Case No. 131710

In the

Supreme Court of Illinois

Griffith Foods International, Inc., and Sterigenics, U.S., LLC,

Plaintiffs-Appellees,

v.

National Union Fire Insurance Company of Pittsburgh, P.A.,

Defendant-Appellant.

Question of law certified by the United States Court of
Appeals for the Seventh Circuit, Case Nos. 24-1223 & 24-1217,
There on appeal from the United States District Court for the
Northern District of Illinois, Case Nos. 1:21-cv-6403 & 1:21-cv-4581,
Honorable Mary M. Rowland, Judge Presiding.

BRIEF OF *AMICI CURIAE* THE ILLINOIS MANUFACTURERS' ASSOCIATION, MEDLINE INDUSTRIES, LP, VANTAGE SPECIALTY CHEMICALS, INC., STERILIZATION SERVICES OF TENNESSEE, INC., and iBIO

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INTERESTS OF THE *AMICI*

Founded in 1893, the Illinois Manufacturers' Association (IMA) is an Illinois not-for-profit corporation as well as the oldest and largest state-wide manufacturing association in the country. More than 4,000 Illinois manufacturing companies of all sizes hold IMA membership, employing over 75% of our state's manufacturing workforce. The IMA seeks to preserve and strengthen the Illinois manufacturing base and the state's business climate by providing information and legislative and judicial advocacy on behalf of its member companies.

Many IMA member companies produce essential goods that support the health, safety, and economic wellbeing of the public, including products for healthcare, infrastructure, transportation, agriculture, and manufacturing supply chains. In the process of creating these goods, companies may emit regulated substances that are lawfully permitted and closely monitored by both state and federal environmental authorities. For instance, formaldehyde is used in the manufacture of durable resins for automotive components and engineered wood, enabling the construction of energy-efficient buildings and long-lasting infrastructure. Hydrogen chloride and chlorine are involved in the synthesis of polymers and disinfectants critical to public health systems, including municipal water treatment and sanitation in hospitals. Ammonia is indispensable in agricultural production, as it is a primary ingredient in nitrogen-based fertilizers essential to global food security. Other compounds,

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such as volatile organic compounds like acetaldehyde, are part of the production of adhesives, coatings, and packaging materials that preserve goods, support commerce, and reduce spoilage.

These emissions occur under the authority of stringent permitting regimes overseen by the Illinois Environmental Protection Agency (IEPA) and the Illinois Pollution Control Board. These permits include detailed emission limitations, operational standards, and compliance monitoring protocols. In addition, companies must obtain construction and operating permits before installing or modifying any equipment that emit air contaminants. These permits undergo technical review to ensure compliance with best available control technologies and national ambient air quality standards, ensuring emissions from IMA member companies are authorized, technologically managed, and environmentally responsible. These necessary emissions are byproducts of highly regulated manufacturing processes that produce goods indispensable to modern life.

Headquartered in Northfield, Illinois, Medline Industries, LP (Medline) is the nation's largest privately held manufacturer and distributor of medical supplies. Medline provides products and services to customers across the continuum of healthcare, including hospitals, extended care facilities, surgery centers, home care providers, physician offices, and consumers.

Many of the products Medline sells must be sterilized. Medline utilizes ethylene oxide, or EtO, to sterilize medical products. Ethylene oxide is the only

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sterilization method approved by the United States Food and Drug Administration (FDA) for many of the products Medline sells, as other methods such as steam and gamma radiation are ineffective or damage the products. For this reason, EtO is used to sterilize approximately half of all medical devices sold throughout the United States. Medline utilizes contract sterilizers for the majority of its product sterilization needs, but since 2008 Medline has operated a sterilizer of its own in Waukegan, Illinois. Medline purchased commercial general liability (CGL) insurance coverage to protect against potential liabilities arising from its normal business operations, including lawful EtO emissions made in accordance with a governmental permit issued by the IEPA. Consistent with existing law, Medline sought coverage for lawsuits alleging personal injury from EtO emissions. Medline's CGL insurers, including National Union, acknowledged their duty to defend Medline against the underlying lawsuits, subject to a reservation of rights, notwithstanding pollution exclusions in Medline's insurance policies. Medline is presently in litigation with some of its excess insurers regarding coverage for settling personal-injury lawsuits.

Vantage Specialty Chemicals, Inc. (Vantage) employs approximately 150 people at its chemical production facility in Gurnee, Illinois, manufacturing ingredients for ubiquitous, widely used products such as packaged foods, cosmetics, shampoo, and clothing. Vantage produces these important ingredients by using EtO to process compounds inside sealed

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chemical reaction chambers. Vantage's Gurnee facility is closely regulated by the IEPA. Consistent with the bespoke, facility-specific permits issued to Vantage by the IEPA, operations at the Gurnee facility result in the potential escape of extremely small amounts of EtO. Like other *Amici*, Vantage purchased CGL insurance coverage to protect against potential liabilities arising from its normal business operations at the Gurnee facility, including its permit-compliant EtO emissions, and Vantage is presently in litigation with its CGL insurers regarding coverage for lawsuits that allege bodily injuries from EtO emissions. The insurers have raised the pollution exclusion as a basis to defeat coverage.

Sterilization Services of Tennessee (SST) was a medical device sterilizer that used EtO to sterilize medical devices and materials on a contract basis. The devices SST processed required sterilization to prevent exposing patients to microorganisms that can cause potentially life-threatening infections and diseases. As mentioned above, EtO is used to sterilize approximately fifty percent of all sterilized medical equipment. SST maintained continuous CGL insurance coverage since the 1970s to protect against potential liabilities arising from its permitted EtO emissions. SST is presently a defendant in a stayed Lake County, Illinois, coverage litigation with some of its insurers regarding coverage for underlying lawsuits alleging personal and bodily injury from EtO emissions. The insurers tried to defeat coverage by relying on the pollution exclusion.

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iBIO is a state trade association representing the life sciences industry in Illinois.[1] iBIO's membership ranges from global corporations to startup companies in the biopharma, medical device, and nutrition industries, supporting the 85,000 life sciences employees at member companies, universities, service providers, and venture firms throughout the state. iBIO and its members are committed to expanding the boundaries of science by discovering, developing, and delivering innovative and needed therapeutics and products to transform patients' lives and fostering a diverse science, technology, engineering, and mathematics (STEM) pipeline of scientists, entrepreneurs and innovators. In furtherance of these goals, iBIO promotes thoughtful legislative and regulatory solutions at the local, state, and federal levels that allow its members to research, develop, and commercialize breakthrough therapies and cures, and to ensure patients have affordable access to those new treatments, while opposing policies that threaten patient access, limit innovation, or adversely impact the Illinois life sciences industry's competitiveness in the global economy.

As discussed above and below, *Amici* have valuable, real-world insights into: operating businesses within Illinois that require applying for, receiving, and complying with regulatory permits to emit regulated substances as a part of their normal business operations; obtaining and relying upon CGL

[1] The IMA, Medline, Vantage, SST, and iBIO are collectively referred to herein as the *Amici*.

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insurance policies to insure against potential liabilities relating to their normal business operations; and the consequences Illinois businesses will face if insurance companies are allowed to deny coverage under a pollution exclusion for lawful, permitted emissions arising out of typical business operations. *Amici* respectfully submit this brief to assist the Court's deliberations by presenting facts, insights, and practical realities on these points that may assist the Court in understanding the consequences of the Court's opinion in the matter before it.

INTRODUCTION

This case asks an important question, which may be expressed in a number of ways. The United States Court of Appeals for the Seventh Circuit phrased the issue in the broadest of terms when certifying the matter to this Court, asking "what relevance, if any, does a permit or regulation authorizing emissions (generally or at particular levels) play in assessing the application of a pollution exclusion within a standard-form commercial general liability policy?" *Griffith Foods Int'l Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 134 F.4th 483, 492-93 (7th Cir. 2025). To avoid "limit[ing] the scope" of this Court's review, the Seventh Circuit expressly "welcome[d] the Justices to reformulate the question as they see fit." *Id.* at 493. Given this Court's precedent, *Amici* respectfully suggest the question can and should be phrased more narrowly: do emissions made pursuant to and in compliance with a

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regulatory permit clearly and unambiguously fall within this Court's longstanding definition of traditional environmental pollution?

The answer to that question will determine whether the pollution exclusion found in standard-form CGL insurance policies can be used to overcome insurers' duty to defend in cases like this; that is, when their insureds face potential liability arising from harms allegedly caused by lawful, permitted emissions of highly regulated substances. As the Seventh Circuit noted, the answer to this question has broad implications for Illinois insurance law and the insurance industry generally. *Id.* at 492-93. The same should also be said for their insureds.

Amici suggest the answer to that question must be: no. The pollution exclusion found in most CGL policies is inapplicable to lawful, permitted emissions because those emissions are not "pollution" under Illinois law. Federal and state governmental agencies do not consider such emissions to be pollution and those agencies, not insurers, are in the best position to decide as a matter of science and policy what constitutes pollution. Insurers should not be allowed to overcome their duty to defend responsible, law-abiding Illinois businesses that obtain necessary regulatory permits and comply with their conditions and limitations when they are faced with litigation alleging their lawful conduct accidentally caused personal injury or property damage. That has been the law of Illinois for well over a decade and it should continue to be

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so now. At the very least, the pollution exclusion's recognized ambiguity should apply to cases where those types of emissions are involved.

Normal operations of many Illinois businesses, including at companies that create significant manufacturing jobs in Illinois, require the use and emission of compounds regulated by law. Those companies acquire CGL policies and pay premiums to insure against potential liability arising from the lawful use and operation of their facilities, including from emissions expressly authorized in permits issued by environmental experts. These businesses are not scofflaws seeking to shift the costs of their choices. Just the opposite. They have obtained CGL coverage reasonably believing it would insure against lawful emission risks, relying on definitions of air pollution devised by expert governmental agencies and a consistent body of Illinois appellate court authority holding that general pollution exclusions do not clearly and unambiguously defeat an insurer's duty to defend lawsuits involving injuries allegedly caused by lawful, permitted emissions. To come to the opposite conclusion would deprive such responsible, law-abiding companies of their bargained-for coverage and upset current Illinois insurance law and the many years of expectations and actions based on it.

Moreover, answering the certified question in favor of the insurers would not, as National Union and its *amici* lament, encourage pollution, wreak havoc within the insurance industry, and skyrocket insurance premiums. If those predictions were true, they would have already come to pass, given the

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current state of Illinois law since *Imperial Marble* was decided more than 14 years ago. All *Amici* advocate for here is maintaining the *status quo* and holding insurance carriers to their end of the bargain by requiring them to defend law-abiding policyholders.

ARGUMENT

I. Emissions authorized by state-issued regulatory permits are not traditional environmental pollution under Illinois law.

