

No. 131710

IN THE SUPREME COURT OF ILLINOIS

GRIFFITH FOODS INTERNATIONAL INC.,
GRIFFITH FOODS GROUP INC., and
STERIGENICS, U.S., LLC,

Plaintiffs-Appellees,

v.

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.,

Defendant-Appellant.

On Question of Law Certified by the
United States Court of Appeals for the Seventh Circuit,
Nos. 24-1223, 24-1217

There Heard on Appeal from the
United States District Court for the Northern District of Illinois,
Nos. 1:21-cv-4581, 1:21-cv-6403

**BRIEF AMICUS CURIAE OF VANTAGE ETHYLENE OXIDE
SETTLEMENT PARTICIPANTS
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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POINTS AND AUTHORITIES

ARUGMENT	1
<i>American Service Insurance Co. v. City of Chicago</i> , 404 Ill. App. 3d 769 (1st Dist. 2010)	2
<i>Guillen ex rel. Guillen v. Potomac Insurance Co. of Illinois</i> , 203 Ill. 2d 141 (2003)	3
<i>State Security Insurance Co. v. Burgos</i> , 145 Ill. 2d 423 (1991)	3
CONCLUSION	4

ARGUMENT

Defendant Appellant National Union Fire Insurance Company assures the Court that this appeal will affect only insurers and their insureds that emit ethylene oxide, with no effect on the victims who developed cancer and other serious diseases after years of exposure to the toxic gas. See Op. Br. at 2 (“The overwhelming majority of the underlying lawsuits have since been settled, and Griffith and Sterigenics placed the funds to pay the victims in escrow more than two years ago. The issue in this case is not who will pay the victims, but who will pay Griffith’s and Sterigenics’ defense costs.”). As National Union and its parent company AIG are well aware, however, that position is misleading at best. They intend for the outcome of this appeal to limit their liability in other pending cases—including in cases where, as they know, the outcome they ask for from this Court would be financially devastating for hundreds of cancer victims, including Amici.

Amici are more than four hundred individuals who developed cancer as a result of decades of ethylene oxide emissions from a facility in Gurnee. They brought claims the operators of that facility, past and present, including Vantage Specialty Chemicals, Inc. Amici and Vantage entered into a settlement agreement, but Vantage did not agree to pay the full settlement amount out-of-pocket. Rather, more than 50% of the settlement amount that is due to Amici is contingent on Vantage’s ability to secure recovery from its insurers for the amounts it owes under the settlement.

Two of those insurers, AIG Specialty Insurance Company and Lexington Insurance Company, are subsidiaries of AIG, the same company that owns National Union. In the pending coverage action in the Circuit Court of Cook County, Vantage's AIG insurers took a notably different position regarding the impact of this litigation than National Union has taken here. They filed a motion to stay the coverage action on the basis that:

The Supreme Court's answer has the potential to resolve entirely **both** the [federal matter in which the question was certified] and this case: if the pollution exclusion bars coverage for EtO emissions, then the AIG Insurers owe Vantage no coverage. While there are other coverage defenses and issues in the case, neither the parties nor the Court need to address them if the pollution exclusion fully precludes coverage.

Ex. A at 2. To be clear, the AIG insurers' position is that if this Court accepts National Union's position, then it does not have to cover Vantage's liability to Amici. If they are right, and the Court rules in National Union's favor in the sweeping manner requested by National Union, then Amici will receive less than half of the money that they expected to receive in reliance on settled Illinois insurance law.

"Under Illinois public policy, an insurance policy is not necessarily a private matter between an insurer and its insured[.]" *American Service Insurance Co. v. City of Chicago*, 404 Ill. App. 3d 769, 780 (1st Dist. 2010). The victim matters too. For example, "Illinois courts have held that a liability insurance carrier *** cannot cut off the rights of an injured third party *** merely by obtaining a default judgment against the insured." *Id.* And when

an insurance carrier breaches its duty to defend its insured, the carrier may be required to cover a reasonable settlement between the insured and the victim even absent the carrier's consent. See *Guillen ex rel. Guillen v. Potomac Insurance Co. of Illinois*, 203 Ill. 2d 141, 162 (2003).

