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Seventh Circuit, With an Assist From the Illinois Supreme Court, Finds That "Pollution Exclusion" Bars Coverage For Emissions Allowed Under Regulatory Permit

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In *Griffith Foods Int'l Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 24-1217 & 24-1223 (7th Cir. Mar. 13, 2026), the Seventh Circuit addressed the meaning and scope of a pollution exclusion in a standard-form commercial general liability insurance policy for underlying injuries caused by ethylene oxide (EtO) emissions. The insurance dispute arose out of underlying tort litigation involving bodily injury claims, including cancer, allegedly caused by emissions of ethylene oxide over a 35-year period from 1984 through 2019 by Griffith Foods International and later Sterigenics U.S. The pollution exclusion at issue generally barred coverage for "bodily injury" arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, or other irritants, contaminants or pollutants.

Interpreting similar exclusions, the Illinois Supreme Court has previously held that the standard CGL pollution exclusion bars coverage for bodily injuries caused by traditional environmental pollution (essentially industrial emissions of pollutants), but not by more commonplace emissions (such as carbon monoxide from a residential furnace or excess chlorine in a backyard swimming pool). *See American States Insurance Co. v. Koloms*, 177 Ill. 2d 473 (Ill. 1997). In *Griffith Foods*, the District Court initially concluded that the pollution exclusion did not apply because the companies emitted EtO pursuant to a permit issued by the IEPA. The District Court reached this latter conclusion by applying *Erie Insurance Exchange v. Imperial Marble Corp.*, 957 N.E.2d 1214 (Ill. App. Ct. 2011), an Illinois intermediate appellate court decision finding it ambiguous whether a CGL policy's pollution exclusion barred coverage for emissions authorized by regulatory permit.

The Seventh Circuit was then required to interpret and apply *Koloms* as part of determining whether an industrial pollutant discharged pursuant to a permit issued by an Illinois regulatory agency constitutes traditional environmental pollution subject to a CGL policy's pollution exclusion. On its face, and under *Koloms*, the Seventh Circuit believed the exclusion should apply. However, in light of *Imperial Marble* and the general importance of the coverage question, the Seventh Circuit was hesitant to take either approach. Instead, the Seventh Circuit certified the following question for the Illinois Supreme Court to provide guidance: "Does a permit or regulation authorizing emissions play in assessing the application of a pollution exclusion in a commercial general liability policy?"

The Illinois Supreme Court answered the certified question in unequivocal terms: "a permit or regulation authorizing emissions (generally or at any particular levels) ***has no relevance*** in assessing the application of a pollution exclusion within a standard-form commercial general liability policy" (emphasis added). In so ruling, the Illinois Supreme Court overruled *Imperial Marble*, which the Seventh Circuit described as a "watershed moment in Illinois law" by eliminating any prior ambiguity in applying the exclusion. With this guidance, the Seventh Circuit "reaffirmed" its prior reasoning that the pollution exclusion applied to bar coverage for alleged injuries caused by the EtO emissions at the insureds' facilities. According to the Seventh Circuit:

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> [T]he discharge of EtO emissions into the atmosphere at issue in this case fits squarely within the plain language of the pollution exclusion. Put another way, the Illinois Supreme Court confirmed our own instinct that the emissions fit squarely within the plain and ordinary meaning of "traditional environmental pollution" triggering the pollution exclusion. Leaving nothing to doubt, the Court punctuated its conclusion further by declining to find an ambiguity where none exists.

Griffith Foods, Nos. 24-1217 & 24-1223, p. 5 (citations omitted).

Accordingly, the Seventh Circuit reversed the District Court's entry of judgment for the insured, and remanded with instruction to enter judgment for the carrier.

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