State Of Insurance: Q1 Notes From Illinois

By **Matthew Fortin** (April 30, 2026)

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The first quarter of 2026 was highlighted by the Illinois Supreme Court's ruling regarding the applicability of the standard-form pollution exclusion in commercial general liability policies to permitted emissions of traditional environmental pollutants.

While Illinois' state courts were otherwise quiet in the first quarter, the Illinois Department of Insurance issued two bulletins aimed at empowering policyholders in their dealings with public adjusters. The U.S. Court of Appeals for the Seventh Circuit, meanwhile, rejected an Orwellian argument for a "Super Excess" tier of liability insurance coverage.

Illinois Justices Weigh in on Applicability of Pollution Exclusion to Permitted Emissions

On Jan. 23, the Illinois Supreme Court issued its highly anticipated opinion in Griffith Foods International v. National Union Fire Insurance Co., regarding application of the standard form pollution exclusion in CGL policies to emissions authorized by regulatory permit.[1] Answering a certified question from the Seventh Circuit, the Illinois Supreme Court held that a permit or other regulation authorizing an insured's emission of a pollutant has no relevance in determining whether a pollution exclusion precludes coverage under a CGL policy.[2]

The ruling eliminated uncertainty in Illinois law created by the Illinois Appellate Court, Third District's 2011 ruling in Erie Insurance Exchange v. Imperial Marble Corp., which found a pollution exclusion ambiguous as to whether it barred coverage for emissions authorized by a regulatory permit.[3] The Supreme Court expressly rejected the basis for that ambiguity, and in no uncertain terms, holding that "it is irrelevant whether the underlying pollution is permitted or not."[4]

The Supreme Court's ruling effectively closes the door on the argument made colorable by Imperial Marble, that authorized emissions do not constitute "traditional environmental pollution" under the Supreme Court's 1997 decision in American States Insurance Co. v. Koloms.[5]

Going forward Koloms, which recognized the applicability of the exclusion to traditional environmental pollution, remains the touchstone for analysis of the standard form pollution exclusion in CGL policies. Whether an insured's emissions are authorized by permit or regulations simply does not factor into the equation.

Illinois Department of Insurance Bulletins

Company Bulletin 2026-01 — Public Adjuster as Co-Payee

On Jan. 9, the department issued Bulletin 2026-01 advising property and casualty insurance companies to review their claims handling practices to ensure that public adjusters are only included as co-payees and that claims checks are only mailed to public adjusters when the public adjuster's contract with the insured contains such provisions.[6]

The department issued the bulletin in response to a tendency of "many insurance companies" to add public adjusters as co-payees on claims checks along with the insured regardless of whether authorized by the insured to do so.

The department similarly noted that "some insurance companies" have a practice of mailing checks directly to the public adjuster, again regardless of whether the public adjuster contract directs it to do so. The department views those practices as "undermining the rights of insurance consumers" provided in the Illinois Public Adjuster Law.[7]

The bulletin reassures property and casualty insurers that, consistent with Section 1575 of the Illinois Public Adjuster Law, a public adjuster's compensation for its services is the insured's responsibility, not the insurer's.[8]

In that regard, the department was careful to emphasize the limited nature of its ask to insurers: "The Department is ONLY asking that insurance companies review the public adjuster contracts that they receive and NOT make the public adjuster a co-payee and/or NOT mail claims checks directly to the public adjuster, UNLESS the public adjuster contract contains such provisions."[9]

While the bulletin leaves unsaid how insurers including public adjusters as co-payees and mailing claims checks directly to them unless specifically authorized by the public adjuster contract undermines insureds' rights under the Illinois Public Adjuster Law, it does not require any imagination to connect the dots.

A 2023 ruling from the Seventh Circuit, Thirteen Investment Co. v. Foremost Insurance Co., illustrates the nightmare scenario for insureds, where a public adjuster endorsed an insured's name on a claim check, cashed the check and kept the proceeds.[10] In that case the insured was left holding the bag, as the court held that the insurer's performance obligation was discharged when the endorsed claim check was accepted by the insurer's bank.[11]

The bulletin's directive to insurers is clear — don't include a public adjuster as a co-payee or send them the check unless authorized to do so by a specific provision of the public adjuster contract — but things are not always that simple. Insurers might ask how, if at all, an assignment of the insured's claim to a public adjuster or other third-party contractor changes their obligations.