Consideration of the victims' interests also extends to interpretation of policy language. This Court has long recognized that "[i]n the context of liability insurance policies, public policy considerations *** dictate that a liberal construction in favor of coverage be applied" where "recovery of an injured third party is involved." *State Security Insurance Co. v. Burgos*, 145 Ill. 2d 423, 438 (1991). That is a particularly important consideration in cases that involve serious injury to a large number of people, because damages of that magnitude are difficult for all but the largest defendants to cover by themselves. Insurance is often the only practical recourse.

Amici respectfully submit that in ruling on this matter, the Court should evaluate National Union's position in light of the arguments that the other AIG insurers are raising. That is: National Union (and by extension AIG) is not seeking a ruling that would merely decide whether it or its insured will be required to cover the defense costs in this case. Rather, it is seeking a broad ruling that would, as a practical matter, severely limit the recovery of Illinoisans like Amici who have suffered serious illness as a result of long-term exposure to ethylene oxide. Even if that were the correct outcome—and Amici strongly agree with Plaintiffs that it is not—a certified

question from a federal court, in a case where nobody is representing the interests of tort victims, is not the appropriate vehicle to reach it.

CONCLUSION

The Court should decline National Union's request to overturn decades of Illinois law that cancer victims like Amici rely on to be made whole when tortfeasors cause more damages than they can pay absent insurance coverage.

In the alternative, to the extent that the Court is inclined to find in favor of National Union, Amici respectfully request that the Court narrow its opinion in two respects. *First*, to the extent that the Court announces a new rule with respect to pollution exclusions, the rule should apply only prospectively—that is, to coverage disputes initiated after the mandate issues. *Second*, the Court should answer the certified question only with respect to the specific facts of this case, and without broadly restricting the ability of Amici and other persons injured by toxic emissions to recover under standard commercial general liability policies.

Dated: August 27, 2025

/s/ Alexander G. Tievsky

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b), as required by Rule 345(b). The length of this brief, excluding the pages or 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 to be appended to the brief under Rule 342(a), is 4 pages.

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 6403

NOTICE OF FILING AND CERTIFICATE OF SERVICE

On August 27, 2025, the foregoing Brief of Amicus Curiae of Vantage Ethylene Oxide Settlement Participants in Support of Plaintiffs-Appellees was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct.

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EXHIBIT A

**THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ILLINOIS UNION INSURANCE COMPANY,

Plaintiff,

v.

VANTAGE SPECIALTY CHEMICALS, INC.,
et. al.

Defendants.

Case No. 2024 CH 05319

Honorable Clare J. Quish

Calendar 14

**AIG INSURERS’ MOTION TO STAY PROCEEDINGS
PENDING RULING OF THE ILLINOIS SUPREME COURT**

Defendants/Counter-Defendants AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company) (“AIG Specialty”) and Lexington Insurance Company (“Lexington”) (collectively, the “AIG Insurers”), by and through their undersigned counsel, for their Motion to Stay Proceedings Pending the Ruling of the Illinois Supreme Court, state as follows:

PRELIMINARY STATEMENT

This case presents questions about whether Defendants/Counter-Plaintiffs/Counter-Defendants Vantage Specialty Chemicals, Inc. and Vantage Specialty Chemical Holdings, Inc. (together, “Vantage”) are entitled to insurance coverage under commercial general liability and umbrella and excess policies for more than 400 underlying tort lawsuits (“Underlying Tort Cases”). Claimants in the Underlying Tort Cases allege they were injured by exposure to ethylene oxide (“EtO”) that Vantage continuously emitted from 2003 to the present from its facility in Gurnee, Illinois (“Gurnee Facility”). The AIG Insurers denied coverage because the Underlying Tort Cases alleged injuries that were known before each policy’s effective date and

because the disputed policies expressly exclude coverage for pollution. The Answer contains a more complete list of the AIG Insurers' coverage defenses.