The heart of the issue before this Court is whether emissions discharged pursuant to and in compliance with an agency permit fall within the scope of a CGL policy's pollution exclusion. They do not. By enacting the Illinois Environmental Protection Act (Illinois Environmental Act), the General Assembly expressed its desire "to restore, maintain, and enhance the purity of the air of this state," ensuring substances are not "discharged into the atmosphere without being given the degree of treatment or control necessary to *prevent pollution*." 415 ILCS 5/8 (emphasis added). The legislature thus vested the IEPA with sole authority to *prevent* pollution in this state. In accordance with such authority and the unique expertise it possesses, the IEPA has determined substances emitted or discharged pursuant to and in compliance with agency issued permits are lawful and do ***not*** constitute traditional environmental pollution—full stop.

Accordingly, when deciding whether an emission constitutes "traditional environmental pollution" as this Court contemplated in *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473 (1997), the analysis must

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include the IEPA's reasoned policy choice to allow for certain emissions in quantities it deems safe. Whether to account for permitted activity in this regard should not be left to self-interested insurance companies seeking to limit their potential exposure for lawful, regulated conduct. Nor should it rely on an overbroad interpretation of a pollution exclusion the insurers devised, drafted, and chose not to revise following more than a decade of Illinois authority rejecting their interpretation.

A. This Court in *Koloms* limited the scope of the pollution exclusion to traditional environmental pollution.

This Court was confronted nearly 30 years ago with the problem of how to properly interpret an "absolute" pollution exclusion commonly found in insurance policies issued to insureds in Illinois. The parties have and will continue to discuss *Koloms*, and in the interest of efficiency *Amici* do not repeat that analysis here. It suffices to say that in affirming the trial and appellate courts' holdings in *Koloms* that the pollution exclusion there did not bar coverage, this Court rejected as absurd and unworkable the kind of overbroad interpretation argued for by National Union and its *amici* here. *Id.* at 494.

The Court reached that conclusion after reviewing the history behind the insurance industry's adoption of the pollution exclusion (*see infra* § I(C)), revealing its purpose was to avoid the "enormous expense and exposure resulting from the explosion of environmental litigation." *Id.* at 492 (cleaned up). Troubled by "an overbreadth in the language of the exclusion as well as the manifestation of an ambiguity which results when the exclusion is applied

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to cases which have nothing to do with 'pollution' in the conventional, or ordinary, sense of the word," the Court rejected the insurer's "purely literal interpretation" of the exclusion and held its "otherwise potentially limitless application" must be restricted "to only those hazards traditionally associated with environmental pollution." *Id.* at 488-89. The Court announced that pollution exclusions "ha[ve] been, and should continue to be, the appropriate means of avoiding the yawning extent of potential liability arising from the gradual or repeated discharge of hazardous substances into the environment." *Id.* at 493. But extending such exclusions any further would be improper. *Id.*

Following *Koloms*, the controlling question when deciding if an insurer can properly deny its insured a defense under the pollution exclusion is whether the alleged activity in question constitutes "traditional environmental pollution." Here, that means answering whether National Union has proven that it is unreasonable to conclude that alleged injuries and damages arising from lawful, permitted emissions constitute claims involving traditional environmental pollution. National Union has not met its high burden because expert governmental agencies and the appellate court have both previously concluded they do not.

B. Emissions made pursuant to and in compliance with permits issued by the IEPA cannot constitute traditional environmental pollution under *Koloms*.

Numerous chemicals—including EtO—are strictly regulated under federal and Illinois law. The United States Environmental Protection Agency

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(EPA) and IEPA impose exacting requirements before issuing permits allowing the emission of any regulated substance. These are not "shall issue" permits. Regulators have the authority to deny permit applications from facilities they do not believe will comply with the law. Those agencies also require rigorous modeling and testing to confirm compliance with agency-issued permits, thus ensuring companies do not harm the environment or the public. Accordingly, when the federal and state administrative agencies responsible for *preventing* pollution allow companies to emit substances in certain specified quantities, those subject-matter experts have determined that permitted emissions are not traditional environmental pollution, and the courts should follow suit.

Congress enacted the federal Clean Air Act to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare … [and] governmental actions for ***pollution prevention***." 42 U.S.C. § 7401 (emphasis added). The Clean Air Act allows the EPA to delegate authority to the states to oversee pollution prevention within their borders. 42 U.S.C. § 7412(l). The EPA delegated this duty to the IEPA, while retaining responsibility to oversee the implementation, administration, and enforcement of the Clean Air Act. *See, e.g.*, 37 Fed. Reg. 10,862 (May 31, 1972).

Like the Clean Air Act, the Illinois Environmental Act's purpose is "to restore, maintain, and enhance the purity of the air of this state in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere *without being given the*

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degree of treatment or control necessary ***to prevent pollution***." 415 ILCS 5/8 (emphasis added). The statute and related regulations thus prohibit "the discharge or emission of any contaminant into the environment . . . so as to cause or tend to cause air pollution . . . ." 415 ILCS 5/9; 35 Ill. Admin. Code § 201.141. The General Assembly and the IEPA both define "air pollution" as "the presence in the atmosphere of one or more contaminants *in sufficient quantities and of such characteristics and duration* as to be injurious to human, plant, or animal life . . . ." 415 ILCS 5/3.115; 35 Ill. Admin. Code § 201.102 (emphasis added).

To ensure emissions will not pollute the environment or harm public health, the General Assembly established the Clean Air Act Permitting Program (CAAPP), which allows the IEPA to issue CAAPP permits or federally enforceable state operating permits (FESOP). 415 ILCS 5/8, *et seq.*; 415 ILCS 5/39.5(3), (9). These permits allow their recipients to emit regulated substances in specified quantities that the EPA and IEPA deem safe. 415 ILCS 5/39.5(6)-(7). The IEPA oversees and administers the CAAPP, and makes permitting decisions for each emissions source within Illinois, subject to EPA approval. 415 ILCS 5/39.5(3), (9); 42 U.S.C. § 7661(a), (d); 40 C.F.R. § 70.8. Thus, the General Assembly understood that emissions in accordance with an IEPA-issued permit are *per se* not "air pollution" under Illinois law.

Accordingly, it is illegal under both federal and Illinois law to violate the federal Clean Air Act or the Illinois Environmental Act. 415 ILCS 5/9(a). That

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does not mean a company emitting one of the hundreds of substances strictly regulated by the IEPA is deemed a "polluter" under the law. *See* 35 Ill. Admin. Code § 323, App'x A (listing air contaminants). To the contrary, companies that apply for, receive, and comply with environmental permits to emit substances at certain specified levels are not emitting traditional environmental pollution.

Take EtO for example. It is an organic compound that exists naturally in the environment, including in humans.[2] It is also a raw material that is transformed, through chemical reactions, into a variety of consumer products used in everyday life. Ethylene oxide is also used to sterilize medical devices, and the FDA considers EtO sterilization "an important sterilization method that manufacturers widely use to keep medical devices safe."[3] Indeed, the FDA acknowledges for "many medical devices, sterilization with EtO may be the *only method* that effectively sterilizes and does not damage the device during the sterilization process." 89 Fed. Reg. 98,298 (Nov. 26, 2024) (emphasis added). Providing sterile equipment to local, national, and global medical professionals can mean the difference between life or death. The FDA therefore *requires*, and the IEPA allows medical device suppliers like Medline to utilize EtO in their everyday operations.

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[2] *Ethylene Oxide Emissions Guidance* § 2.2 and App'x 8, Interstate Tech. Regul. Council, https://eto-1.itrcweb.org/#2_2 (last accessed Aug. 27, 2025).

[3] *Sterilization for Medical Devices*, U.S. Food & Drug Admin. (May 14, 2025), https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/sterilization-medical-devices (last accessed Aug. 27, 2025).

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The IEPA, under authority delegated to it by the EPA, has tightly regulated the emission of EtO to ensure it does not pollute the environment by enforcing specific efficiency requirements and total emissions limitations in CAAPP and FESOP permits.[4] The limitations have been established over the course of more than 30 years of intensive review by the EPA's Office of Research and Development of what levels of EtO can be emitted safely from a regulatory perspective. Also, the General Assembly continues to legislate in this space to prevent environmental pollution. *See, e.g.*, 415 ILCS 5/9.16 (requiring ethylene oxide sterilization sources to reduce EtO emissions by certain thresholds, and establishing comprehensive testing requirements); 415 ILCS 5/9.17 (similar, regarding "nonnegligible ethylene oxide emissions sources").

It should go without saying that whether, and under what circumstances, EtO emissions constitute "pollution" should be and, in fact, has been decided by the IEPA, not National Union. The General Assembly has made plain that emissions within permitted levels are not pollution and has delegated to the IEPA to determine in its sound and informed judgment where

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[4] FESOP permits—like those possessed by Medline and Vantage—contain "permit limits that constrict the source to non-major status," and such limitations are expressed numerically in "the form of production, operation, and emission limitations." *General Instructions for Clean Air Act Permit Program (CAAPP) Applications*, Ill. Env't Prot. Agency, https://epa.illinois.gov/content/dam/soi/en/web/epa/documents/epa-forms/air/permits/caapp/202-caapp-inst.pdf (last accessed Aug. 27, 2025).

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such permits should be set. The IEPA possesses "specialized experience and expertise" in environmental matters, including what constitutes unlawful air pollution. *See Vino Fino Liquors, Inc. v. License Appeal Comm'n*, 394 Ill. App. 3d 516, 524-25 (1st Dist. 2009); *accord Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16 ("agencies make informed decisions on the issues based on their experience and expertise and serve as an informed source for ascertaining the legislature's intent."). It is thus for the IEPA—not self-interested insurance carriers—to decide what constitutes environmental pollution.

The IEPA has done so here through its strict regulatory framework and the issuance of CAAPP and FESOP permits. To ensure substances are emitted in lawful quantities, companies must apply for construction permits, operating permits, or both when their normal business operations entail emitting such substances. *See, e.g.*, 35 Ill. Admin. Code § 201.142 (requiring construction permit); 35 Ill. Admin. Code §§ 201.143-44 (requiring operating permits for new and existing sources of emissions); 35 Ill. Admin. Code § 201.163 (allowing issuance of "joint construction and operating permit."). Applicants must submit for the IEPA's review a host of information, including technical designs evidencing the methods by which any emissions will be limited to satisfy air-quality standards. The IEPA then strenuously reviews each permit application and, in Medline and Vantage's case, periodically conducts inspections to ensure compliance with state and federal requirements.

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Obtaining a permit from the IEPA is just the start of a company's regulatory journey. Permitted businesses are subject to ongoing emissions' monitoring to ensure compliance with the law and must submit the results thereof to the IEPA on at least an annual basis. *See, e.g.*, 35 Ill. Admin. Code §§ 201.241-47, 201.282, 201.302. Permit holders are also obligated to monitor and report any periods during which they exceed the amount of emissions their permits allow. 35 Ill. Admin. Code § 201.405.

The purpose of these regulations is to *prevent* pollution by ensuring emissions comply with standards set by the EPA, the General Assembly, and the IEPA to protect the environment and human health. Businesses that comply with these standards cannot reasonably be viewed as creating "traditional environmental pollution" as contemplated by this Court in *Koloms* because they are, in the view of the subject-matter experts, not polluting from a regulatory perspective. Such lawful emissions should not be considered pollution at all; indeed, the General Assembly defines pollution to specifically *exclude* permitted emissions. *See* 415 ILCS 5/3.115.

