PLUNKETT COONEY

Pollution Exclusion, Insurer's Duty to Advise, Single Claims Provision Coverage Update

February 2, 2026

Pollution Exclusion – Seventh Circuit (Illinois Law)

Griffith Foods Int'l, Inc. v. Nat'l. Union Fire Ins. Co. of Pittsburgh, PA
2026 IL 131710, --- N.E.3d ---, 2026 WL 181277 (Ill. Jan. 23, 2026)

On a certified question from the U.S. Court of Appeals for the Seventh Circuit, the Illinois Supreme Court unanimously held that permits or regulations authorizing emissions of certain pollutants have no relevance in determining the applicability of a pollution exclusion in standard Commercial General Liability (CGL) policies.

Griffith Foods International, Inc. and its corporate successor, Sterigenics U.S., LLC (collectively, the insureds) faced mass tort actions filed by over 800 individuals, who allegedly sustained bodily injuries, including cancer and other serious diseases, caused by the emission of Ethylene Oxide (EtO) from the insureds' medical-equipment sterilization facility for more than 35 years. For two of the 35 years that the EtO was allegedly emitted from the insureds' facility, National Union Fire Insurance Company of Pittsburgh, PA (National Union) insured Griffith under two materially identical CGL policies. Each policy was in effect for one year between Sept. 30, 1983 and Sept. 30, 1985.

The insureds sought coverage from National Union for the litigation, but National Union denied coverage based on the pollution exclusion. The pollution exclusion in each policy precluded coverage for "bodily injury …. Arising out of the discharge, dispersal, release or escape of … toxic chemicals, liquids or gasses, … contaminants or pollutants into or upon land, the atmosphere or any water course or body of water," unless "such discharge, dispersion, release or escape is sudden and accidental."

After being denied coverage, the insureds sued National Union in the U.S. District Court for the Northern District of Illinois seeking a declaration that National Union had a duty to defend them under the CGL policies. Before the parties conducted discovery, the parties filed cross-motions for judgment on the pleadings. The district court granted the insureds' motion, finding that National Union had a duty to defend because the pollution exclusion did not apply since the insureds had a permit from the Illinois Environmental Protection Agency (IEPA) to emit the EtO.

National Union appealed, and the appellate court, recognizing that Illinois law was unsettled with regard to whether a pollution exclusion in a CGL policy applied to preclude coverage for claims

involving emissions authorized by law, certified the question to the Illinois Supreme Court.

In deciding the certified question, the Illinois Supreme Court considered four previous cases involving pollution exclusions. First, it considered its previous holding in *Am. States Ins. Co. v. Koloms*, 177 Ill.2d 473, 227 Ill.Dec. 149, 687 N.E.2d 72 (1997), where the court determined that the pollution exclusion in CGL policies applies only to injuries caused by "traditional environmental pollution."

The appellate court next considered the holdings in *Erie Ins. Exch. v. Imperial Marble Corp.*, 2011 IL App (3d) 100380, 354 Ill.Dec. 421, 957 N.E.2d 1214 and *Country Mut. Ins. Co. v. Bible Pork, Inc.*, 2015 IL App (5th) 140211, 397 Ill.Dec. 712, 42 N.E.3d 958, where the intermediary appellate courts determined that pollution exclusions in CGL policies were ambiguous as to whether emissions of hazardous materials in levels permitted by the IEPA constituted "traditional environmental pollution."

Finally, the appellate court considered *Scottsdale Indem. Co. v. Vill. of Crestwood*, 673 F.3d 715 (7th Cir. 2012), where the U.S. Court of Appeals for the Seventh Circuit determined that the pollution exclusion applied to preclude coverage for injuries caused by contaminated ground water even though the amount of contaminant was below the maximum level permitted by environmental regulation. Considering these four cases, the appellate court determined that a permit or regulation authorizing emissions is irrelevant in assessing the applicability of CGL policy's pollutant exclusion.

The appellate court rejected the insureds' argument that the pollution exclusion is ambiguous because the IEPA deems the emissions to no longer be pollution once it issues a permit authorizing the emissions. The appellate court, overruling *Imperial Marble Corp.* and *Bible Park, Inc.*, determined the emission of EtO into the atmosphere falls squarely within the plain language of the pollution exclusion, and any authorization of the IEPA that allows for EtO to be emitted does not alter that analysis. The appellate court noted that the IEPA permit did not change the character or substance of the EtO emission as a pollution. The appellate court also reasoned that, if EtO emissions were not pollution, there would have been no need to obtain a permit from the IEPA. As noted by the court, "[d]eclining to apply the pollution exclusion simply because the pollution was *permitted* by the State would undermine the pollution exclusion's very purpose." *Griffith Foods Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, PA, 2026 IL 131710, ¶ 27, 2026 WL 181277, at *6 (Ill. 2026).

