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Illinois Supreme Court Holds That Emissions Permits Have No Bearing on Whether a Pollution Exclusion Applies

Griffith Foods International, Inc., and its corporate successor, Sterigenics U.S., LLC ("Griffith") operated a medical equipment sterilization facility for more than 35 years in Willowbrook, Illinois. Residents claimed that the facility's ethylene oxide (EtO) emissions caused them to become ill.

Mass tort claims were filed, and Griffith sought a defense from its CGL insurer, National Union. National Union's policies had a pollution exclusion that barred coverage for:

> bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.

National Union denied Griffith's request for a defense, citing the pollution exclusion. Griffith then sued National Union in federal court and won. The federal district court held that the pollution exclusion did not apply because Griffith had emitted the EtO under an Illinois Environmental Protection Agency permit.

National Union appealed and the Seventh Circuit certified a question to the Illinois Supreme Court:

> [W]hat relevance, if any, does a permit or regulation authorizing emissions (generally or at any particular levels) play in assessing the application of a pollution exclusion within a standard-form commercial general liability policy?

The Illinois Supreme Court held that it has no relevance.

Under Illinois law, pollution exclusions in CGL policies apply only to injuries caused by traditional environmental pollution. Griffith argued that because its EtO emissions were within the levels authorized under its permit, the exclusion did not apply. According to Grifith, there was no traditional environmental pollution because once the Illinois EPA issued a permit authorizing a certain level of emissions, those emissions are no longer considered to be pollutants.

The Illinois Supreme Court disagreed. It found that the discharge of EtO into the atmosphere fits squarely within the plain language of the pollution exclusion and would ordinarily be understood as traditional environmental pollution.

That the Illinois EPA permitted the EtO emissions is beside the point. The permit did not change the character or substance of the EtO emissions. The permit simply allowed Griffith to emit a restricted amount of EtO. If the EtO emissions were not pollutants, then why would Giffith even need a permit in the first place?

The pollution exclusion says nothing about permitted or authorized pollution. The court noted that the pollution exclusion was created in response to the insurance industry's concerns over costly litigation. Declining to apply it just because the pollution was permitted by the state, the court explained, would undermine the exclusion's very purpose.

So in determining whether the pollution exclusion in a CGL policy applies, the Illinois Supreme Court ruled that a permit or regulation authorizing emissions is irrelevant.

The case is *Griffith Foods, Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, No. 131710 (Ill. Jan. 23, 2026).

Delaware Supreme Court Holds That Securities Suit Did Not Involve Excluded Claim for Inadequate Deal Consideration

In 2017, Samsung Electronics acquired Harman. A class of former Harman shareholders contended that certain disclosures about the acquisition violated federal securities laws and sued. They alleged that the proxy issued with the proposed transaction was misleading. Investors were thus deprived of their right to a fully informed shareholder vote and the fair value of their respective shares. Harman paid $28 million to settle the claims and then sought to recover this sum from its insurers.

The insurers denied coverage for the settlement under a bump-up provision in each policy. The bump-up provision excluded settlements where the underlying claim alleged inadequate deal consideration for an acquisition and the settlement amount represented an effective increase in deal consideration.

Harman sued its insurers in Delaware state court for breach of contract. The Superior Court granted summary judgment to Harman and the insurers appealed.

The Delaware Supreme Court affirmed. It disagreed with the lower court's conclusion that the operative complaint did not allege inadequate consideration. But the high court found that the insurers failed to show that the settlement amount represented an effective increase in consideration for the transaction. In other words, the insurers did not show that the "real result" or purpose of the settlement was to increase the amount of deal consideration.

The court reasoned that the composition of the class was not limited to shareholders who received consideration in connection with the transaction. That is, the class definition did not require class members to hold stock through the transactions' closing date. The record also showed that the parties settled before either side presented evidence relating to the true value of the shares. The court found it likely that the settlement amount was based on the continuing costs of litigation.

For these reasons, the court held that the Superior Court did not err in determining that the insurers did not meet their burden to show that the settlement amount represented an increase in deal consideration.

The case is *Nat'l Ins. Co. v. Harman Int'l Indus., Inc.*, No. 47, 2025 (Del. Jan 27, 2026).

Fourth Circuit Holds that SEC Investigation and Shareholder Suits Were Related Claims, Only One Liability Limit Applies

In 2014, Under Armour became the second-leading sportswear apparel brand in the United States. But one of its main retailers, Sports Authority, was having financial difficulties. Investors were concerned that Sports Authority could not pay Under Armour the substantial receivables it owed.