National Union and its *amici* nevertheless argue that recognizing a "permitted use" exception to the pollution exclusion would encourage Illinois companies to pollute the environment. *See, e.g.*, Nat'l Union Br. 41. This is merely a scare tactic. As discussed above, Illinois law and federal law strictly *prohibit* pollution in all forms. That is why companies that emit potentially harmful substances may do so only after receiving approval from the IEPA and

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after continuing to demonstrate that their business operations comply with the law, including maximum emissions levels. The IEPA does not issue permits to pollute. The more sensible view is that maintaining the legal *status quo* would create even stronger incentives to comply with regulatory permits (and therefore protect the environment) by linking agency-issued permits with CGL insurance coverage. This would keep insurance law in line with environmental regulatory law.

Seeking to avoid the result compelled by Illinois law, National Union and its *amici* argue any recognition that lawful, permitted emissions are not pollution would result in "arbitrary" line drawing problems for which insurers cannot accurately assess and underwrite risk. *See, e.g.*, Nat'l Union Br. 42. Only insurers, say the insurers, can be trusted to make such determinations. This argument ignores the fact that regulatory permits issued by the IEPA include specific total emissions' caps.

Illinois sterilizers emitting EtO—including Medline—need to reduce EtO emissions by "at least 99.9% or to 0.2 parts per million." *See* 415 ILCS 5/9.16. Additionally, the IEPA sets site-specific EtO emissions caps for chemical manufacturing companies in Illinois—like Vantage. 415 ILCS 5/9.17(e). And even before the General Assembly enacted EtO-specific legislation in 2019, the IEPA required companies using ethylene oxide in their normal business operations to limit total emissions below specific levels set forth in their CAAPP or FESOP permits. *See supra* n.4. Accordingly, when

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regulatory agencies issue permits that include a ceiling above which companies cannot emit certain substances, emissions at or below those levels are not considered "air pollution" as a matter of law. 35 Ill. Admin. Code § 201.102. Nor should claims based on the lawful emission of such substances be considered "pollution claims in the traditional sense of the word." *Country Mut. Ins. Co. v. Bible Pork, Inc.*, 2015 IL App (5th) 140211, ¶ 41. There is nothing arbitrary about that standard, nor does it create any line drawing problems.

C. The pollution exclusion's drafting history further suggests lawful, permitted emissions do not constitute traditional environmental pollution.

The pollution exclusion's drafting history over the last 60 years likewise demonstrates that it was never intended to preclude coverage for lawful, permitted emissions. The exclusion was instead designed to limit the insurance industry's potential exposure for environmental cleanup costs and damages caused by unauthorized, traditional environmental pollution.

Standard-form CGL policies have not always contained pollution exclusions. These exclusions arose and evolved over time based on a variety of factors, including several notorious environmental disasters, the enactment of comprehensive remedial environmental legislation in response thereto, and the concomitant financial burden placed on the insurance industry arising from environmental cleanup costs. Before the mid-1960s, typical CGL policies covered personal injuries and property damage caused by an "accident." *Koloms*, 177 Ill. 2d at 490 (citing *Ctr. for Creative Studies v. Aetna Life & Cas.*

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Co., 871 F. Supp. 941, 943 n.3 (E.D. Mich. 1994)). In 1966, carriers replaced accident-centric language with coverage triggered by an "occurrence." *Id.* Intending to broaden coverage to clearly cover continuing conditions and not just sudden events, insurers typically defined an occurrence as "an accident, including injurious exposure to conditions, which results, during the policy period, in bodily injury and property damage that was neither expected nor intended from the standpoint of the insured." *Id.* (quoting *Morton Int'l, Inc. v. Gen. Accident Ins. Co.*, 134 N.J. 1, 32 (1993)).

The late 20th century then brought about significant changes to the environmental regulatory regime. For instance, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as "Superfund," was enacted by Congress on December 11, 1980. Pub. L. No. 96–510, 94 Stat. 2767 (1980) (codified at 42 U.S.C. § 9601, *et seq*.). CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites, imposed liability on parties responsible for releasing hazardous waste at these sites, and established a trust fund to provide for cleanup costs when no responsible party could be identified. Congress also amended the federal Clean Air Act to enhance air quality nationwide. Pub. L. No. 91–604, 84 Stat. 1676 (1970) (codified at 42 U.S.C. § 7401, *et seq*.).

These legislative enactments sought to clean up the environment and imposed greater economic burdens on insurance underwriters, particularly

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those drafting standard-form CGL policies. *Koloms*, 177 Ill. 2d at 490 (citing *Westchester Fire Ins. Co. v. City of Pittsburg*, 768 F. Supp. 1463, 1469 n. 8 (D. Kan. 1991), *aff'd*, 987 F.2d 1516 (10th Cir. 1993)). The financial burden on insurers increased further with the environmental disasters at Times Beach, Missouri, and Love Canal near Niagara, New York (*id.*)—neither of which involved lawful, permitted emissions, but instead centered around unauthorized, unpermitted dispersal of substances of which federal and state regulators were unaware.[5]

In light of these developments, the insurance industry grew increasingly concerned that their occurrence-based CGL policies were "tailor-made" to cover most pollution-related injuries. *Id.*; *accord* E.J. Rosenkranz, *The Pollution Exclusion Clause Through the Looking Glass*, 74 Geo. L.J. 1237, 1251 (1986). This is when the insurance industry developed the original pollution exclusion. Beginning in 1970, standard-form CGL policies included a new endorsement, providing in relevant part that coverage would not apply to 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 watercourse

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[5] *See* Jenn Little, *A Town, a Flood, and Superfund: Looking Back at the Times Beach Disaster Nearly 40 Years Later*, U.S. Env't Prot. Agency, https://www.epa.gov/mo/town-flood-and-superfund-looking-back-times-beach-disaster-nearly-40-years-later (last accessed Aug. 27, 2025); N.Y. State Dep't of Health, Love Canal: Public Health Time Bomb (Sept. 1978), https://www.health.ny.gov/environmental/investigations/love_canal/docs/lctimbmb.pdf (last accessed Aug. 27, 2025).

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> or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

Koloms, 177 Ill. 2d at 490-91. Insurers incorporated the endorsement within the body of CGL policies (known as exclusion "f."4) three years later in 1973. *Id.* at 491. Based on the exclusion's final clause, this version became colloquially known as the "sudden-and-accidental" pollution exclusion.[6]

Courts struggled over the next decade to discern what "sudden and accidental" meant in practice, focusing primarily on whether the word "sudden" should be given a strict temporal meaning, requiring the discharge of pollution to be "abrupt." *Id.* at 491-92 (citing *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90 (1992)). The meaning of this "sudden and accidental" language was one of "the most hotly litigated insurance coverage questions of the late 1980's," prompting insurers to return to the drawing board. *Id.* (quoting J. Stempel, Interpretation of Insurance Contracts: Law and Strategy for Insurers and Policyholders 825 (1994)).

In 1985, carriers unveiled the "absolute pollution exclusion." *Id.* The two most notable features of this version of the pollution exclusion are the removal

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[6] The relevant CGL policies at issue in the underlying federal coverage litigation contain sudden-and-accidental pollution exclusions. *See Griffith Foods*, 134 F.4th at 489. For purposes of answering the certified question before this Court, there is no meaningful difference between the wording of the "sudden-and-accidental" form at issue in *Griffith* and the "absolute" pollution exclusion form at issue in *Koloms* and *Imperial Marble.* Accordingly, except as otherwise identified, where this brief addresses the pollution exclusion, *Amici* reference both the "sudden-and-accidental" and "absolute" pollution exclusion forms.

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of an exception for "sudden and accidental" releases, and the elimination of the requirement that pollution be discharged "into or upon land, the atmosphere or any watercourse or body of water." *Id.* (citing *Weaver v. Royal Ins. Co. of Am.*, 140 N.H. 780 (1996)). The purpose of the absolute exclusion nonetheless remained the same, "to exclude governmental clean up costs from [the scope of] coverage." *Id.* (quoting *W. Am. Ins. Co. v. Tufco Flooring E., Inc.*, 104 N.C. App. 312, 324 (1991)). This version of the pollution exclusion is found in most CGL policies today.

The Court has reviewed this history before and concluded that it "amply" demonstrates the "predominate motivation in drafting an exclusion for pollution-related injuries was the avoidance of the enormous expense and exposure resulting from the explosion of *environmental* litigation." *Id.* at 492 (cleaned up) (emphasis original). Divorcing the exclusion from this history and context in favor of a strict interpretation of its bare words would, as this Court has explained, ignore its "*raison d' être*," allowing insurers to deny coverage in cases that "do not remotely resemble traditional environmental contamination." *Id.*

This is why the Court in *Koloms* decided to avoid the "potentially limitless application" of the pollution exclusion and interpret the provision narrowly to apply "to only those hazards traditionally associated with environmental pollution." *Id.* at 489. The Court explained the exclusion "has been, and should continue to be, the appropriate means of avoiding the

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yawning extent of potential liability arising from the gradual or repeated discharged of hazardous substances into the environment." *Id.* at 493 (cleaned up).

Nothing about the history and evolution of the pollution exclusions supports the position of National Union and its *amici*. The exclusion was never intended to deny coverage under circumstances involving lawful, permitted emissions. The predominant motivations for adopting the current exclusions were to avoid the increasing liability associated with environmental cleanup costs imposed by statute and the devastation caused by unpermitted activities leading to environmental tragedies like Times Beach and Love Canal. The lawful emission of permitted substances in a manner that causes no pollution, as that term is defined and applied by regulators and their subject-matter experts, implicates none of the same concerns. Reading the pollution exclusion in a manner that bars coverage for lawful, permitted conduct would therefore require this Court to apply it in a circumstance it was never designed to cover.

For these reasons, *Amici* respectfully ask the Court to rule as a matter of law that lawful, permitted emissions made in accordance with a company's normal business operations do not fall within the pollution exclusion's scope. When a company lawfully emits chemicals pursuant to a regulatory permit, those emissions are not and should not be considered traditional environmental pollution precisely because the government—which is in the

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best position to dictate environmental policy—approved those emissions as non-polluting.

II. The pollution exclusion is, at a minimum, ambiguous with respect to its application in cases involving lawful, permitted emissions and must thus favor coverage.

The Seventh Circuit's certified question to this Court is open ended. Should the Court opt to answer it narrowly, rather than by broadly defining the "relevance" that permitted emissions play in assessing the application of a CGL pollution exclusion, it may and should do so by concluding that such exclusions are ambiguous in this context and thus cannot defeat an insurer's duty to defend—as the Illinois appellate court has consistently held.

A. The Illinois appellate court has correctly and consistently held the pollution exclusion is ambiguous when lawful, permitted emissions are involved.