By: Amy Diviney

Insurer's Duty to Advise – Sixth Circuit (Michigan Law)

Piatt Lake Bible Conf. Ass'n v. Church Mut. Ins. Co.
No. 25-1689, 2026 WL 93224 (6th Cir. Jan. 13, 2026)

The U.S. Court of Appeals for the Sixth Circuit affirmed the federal district court's grant of summary judgment in favor of Church Mutual Insurance Company (Church Mutual) and against Piatt Lake Bible Conference Association (Piatt Lake). The issue in the case was whether Piatt Lake's blanket insurance policy (policy) through Church Mutual, which insured Piatt Lake up to approximately $3.5 million, covered damages arising out of the collapse of Piatt Lake's building. The district court held, and the appellate court affirmed, that the policy's sublimit of $100,000 for code-compliance costs was the maximum amount available and dismissed Piatt Lake's claims on summary judgment for additional damages totaling more than $1 million.

As part of its operations, Piatt Lake owns approximately 18 buildings, including the "Miracle Building" at issue in the coverage action. The Miracle Building was built in 1973 and required renovation for modern code compliance. The Miracle Building needed heating, ramps, an elevator, a fire-suppression system and a pump-fed septic system. The policy provided blanket "replacement cost" coverage up to $3,571,200 per occurrence for Piatt Lake's 18 buildings, including the Miracle Building. In addition to the replacement cost coverage, the policy included a coverage sub-limit of $100,000 per occurrence for construction costs related to compliance with any ordinance, law or code. This meant that, in the event of loss, Church Mutual would pay only up to $100,000 for the cost of bringing an old building up to code.

In March 2020, the Miracle Building collapsed due to snow and ice, and Piatt Lake submitted a claim to Church Mutual. Church Mutual accepted the claim and determined that the Miracle Building's total replacement value, which Church Mutual would pay to Piatt Lake, was approximately $2.3 million. Piatt Lake entered into a contract for the design and rebuild of the Miracle Building. However, the estimate was $3.7 million, which was $1.4 million more than Church Mutal's estimated replacement cost coverage. Piatt Lake acknowledged that the extra cost exceeding the $2.3 million amount consisted entirely of code-compliance costs. Church Mutual informed Piatt Lake that the most that would be covered for the additional code-compliance costs would be $100,000 under the policy's sublimit. Despite knowing this information, Piatt Lake went forward with the construction.

Piatt Lake eventually filed a lawsuit in state court, which was then removed to federal court. Piatt Lake alleged that, although the express language of the policy limited code-compliance coverage to $100,000, Church Mutual's conduct made the insurer liable for code-compliance costs exceeding that limit. Specifically, Piatt Lake alleged three instances of conduct on the part of Church Mutual that suggested the full amount of the code-compliance costs would be covered.

First, Church Mutual's brochure indicated that its "specialists will measure your building(s) to establish replacement values based on current construction costs." Second, Piatt Lake claimed that a board member had discussed the policy with Church Mutual's agent and asked whether the policy 100% covered Piatt Lake such that there would be no "'under valued' problem with any potential claim in the future." The agent allegedly told the board member that the question concerned the blanket nature of

the policy, which would cover up to $3.5 million for all of the buildings. Third, Piatt Lake's board president spoke to another agent and asked whether it would be "fully covered," and the president testified that she left the meeting and felt comfortable that Piatt Lake was covered for all loss to the buildings.

The district court concluded that Piatt Lake had not shown that Church Mutual owed a separate and distinct duty to advise the potential insured about coverage. Under Michigan law, a duty to advise only arises if a special relationship existed, which would arise only if (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured.

The district court held that Church Mutual did not have a duty to advise because there was no evidence that Piatt Lake received the brochure and relied on it before procuring the policy. Further, the district concluded that the representations made by the insurance agents were accurate and unambiguous. The district court also concluded that Piatt Lake's claims failed for lack of reasonable reliance. Lastly, given the unambiguous terms of the contract, any alleged reliance would have been unreasonable. The appellate court affirmed, concluding that Piatt Lake could not establish reasonable reliance of any of its claims.

By: Joshua LaBar

The Single Claims Provision – Fourth Circuit (Maryland Law)

Navigators Ins. Co. v. Under Armour, Inc.
No. 25-1068, 2026 WL 137123 (4th Cir. Jan. 20, 2026)

The U.S. Court of Appeals for the Fourth Circuit held that Under Armour's public financial forecasts and its accounting practices constitute a single claim subject to one limit on the total coverage owed under its excess insurers' policy language because they are "logically or causally related."

Under Armour, which derives substantial revenue from wholesale sales to retailers, was owed a considerable amount of money from retailer Sports Authority and, in January 2016, questions were raised about whether Sports Authority could pay Under Armour the substantial receivables it owed. In its federal filing in February 2016, Under Armour stated that the company's receivables would not be impacted by Sport Authority's business problems. In March 2016, Sports Authority filed for Chapter 11 Bankruptcy and closed a third of its stores.