In a separate case involving substantially similar allegations, other facility operators are being sued for injury supposedly arising from similar EtO emissions from a medical sterilization facility in Willowbrook, Illinois. Those facility operators are parties in a consolidated federal case in the Northern District of Illinois where they contend their insurer, National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), must pay to defend underlying EtO lawsuits under its commercial general liability insurance. Vantage seeks similar coverage against the AIG Insurers here. On appeal, the Seventh Circuit recently recognized (in the attached opinion) that a critical and likely outcome-dispositive question is whether the pollution exclusion in those policies—materially the same pollution exclusion as in the policies here—excludes coverage for the underlying claims. While suggesting that the pollution exclusion bars coverage under those policies, the Seventh Circuit nevertheless certified a question to the Illinois Supreme Court. The answer to the certified question is potentially dispositive with respect to how the pollution exclusion bars coverage under those policies. The Supreme Court has agreed to review this certified question.

The Supreme Court's answer has the potential to resolve entirely **both** the consolidated federal-court matter and this case: if the pollution exclusion bars coverage for EtO emissions, then the AIG Insurers owe Vantage no coverage. While there are other coverage defenses and issues in the case, neither the parties nor the Court need to address them if the pollution exclusion fully precludes coverage. Proceeding with this case now would therefore waste the Court's and the parties' time and resources. Accordingly, the AIG Insurers respectfully request

that this case be stayed pending the Illinois Supreme Court's decision on the applicability of the pollution exclusion.

BACKGROUND

Whether regulatory permits vitiate the pollution exclusion is at issue in this case.

The Underlying Tort Cases allege that since 2003 Vantage has used EtO in its manufacturing processes at the Gurnee Facility, emitting dangerous quantities of EtO into surrounding neighborhoods.¹ The EtO emissions implicate the pollution exclusion in the policies issued by insurers in this case. Vantage, however, claims that the pollution exclusion does not apply because it emitted EtO under a permit from the Illinois Environmental Protection Agency.²

The Griffith/Sterigenics Federal Action raises the same issues as this case.

After being sued in hundreds of underlying tort actions alleging bodily injuries from EtO exposure from a medical sterilization facility in Willowbrook, Illinois, Griffith Foods International, Inc. and Griffith Foods Group, Inc. (together, "Griffith"), along with Sterigenics U.S., LLC ("Sterigenics"), brought separate but related insurance-coverage actions against National Union in the U.S. District Court for the Northern District of Illinois. Griffith and Sterigenics both sought declarations that Illinois Union owed them coverage for their defense of the underlying tort cases. Those declaratory judgment actions were consolidated ("Griffith/Sterigenics Federal Action").³

¹ See First Amended Counterclaim and Crossclaim (the "Counterclaim") at ¶ 1.

² *Id.* at ¶ 2 ("Illinois law holds that pollution exclusions do not apply where an insured operates pursuant to a lawfully issued permit authorizing the release of the alleged pollutants at issue.").

³ Case No.1:21-cv-06403 was filed by Griffith against National Union and Case No. 1:21-cv-04581 was filed by Sterigenics against National Union.

In that federal action, Griffith and Sterigenics contended that National Union had a duty to defend them in the underlying cases under two commercial general liability policies that National Union had issued. National Union argued that it had no obligation to defend Griffith or Sterigenics in the underlying cases. One of National Union's arguments was (and is) that the pollution exclusion in those policies precludes coverage, in relevant part, for bodily injury "arising out of the discharge, dispersal, release or escape of . . . chemicals . . . gases . . . or other irritants, contaminants or pollutants."

On August 3, 2022, Judge Mary Rowland ruled that National Union had a duty to defend Griffith and Sterigenics in the underlying cases, holding that, in light of Griffith's and Sterigenics' alleged regulatory permits to emit EtO, the pollution exclusion in the National Union policies was "ambiguous" about whether it applied to their permitted emissions.⁴ She concluded the pollution exclusion thus did not preclude coverage for defense of the underlying cases. Judge Rowland relied on *Imperial Marble*, an intermediate appellate court decision, where the court held that a pollution exclusion was "arguably ambiguous as to whether the emission of hazardous materials in levels permitted by an [IEPA] permit constitute traditional environmental pollution."⁵ National Union appealed the district court's decision to the Seventh Circuit.