The Court is well aware of the rules governing the interpretation of insurance policy exclusions, which need not be repeated here except to say that this Court has already determined by applying those principles that the pollution exclusion's plain language cannot be interpreted literally and is ambiguous in certain circumstances. *Koloms*, 177 Ill. 2d at 488. For the reasons discussed above, whether lawful, permitted emissions constitute traditional pollution is—at the very least—one such circumstance. *See supra* §§ I(A)-(C).

The appellate court's opinion in *Erie Insurance Exchange v. Imperial Marble Corp.*, 2011 IL App (3d) 100380 (O'Brien, J.), *pet. for leave to appeal den'd*, 357 Ill. Dec. 292 (Jan. 25, 2012), was the first Illinois reviewing court

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decision to have applied *Koloms* in answering the same question pending now before this Court. The insured's alleged emissions in *Imperial Marble* were, like EtO, authorized by IEPA permit and complied with the Clean Air Act. 2011 IL App (3d) 100380, ¶ 3. In reversing the trial court's summary judgment order for the insurer under a CGL policy exclusion, the appellate court soundly relied on the reasoning in *Koloms*, assessed the relevant regulatory framework and IEPA permits, and concluded under these circumstances that the pollution exclusion is "arguably ambiguous as to whether the emission of hazardous materials in levels permitted by an IEPA permit constitute traditional environmental pollution," thereby triggering the insurer's duty to defend. *Id.* ¶¶ 20-25.

Imperial Marble is no outlier. For instance, the Fifth District in *Country Mutual Insurance Co. v. Bible Pork, Inc.* adopted the Third District's reasoning when finding the pollution exclusion ambiguous and thus insufficient to overcome an insurer's duty to defend against claims arising from noxious emissions generated by a nearby pig farm when the farm was operating under and within state regulatory approval. 2015 IL App (5th) 140211, ¶¶ 30-33, 40-41, *pet. for leave to appeal den'd*, 400 Ill. Dec. 652 (Mar. 30, 2016). Indeed, the appellate court has for the last 14 years consistently interpreted *Koloms* to mean lawful, permitted emissions do not clearly and unambiguously fall within the pollution exclusion's scope. Several federal district courts in Illinois have likewise applied the reasoning of *Imperial Marble*. *See, e.g.*, *Sterigenics, U.S.,*

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LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, P.A., 619 F. Supp. 3d 852, 863 (N.D. Ill. 2022); *Velsicol Chem., LLC v. Westchester Fire Ins. Co.*, No. 15-cv-2534, 2017 WL 3922901, at *9 (N.D. Ill. Sept. 7, 2017). This is the *status quo* under which insurers and their insureds have operated in Illinois.

Nor does *Imperial Marble* improperly extend the holding in *Koloms*. To the contrary, *Koloms* held that the pollution exclusion should bar coverage only for traditional environmental pollution and therefore the court in *Imperial Marble* was asked to draw the line as to what constitutes "traditional environmental pollution." The *Imperial Marble* court did so in as reasonable and clear a manner as possible—by concluding that those emissions expressly permitted by statute or regulation were not clearly and unambiguously "traditional environmental pollution."

National Union and its *amici* deride *Imperial Marble* and its progeny, saying "[n]o person of ordinary intelligence reading [the pollution exclusion] would understand 'pollutant'" as the appellate court has interpreted it (Swiss Re Br. 15-16), and "[o]rdinary English speakers understand those terms [in the pollution exclusion] to encompass government-authorized emissions." *Nat'l Union* Br. 22. This is as misleadingly oversimplified as it is inappropriately disparaging.[7]

[7] The insurer in *Koloms* similarly ridiculed the appellate court's decision in that case, claiming the lower court "chose to judicially rewrite the [pollution] exclusion" and "distorted the plain and ordinary meaning of the exclusion in an attempt to find an invent insurance coverage where there clearly and plainly was none." *Am. States Ins. Co. v. Koloms*, Case No. 81289 (Ill. S. Ct.),

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National Union and its *amici* ignore that this Court has already held that the pollution exclusion cannot be applied literally. They also ignore the complex federal and state regulatory and permitting regime discussed above, demonstrating that lawful, permitted emissions are not air pollution. They fail to consider the conclusion that naturally follows from these facts: the pollution exclusion cannot be said to clearly and unambiguously defeat an insurer's duty to defend its insured in lawsuits alleging injuries or damage arising from the emission types at issue. And, of course, their selective reading of *Koloms* misses that the Court in that case *rejected* the insurer's overbroad reading of the pollution exclusion and its "potentially limitless" application, ultimately finding the insurer erroneously denied coverage.

National Union and its *amici* also incorrectly claim *Imperial Marble* is inconsistent with other decisions from the appellate court. To be clear, besides *Imperial Marble* and *Bible Pork*, no other Illinois reviewing court has been asked to resolve whether permitted emissions fall within the pollution exclusion's scope. *Not one.* National Union and its *amici*'s discussion of Illinois appellate court authority on this point is incomplete at best and misleading at worst.

Unlike *Imperial Marble* and *Bible Pork*, the authority relied on by National Union and its *amici* all involved circumstances in which insurers

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Appellant's Br., 1996 WL 33437004, at *7 (Dec. 18, 1996). This Court disagreed and affirmed. *Koloms*, 177 Ill. 2d at 494. The Court should do so again here.

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declined coverage when their insureds faced liability for emitting or discharging substances for which they possessed *no permit* to do so. *See Kim v. State Farm Fire & Cas. Co.,* 312 Ill. App. 3d 770, 775-76 (1st Dist. 2000) (insured lacked regulatory permit to discharge tetrachloroethane (*i.e.*, "perc") into underlying soil, even though it was legally placed in drycleaning machines); *Connecticut Specialty Ins. Co. v. Loop Paper Recycling, Inc.*, 356 Ill. App. 3d 67, 69 (1st Dist. 2005) (insured lacked regulatory permit to emit "clouds of smoke and toxic substances" into the atmosphere). Such cases are irrelevant and do not support National Union's position.

National Union's contention that the Seventh Circuit "previously rejected *Imperial Marble*'s reasoning in *Scottsdale Indemnity Co. v. Village of Crestwood*, 673 F.3d 715 (7th Cir. 2012)" (Nat'l Union Br. 19), is also unfounded given that the *Scottsdale* court did not mention or consider—let alone "reject"—*Imperial Marble*. National Union and its *amici*'s analysis of *Scottsdale* paints a similarly misleading picture of the relevant facts. That case concerned essentially the same underlying coverage dispute, involving separate insurers who raised the pollution exclusion to deny coverage to the same insured, proceeding in parallel in multiple courts. *Compare Scottsdale Indem. Co.*, 673 F.3d at 716, *with Vill. of Crestwood v. Ironshore Specialty Ins.*, 2013 IL App (1st) 120112, ¶ 2. The appellate court rejected the insured-village's claim to coverage because it "*did not have a permit* to distribute" water from a contaminated well. *Vill. of Crestwood*, 2013 IL App (1st) 120112 ¶ 23 (emphasis

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added). The village also failed to adhere to its promise that the contaminated well "would be used only in emergencies." *Scottsdale Indem. Co.*, 673 F.3d at 716.

If anything, *Crestwood* and the other Illinois appellate court opinions cited by National Union illustrate the continuity in Illinois law that the pollution exclusion post-*Koloms* may bar coverage for unpermitted emissions (even within general regulatory limits), but it does not apply—or is at least ambiguous—as to emissions made pursuant to a state-issued regulatory permit.

National Union and its *amici* next collect authority from "courts around the country" supposedly illustrating the pollution exclusion bars coverage for "discharging pollutants into the environment as part of a policyholder's normal business operations[.]" *See, e.g.*, Ins. Ass'ns Br. 19-23. Notably, however, they omit the fact that *none* of those cases involved lawful, permitted emissions made in accordance with government oversight. *See, e.g.*, *Headwater Res., Inc. v. Ill. Union Ins. Co.*, 770 F.3d 885, 889 (10th Cir. 2014) (holding a pollution exclusion barred coverage caused by insured's discharge of toxic substances into environment, but which is silent on whether it had a regulatory permit to do so); *Legarra v. Federated Mut. Ins. Co.*, 42 Cal. Rptr. 2d 101, 106-07 (Cal. Ct. App. 1995) (same). Selectively canvasing irrelevant and non-binding authority is unpersuasive filler that does not support the insurers' assertion that *Imperial Marble* is an outlier.

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The question presented here is *not* whether chemical emissions, discharges, or dispersals fall outside the scope of a pollution exclusion simply because they occur in connection with a company's normal business operations. This Court must decide the impact of "a permit or regulation authorizing emissions" when assessing whether the pollution exclusion applies to bar coverage. *See Griffith Foods*, 134 F.4th at 493 (certifying the question presented in this precise manner). That is the point on which the Seventh Circuit requested guidance and that is the point National Union and its *amici* largely avoid addressing.

B. Insurance companies failed to revise the pollution exclusion after the appellate court determined it was ambiguous.

National Union and its *amici* argue that construing the pollution exclusion as ambiguous somehow "negates," "redefines," and "swallows" its meaning. Nat'l Union Br. 21-22; Ins. Ass'ns Br. 23. They assert the pollution exclusion should not contain a "permitted use" exception because doing so would read new language into the policy and overlook other coverage provisions that contemplate compliance with the law. As discussed above and below, that is simply untrue. Reading the pollution exclusion as the appellate court has for years simply acknowledges that standard-form pollution exclusions have not *at any point in their history* clearly, unambiguously, and undoubtedly excluded coverage for lawful, permitted emissions made under strict agency oversight.

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It is bedrock insurance law that exclusions and other policy provisions that "tend to limit or defeat liability should be construed most favorably to the insured." *Elson v. State Farm Fire & Cas. Co.*, 295 Ill. App. 3d 1, 11 (1st Dist. 1998); *accord Ziolkowski v. Cont'l Cas. Co.*, 365 Ill. 594, 603 (1937). Insurance companies bear the burden to draft clear exclusions if they wish to exclude coverage under specific circumstances. Indeed, "if an insurer does not intend to insure against a risk which is likely to be inherent in the business of the insured, it should specifically exclude such risk." *Lenny Szarek, Inc. v. Md. Cas. Co.*, 357 Ill. App. 3d 584, 590-91 (1st Dist. 2005). These principles apply with special force to CGL policies, which the "insurance industry tailors" to "provide broad coverage to make [them] attractive to policyholders and to command larger premiums." Jeffrey W. Stempel, *The Insurance Policy as Social Instrument and Social Institution*, 51 Wm. & Mary L. Rev. 1489, 1542 (2010).

Viewed through that lens, there should be nothing surprising about the now-longstanding position of the appellate court that the pollution exclusion in its current form does not clearly encompass lawful, permitted emissions—it does not mention them. If it were true, as the insurers claim, that "no person of ordinary intelligence" would believe that the pollution exclusion could be read so narrowly as not to apply in this case, then the insurance industry would not have needed to include EtO-specific exclusions in CGL policies that also

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contain pollution exclusions, as it has recently done.[8] This illustrates that the only parties with the power to "redefine" the pollution exclusion are insurers. What they cannot do is rewrite or alter the meaning of exclusion terms retroactively and then argue—as they do here—that their current interpretation is what they meant to say all along and that anyone reading it to the contrary is not a "person of ordinary intelligence[.]" Swiss Re Br. 15-16.