Despite this, in a press release, Under Armour represented that it continued to expect growth in net revenues and operating income in 2016. Subsequently, Sports Authority decided to liquidate its operations. One day before Sport's Authority's liquidation announcement, Under Armor insiders sold millions of dollars of Under Armour stock at a significant profit. Nevertheless, Under Armor estimated an increase in the company's operating income and net revenue growth of 24% for 2016.

In the fall of 2016, Under Armour shareholder Chad Sorensen sent the company a derivative demand letter. Sorensen asked the board of directors to take action against Under Armour officers, who allegedly issued false and misleading statements about the effect of Sport Authority's bankruptcy on Under Armour's finances. Sorensen further alleged that these statements inflated Under Armour's stock price, allowing insiders to sell high before the share price dropped. Other Under Armor shareholders issued similar derivative demands, some of which resulted in derivative lawsuits filed against Under Armor.

In February 2017, Under Armour shareholder Brian Breece filed a class action lawsuit against Under Armour, asserting violations of federal securities laws. Breece alleged the company made false and/or misleading statements, as well as failed to disclose material adverse facts about Under Armour's business, operations and prospects. The class action complaint further faulted Under Armour for not indicating that its revenue and profit margins would not be able to withstand the bankruptcy of Sports Authority, heavy promotions, high inventory levels and the ripple effect of numerous department store closures. One month later, the district court consolidated the Breece class action with two related lawsuits under the caption *In re Under Armour Securities Litigation* (the Securities Litigation).

In June 2017, the Securities and Exchange Commission (SEC) subpoenaed Under Armour's financial and accounting documentation from 2015 and 2016 as part of its investigation into whether the company violated federal securities laws. The SEC's investigation, as well as the securities litigation, continued over the next few years. In the summer of 2020, the SEC notified Under Armour of its intent to pursue an enforcement action against Under Armour. Ultimately, Under Armour settled the SEC's enforcement action for $9 million, the securities litigation for $434 million, and the shareholder derivative suits for unspecified amounts.

Under Armour then sought insurance coverage from its insurers for the legal expenses and liabilities incurred in the securities litigation and the derivative lawsuits (the 2016-2017 claims), as well as the SEC's investigations and enforcement action. From February 2016 to February 2017, Under Armour was insured under a claims-made policy with a $10 million coverage limit. Nine excess insurers, including Endurance American Insurance Company (Endurance) each tacked on additional $10 million layers. For the 2017 – 2018 policy year, Under Armour was insured under a primary claims-made policy issued by Endurance with a $10 million coverage limit. Nine excess carriers, following form to the Endurance policy, each provided additional $10 million layers.

The 2016-2017 insurers agreed that they owed coverage for the 2016-2017 claims. Following the SEC settlement, however, Endurance determined that the government's allegations – the accounting pull forwards – were related to those first made in the 2016-2017 claims, which Endurance accepted coverage for under the 2016-2017 policy. Endurance relied upon the single claim provision in the 2017-2018 policies, which provided that "[a]ll 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 Claim is made…"

Based on the single claims provision, Endurance and the 2017-2018 excess insurers concluded that the SEC's investigations involved the same common nexus of facts as the 2016-2017 claims and were thus logically and causally related. Therefore, Endurance and the 2017-2018 excess insurers filed a declaratory judgment action seeking a declaration that the SEC's investigations and the 2016-2017 claims constituted a single claim first made in 2016, which is subject to the 2016-2017 policy limits, not the 2017-2018 policy limits. The district court determined that the SEC's investigations did not arise from the same facts as the 2016-2017 claims. Thus, in the district court's view, the SEC's investigations and the 2016-2017 claims were not a single claim, and, therefore, coverage under the 2017-2018 policies attached to the claims involving the SEC's investigations.

The appellate court reversed, holding that the SEC's investigations and the 2016-2017 claims constituted a single claim. The appellate court considered the plain meaning of the single claim provision and reasoned that two things are "logically related" when they are reasonably or rationally connected to or associated with one another, and that two things are "causally related" when they are connected or associated by cause or by cause and effect.

The SEC's investigation involved Under Armour's efforts to achieve a quarterly revenue growth rate of at least 20% and Under Armour's pulling of revenue expected in later quarters into the current quarter to make its financial performance in 2016 look better (the accounting manipulation). Given that the 2016-2017 claims involved Under Armour's misleading public financial forecasts and officers using inside information to sell Under Armour stock at a substantial profit, the appellate court determined that both claims involved "logically related" conduct. The appellate court also determined that both claims involved "causally related" conduct because the accounting manipulation and the misleading public financial forecasts derived 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."

On these bases, the appellate court held that the SEC's investigations and the 2016-2017 claims constituted a single claim pursuant to the single claim provision set forth in the 2017-2018 policies. As a result, no coverage was afforded to Under Armour under the 2017-2018 policies, as those policies only apply to claims first made during the 2017-2018 policy period.

By: Nicholas Badalamenti