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In This Issue

Illinois Appellate Court Reverses Trial Court's Summary Judgment Ruling For Reinsurer, Finding Genuine Issues Of Material Fact On Reinsurance Existence And Late Notice Of Loss

An Illinois appellate court held that genuine issues of material fact existed as to the existence of reinsurance policies, based on the cedent's secondary evidence. The court also held that the reinsurer was not entitled to summary judgment on its late notice defense. *Pohjola Ins. Ltd. v. Cont'l Ins. Co.*, 2026 IL App (1st) 242294-U. (Click here for full article)

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The Eighth Circuit affirmed summary judgment in favor of an insurer, holding that a liability insurance policy's pollution exclusion bars coverage for injuries caused by carbon monoxide emissions. *N. Star Mut. Ins. Co. v. Rodin*, 2026 U.S. App. LEXIS 9969 (8th Cir. Apr. 7, 2026). (Click here for full article)

California State And Federal Courts Address Application Of Silica And Pollution Exclusions In Commercial General Liability Policies

Several courts in California have declined to dismiss, at the pleadings stage, coverage actions by stone manufacturers and distributors seeking defense and indemnity for hundreds of underlying lawsuits by workers alleging silicosis and related injuries from exposure to silica-containing dust released during stone fabrication. *Arizona Tile, LLC v. Travelers Prop. Cas. Co. of Am.,* Case No. 25STCV02521 (Cal. Super. Ct. L.A. Cty. Mar. 10, 2026); *C & C North Am., Inc. v. ACE Prop. and Cas. Ins. Co.*, Case No. 24STCV18642 (Cal. Super. Ct. L.A. Cty. Mar. 10, 2026); *Sompo Am. Ins. Co. v. LX Hausys Am., Inc.*, 2025 U.S. Dist. LEXIS 271754 (C.D. Cal. Dec. 22, 2025); *Hanover Am. Ins. Co. v. Francini, Inc.*, 2026 U.S. Dist. LEXIS 84338 (C.D. Cal. Mar. 31, 2026); *Regent Ins. Co., et al. v. Cambria Enter., et al.*, No. 2:25-cv-4142 MRA (MAAx) (C.D. Cal. Mar. 31, 2026); *Pac. Shore Stones, LLC, et al. v. Allied Prop. & Cas. Co., et al.*, 2026 U.S. Dist. LEXIS 86260 (C.D. Cal. Mar. 31, 2026); *Surface Warehouse LP v. Charter Oak Fire Ins. Co.*, 2026 U.S. Dist. LEXIS 85579 (C.D. Cal. Mar. 31, 2026). (Click here for full article)

Chubb Permitted To Exclude Shareholder Climate Proposal From Proxy Materials

The U.S. District Court for the District of Columbia denied a preliminary injunction seeking to compel Chubb Ltd. to include a shareholder's climate-related proposal in its proxy materials, finding that the proposal arguably falls in the "ordinary business" exemption to the SEC rule that requires companies to include shareholder proposals in their annual proxy materials. *As You Sow v. Chubb Ltd.*, 2026 U.S. Dist. LEXIS 69901 (D.D.C. Mar. 31, 2026). (Click here for full article)

English Commercial Court Addresses Scope Of Solicitors' Professional Indemnity Cover In Litigation Funding Scheme Dispute

The English Commercial Court held that the obligations owed by solicitors' firms to an after-the-event ("ATE") insurer under terms of business agreements were commercial—not solicitorial—in nature and therefore fell outside the scope of the firms' professional indemnity ("PI") cover. The court also held that the ATE insurer's right to subrogation under the PI insurance policy depended on whether the insurer's payments were made under the ATE policies or a separate deed of indemnity. *Novitas Loans Limited v AmTrust Specialty Limited (& Ors)* [2026] EWHC 592 (Comm) (16 March 2026). (Click here for full article)

Illinois Appellate Court Reverses Trial Court's Summary Judgment Ruling For Reinsurer, Finding Genuine Issues Of Material Fact On Reinsurance Existence And Late Notice Of Loss

HOLDING

An Illinois appellate court held that genuine issues of material fact existed as to the existence of reinsurance policies, based on the cedent's secondary evidence. The court also held that the reinsurer was not entitled to summary judgment on its late notice defense. *Pohjola Ins. Ltd. v. Cont'l Ins. Co.*, 2026 IL App (1st) 242294-U.

BACKGROUND

In 2004, Continental Casualty Co. ("Continental") was asked by its policyholder to cover asbestos-related bodily injury liabilities under policies issued in the 1980s. In 2007, Continental and the policyholder entered into a defense cost sharing agreement. At that time, Continental searched for reinsurance but found no evidence that such coverage existed. In 2021, however, Continental uncovered internal records suggesting that Pohjola Insurance Ltd. ("Pohjola"), a Finnish insurer, had reinsured the underlying policies. Continental then submitted a notice of loss and reinsurance billing for over $1.8 million to Pohjola. Pohjola disputed liability and raised concerns over late notice. In 2022, Pohjola sued Continental seeking a declaration that Continental had not proven the existence and terms of any reinsurance agreement and that notice was untimely.