National Union and its *amici* argue that there is no duty to defend lawsuits involving allegations of injury due to lawful, permitted emissions because insureds can obtain pollution-specific policies. *See, e.g.*, Nat'l Union Br. 43; Zurich Br. 6-7. This wrongly assumes that such emissions are pollution. It also ignores the unexceptional fact, of which the insurers are presumably aware, that simply because coverage is provided by one type of policy, that does not bar or preclude wholly or partially overlapping coverage under another type of policy. *See Putnam v. New Amsterdam Cas. Co.*, 48 Ill. 2d 71, 76 (1970) ("Presumably from the time insurance first became available, there has been at least the possibility that multiple coverage situations would occur."); *see also Bradley Hotel Corp. v. Aspen Specialty Ins. Co.*, 19 F.4th 1002, 1009 (7th Cir. 2021) ("[S]ome overlap in insurance policies is common.").

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8 The policy excerpts contained in *Amici*'s supplemental appendix provide an example of an EtO-specific exclusion added as an endorsement to a CGL policy that already contained a pollution exclusion. IMA_SA1-35.

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There are countless examples of insurance policies concurrently insuring against the same underlying risk. *See, e.g.*, *Rhone-Poulenc Inc. v. Int'l Ins. Co.*, 71 F.3d 1299, 1305-06 (7th Cir. 1996) (discussing priority of payment between the policyholder's environmental liability policies and concurrent CGL policies for purposes of coverage for property damage claims involving clean-up costs at contaminated site); *Cont'l Cas. Co. v. Sec. Ins. Co. of Hartford*, 279 Ill. App. 3d 815, 817-19 (1st Dist. 1996) (discussing "overlapping coverage" in a professional liability policy and architects'/engineers' liability policy); *Universal Underwriters Ins. Grp. v. Griffin*, 287 Ill. App. 3d 61, 63 (1st Dist. 1997) (discussing a driver who was simultaneously insured by a garage policy and a personal automobile policy). There is thus nothing inconsistent or uncommon about companies obtaining CGL coverage for lawful, permitted emissions while, at the same time, obtaining pollution coverage that covers a nonconcurrent scope of risks.

Therefore, even if the Court does not hold that the pollution exclusion never applies to overcome insurers' duty to defend lawsuits involving alleged lawful, permitted emissions, the Court should nonetheless find the pollution exclusion is at least ambiguous with respect to those emissions. Resolving this ambiguity in favor of responsible, law-abiding policyholders would further the "predominate purpose" of insurance contracts, namely, "to provide coverage to the insured." *U.S. Fidelity & Guar. Co. v. Specialty Coatings Co.*, 180 Ill. App. 3d 378, 384 (1st Dist. 1989) (citing *Dora Twp. v. Ind. Ins. Co.*, 78 Ill. 2d 376,

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378-79 (1980)). A contrary ruling would upset the current state of Illinois law, leaving policyholders vulnerable to liabilities they reasonably believed were guarded against by CGL coverage. The Court should prevent that unjust outcome and hold insurance companies to their end of the bargain; a bargain in which they have accepted substantial premium payments for many years.

If the Court disagrees, any new, contrary interpretation of the pollution exclusion's scope should apply on a prospective basis only to coverage disputes arising hereafter. For *Amici* and many other companies operating within Illinois, their normal business operations entail emitting or discharging substances for which they require permits. Interpreting the pollution exclusion as National Union urges would deprive those companies of insurance coverage they originally obtained and continued to renew based on their reasonable and justifiable reliance on established reviewing court authority holding that insurers could not shirk their duty to defend claims arising from lawful, permitted emissions. For this reason, if the Court overrules *Imperial Marble*, any new interpretation of the pollution exclusion's scope should apply prospectively—not retroactively—so as to give policyholders fair notice and an opportunity to seek out additional coverage. *See Bogseth v. Emanuel*, 166 Ill. 2d 507, 515 (1995) (this Court may determine a judicial opinion applies solely on a prospective basis after analyzing several considerations, including a litigant's reasonable reliance on prior precedent and when the equities favor a prospective application).

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III. Keeping lawful, permitted emissions outside the pollution exclusion's scope furthers Illinois' public policy.

This Court should also find lawful, permitted emissions fall outside the pollution exclusion's scope because doing so aligns with Illinois' public policy. Even if the Court agrees with National Union's interpretation of the pollution exclusion, this Court has said it "will apply terms in an insurance policy as written unless those terms contravene public policy." *State Farm Mut. Auto. Ins. v. Smith*, 197 Ill. 2d 369, 372 (2001). The state's public policy may be discerned from the constitution, the General Assembly's legislative enactments, and this Court's judicial decisions (when the other two sources "are silent"). *Turner v. Mem'l Med. Ctr.*, 233 Ill. 2d 494, 500 (2009).

Administrative regulations and agency actions are enlightening in this respect too because they "effectuate" the state's public policy as previously announced and authorized by the legislature. *See, e.g.*, *Zientara v. Long Creek Twp.*, 211 Ill. App. 3d 226, 245 (4th Dist. 1991) (agency regulations enacted with legislative authorization "effectuate public policy" announced by the General Assembly). Courts analyze whether insurance policy provisions violate public policy "by examining the application of the contested language to the facts and circumstances of the case before it." *Beard v. Economy Preferred Ins.*, 2025 IL App (1st) 231694-U, ¶ 19 (collecting cases).

The public policy of Illinois further demonstrates insurers must defend their insureds when faced with potential liability arising from lawful, permitted emissions. By enacting the Illinois Environmental Act and vesting

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the IEPA with sole discretion to regulate emissions and prevent pollution in an ordered framework, the General Assembly made clear that the IEPA is best suited to determine what constitutes hazardous environmental pollution. Such decisions certainly cannot be left to insurers, which will only make self-interested findings to deny coverage at every available opportunity. This would undermine the IEPA's role and the General Assembly's clear direction. *C.f.*, *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶ 31 (rejecting statutory construction that would "undermine the role of [the Illinois Department of Natural Resources] in the permit process").

Ruling in favor of National Union and its *amici* would in this way contravene public policy *and* benefit no one except insurers; the same insurers who had every opportunity to draft pollution exclusions that unambiguously excluded lawful, permitted omissions, but failed to do so. That outcome is unwarranted. *See* Robert Hartzer, *Construing the Pollution Exclusion in Illinois*, 52 UIC J. Marshall L. Rev. 805, 831-33 (2019) (advocating that courts interpret the pollution exclusion as ambiguous with respect to permitted emissions because a contrary finding would contradict "the purpose of both environmental permitting and liability insurance").

Of course, National Union and its *amici* plead poverty, arguing that finding coverage for lawful, permitted emissions will end in catastrophe for the entire insurance industry. *See, e.g.*, Nat'l Union Br. 41; Ins. Ass'ns Br. 30; Zurich Br. 8. The Court has heard this trope from insurers before. Indeed, the

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exact same contention was raised by the insurer's *amici* in *Koloms* nearly 30 years ago. *See Am. States Ins. Co. v. Koloms*, Case No. 81289 (Ill. S. Ct.), Ins. Env't Litig. Ass'n *Amicus* Br., 1996 WL 33437003, at *8-9 (Dec. 24, 1996) ("Over time, imposing pollution-related liability on insurers despite clear contractual limitations to the contrary would invade and deplete insurer surplus, threatening insurers' ability to respond to disasters such as tornadoes, fires and earthquakes, and to everyday claims that properly fall within general liability coverage."). As discussed above, *Imperial Marble* has also been the law of the land for many years. Yet the sky has not fallen. Premiums rise regardless of need. And the Illinois insurance market remains remarkably profitable for insurers.

CONCLUSION

The pollution exclusion should not be read to defeat an insurer's duty to defend responsible, law-abiding companies in litigation arising from alleged emissions of permitted substances that the EPA and IEPA have said are not "pollution." This Court correctly recognized nearly 30 years ago in *Koloms* that the pollution exclusion cannot be given its literal meaning without leading to absurd consequences and without unjustly leaving policyholders defenseless. And yet that is exactly the overbroad interpretation argued for here by National Union and its *amici*. Holding otherwise would stretch the pollution exclusion's reach beyond reason, upset years of business dealings and reliance

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based on *Imperial Marble* and its progeny, and leave many Illinois businesses unfairly vulnerable. The Court should not allow any of that to occur.

WHEREFORE, and for the reasons discussed above, *Amici* respectfully request this Court answer the United States Court of Appeals for the Seventh Circuit's certified question as follows: pollution exclusions in commercial general liability insurance policies do not overcome an insurer's obligation to provide a defense when an insured faces potential liability for emissions made in accordance with a permit issued by a relevant regulatory agency. Alternatively, *Amici* ask the Court to declare that any new, contrary interpretation of the pollution exclusion's scope apply to coverage disputes only on a prospective basis. *Amici* further request any other relief the Court deems appropriate.

Dated: August 27, 2025

Respectfully submitted,

THE ILLINOIS MANUFACTURERS' ASSOCIATION, MEDLINE INDUSTRIES, LP, VANTAGE SPECIALTY CHEMICALS, INC., STERILIZATION SERVICES OF TENNESSEE, INC., iBIO

By: *<u>/s/ J. Timothy Eaton</u>*
One of Their Attorneys

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CERTIFICATE OF COMPLIANCE

The undersigned, an attorney, certifies that this Brief conforms to the requirements of Illinois Supreme Court Rules 341 and 345. The length of this Brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a) is 9,169 words.

Dated: August 27, 2025

/s/ J. Timothy Eaton

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Case No. 131710

In the
Supreme Court of Illinois

Griffith Foods International, Inc., and Sterigenics, U.S., LLC,

Plaintiffs-Appellees,

v.

National Union Fire Insurance Company of Pittsburgh, P.A.,

Defendant-Appellant.

Question of law certified by the United States Court of Appeals for the Seventh Circuit, Case Nos. 24-1223 & 24-1217, There on appeal from the United States District Court for the Northern District of Illinois, Case Nos. 1:21-cv-6403 & 1:21-cv-4581, Honorable Mary M. Rowland, Judge Presiding.

APPENDIX TO BRIEF OF *AMICI CURIAE* THE ILLINOIS MANUFACTURERS' ASSOCIATION, MEDLINE INDUSTRIES, LP, VANTAGE SPECIALTY CHEMICALS, INC., STERILIZATION SERVICES OF TENNESSEE, INC., and iBIO

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TO APPENDIX

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SOMPO INTERNATIONAL
INSURANCE

Sompo International

Commercial Umbrella Liability Policy

Policy Number: ELD10004065211
Effective Dates: July 01, 2024 To: July 01, 2025
Endurance Assurance Corporation

Issuing Office:
155 N Wacker Drive
Suite 3700
Chicago, IL 60606
www.sompo-intl.com

IMA_SA1

PN 0027 0221

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GENERAL CHANGE ENDORSEMENT

Named Insured:	Medline Industries, LP		
Policy No.:	ELD10004065211	**Endorsement Effective Date:**	07/01/2024
Issued By:	Endurance Assurance Corporation	**Endorsement No.:**	1

ETHYLENE OXIDE EXCLUSION

THIS ENDORSEMENT CHANGES THIS POLICY, PLEASE READ IT CAREFULLY.