Under Armour stated in its February 2016 annual report that it did not believe Sports Authority's financial woes would materially impact Under Armour's receivables. Sports Authority filed for Chapter 11 bankruptcy a month later. Under Armour then issued a press release reiterating a positive outlook and projected that growth would continue in line with financial targets.

Sports Authority's business continued to deteriorate, and it chose to liquidate rather than reorganize. Under Armour revised its position to reflect that it could only recover about a quarter of the revenues that Sports Authority owed but still expressed confidence that its operating income and net revenue would continue to grow on pace. The day before Sports Authority's liquidation announcement, however, Under Armour's CEO and other insiders allegedly sold millions of dollars of Under Armour's stock at a substantial profit.

In August 2016, a shareholder exercised his right to inspect Under Armour's books. A few months later, he sent a derivative demand letter requesting that Under Armour's board of directors act against the CEO and other officers over the misleading statements minimizing the effect of Sports Authority's bankruptcy on Under Armour's finances. The shareholder claimed that the misleading statements inflated Under Armour's stock price, allowing the company's insiders to sell high before the share price dropped.

Under Armour's sales growth streak had ended by the fourth quarter of 2016 and by the summer of 2017, its stock had fallen about 25%.

In February 2017, shareholders filed class action lawsuits against the CEO and other officers asserting violations of securities laws. Other derivative actions were also filed.

In June 2017, the Securities and Exchange Commission subpoenaed documents from Under Armour as part of an investigation into whether the company had violated federal securities laws.

In the summer of 2020, the SEC notified Under Armour of its intent to begin an enforcement action over Under Armour's shifting of sales revenues between quarters. The SEC contended Under Armour had pulled revenue expected in later quarters into earlier quarters to make its financial performance look better. The alleged misconduct spanned from the third quarter of 2015 through the fourth quarter of 2016. The plaintiffs in the securities litigation amended their complaint to allege that Under Armour resorted to improper accounting practices that violated Generally Accepted Accounting Principles (GAAP) and SEC regulations.

Under Armour eventually settled the securities litigation for $434 million and settled with the SEC for $9 million.

Under Armour had claims-made directors and officers coverage in the amount of $100 million for the 2016-17 year, and $100 million for the 2017-18 year. Continental issued the primary policy for the 2016-17 year, and Endurance was the primary insurer for the 2017-18 year.

Following the SEC settlement, Endurance and the excess insurers in the 2017-18 tower contended that the SEC's allegations related to the claims first made in the shareholders' class action. In other words, the SEC's investigation into the "accounting pull forwards" was related to Under Armour's misleading statements.

The Endurance policy stated:

> All Claims . . . that arise out of the same fact, circumstance, situation, event, or Wrongful Act, or facts, circumstances, situations, events, or Wrongful Acts that are logically or causally related shall be deemed one Claim, which shall be deemed to be first made on the earliest that the first of any such Claims is made . . . .

Based on this provision, Endurance and the excess insurers in the 2017-18 tower concluded that the government investigations involved the same common nexus of facts as the securities litigation and the derivative matters and were thus logically and causally related. The insurers contended that they constituted a single claim that was first made in 2016 and thus subject to the 2016-2017 policy limits, not the 2017-2018 policy limits.

Under Armour insisted that the government investigations involved different conduct and thus was a separate claim from the securities and derivative litigations.

Litigation ensued and the district court sided with Under Armour.

But on appeal, the Fourth Circuit reversed. Applying the plain meaning of the phrase "logically or causally related," it found that two things are logically related when they are reasonably or rationally connected or associated with one another. The Fourth Circuit explained why all the claims were logically related.

> The derivative litigation and the securities litigation involve claims about the public forecasts that Under Armour would continue to grow at the same pace despite the financial trouble, bankruptcy and liquidation of its major customer, Sports Authority. They also involve claims that, despite their optimistic public statements, [the CEO] and other officers used inside information to sell Under Armour stock at a substantial profit.
>
> The government investigations, at least when they began, involved these same issues. In its initial subpoena to Under Armour, the SEC requested, among other things, "all documents concerning the company's efforts to achieve a quarterly revenue growth rate of at least twenty percent" between January 1 and December 31 of 2016. So, by that point, the government investigation involved not just “logically [and] causally related” conduct; it involved the same conduct.