⁴ *Sterigenics, U.S., LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, P.A.*, 619 F. Supp. 3d 852, 863 (N.D. Ill. 2022).

⁵ *Id.* (citing *Erie Ins. Exch. v. Imperial Marble Corp.*, 957 N.E.2d 1214, 1221 (Ill. App. Ct. 2011)).

The Seventh Circuit certifies to the Illinois Supreme Court the question of whether regulatory permits vitiate the pollution exclusion.

On April 11, 2025, the Seventh Circuit issued an opinion regarding the District Court's ruling.⁶ While the following quotation is lengthy, it captures the state of Illinois law and the Seventh Circuit's view of the issue:

Before us is an important question of Illinois law about the meaning and scope of the pollution exclusion in standard-form commercial general liability policies. . . . In its 1997 decision in *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 687 N.E.2d 72, 227 Ill. Dec. 149 (Ill. 1997), the Illinois Supreme Court . . . interpreted the standard CGL pollution exclusion to exclude coverage for bodily injuries caused by traditional environmental pollution (essentially industrial emissions of pollutants), but not by more commonplace emissions—for example, a leak of carbon monoxide from a residential furnace or excess chlorine in a backyard swimming pool.

This appeal requires us to interpret and apply *Koloms* as part of determining whether an industrial pollutant discharged pursuant to a permit issued by an Illinois regulatory agency constitutes traditional environmental pollution subject to a CGL policy's pollution exclusion. The issue comes to us in an insurance dispute that accompanied highly publicized mass tort litigation arising out of substantial injuries, including cancer, allegedly caused by emissions of ethylene oxide over a 35-year period by Griffith Foods International and later Sterigenics U.S. in the suburban Chicago community of Willowbrook, Illinois.

Our own reading of Koloms suggests that the pollution exclusion applies. But a post-*Koloms* decision by an intermediate Illinois appellate court suggests that industrial emissions of a contaminant like ethylene oxide pursuant to a regulatory permit changes the analysis and renders the pollution exclusion not applicable, essentially on the theory that the injury-causing emissions were authorized by law and thus cannot constitute a form of traditional pollution otherwise excluded by a CGL pollution exclusion. So the question is unsettled in Illinois law. Mindful that ***the answer will have substantial consequences—for this case, others***, and indeed the broader insurance market—we believe the most

⁶ *Griffith Foods Int'l Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 134 F.4th 483 (7th Cir. 2025).

appropriate path forward is to certify the question to the Illinois Supreme Court, the definitive authority on Illinois law.⁷

The post-*Koloms* decision by an intermediate Illinois appellate court to which the Seventh Circuit refers is *Imperial Marble*, which the district court cited as the basis for its ruling that the pollution exclusion in the National Union policies did not negate coverage for the underlying cases. Though National Union had asserted alternative bases to deny coverage, the Seventh Circuit noted that “if the pollution exclusion applies, [Griffith and Sterigenics] have no claim to coverage and no basis for requiring National Union to defend them against the allegations in the [underlying cases].”⁸ Accordingly, pursuant to Illinois Supreme Court Rule 20, the Seventh Circuit certified the following question to the Illinois Supreme Court:

In light of the Illinois Supreme Court’s decision in *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 687 N.E.2d 72, 227 Ill. Dec. 149 (1997), and mindful of *Erie Insurance Exchange v. Imperial Marble Corp.*, 2011 IL App (3d) 100380, 957 N.E.2d 1214, 354 Ill. Dec. 421 (2011), 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?⁹

On April 17, 2025, the Illinois Supreme Court issued an order stating: “this Court will answer the question of law certified to this Court by the United States Court of Appeals for the Seventh Circuit in [the Griffith/Sterigenics Federal Action].”¹⁰ Thus, the Illinois Supreme Court will likely issue a ruling that may clarify how the pollution exclusion applies where there are regulatory permits.