This insurance does not apply to any actual or alleged liability or damages arising out of or resulting from , in whole
or in part, directly or indirectly or related in any way to "Ethylene Oxide" or any derivative or extract of "Ethylene
Oxide".

"Ethylene Oxide" means emissions from ethylene oxide and its daughter and degradation products and any additives
thereto, or its waste. Waste includes any material to be recycled, reconditioned or reclaimed.

This insurance shall not become excess of any reduced or exhausted underlying aggregate limit to the extent that
such reduction or exhaustion is the result of claims, damage, loss or expense arising out of or in any way related to
claims concerning "Ethylene Oxide" excluded under this endorsement.

Nothing herein contained shall vary, alter, waive, or extend any of the terms, representations, conditions or agreements of the policy other than as above stated.

Patricia Calder

Authorized Representative

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SOMPO INTERNATIONAL

COMMERCIAL UMBRELLA LIABILITY POLICY

Please read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION III - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Please refer to SECTION V - DEFINITIONS.

SECTION I - COVERAGE

A. Insuring Agreement

1. We will pay on behalf of the insured those sums in excess of the "retained limit" that the insured:

a. becomes legally obligated to pay as damages, or assumes under an "insured contract", because of "bodily injury" or "property damage" that takes place during the policy period and is caused by an "occurrence" taking place in the "coverage territory"; or

b. becomes legally obligated to pay as damages because of "personal and advertising injury" caused by an "occurrence" committed in the "coverage territory" during the policy period.

The amount we pay for damages is limited as described in SECTION II - LIMITS OF INSURANCE.

2. **a.** This policy applies to "bodily injury" or "property damage" only if prior to the policy period, no insured listed under Paragraph A.2. of SECTION III - WHO IS AN INSURED (other than stockholders under subparagraph A.2.d.) and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" had occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

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b. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph A.2. of SECTION III - WHO IS AN INSURED (other than stockholders under subparagraph A.2.d.) or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph A.2. of SECTION III - WHO IS AN INSURED (other than stockholders under subparagraph A.2.d.) or any "employee" who was authorized by you to give or receive notice of an "occurrence" or claim:

(1) reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care or loss of services resulting at any time from the "bodily injury".

3. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION I - COVERAGE, Paragraph B. Defense and Supplementary Payments.

4. In the event we are prevented by law from paying damages covered by this policy on behalf of the insured, we will indemnify the insured for those sums in excess of the "retained limit".

B. Defense and Supplementary Payments

1. Defense

a. We have the right to investigate any "occurrence" or claim. We have the right and duty to defend the insured against any "suit" seeking damages to which this policy applies, even if such "suit" is groundless, false or fraudulent, under the following circumstances only:

(1) the total applicable limits of "underlying insurance" have been exhausted due to the payment of "loss" covered hereunder and the total applicable limits of "other insurance" have been exhausted; or

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(2) the damages for "bodily injury", "property damage" or "personal and advertising injury" sought in the "suit" are not covered by "underlying insurance" or "other insurance", regardless of whether the applicable limits of "underlying insurance" or "other insurance' have been exhausted or not.

We have no duty to defend an insured against any "suit" seeking "bodily injury", "property damage" or "personal injury and advertising injury" to which this policy does not apply.

b. Other than as described in B.1.a. above, we will not be obligated to defend any "suit" against the insured. However, we will have the right at our discretion, but not the duty, to participate effectively in the investigation, settlement or defense of any claim or "suit" that, in our opinion, may involve this policy. If we exercise this right, we will do so at our own expense, and the insured will cooperate with us in the investigation, settlement or defense.

2. Supplementary Payments

With respect to any "suit" we defend, we will pay the following "supplementary payments":

a. All expenses we incur;

b. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $250 a day because of time off from work;

c. Premiums on bonds to release attachments for amounts within the applicable Limits of Insurance under this policy and premiums on appeal bonds required by law to appeal a judgment in a "suit" for amounts within the applicable Limits of Insurance under this policy, but we are not obligated to apply for or furnish any such bonds;

d. All court costs taxed against an insured on amounts payable by this policy;

e. Pre-judgment interest awarded against an insured on that part of the judgment within the applicable Limits of Insurance under this policy. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest accruing after the time of the offer; and

f. All interest on the amount of any judgment within the applicable Limits of Insurance under this policy that we become obligated to pay and that accrues after entry of the judgment and before we have paid, offered

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to pay, or deposited in court the part of the judgment that is within our applicable Limit of Insurance.

"Supplementary payments" will not reduce the Limits of Insurance of this policy unless the limits of "underlying insurance" applicable to the "loss" are reduced by expenses incurred to defend a "suit" or investigate a claim, in which case "supplementary payments" are included within and will reduce the Limits of Insurance of this policy.

All obligations for "supplementary payments" end when we have used up our applicable Limits of Insurance in the payment of "loss".

C. Exclusions

This policy shall not apply to:

1. Aircraft and Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to a watercraft you do not own that is less than 26 feet long and not being used to carry persons or property for a charge.

2. Asbestos

Any liability arising out of:

a. the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos containing products or materials, asbestos fibers or asbestos dust;

b. any obligation of the insured to indemnify any party because of damages arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or

c. any obligation to defend any "suit" or claim against the insured that seeks damages if such "suit" or claim arises as the result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to

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asbestos, asbestos products, asbestos fibers or asbestos dust.

3. Contractual Liability

Any liability for any obligation of an insured to pay damages by reason of the assumption of liabilityin a contract or agreement. This exclusion does not apply to liability for such damages:

a. that an insured would have in the absence of the contract or agreement; or

b. assumed in an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract". Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(1) liability to such party for, or for the cost of that party's defense has also been assumed in the same "insured contract"; and

(2) such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this policy applies are alleged.

4. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

a. a defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

b. a delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

5. Damage to Property

"Property damage" to:

a. property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to

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another's property;

b. premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

c. property loaned to you;

d. personal property in the care, custody or control of the insured;

e. that particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

f. that particular part of any property that must be restored repaired or replaced because "your work" was incorrectly performed on it.

Paragraph b. of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you;

Paragraphs c., d., e., and f. of this exclusion do not apply to liability assumed under a sidetrack agreement;

Paragraph f. of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

6. Damage to Your Product

"Property damage" to "your product" arising out of it or any part of it.

7. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

However, this exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

8. Electronic Data

The loss of, loss of use of, damage to, corruption or unauthorized use of, inability to access or inability to manipulate "electronic data".

9. Employee Retirement Income Security Act

Any obligation under the Employee Retirement Income Security Act of 1974, including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, as now or hereafter amended, or any similar law.

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10. Employees and Volunteers

Solely with respect to "employees" and volunteer workers who qualify as insureds, "bodily injury" or "personal and advertising injury":

a. to you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to another volunteer worker of yours while performing duties related to the conduct of your business;

b. to the spouse, child, parent, brother or sister of such injured "employee" or volunteer worker as a consequence of Paragraph a. above;

c. for which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs a. or b. above; or

d. arising out of his or her providing or failing to provide professional health care services.

However, this exclusion does not apply to the extent coverage is provided by "underlying insurance", but for no broader coverage than is provided by that "underlying insurance".

11. Employer's Liability

"Bodily injury" to:

a. an "employee", temporary worker or volunteer worker of the insured arising out of and in the course of:

(1) Employment by the insured; or

(2) Performing duties related to the conduct of the insured's business; or

b. the spouse, child, parent, brother or sister of that "employee", temporary worker or volunteer as a consequence of the "employee's", temporary worker's or volunteer worker's injury.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

However, this exclusion does not apply to the extent coverage is provided by "underlying insurance", but for no broader coverage than is provided by that "underlying insurance".

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12. Employment-Related Practices

Any liability arising out of:

a. Failure to hire any prospective "employee" or any applicant for employment;

b. Dismissal, discharge or termination of any "employee"; failure to promote or advance any "employee"; or

c. Employment-related practices, policies, acts, omissions or misrepresentations directed at a present, past, future or prospective "employee", including:

(1) Coercion, harassment, humiliation or discrimination;

(2) Demotion, evaluation, reassignment, discipline or retaliation;

(3) Libel, slander, humiliation, defamation or invasion of privacy; or

(4) Violation of civil rights.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages.

13. Expected or Intended Injury or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of an insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

14. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be liable by reason of:

a. causing or contributing to the intoxication of any person;

b. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

c. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

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(i) the supervision, hiring, employment, training or monitoring of others by that insured; or

(ii) providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph a., b., or c. above.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

This exclusion does not apply to the extent coverage is provided by "underlying insurance", but for no broader coverage than is provided by that "underlying insurance".

15. Nuclear

a. Any injury or damage:

(1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of insurance; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

(i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
(ii) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Any injury or damage resulting from the "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" (1) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any

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time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(3) The injury or damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operations or use of any "nuclear facility".

As used in this exclusion:

1. "Hazardous properties" include radioactive, toxic or explosive properties.

2. "Nuclear material" means "source material", "special nuclear material" or "by-product material".

3. "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy act of 1954 or in any law amendatory thereof.

4. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

5. "Waste" means any waste material (a) containing "by-product material" other than the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

6. "Nuclear facility" means:

a. Any "nuclear reactor";

b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium; (2) processing or utilizing "spent fuel"; or (3) handling, processing or packaging "waste";

c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste" and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

7. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self- supporting chain reaction or to contain a critical mass of fissionable material.

8. Injury or damage includes all forms of radioactive contamination of property.

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16. Personal and Advertising Injury Exclusions

"Personal and advertising injury":

a. Breach of Contract

Arising out of breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

b. Contractual Liability

For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

c. Criminal Acts

Arising out of a criminal act committed by, at the direction of, or with the consent of the insured.

d. Infringement of Copyright, Patent, Trademark or Trade Secret

Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement in your "advertisement" of copyright, trade dress or slogan.

e. Insureds in Media and Internet Type Businesses

Arising out of an "occurrence" committed by an insured whose business is:

(1) advertising, broadcasting, publishing, or telecasting;

(2) designing or determining website content for others; or

(3) internet search, access, content or service provider.