The court acknowledged that the SEC’s attention later shifted to include Under Armour’s accounting practices and revenue pulling. And while this was not the same as the misleading public statements and insider trading, it was logically related. The effect of the accounting manipulation and optimistic public statements was to maintain the appearance of financial strength. Pulling revenue forward bolstered the earlier quarter’s revenues, creating an illusion of continued growth and permitting Under Armour officials to plausibly make misleading public statements. As the court noted, “it would have been much harder to claim growth continued unabated if the books had shown that growth had already slowed.”

And the court said the same goes for “causally related.” Under the plain meaning of those terms, the court found that two things are causally related when they are connected or associated by cause or by cause and effect.

To get out in front of the negative financial impact that could follow from missing its growth estimates, Under Armour pulled forward its orders, allowing it to continue forecasting its target publicly. Its actions stemmed from a single goal—to convince its shareholders and the public that it was achieving sustained growth. The pull forwards and the allegedly misleading public statements, the court noted, derive from the same cause—a desire to continue to hit its growth estimate—and resulted in the same effect—Under Armour giving the illusion it was growing in line with its earlier projections.

Thus, the court concluded that Under Armour's pull forward accounting actions and its alleged misleading public statements were logically and causally related. Only the 2016-17 policies applied.

In early February, Under Armour filed a petition for rehearing arguing that the panel failed to enforce an endorsement added to its 2019 policy. Under Armour says the endorsement deems claims from the government investigations to have been made during the 2017-18 policy period. The panel had considered Under Armour's argument in its January 20 decision but found that other language in the 2019 policy made the endorsement subject to the terms of the 2017-18 policy, which in turn deems the government claims as having first been made during the 2016-17 policy. A ruling on the petition for rehearing remains pending.

The case is *Navigators Ins. Co. v. Under Armour, Inc.*, No. 25-1068 (4th Cir. Jan. 20, 2026).

Fifth Circuit Rules That Domestic Insurers Cannot Arbitrate Insurance Dispute with Louisiana Parish

Whether surplus lines insurers can arbitrate Louisiana insurance disputes has been an evolving issue over the past few years. Louisiana law restricts enforcement of arbitration clauses in insurance policies. But that state law is trumped by an international treaty, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention). The Fifth Circuit has generally permitted foreign insurers to enforce arbitration clauses under the Convention.

The Convention aside, the Fifth Circuit had also allowed surplus lines insurers – whose forms are not subject to approval by Louisiana regulators – to arbitrate insurance disputes based on the Louisiana statute's exception for forum and venue selection clauses. The Fifth Circuit viewed an arbitration clause as a type of forum selection clause. But the Louisiana Supreme Court did not share that view, and a 2024 ruling closed the door on this alternate route to arbitration.

And in the past, in disputes involving both foreign and domestic insurers, the Fifth Circuit had applied equitable estoppel to compel arbitration.

In this case, the Police Jury of Calcasieu Parish (the Parish) purchased surplus lines insurance from various foreign and domestic insurers. Although the insurers signed a single policy, the agreement's Contract Allocation Endorsement specified that the agreement "shall be construed as a separate contract between the Insured and each of the Underwriters."

Following Hurricanes Laura and Delta in 2020, the Parish filed claims with the insurers. When the Parish did not receive the compensation it sought, the Parish sued the insurers in state court. To maintain a state venue, the Parish dismissed with prejudice the foreign insurers from the case. The remaining domestic insurers removed the case to federal district court and sought to compel arbitration.

Now on appeal, the Fifth Circuit was asked to decide whether the Convention applied, and whether it even had jurisdiction to hear the dispute.

The Fifth Circuit found that subject matter jurisdiction was lacking. It relied heavily on its own 2025 decision in *Town of Vinton*, which involved nearly identical facts.

Even though the foreign and domestic insurers collectively issued a single policy, the court found that the Contract Allocation Endorsement required that the policy be viewed as separate contracts between the insured and each insurer. And, despite the Fifth Circuit's earlier rulings, it recognized that the Louisiana Supreme Court has since held that Louisiana law precludes using estoppel to compel arbitration.

As there was no foreign party to any arbitration agreement – the foreign insurers were let out of the case and the policy called for separate contracts – there was no arbitration agreement falling within the Convention. Because the Convention was the sole basis for subject matter jurisdiction, the Fifth Circuit concluded that it lacked jurisdiction.

The domestic insurers could not hitch a ride on the foreign insurers' wagon and thus could not compel arbitration.

The case is *Police Jury of Calcasieu Parish v. Indian Harbor Ins. Co.*, No. 24-30696 (5th Cir. Jan. 27, 2026).

Indiana Federal Judge Rules That Crane Inspection Was Not a Professional Service

CGL policies typically have a professional services exclusion. But whether the insured was performing a professional service at the time of the accident is sometimes subject to debate. And this is especially so when the policy leaves the term "professional services" undefined.