⁷ *Id.* at 484–85 (emphasis added).

⁸ *Griffith Foods*, 134 F.4th at 486.

⁹ *Id.* at 493.

¹⁰ Attached as Exhibit A to the June 16, 2025 Declaration of Kelly H. Tsai.

ARGUMENT

I. THE ILLINOIS SUPREME COURT’S ANSWER TO THE CERTIFIED QUESTION IN THE GRIFFITH/STERIGENICS FEDERAL ACTION COULD FULLY RESOLVE THIS CASE.

The Illinois Supreme Court’s answer to the certified question in the Griffith/Sterigenics Federal Action could resolve the duty to defend and thus the duty to indemnify. The Illinois Supreme Court has held that “where there is no duty to defend, there will be no duty to indemnify.”¹¹ Specifically, if the Illinois Supreme Court holds in the Griffith/Sterigenics Federal Action that, regardless of regulatory permits, the pollution exclusion eliminates National Union’s duty to defend, that ruling will necessarily establish that the pollution exclusion also eliminates any duty to indemnify for underlying judgments or settlements.

Insurers in this case make the same arguments that National Union makes in the Griffith/Sterigenics Federal Action: the pollution exclusions in the contested policies foreclose coverage for claims against Vantage in the Underlying Tort Cases. And Vantage makes the same counterargument: the pollution exclusion does not apply in light of Illinois Environmental Protection Agency permits to emit EtO.

Like National Union in the Griffith/Sterigenics Federal Action, insurers in this case have also cited other policy provisions and legal bases to disclaim coverage for the Underlying Tort Cases, including, but not limited to, late notice and the expected-or-intended and known-loss defenses. But if the pollution exclusion negates coverage for the Underlying Tort Cases, there will be no need for the parties to litigate—or for this Court to adjudicate—the effect of those other policy provisions. This would, of course, eliminate the need to expend significant

¹¹ *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 398 (Ill. 1993).

resources on searching for and producing countless documents, deposing dozens of witnesses, working with experts, and resolving inevitable discovery disputes.

Put another way, if the Illinois Supreme Court were to answer the certified question by stating that a permit or regulation authorizing emissions (generally or at particular levels) *is not* relevant to assessing whether the pollution exclusion applies in a standard-form commercial general liability policy (or otherwise agrees with the Seventh Circuit that the pollution exclusion bars coverage under those policies), that would negate coverage for the underlying cases and fully dispose of Vantage's coverage claim here.¹² This matter would need to proceed only if the Supreme Court were to answer the certified question in the converse, *i.e.*, that a permit or regulation authorizing emissions (generally or at particular levels) *is* relevant to assessing whether the pollution exclusion applies in a standard-form commercial general liability policy. Only in that event would this Court be required to decide the other coverage defenses and legal issues in this case.

Therefore, the parties and the Court should not waste their time and resources—or the time and resources of various fact and expert witnesses who would be deposed—unless and until the Supreme Court's ruling makes those efforts necessary. Indeed, a Cook County court (Judge Allen Walker) recently granted what is effectively a temporary stay of non-written discovery in a similar EtO coverage case. The procedural posture of that case is more advanced than this one, with discovery having been ongoing for more than a year.¹³ Here, the benefits of a stay (and lack of prejudice) are even stronger because the case has only just progressed past the pleadings

¹² To the extent the law of another jurisdiction were to apply to some of the policies, there is no question that the pollution exclusion would apply because Illinois is the only state that even arguably has a permitted emissions exclusion.

¹³ *Medline Indus., LP v. Nat'l Fire & Marine Ins. Co.*, No. 23-CH-8965 (Cir. Ct. Cook County).

stage and the parties have not yet produced any documents. A stay would avoid what could turn out to be needless discovery. This matter should therefore be stayed until the Supreme Court resolves the certified question in the Griffith/Sterigenics Federal Action.

