 in *Technicon*, it took eight years before the New York Court of Appeals, in a case handled by Melito & Adolfsen and others, addressed the meaning of “sudden” in *Northville Industries*. *Northville* involved an enormous quantity of pollution emanating from underground storage tanks and pipelines at two sites. The discharges were accidental. Consistent with its previous interpretations of the exclusion, the Court concluded that the language of the exclusion was unambiguous and that “sudden” had a temporal meaning. The Court held that the “sudden” element of the exclusion is satisfied if there is an abrupt discharge of a significant quantity of a pollutant having some potentially damaging environmental effect. Of arguably equal importance, the Court also placed the burden of proof on the policyholder to establish that the “sudden and accidental” exception applies -- after the insurer first demonstrates that the underlying complaint alleges damages attributable to a discharge of a pollutant into the environment. The insurers were granted summary judgment.

POST-SCRIPT: Shortly after *Northville*, Melito & Adolfsen obtained a voluntary dismissal with prejudice of an environmental case in New York involving a leaking underground storage tank at a dry cleaner based on just the threat of a *Northville* summary judgment motion.