However, this exclusion does not apply to subparagraphs 1., 2. 3. of the definition of "personal and advertising injury" in SECTION V. - DEFINITIONS, Paragraph Q.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

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f. Internet- or Web-Based Venues

Arising from any internet- or web-based venue, hosted or owned by the insured or over which the insured exercises control, where information or ideas are exchanged by users, whether registered members or otherwise, including chatrooms, bulletin boards, blogs and matchmaking sites.

g. Knowing Violation of Rights of Another

Arising out of oral, written, or electronic publication, caused by or at the direction of the insured with knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

h. Material Published Prior to Policy Period

Arising out of oral, written, or electronic publication, of material whose first publication took place before the beginning of the policy period.

i. Material Published with Knowledge of Falsity

Arising out of oral, written, or electronic publication of material if done by or at the direction of any insured with knowledge of its falsity.

j. Quality or Performance of Goods - Failure to Conform to Standards

Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

k. Unauthorized Use of Another's Name or Product

Arising out of the unauthorized use of another's name or product, or any portion thereof, in your e-mail address, domain name, website link or metatag, or any similar tactics to mislead or misdirect another's potential customers.

l. Wrong Description of Prices

Arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

17. Pollution

"Bodily injury," "property damage" or "personal and advertising injury" arising out of:

a. The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" anywhere at any time;

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b. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that the insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

c. Any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of "pollutants".

However, Paragraph a. of this exclusion does not apply to "bodily injury" or "property damage" if coverage for such "bodily injury" or "property damage" as described in subparagraphs (1) through (6) below is provided by "underlying insurance":

(1) Products-Completed Operations Hazard

"Bodily injury" or "property damage" included within the "products-completed operations hazard", provided that "your product" or "your work" has not at any time been:

(a) discarded, dumped, abandoned, thrown away; or

(b) transported, handled, stored, treated, disposed of or processed as waste; by anyone.

(2) Hostile Fire

"Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(3) Equipment to Heat the Building and Contractor/Lessee Operations

(a) "Bodily injury" sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat, cool or dehumidify the building; or equipment used to heat water for personal use, by the building's occupants or their guests.

(b) "Bodily injury" or "property damage" for which you may be held liable if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at such premises, site or location, and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than the additional insured.

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(4) Fuels, Lubricants and Other Operating Fluids - Mobile Equipment

(a) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids that are needed to perform normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured contractor or subcontractor; or

(b) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.

(5) Fuels, Lubricants, Fluids, etc. - Auto

"Bodily injury" or "property damage" arising out of fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto" covered by "underlying insurance" or its parts, if:

(a) the "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an 'auto' part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

(b) the "bodily injury" or "property damage" does not arise out of the operation of any equipment shown in Paragraphs M.6.b. and M.6.c. of the definition of "mobile equipment".

(6) Upset, Overturn or Damage of an Auto

"Bodily injury" or "property damage" arising out of an "occurrence" that takes place away from premises owned by or rented to an insured with respect to "pollutants" not in or upon an "auto" covered by "underlying insurance" if:

(a) the "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of an "auto" covered by "underlying insurance"; and

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(b) the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

Coverage under this policy for such "bodily injury" or "property damage" as is described in subparagraphs (1) through (6) above will follow the terms, definitions, conditions and exclusions of the "underlying insurance", subject to the policy period, Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. Provided, however, that coverage provided by this policy will be no broader than the coverage provided by "underlying insurance".

18. Recall of Products, Work or Impaired Property

"Bodily injury," "property damage" or "personal and advertising injury" or any other "loss", cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

a. "your product";

b. "your work"; or

c. "impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

19. Recording or Distribution of Material or Information in Violation of Law

Any liability directly or indirectly arising out of any action or omission that violates or is alleged to violate:

a. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

b. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;

c. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

d. any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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20. Securities

Any liability arising out of:

a. Any violation of any securities law or similar law or any regulation promulgated thereunder;

b. The purchase, sale, offer of sale or solicitation of any security, debt, insurance policy, bank deposit or financial interest or instrument;

c. Any representations made at any time in relation to the price or value of any security, debt, insurance policy, bank deposit or financial interest or instrument; or

d. Any depreciation or decline in price or value of any security, debt, insurance policy, bank deposit or financial interest or instrument.

21. Uninsured, Underinsured or No Fault Laws

Any “bodily injury” or “property damage” arising from any uninsured, underinsured or automobile no-fault law, or any similar law, or any first party coverage.

22. War

"Bodily injury," "property damage" or "personal and advertising injury”, however caused, arising, directly or indirectly, in whole or in part, as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes:

a. War, including undeclared or civil war;

b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

23. Workers Compensation or Disability Benefits

Any “loss” demand, claim or “suit” under any workers compensation, unemployment compensation or disability benefits law or under any similar law, regulation or ordinance and any employment in violation of law.

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SECTION II - LIMITS OF INSURANCE

A. Application of Limits

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

   a. insureds;

   b. claims made or "suits" brought;

   c. persons or organizations making claims or bringing "suits"; or

   d. coverages provided under this policy.

2. The Limits of Insurance apply only in excess of the "retained limit".

3. The Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

B. General Aggregate Limit

The General Aggregate Limit stated in Item 4 of the Declarations is the most we will pay for all damages covered under the policy other than damages:

1. because of "bodily injury" or "property damage" included in the "products-completed operations hazard", or

2. resulting from the ownership, maintenance or use of an "auto" if such damages are covered under "underlying insurance" and are not subject to an aggregate limit of liability under such "underlying insurance".

C. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit stated in Item 4 of the Declarations is the most we will pay for the sum of all damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard".

D. Each Occurrence Limit

Subject to Paragraph B. or C. above, the Each Occurrence Limit stated in Item 4 of the Declarations is the most we will pay for all "loss" arising out of any one "occurrence".

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E. Underlying Limits of Insurance; Reduction or Exhaustion

If a policy shown in the Schedule of Underlying Insurance has a limit of liability:

1. greater than the amount shown in the Schedule, this policy will apply in excess of such greater amount; or

2. less than the amount shown in the Schedule, this policy will apply in excess of the amount shown in the Schedule.

Subject to Paragraphs B., C. and D. above, if the applicable limits of "underlying insurance" are reduced or exhausted by payment of "loss" to which this policy applies and the applicable limits of insurance of any "other insurance" are reduced or exhausted, this policy will apply in excess of such reduced limits of insurance, or, if all such limits of insurance are exhausted, this policy will continue in force as underlying insurance.

F. Additional Insureds

Subject to the paragraphs above, the most we will pay for "loss" on behalf of any person or organization to whom you are obligated by any contract or agreement to provide insurance such as is afforded by this policy is the lesser of the Limits of Insurance set forth in the Declarations or the minimum limits of insurance required by such contract or agreement.

SECTION III - WHO IS AN INSURED

A. The following are insureds:

1. The Named Insureds set forth in Paragraph. B. below;

2. If you are designated in the Declarations as:

a. an individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner;

b. a partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business;

c. a limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers;

d. an organization other than a partnership, joint venture or limited liability company, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability

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as stockholders;

e. a trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

3. Your volunteer workers but only while performing duties related to the conduct of your business;

4. Your "employees" other than your executive officers (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business;

5. Any person (other than your "employee" or volunteer worker), or any organization while acting as your real estate manager;

6. Any person or organization having proper temporary custody of your property if you die, but only:

a. with respect to liability arising out of the maintenance or use of that property; and

b. until your legal representative has been appointed;

7. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy;

8. Any person or organization, other than a Named Insured, included as an additional insured under "underlying insurance", but not for broader coverage than afforded by such "underlying insurance".

Notwithstanding any of the above, no person or organization is an insured with respect to the conduct of any current, past or newly formed partnership, joint venture or limited liability company that is not designated as a Named Insured in Item 1 of the Declarations.

B. The following are Named Insureds:

1. Any person or organization designated in Item 1 of the Declarations;

2. Any organization in which you maintain an interest of more than fifty percent (50%) as of the effective date of this policy, provided that coverage provided to such organization under this paragraph does not apply to any "bodily injury" or "property damage" that occurred, or any "personal and advertising injury" that was caused by an "occurrence" that was committed, before you acquired or formed such organization or after you ceased to maintain an interest of more than fifty percent (50%) in such organization; and

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3. Any organization, other than a partnership, joint venture or limited liability company, that you acquire or form during the policy period and over which you maintain ownership or majority interest, provided:

a. you give us prompt notice of such acquisition or formation;

b. coverage for such organization does not apply to "bodily injury" or "property damage" that occurred, or any "personal and advertising injury" that was caused by an "occurrence" that was committed, before you acquired or formed such organization or after you ceased to maintain an interest of more than fifty percent (50%) in such organization; and

c. we reserve the right to charge an additional premium for such organization.

You agree that any organization to which Paragraphs 2. and 3. above apply, must also be included as an insured under applicable "underlying insurance". If you fail to comply with this requirement, coverage under this policy will apply as though the organization was included as an insured under the highest applicable limit of "underlying insurance".

SECTION IV - CONDITIONS

A. Appeals

1. If the insured or a provider of "underlying insurance" elects not to appeal a judgment that exceeds the applicable limits of "underlying insurance", at our discretion we may do so.

2. If we elect to appeal a judgment, we will pay, in addition to the applicable limits of insurance, all costs of the appeal and any post-judgment interest awarded against the insured attributable to such appeal.

In no event shall this provision increase our liability beyond the applicable Limit of Insurance described in SECTION II - LIMITS OF INSURANCE.

B. Audit

We may audit and examine your books and records as they relate to this policy at any time during the period of this policy and for up to three (3) years after the expiration or cancellation of this policy.

C. Cancellation

1. The "first named insured" may cancel this policy by mailing or delivering advance written notice to us stating when the cancellation is to take effect.

2. We may cancel this policy by mailing or delivering advance written notice to the "first named insured" at the address stated in Item 1 of the Declarations at least:

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a. fifteen (15) days before the effective date of cancellation if we cancel for non-payment of premium; or

b. ninety (90) days before the effective date of cancellation if we cancel for any other reason.

3. The policy period will end on the day and hour stated in the cancellation notice. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. a. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium, however, will not be less than the pro rata share of the Premium shown in Item 3 of the Declarations.

b. If the "first named insured" cancels, final premium will be more than pro rata; it will be based on the time this policy was in force and increased by our short rate cancellation table and procedure. Final premium, however, will not be less than
the short rate share of the Premium shown in Item 3 of the Declarations.

5. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any refund of unearned premium. Our check or our representative's check, mailed or delivered, will be sufficient tender of any refund due to the "first named insured".

6. Any of the foregoing provisions that conflict with a law that controls the cancellation of this policy is changed by this statement to comply with that law.

D. Changes

Notice to any agent or knowledge possessed by any agent or any other person will not affect a waiver or change in any part of this policy. This policy can be changed only by a written endorsement that we make to this policy.

E. Duties in the Event of Occurrence, Claim or Suit

1. You must notify us in writing as soon as practicable of an "occurrence" that may result in a claim or "suit" under this policy. To the extent possible, notice should include:

a. how, when and where the "occurrence" took place;

b. the names and addresses of any injured persons and witnesses, and any person or organizations who may make claims; and

c. the nature and location of any injury or damage arising out of the "occurrence".

2. You must notify us in writing as soon as practicable of any claim made or "suit" brought against any insured that is reasonably likely to involve this policy.