II. A STAY IS WARRANTED UNDER PREVAILING LAW.

This Court has the requisite authority to stay this case. Illinois courts have held that “the power of the trial court to stay proceedings is an attribute of its inherent power to control the disposition of cases before it,” which means that “trial courts are afforded discretion in issuing stay orders.”¹⁴ This Court faces a rare situation where a potentially dispositive question in a case before it is at this moment also the subject of a pending appeal in a separate case, *i.e.*, whether the pollution exclusion negates coverage for the underlying cases. The appellate courts have spoken to this unique situation:

[I]n order for a stay to be justified, the overlap between the case at hand and the pending appeal does not have to be complete such that resolution of the appeal is potentially dispositive; it is necessary only that the two proceedings share a “significant” issue, in contrast to an issue “collateral” to the case at hand . . . Unless the appeal is clearly frivolous, the circuit court *should* stay its proceedings for a reasonable length of time, *until the appeal resolves the shared significant issue*.¹⁵

As the First District has since elaborated, the relevant inquiry is “whether the [appeal] would be significant to, *or have an effect on*, [this matter] and not whether it would be completely dispositive of it.”¹⁶

¹⁴ *Vasa N. Atl. Ins. Co. v. Selcke*, 261 Ill. App. 3d 626 (1st Dist. 1994).

¹⁵ *Khan v. BDO Seidman, LLP*, 2012 IL App (4th) 120359 ¶ 74 (4th Dist. 2012) (internal citations omitted and emphasis added) (citing *Shaw v. Citizens State Bank of Shipman*, 185 Ill. App. 3d 79, 82–83 (4th Dist. 1989)).

¹⁶ *Evans v. Dart*, 2020 WL 1130710 at *2 (1st Dept. 2020) (emphasis added) (citing *Khan*, 2012 IL App (4th) 120359 ¶¶ 74, 78) (upholding stay where case shared significant issues with case on appeal to supreme court and relief plaintiff sought was intertwined with questions on appeal).

There can be no question that the Illinois Supreme Court's forthcoming decision is "potentially dispositive" to this matter, let alone that it will "be significant to" or "have an effect on" it. Accordingly, this Court "should stay [these] proceedings for a reasonable length of time until the appeal resolves the shared significant issue."¹⁷ This guidance from *Khan* and *Dart* is consistent with the more general directives from Illinois appellate courts that a circuit court should consider factors such as "judicial economy" and the "orderly administration of justice" in determining whether a stay is appropriate.¹⁸ The interests of judicial economy and the orderly administration of justice are plainly best served here by staying this matter to avoid needlessly wasting the parties' and this Court's valuable resources.

Moreover, a stay will not prejudice Vantage in this matter, as there is no reason to predict that the Illinois Supreme Court's resolution of the certified question will be unreasonably delayed. And, as noted above, this litigation is in its early stages. In any event, whenever the Illinois Supreme Court answers the certified question, it will affect this case.

CONCLUSION

For the above reasons, in the unique circumstances here, the Court should stay further proceedings in this case until the Illinois Supreme Court has resolved the certified question in the Griffith/Sterigenics Federal Action. If the Court is not inclined to stay the entire case, it should proceed with written and document discovery only, *i.e.*, stay deposition and expert discovery pending resolution of the appeal. Even if the Supreme Court's answer to the certified question did not dispose of this case, an appellate decision could have a significant impact on the nature and scope of deposition and expert discovery.

¹⁷ *Id.* at ¶ 74.

¹⁸ *TIG Ins. Co. v. Canel*, 389 Ill.App.3d 366, 375 (1st Dist. 2009).

Dated: June 16, 2025

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on June 16, 2025, a true and correct copy of the foregoing Defendants AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company) and Lexington Insurance Company's Motion to Stay Proceedings Pending the Ruling of the Illinois Supreme Court was served using the Odyssey File & Serve Illinois E-Filing System which will send notification to all parties of record in this action, by operation of the Court's electronic filing system.

By: /s/ Bikramjeet S. Toor

*One of the counsels for AIG
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