

III. Justices To Weigh Scope Of Standard Pollution Exclusions

By **Ganesh Setty**

Law360 (April 18, 2025, 4:01 PM EDT) -- The Illinois Supreme Court will consider whether pollution exclusions in standard-form commercial general liability policies apply to industrial emissions allowed under a regulatory permit, the court said Thursday, agreeing to take up a question certified by the Seventh Circuit.

This month, a three-judge Seventh Circuit panel requested **the justices' input** in a consolidated appeal concerning an AIG unit's duty to cover \$150 million in defense costs from hundreds of injury lawsuits against a sterilization company and its former parent. The panel asked the state high court to weigh in on how to apply two decisions from separate Illinois courts.

In the first, *American States Insurance Co. v. Koloms* , Illinois justices ruled in 1997 that pollution exclusions in standard-form CGL policies generally bar coverage for injuries caused by the industrial emission of traditional pollutants, but not more common emissions, like carbon monoxide.

And in the second, *Erie Insurance Exchange v. Imperial Marble Corp.* , a state appeals court cited the *Koloms* case to find in 2011 that it was "arguably ambiguous" if the industrial emission of pollutants at levels allowed under a regulatory permit constituted such traditional pollution under a pollution exclusion. Because of that ambiguity, the court further ruled the insurer, as drafter of the policy, had a duty to defend its insured.

"Because federal law requires any company that emits large amounts of pollutants to obtain a permit, and environmental regulations are constantly evolving, the situation before us is likely to recur and our decision would have substantial ramifications for insurers and insureds alike," the Seventh Circuit panel said in its certification opinion April 11.

According to court filings, the exclusion question originates from AIG unit National Union Fire Insurance Co. of Pittsburgh, Pa.'s bid to avoid defending Sterigenics U.S. LLC and former parent Griffith Foods in lawsuits over their release of ethylene oxide, or EtO, which federal regulators say is carcinogenic to humans.

The claims specifically center on a Griffith predecessor's business of sterilizing medical equipment at a facility in Willowbrook, Illinois, between 1984 and 1999, after which the predecessor then sold its sterilization operations to a company that later became Sterigenics. The plant ultimately shut down in 2019.

In the wake of a 2018 government report finding Willowbrook was experiencing "staggering and disproportionate" cancer rates, Illinois residents filed hundreds of lawsuits against Sterigenics and Griffith, alleging that the plant's release of EtO during sterilization operations caused the residents to suffer severe injuries. The underlying EtO lawsuits were consolidated into a single proceeding with a corresponding master complaint.

National Union had issued the Griffith predecessor two CGL policies collectively spanning between September 1983 and September 1985, which the insurer said barred coverage for the underlying EtO injury claims under their pollution exclusions.

After Sterigenics **prevailed in one** EtO trial and was hit with a **\$363 million** jury award in another in 2022, the company ultimately reached a \$408 million settlement **to resolve** over 870 underlying

emissions lawsuits in January 2023.

Before Sterigenics' global settlement, an Illinois federal court in the present case granted judgment on the pleadings in **August 2022** to Sterigenics and Griffith, finding National Union had a duty to defend because the pollution exclusion was "ambiguous as to whether it applies to permitted emissions like the ones alleged in the underlying complaint."

In its certification opinion, however, the Seventh Circuit panel that said although the Koloms decision "goes a long way" in advising it how to analyze a standard-form CGL policy's pollution exclusion, "the exact scope of traditional environmental pollution remains unclear, and leaves us 'genuinely uncertain' as to how to proceed."

Relying on the allegations in the most recently amended underlying master complaint, the panel highlighted that in the Griffith predecessor's communications with the Illinois Environmental Protection Agency to secure a permit to build the Willowbrook facility, the company told the agency about its EtO emissions, and the agency expressed concerns.

But "as far as we can tell," the panel further found, the Griffith predecessor's permit from the Illinois Environmental Protection Agency to construct the Willowbrook facility "did not specify or otherwise limit the amount of EtO that Griffith could emit from its Willowbrook sterilization operations."

Griffith Foods is represented by Sopen Shah, James Davis, Kahin Tong, Bradley Dlatt and Eric Wolff of Perkins Coie LLP.

Sterigenics is represented by Gary Feinerman, Peter Prindiville and Margaret Upshaw of Latham & Watkins LLP, by Kerry Sullivan and Matthew Chiricosta of Calfee Halter & Griswold LLP and by Andrew May, Steven Pflaum and Paul Walker-Bright of Neal Gerber & Eisenberg LLP.

National Union is represented by Thomas Dupree Jr., Alyson Cox, Nick Harper and Aaron Hauptman of Gibson Dunn & Crutcher LLP.

The cases are Sterigenics U.S. LLC v. National Union Fire Insurance Company of Pittsburg, Pa., case number 24-1223, and Griffith Foods International Inc. et al. v. National Union Fire Insurance Company of Pittsburg, Pa., case number 24-1217, in the U.S. Court of Appeals for the Seventh Circuit.

--Additional reporting by Celeste Bott, Hope Patti and Lauren Berg. Editing by Abbie Sarfo.