Indeed, the bulletin quotes Section 1575(f)(4) of the Public Adjuster Law, as making "it explicitly clear that '[t]he salary, fee, commission, or other consideration [for public adjuster services] is the obligation of the insured, not the insurer,'" but omits the final clause of that sentence: "except when rights have been assigned to the public adjuster by the insured."[12]

Company Bulletin 2026-02 — Third-Party Public Adjuster Lead Generators

On Jan. 26, the department issued Bulletin 2026-02 to Illinois public adjusters cautioning that the use of unlicensed third parties to generate client leads violates the Illinois Public Adjuster Law, such that any public adjuster contract even partially solicited by an unlicensed person is void.[13]

The department noted that it has primarily seen this practice in situations where a roofing contractor or home repair company makes initial contact with a potential client and then

shares that client's information with a public adjuster. In those circumstances, if the contractor is to receive anything of value from the public adjuster for generating the lead, it must be licensed as an Illinois public adjuster even if it is not in the business of adjusting claims and has zero intention of participating in the adjustment of a claim.[14]

While the scenario of a roofing contractor or vendor that aims to provide services to the client separate from those that would be provided by a public adjuster is the only illustration of this practice cited by the department, the bulletin emphasizes that the licensing requirement also applies to third-parties whose sole business is generating leads.

As long as the third party's arrangement with the public adjuster provides "anything of value" in exchange for a lead the third-party must be licensed as a public adjuster.[15] In addition to direct payment, the thing of value may be in the form of common ownership or shared expenses between the contractor and the public adjuster, or the potential for greater compensation for the contractor's services if the public adjuster's representation of the insured results in a higher claim payment.[16]

The bulletin reminds public adjusters of its authority to suspend or revoke licenses from those who accept business from unlicensed individuals, but makes a point of highlighting the consequences of a public adjuster contract solicited by an unlicensed third-party being rendered null and void.

The department notes that a court "will not enforce payment for any public adjuster services provided under a contract that was solicited by an unlicensed person" and that accepting payments under a contract solicited by an unlicensed individual could expose a public adjuster to criminal liability.[17] "This risk of civil and criminal liability is increased," the bulletin warns, "when an insured disputes the public adjuster's retention or handling of their insurance proceeds."[18]

It is clear from the tone of the bulletin that the department intended it to motivate public adjusters to ensure that third-party entities and their employees that provide leads to the adjuster are properly licensed. But in the absence of fraud or deceit, adjusters may still be able to pursue compensation for services provided under a voided contract through quantum meruit.[19]

Seventh Circuit Rejects Orwellian Argument for "Super Excess" Tier of Liability Coverage for Underlying Wrongful Death Action

Common law principles of contract interpretation provide the framework in which courts ascertain and give effect to the intent of parties to an insurance contract, as expressed in the policy language.

One of those principles is that a contract should be interpreted in a way that harmonizes and gives effect to all of its provisions, and does not render any language superfluous.[20] But any one principle can only get a litigant so far, as shown by the Seventh Circuit's Feb. 11 ruling in Great West Casualty Co. v. Nationwide Agribusiness Insurance Co.[21]

The case arose out of a wrongful death action against the driver and lessee of a tractor, and owner of the attached trailer, involved in a fatal crash with an SUV driven by the deceased. Great West and Nationwide each issued liability insurance policies that covered all defendants. In the declaratory judgment action that made its way to the Seventh Circuit, those insurers sought a determination regarding their respective payment responsibilities in light of the "other insurance" clauses in their policies.

