

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.

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

**BRIEF OF THE ILLINOIS TRIAL LAWYERS
ASSOCIATION AS *AMICUS CURIAE***

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Table of Contents/Points & Authorities

	Page
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION	1
ARGUMENT	3
<i>Founders Ins. Co. v. Munoz</i> , 237 Ill. 2d 424 (2010)	3
<i>Nicor, Inc. v. Associated Elec. & Gas Ins. Servs. Ltd.</i> , 233 Ill. 2d 407 (2006)	3
<i>Reed v. Farmers Ins. Grp.</i> , 188 Ill. 2d 168 (1999)	3
<i>Beard v. Economy Preferred Ins.</i> , 2025 IL App (1st) 231694-U	3
<i>State Farm Mut. Auto. Ins. Co. v. Villicana</i> , 181 Ill. 2d 436 (1998)	3
<i>Luechtefeld v. Allstate Ins. Co.</i> , 167 Ill. 2d 148 (1995)	3
<i>Best v. Taylor Mach. Works</i> , 179 Ill. 2d 367 (1997)	3
<i>Hoglund v. State Farm Mut. Auto. Ins. Co.</i> , 148 Ill. 2d 272 (1992)	4
<i>In re Spicey Partners Real Est. Holdings, LLC & Cosmed Grp., Inc.</i> , Case No. 4:24 bk-90572 (S.D. Tex. Bankr.).....	4
Rihem Akkouche, <i>Cosmed Group files for Chapter 11 bankruptcy</i> , USA Herald (Nov. 15, 2024), https://usaheald.com/cosmed-group-files-for-chapter-11-bankruptcy/	4
Ill. Const. 1970, art. I § 12	5
11 U.S.C. § 362.....	5
<i>Turner v. Indus. Comm'n</i> , 393 Ill. 528 (1946)	5

<i>Kemner v. Monsanto Co.</i> , 112 Ill. 2d 223 (1986)	5
CONCLUSION	5

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Founded in 1952, the Illinois Trial Lawyers Association (“ITLA”) is a statewide, nonprofit organization with over 2,000 members dedicated to protecting plaintiffs’ rights throughout the state. ITLA advocates for plaintiffs’ longstanding, constitutional right to obtain a *complete* remedy for all injuries wrongfully suffered at the hands of another. Because this case involves the interpretation of an insurance policy exclusion that will likely impact injured plaintiffs’ ability to be compensated fully for their harms, the proper resolution thereof is a matter of substantial interest and concern to ITLA and its members.

INTRODUCTION

Insurance coverage disputes, like the one presently before this Court, first focus on two parties: the insurer and its insured. Determining whether a carrier must defend or indemnify the policyholder proceeds according to well-established principles, whether that be under the so-called “eight corners” rule or ascertaining whether the particular facts of a case fall within the insurance policy’s scope. And yet in the formulaic pursuit to claim or deny coverage, an equally important stakeholder is often overlooked and left in the shadows: the victim.

The sometimes catastrophic, life-altering injuries suffered by innocent third parties fall beyond the record. Ruinous, burgeoning medical bills and strained finances are not considered. Nor are the everyday struggles and newfound responsibilities imposed upon a victim’s close friends and family members. Real people with very real problems are left in the balance and, in many instances, rendered mere spectators while their future is decided by insurance disputes over which they have no control. Insurance coverage plays a crucial component for compensating victims when their tortfeasors lack the means to do so.

This is especially true for many small and mid-size businesses that, if denied coverage, are unable to shoulder the burden of defending against (let alone paying damages for) mass- and class-action litigation alleging those companies caused personal injury on a wide scale. Allowing insurance carriers to deny coverage without clearly and unambiguously informing their policyholders that emissions made in accordance with a government-issued permit are excluded may force these businesses into bankruptcy before an injured plaintiff has the opportunity to try her case. And other secured creditors will have greater priority to the bankrupt company's assets, leaving tort victims fighting over proverbial scraps. This unjust result runs directly counter to our constitution's assurance that tort victims will have a full, complete, and prompt recovery.

Answering the certified question in the manner advocated for by Defendant-Appellant, National Union Fire Insurance Company of Pittsburgh, P.A. ("National Union") and its *amici*, would defeat—not further—this end. Additionally, doing so would help no one except the insurance industry. Insured companies may be forced to close up shop, while injured, innocent third parties are left uncompensated for their harms. ITLA respectfully suggests the Court should avoid interpreting the pollution exclusion in a manner that accomplishes either of those outcomes.

To be clear, this *amicus* brief does not delve into an insurer's duty to defend, how to interpret policy provisions and exclusions, or other matters of insurance law that the parties have and will continue to discuss in their respective merits briefs. Instead, ITLA wishes to give a voice to injured tort victims who may be largely if not completely deprived of compensation if unfortunate enough to be injured at the hands of a business who uses regulated substances and is denied coverage under a pollution exclusion, like that at issue

here. These innocent victims should not be left holding the bag when National Union chose to keep in force an ambiguous pollution exclusion Illinois reviewing courts have found is unclear in its scope and effect.

