Pollution Exclusion/Permitted Emissions: Federal Appellate Court Addresses Coverage Question Related to Ethylene Oxide



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The United States Court of Appeals for the Seventh Circuit ("Seventh Circuit") addressed in a March 13th Opinion an insurance coverage question involving emissions of ethylene oxide. *See GRIFFITH FOODS INTERNATIONAL INC., et al., v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA*, Nos. 24-1217 and 24-1223.

The question addressed was the meaning and scope of a pollution exclusion in a standard-form commercial general liability insurance policy under Illinois law for injuries caused by emission of ethylene oxide.

Griffith Foods International and Sterigenics U.S. (collectively, "Griffith") sought insurance coverage for tort litigation related to injuries allegedly caused by emissions of ethylene oxide over a 35-year period of 1984 – 2019. They are noted to have litigated before both the Seventh Circuit and Illinois Supreme Court on various issues associated with these policies.

The Seventh Circuit initially notes the Illinois Supreme Court answered a certified question in unequivocal terms, stating:

… 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 (citing *Griffith Foods Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 2026 WL 181277, at *1 (Ill. Jan. 23, 2026)).

The answer to this question is held to mean that the pollution exclusion applies to the litigation. Therefore, Griffth is stated to have:

… no claim to coverage and no basis for requiring National Union to defend them against the allegations in the Master Complaint.

Griffith raised several arguments attempting to rebut this conclusion, including:

- Ambiguity predominated before the Illinois Supreme Court answered the certified question, thereby rendering the pollution exclusion inapplicable at the time they tendered their defense in the underlying litigation (Seventh Circuit responds that throughout its prior opinion, that the best reading of Illinois law was that the pollution exclusion applied to bar both coverage and any duty to defend).

- There must have been ambiguity before the Illinois Supreme Court weighed in because National Union agreed to defend them during the pendency of this appeal, attaching four exhibits to a Rule 52(b) position statement (Seventh Circuit refuses to exercise its authority to supplement the record and instead follows the general rule disallowing a party to add materials to the record on appeal which were not before the District Court.

A copy of the Opinion can be found here.