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Scott Seaman Comments on Illinois Supreme Court's Review of Pollution Exclusion

Via *Law360 Insurance Authority*

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Scott Seaman, Chicago-based partner and Co-Chair of Hinshaw's Insurance Services Group, was quoted in a recent *Law360 Insurance Authority* story on the Illinois Supreme Court's decision to address a certified question referred to it by the Seventh Circuit about whether pollution exclusions in commercial general liability (CGL) policies apply to industrial emissions where the emissions were within the limits of permits.

Seaman noted that it is not common for the Seventh Circuit to certify such questions to the Illinois Supreme Court, as "the justices generally are confident in their ability to make an *Erie* prediction on how the Illinois Supreme Court would rule. The court believed that an intermediate Illinois appellate court decision interposed some doubt as to how the Illinois Supreme Court may rule."

Seaman emphasized that the pollution exclusion in CGL policies is clear and does not distinguish between permitted and unpermitted discharges. "There is no fair dispute but that the pollution here is 'traditional' environmental pollution," Seaman said. "The exclusion has no exception for lawful or permitted discharges." He further explained that the exclusion plainly bars coverage for pollution, regardless of whether emissions are within regulatory limits.

Seaman also highlighted the broader economic implications, stressing that judicially limiting such exclusions could disrupt the insurance market. "An artificial judicial limitation on an exclusion—particularly on an exclusion such as a pollution exclusion—improperly alters the terms of the parties' agreement, provides coverage for risks expressly factored out of the bargain, and pours fuel on social inflation, which already is out of control," he said.

The Illinois Supreme Court's answer is expected to provide important guidance for insurers and policyholders alike regarding the scope of pollution exclusions in liability policies.

Read the full article *(subscription may be required)*.

- *Law360 Insurance Authority:* ”Justices’ Pollution Exclusion Review Could Realign Courts” (April 24, 2025)

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