A worker was seriously injured in a crane accident. Crane 1 Holdco, Inc., who had been hired to perform a visual inspection of the crane, settled the worker's suit for a large sum of money. The worker claimed that Crane 1 performed the inspection negligently.

Crane 1 then sued its first-layer excess insurer, Continental, to recover the settlement amount. Continental asserted two exclusions that it thought applied.

The first was entitled "Professional Services" and barred coverage for "any liability arising out of the actual or alleged rendering of, or failure to render, any professional services by the Insured or any other person for whose acts the Insured is legally responsible." This exclusion did not define "professional services."

The second exclusion was for "Architects and Engineers Professional Services" and barred coverage for "any liability of the Insured, or any other person or entity acting on the Insured's behalf, arising out of any actual or alleged rendering of, or failure to render, professional services by an architect, engineer, surveyor, landscape architect, or soil or subsoil analyst." This exclusion included a list of things that constituted professional services, including "inspections" done by architects and engineers.

Here, the court needed to determine whether someone providing a crane inspection performed a "professional service." The judge conceded that this was a very close call but ultimately sided with the insured.

The judge's decision was based on the deposition testimony of Crane 1's CEO and inspectors, and an examination of factually similar cases. He concluded that Crane 1's inspectors did not implement specialized training or skill, interpret any data, troubleshoot, or conduct any repairs. Rather, the Crane1 inspectors, who were high school educated, conducted routine visual inspections of the crane and manual operating tests, such as testing the hoist and crane, and captured those results on a checklist.

The Crane1 inspectors did not have extensive experience and training, nor could they interpret the results of the inspection. They completed the inspection form, checked the various boxes, and gave the form to the crane owner, who then determined whether to hire another company to do any repairs.

But what really tipped the scales in the insured's favor was Continental's decision to define "professional services" in the exclusion for architects and engineers, but not in the more general exclusion. The judge found that the policy did not "clearly and unmistakably bring the professional services exclusion into play." Crane 1 was thus entitled to coverage.

The case is *Crane 1 Holdco, Inc. v. Continental Ins. Co.*, No. 2:23-CV-205-PPS-JEM (N.D. Ind. Jan. 12, 2026).

Wyoming Federal Court Applies Insured Versus Insured Exclusion to Suit by Board Member Against Company

For years, Big Horn Telecommunications (BHT) and its related entities discussed possibly merging with Tri County Telephone Association, Inc. (TCT). They finally reached an agreement on September 19, 2014.

As TCT is a cooperative, its members are like security holders of a private company. Two-thirds of the members had to approve the merger.

Joe Campbell was on the Board of Directors at the time and opposed the Merger Transaction. Campbell believed that TCT was being sold for less than it was worth. During the ninety-day voting period, Mr. Campbell participated in an opposition movement and tried without success to persuade members to vote "no." The Merger Transaction closed on January 2, 2015.

On December 28, 2015, Joe Campbell and his wife, Barbara Campbell, brought a class action against TCT, its CEO, the board of directors, and BHT. The Campbells alleged that the merger deprived TCT members of millions of dollars in value that they owned in the company.

Three days later, the entire board (including Mr. Campbell) resigned.

TCT sought coverage for the Campbell class action suit under its Private Choice Ovation policy with Twin City Fire Insurance Company. The policy included coverage for directors and officers but had an exclusion for insured versus insured claims. Twin City asserted this exclusion.

TCT sued Twin City in Wyoming federal court for declaratory relief. The parties cross-moved for summary judgment.

The court granted Twin City's motion. The court held that the insured versus insured exclusion applied on its face because both Campbell and TCT were insureds under the policy. It did not matter, the court said, that the underlying suit did not necessarily involve collusive concerns that often animate insured versus insured exclusions.

Nor did any of the exceptions to the exclusion apply. A former manager exception did not apply because Campbell had served as a director within one year of the Campbell class action being filed. The exception for claims by security-holders also did not apply because the suit was brought by a security-holder with the assistance of an insured entity or manager. Here, it was enough that Mr. Campbell participated alone in the lawsuit. Because of his involvement, the proceeding was not "brought and maintained without solicitation, assistance, or active participation of any Insured Entity or Manager."

For these reasons, the court held that all the civil proceedings were excluded from coverage.

The case is *Tri Cnty. Tel. Ass'n, Inc. v. Twin City Fire Ins. Co.*, Case No. 24-CV-274 (D. Wyo. Jan. 12, 2026).

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