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3. You and any other involved insured must:

   a. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

   b. authorize us to obtain records and other information;

   c. cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

   d. assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this policy may also apply.

4. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our written consent.

F. Economic and Trade Sanctions

If coverage for a claim or any other benefit under this policy is in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC") then coverage for that claim or other benefit will be null and void.

G. Financial Impairment

Bankruptcy, insolvency, rehabilitation, receivership, liquidation, or other financial impairment of the insured, the insured's estate, or an insurer providing "underlying insurance" will not relieve us of our obligations under this policy. However, in no event will such bankruptcy, insolvency, rehabilitation, receivership, liquidation, or other financial impairment require us to provide coverage or assume any obligation of "underlying insurance" or replace any "underlying insurance".

H. First Named Insured

The "first named insured" shall act on behalf of all insureds for the payment or return of premium; negotiation, receipt and acceptance of any endorsement issued by us and made part of the policy; giving or receiving notice of cancellation; and if applicable, exercising the right to an extended reported period.

I. Headings

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

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J. Inspection

We have the right, but are not obligated, to inspect your premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of your premises and operations and the premiums to be charged. We may give you reports on the conditions that we find. We may also recommend changes. We, however, do not undertake to perform the duty of any person or organization to provide for the health or safety of your employees or the public. We do not warrant the health and safety conditions of your premises or operations or represent that your premises or operations comply with laws, regulations, codes or standards.

K. Legal Action Against Us

No person or organization has a right under this policy:

1. to join us as a party or otherwise bring us into a “suit” asking for damages from an insured; or

2. to sue us under this policy unless all of the terms of this policy have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

L. Maintenance of Underlying Insurance

1. You agree to maintain “underlying insurance”, or renewal or replacement policies not more restrictive in their terms and conditions, in full force and effect and without material change during the policy period. The limits of “underlying insurance” must be maintained during the policy period without reduction other than by payment of “loss” to which this policy applies.

2. Your failure to comply with Paragraph 1. above shall not invalidate coverage under this policy, but we shall be liable only to the extent that we would have been liable had you complied with that paragraph.

3. You must notify us in writing as soon as practicable of exhaustion of “underlying insurance” aggregate limits.

M. Other Insurance

This policy applies as excess over any “other insurance”.

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N. Premium

The premium for this policy will be computed on the basis set forth in Item 3 of the Declarations. At the beginning of the policy period, you must pay us the Advance Premium shown in Item 3 of the Declarations. When the policy expires or is cancelled, we will compute the earned premium for the time the policy was in force. If the policy is subject to audit adjustment, the actual exposure base will be used to compute the earned premium. If the earned premium is greater than the Advance Premium, you will promptly pay us the difference. If the earned premium is less than the Advance Premium, we will return the difference to you.

O. Separation of Insureds

Except with respect to the Limits of Insurance of this policy and rights or duties specifically assigned to the "first named insured", this policy applies:

1. as if each Named Insured were the only Named Insured; and

2. separately to each insured against whom claim is made or "suit" is brought.

P. Transfer of Rights of Recovery Against Others to Us

If an insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after "loss" to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Distribution of amounts recovered will be made in the following order:

1. to any person or organization (including the insured) who has paid any amount in excess of the limits of this policy;

2. to us up to the amount we have paid; and

3. to any person or organization (including the insured or a provider of "underlying insurance") entitled to claim the remainder, if any.

When we assist in pursuit of an insured's rights of recovery, reasonable expenses resulting therefrom shall be apportioned among all interests in the ratio of their respective recoveries. If there should be no recovery as a result of proceedings instituted solely at our request, we shall bear all expenses of such proceedings.

Q. Transfer of Your Rights and Duties

Your rights and duties under this policy may not be transferred without our written consent.

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If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. However, notice of cancellation sent to the "first named insured" and mailed to the address shown in this policy will be sufficient notice to effect cancellation of this policy.

R. Unintentional Failure to Disclose

Your failure to disclose all hazards existing as of the inception date of the policy will not prejudice you with respect to the coverage afforded by this policy, provided that any such failure or omission is not intentional.

S. When We Do Not Renew

If we decide not to renew this policy, we will mail or deliver to the "first named insured" written notice of the non-renewal not less than 60 days before the expiration date, unless a different number of days is shown in the Declarations. If notice is mailed, proof of mailing will be sufficient proof of notice.

T. When Loss Is Payable

We will pay covered "loss" after:

1. **a.** an insured's liability is established by a final judgment; or

b. there is a written agreement between the claimant, the insured, and us; and

2. The "retained limit" has been paid by or on behalf of an insured.

SECTION V - DEFINITIONS

A. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

1. notices that are published include material placed on the internet or on similar electronic means of communication; and

2. regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

B. "Auto" means:

1. a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

2. any other land vehicle that is subject to a compulsory or financial responsibility

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law or other motor vehicle insurance law where it is licensed or principally garaged.

However, “auto” does not include “mobile equipment”.

C. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death, mental anguish or injury, shock, humiliation, or emotional distress resulting from any of these at any time.

D. “Coverage territory” means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanctions or embargo by the United States of America.

E. **“**Electronic data” means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

F. “Employee” includes a leased worker, but does not include a temporary worker.

G. **“**First named insured” means the first person or organization listed in Item 1 of the Declarations.

H. **“**Hostile fire” means one which becomes uncontrollable or breaks out from where it was intended to be.

I. “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

1. it incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or

2. you have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of “your product” or “your work” or your fulfillingthe terms of the contract or agreement.

J. “Insured contract” means that part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liabilitymeans a liabilitythat would be imposed by law in the absence of any contract or agreement.

“Insured contract” does not include that part of any contract or agreement:

1. that indemnifies a railroad for “bodily injury” or “property damage” arising out

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of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge of trestle, tracks road-beds, tunnel, underpass or crossing;

2. that indemnifies an architect, engineer or surveyor for injury or damage arising out of:

a. preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

b. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

3. under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to rendering professional services, including those listed in Paragraph 2. above and supervisory, inspection, architectural or engineering activities.

K. "Loading or unloading" means the handling of property:

1. after it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

2. while it is in or on an aircraft, watercraft or "auto"; or

3. while it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered.

However, "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

L. "Loss" means those sums actually paid as judgments or settlements, provided, however, that if expenses incurred to defend a "suit" or to investigate a claim reduce the applicable limits of the "underlying insurance", the "loss" shall include such expenses.

M. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

1. bulldozers, farm machinery, forklifts and other vehicles designated for use principality off public roads;

2. vehicles maintained for use solely on or next to premises you own or rent;

3. vehicles that travel on crawler treads;

4. vehicles, whether self-propelled or not, maintained primarily to provide mobility

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to permanently mounted:

a. power cranes, shovels, loaders, diggers or drills; or

b. road construction or resurfacing equipment such as graders, scrapers or rollers;

5. vehicles not described in Paragraphs 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

a. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

b. cherry pickers and similar devices used to raise or lower workers;

6. vehicles not described in Paragraphs 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of person or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

a. equipment designed primarily for:

(1) snow removal;

(2) road maintenance, but not construction or resurfacing; or

(3) street cleaning;

b. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

c. air compressor, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicles insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or considered "autos".

N. "Occurrence" means:

1. with respect to "bodily injury" and "property damage", an accident, including continuous or repeated exposure to substantially the same general harmful conditions. All such exposure that arises out of the same, related, continuous or repeated general harmful conditions will be deemed to arise out of one

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"occurrence"; and

2. with respect to "personal and advertising injury", an offense arising out of your business. All damages that arise out of the same, related, continuous or repeated offense will be deemed to arise out of one "occurrence", regardless of the frequency or repetition thereof, the media involved, or the number of claimants.

O. "Other insurance" means any other valid and collectible insurance, including self-insured retentions, deductibles, or any other insurance that provides coverage in whole or in part for damages covered under this policy. However, "other insurance" does not include "underlying insurance", the Self-Insured Retention shown in Item 5 of the Declarations, or any insurance specifically written to apply in excess of this policy.

P. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, toxic or hazardous substances, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Q. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
4. oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
5. oral or written publication, in any manner, that violates a person's right of privacy;
6. the use of another's advertising idea in your "advertisement"; or
7. infringing upon another's copyright, trade dress or slogan in your "advertisement".

R. "Products-completed operations hazard":

1. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

   a. products that are still in your physical possession; or

   b. work that has not yet been completed or abandoned. However, "your work"

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will be deemed completed at the earliest of the following times:

(1) when all of the work called for in your contract has been completed;

(2) when all of the work to be done at the job site has been completed if your contract calls for work at more than one job site;

(3) when that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

2. Does not include "bodily injury" or "property damage" arising out of:

a. the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

b. the existence of tools, uninstalled equipment or abandoned or unused materials.

S. "Property damage" means:

1. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

2. loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this policy, "electronic data" is not tangible property.

T. "Retained limit" means:

1. the total of the applicable limits of scheduled "underlying insurance", whether or not such limits are collectible and the limits of any applicable "other insurance" providing coverage to the insured; or

2. for damages not covered by "underlying insurance", the Self-Insured Retention applicable to "each occurrence" shown in Item 5 of the Declarations.

U. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this policy applies is alleged. "Suit" includes:

1. an arbitration proceeding in which such damages are is claimed and to which an insured must submit or does submit with our consent; or

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2. any other alternative dispute resolution proceeding in which such damages are claimed and to which an insured submits with our consent.

V. "Supplementary payments" means the amounts set forth in subparagraphs a. - f. of SECTION I. - COVERAGE, Paragraph B.2.

W. "Underlying insurance" means:

1. The Self-Insured Retention shown in the Schedule of Underlying Insurance, or the policy or policies and limits thereof shown in the Schedule of Underlying Insurance, including any self-insured retentions and deductibles under such policies.

2. Automatically any renewal or replacement of any policy in Paragraph 1. above, provided that such renewal or replacement provides equivalent coverage to and affords limits of insurance equal to or greater than the policy being renewed or replaced.

X. "Your product":

1. Means:

a. any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(1) you

(2) others trading under your name; or

(3) a person or organization whose business or assets you have acquired; and

b. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

2. Includes:

a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

b. the providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

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Y. "Your work":

1. Means:

a. work or operations performed by you or on your behalf; and

b. materials, parts or equipment furnished in connection with such work or operations.

2. Includes:

a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

b. the providing of or failure to provide warnings or instructions.

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Endorsement Title Ethylene Oxide Exclusion Endorsement			
Named Insured [redacted]			Endorsement Number [redacted]
[redacted]	[redacted]	[redacted]	[redacted] Endorsement Number Manuscript
Issued by [redacted]			Effective Date of Endorsement 01/01/2024

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ETHYLENE OXIDE EXCLUSION ENDORSEMENT

It is hereby agreed as follows:

1. That the following section is added to the Policy:

SECTION VII. EXCLUSIONS

2. The following is added to **SECTION VII. EXCLUSIONS**:

This insurance shall not apply to **ultimate net loss**:

Ethylene Oxide
Arising, in whole or in part from Ethylene Oxide

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

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