The Seventh Circuit's opinion addressed a number of nuanced issues, including whether a "hired or covered auto" included a leased covered auto and whether an agreement between the lessee of the tractor and the trailer's owner constituted an "insured contract," en route to affirming the U.S. District Court for the Northern District of Illinois' determination that both Nationwide and Great West owed excess coverage.[22]

But that did not resolve the dispute, as Great West argued that its policy was "super excess" such that its coverage obligations did not kick in until Nationwide's limits were exhausted. The argument hinged on a difference in the parties' "other insurance" clauses. The relevant portion of Great West's "other insurance" clause stated that it was "excess over any other collectible insurance," whereas Nationwide's clause stated only that it was "excess." That difference, Great West argued, made its policy "more excess than" Nationwide's.[23]

The Seventh Circuit was not convinced. The rule of contract interpretation counseling against a reading that renders a provision superfluous, the court explained, is not absolute. Rather, "it is a preference to be employed to the extent possible."[24] Because drafters "intentionally err on the side of redundancy," the court noted, "some redundancy in insurance contracts is normal."[25]

The court concluded that Great West's "super excess" language was "merely an example of redundancy in contract drafting and not a command to recognize a never-before-seen 'super excess' tier of insurance coverage."[26]

The court seemed keen to avoid the arms race that would follow if Great West's argument were accepted, with insurers revising their policies first to replace each use of "excess" with "excess over any other collectible insurance," and then to create another tier of coverage that would be excess over that, and so on.[27]

Without any existing case law or other evidence suggesting that Illinois courts would recognize the language of Great West's policy as creating a "super excess" tier of coverage, the Seventh Circuit, applying Illinois law, concluded that Great West and Nationwide had equal payment priority in proportion to their respective coverage limits.[28]

Conclusion

The Illinois Supreme Court's ruling in Griffith Foods restores order to the analysis of coverage, or lack thereof, for traditional environmental pollution under standard form CGL policies, while the Seventh Circuit's analysis in Great West Casualty is similarly reassuring to those regularly sorting out competing "other insurance" clauses. Meanwhile, on the regulatory front, property and casualty insurers will find some comfort in the Department of Insurance's acknowledgment of emerging issues in the public adjuster space, though they will hope there is more to come.

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[1] Griffith Foods Int'l v. Nat'l Union Fire Ins. Co., --- N.E.3d ---, 2026 IL 131710 (Jan. 23, 2026).

[2] Id. at ¶ 31.

[3] See Erie Insurance Exchange v. Imperial Marble Corp., 2011 IL App (3d) 100380.

[4] Griffith Foods Int'l, 2026 IL 131710, at ¶ 29.

[5] 177 Ill. 2d 473, 687 N.E.2d 72 (1997).

[6] Company Bulletin 2026-01 – Public Adjuster as Co-Payee, IL Bulletin No. 2026-1, 2026 WL 64280 (Jan. 9, 2026).

[7] Id.

[8] Id.

[9] Id.

[10] See Thirteen Investment Co. v. Foremost Ins. Co., 67 F.4th 389 (7th Cir. 2023).

[11] Id. at 393.

[12] 215 Ill. Comp. Stat. § 5/1575(f)(4).

[13] Company Bulletin 2026-02 – Third-Party Public Adjuster Lead Generators, IL Bulletin No. 2026-2, 2026 WL 207404 (Jan. 26, 2026).

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] See Willis v. Ohio Cas. Co., 101 Ill. App. 3d 1099 (1st Dist. 1981) (allowing public adjuster to assert quantum meruit claim for reasonable value of services rendered under contract effectively avoided by insured at conclusion of claim due to adjuster's failure to furnish insured with notice of right to avoid representation agreement within first 10 days).

[20] See Clanton v. Oakbrook Healthcare Centre, Ltd., 2023 IL 129067 ¶ 34.

[21] Great West Cas. Co. v. Nationwide Agribusiness Ins. Co., 167 F.4th 448 (7th Cir. 2026).

[22] Id. at 458.

[23] Id. at 458-460.

[24] Id. at 459 (quoting Stone v. Signode Indus. Grp., 943 F.3d 381, 388 (7th Cir. 2019)).

[25] Id. at 455, 459.

[26] Id. at 459.

[27] Id. at 459-460.

[28] Id. at 460.