ARGUMENT

This Court has made clear that it will not literally interpret language in an insurance contract when doing so “contravenes public policy.” *Founders Ins. Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010); *accord Nicor, Inc. v. Associated Elec. & Gas Ins. Servs. Ltd.*, 233 Ill. 2d 407, 416-17 (2006). “The public policy of the state is found in its constitution, its statutes, and its judicial decisions.” *Reed v. Farmers Ins. Grp.*, 188 Ill. 2d 168, 174-75 (1999). And the “Illinois Supreme Court has repeatedly analyzed whether an insurance policy violates 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 (citing *State Farm Mut. Auto. Ins. Co. v. Villicana*, 181 Ill. 2d 436, 441-56 (1998), and *Luechtefeld v. Allstate Ins. Co.*, 167 Ill. 2d 148, 157-61 (1995)).

All sources of Illinois public policy point in the same direction here: insurers must provide coverage when faced with potential liability arising from lawful, permitted emissions. Even aside from those insureds operating lawfully, innocent third parties will be hurt if National Union prevails here. This Court has frequently emphasized the importance of making injured plaintiffs whole. *See, e.g., Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 406 (1997) (striking down as unconstitutional statutory damages caps on non-economic damages in tort cases as violative of public policy and fundamental tort law principles, including the “universal agreement” that “an injured plaintiff be made whole.”); *see also Hoglund v. State Farm Mut. Auto. Ins. Co.*, 148 Ill. 2d 272, 280 (1992) (rejecting

insurer's proposed statutory construction as violative of public policy that "the injured party be placed in the same position as if the" injuring party had adequate insurance coverage).

The undeniable reality is that stripping insurance coverage from small and medium-sized businesses facing potentially crippling liability will often deprive injured plaintiffs of the recoveries they were awarded. The secured lenders of companies forced into bankruptcy will have greater priority to estate distributions than injured tort plaintiffs holding unsecured, contingent claims, leaving little to compensate such innocent and injured plaintiffs. The cost of a defendant's wrongdoing, and an insured's refusal to pay, will be borne by the innocent.

Illustrating this point, medical device sterilization company Cosmed Group, Inc. recently filed for Chapter 11 bankruptcy after more than 300 lawsuits involving personal injury claims allegedly caused by exposure to ethylene oxide were filed against it in various jurisdictions. *See In re Spicey Partners Real Est. Holdings, LLC & Cosmed Grp., Inc.*, Case No. 4:24-bk-90572 (S.D. Tex. Bankr.), Dkt. 1. The company's bankruptcy petition disclosed liabilities ranging from \$100 million to \$500 million owed to more than 200 creditors, largely stemming from EtO-related litigation, while valuing its assets between \$10 million and \$50 million. *Id.*; *see also* Rihem Akkouche, *Cosmed Group files for Chapter 11 bankruptcy*, USA Herald (Nov. 15, 2024), <https://usaherald.com/cosmed-group-files-for-chapter-11-bankruptcy/> (last accessed Aug. 27, 2025). Depriving injured tort victims of the recoveries they were awarded would thus turn a blind eye to the state's constitutional guarantee that every person "shall obtain justice by law, freely, *completely*, and promptly." Ill. Const. 1970, art. I § 12 (emphasis added).

Additionally, lawsuits filed against a company forced into bankruptcy would be automatically stayed under the Bankruptcy Code. *See* 11 U.S.C. § 362 (imposing automatic stay of the “commencement or continuation” of all actions or proceedings against a debtor). Regardless of the stay’s duration, innocent tort victims will be delayed—if not interminably deprived—of their ability to seek justice and to be fully compensated. Justices of this Court have long recognized the reality that “[j]ustice delayed is justice denied.” *Turner v. Indus. Comm’n*, 393 Ill. 528, 536 (1946) (Gunn, Murphy, JJ., concurring); *accord Kemner v. Monsanto Co.*, 112 Ill. 2d 223, 252 (1986) (Clark, C.J., concurring). This is especially true for the grievously injured, who may not live long enough to recover on the other side of prolonged bankruptcy proceedings. Siding with National Union benefits no one except insurers. That is not and should not be the public policy of this state.

CONCLUSION

WHEREFORE, the Illinois Trial Lawyers Association respectfully requests that the Court answer the United States Court of Appeals for the Seventh Circuit’s certified question in a manner that accounts for injured plaintiffs’ ability to seek full compensation for harms wrongfully imposed upon them; that is, by declaring National Union cannot rely on an overly broad interpretation of a pollution exclusion to deny its insured a defense based on harms caused, in whole or in part, by substances emitted after obtaining a government permit allowing them to do so. ITLA further requests any other relief the Court deems appropriate.

Dated: September 8, 2025

Respectfully submitted,

**THE ILLINOIS TRIAL LAWYERS
ASSOCIATION**

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CERTIFICATE OF COMPLIANCE

The undersigned, an attorney, certifies this *Amicus* Brief conforms to the requirements of Illinois Supreme Court Rules 341 and 345. The length of this *Amicus* 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 five (5) pages.

Dated: September 8, 2025

/s/ Patrick A. Salvi, II