To establish the existence of reinsurance, Continental relied on various forms of secondary evidence, including a "reinsurance certificate" setting forth the term, premium and limits; internal communications discussing the reinsurance details; and worksheets and coding sheets reflecting premium processing. Continental also pointed to Pohjola's historic U.S. business practices, including document destruction policies, to explain the absence of original records. Pohjola argued that this evidence showed, at most, that the parties contemplated entering into a reinsurance agreement, not that any agreement was actually formed. It further contended that Continental had not conducted a sufficiently diligent search for underwriting and reinsurance contract documents and therefore could not rely on secondary evidence.

Following discovery, both parties moved for summary judgment. The trial court granted summary judgment in favor of Pohjola, finding Continental's evidence insufficient to prove the existence of reinsurance, and did not reach the late notice issue.

DECISION

The appellate court reversed, holding that genuine issues of material fact precluded summary judgment on both the existence of reinsurance agreements and the late notice defense.

On the existence issue, the court found that Continental's secondary evidence could support a reasonable inference that reinsurance agreements existed. The documents reflected essential terms—such as subject, limits and premium—and a

factfinder could infer that Continental would not have possessed such documents absent an actual reinsurance placement. At the same time, the court acknowledged that a reasonable factfinder could also conclude that the documents merely reflected negotiations or intent to enter into reinsurance. Because competing inferences could be drawn, the issue was properly reserved for trial.

On the late notice defense, the appellate court identified a conflict between New York and Illinois law. The court explained that, under New York law, a reinsurer must demonstrate actual prejudice—*i.e.*, tangible economic injury—resulting from late notice, whereas Illinois law treats prejudice as only one factor in assessing reasonableness. Applying Illinois choice-of-law rules, the court concluded that New York law governed. The court held that Pohjola failed to establish actual prejudice as a matter of law. Although Pohjola argued that earlier notice would have allowed it to participate in claims handling and potentially reduce defense costs, the court noted that New York courts have rejected similar speculative assertions. Pohjola offered no concrete evidence that earlier involvement would have reduced Continental's payments. Accordingly, Pohjola was not entitled to summary judgment on its late notice defense.

COMMENTS

This case underscores the challenges in long-tail insurance disputes where original policies or reinsurance agreements may be lost or destroyed. It also reaffirms that, following a diligent search, parties may rely on secondary evidence to prove the existence and terms of historical insurance coverage—and that such evidence may be sufficient to reach a jury, even decades later.

No Coverage Under Cyber Policy For Law Firm Defrauded By Imposter

HOLDING

A Mississippi federal district court ruled that a law firm was not entitled to coverage under its cyber insurance policy's Social Engineering endorsement for losses resulting from a fraudulent inducement to transfer funds. *Gore, Kilpatrick & Dambrino, PLLC v. Spinnaker Ins. Co.*, 2026 U.S. Dist. LEXIS 69567 (N.D. Miss. Mar. 31, 2026).

BACKGROUND

Gore, Kilpatrick & Dambrino PLLC ("Gore"), a law firm, secured cyber insurance coverage from Spinnaker Insurance Company ("Spinnaker"), which included an endorsement for coverage for Social Engineering Incidents. This endorsement provides coverage for instances where an insured is misled into transferring funds due to fraudulent misrepresentations. A Social Engineering Incident is defined in relevant part as:

> [T]he intentional misleading of an Insured to transfer Money to a person, place or account . . . resulting directly from . . . good faith reliance on an instruction . . . purporting to be from . . . a natural person or entity who exchanges, or is under contract to exchange, goods or services with the Named Insured for a fee . . . but which contained a fraudulent and material misrepresentation and was sent by an imposter.

In May 2024, an imposter posing as David Casteel, a supposed representative of Brooks Machinery, contacted the firm. The imposter claimed to be seeking to recover a debt from Mid-Delta Equipment. The imposter engaged the firm with a signed letter of engagement and fee agreement. In June 2024, the firm received a check from Mid-Delta Equipment for $158,850 to settle the debt. Following the imposter's instructions, the firm deducted their fee of $425 and wired the remaining balance to the imposter. The check later bounced.

After Spinnaker denied Gore's insurance claim, the firm filed suit against Spinnaker and two others asserting breach of contract, bad faith, and various other causes of action.

DECISION

The court ruled in favor of Spinnaker, granting its motion to dismiss. The court determined that the breach of contract claim failed because the real David Casteel was not, in fact, a client of Gore's, and had never contracted with the firm. Under the plain language of the policy, the Social Engineering endorsement required that the imposter purport to be a person or entity with whom Gore had an existing contractual relationship for goods or services. Since the real Casteel had never been a client of the firm, the court determined that coverage did not apply. The court also dismissed the bad faith claim, as it was contingent on the breach of contract claim.

COMMENTS

This case highlights the potential limitations of cyber coverage under Social Engineering endorsements, reinforcing that coverage is determined by the specific language and terms of the policy.

Delaware Chancery Court Rules Speculative Insurance Rights Are Not Assets In Asbestos-Related Dissolution Dispute

HOLDING

The Delaware Chancery Court denied a petition to void the certificate of cancellation for Reinz Wisconsin Gasket Company ("RWG"). The court determined that alleged insurance rights did not constitute "assets" under the Delaware LLC Act, and thus RWG's dissolution complied with the law. *In re Reinz Wis. Gasket LLC*, 2026 Del. Ch. LEXIS 164 (Del. Ch. Apr. 2, 2026).

BACKGROUND

The petitioner, a widow of a decedent pursuing an asbestos-related wrongful death claim, alleged that RWG was obligated to preserve assets, including insurance policies and related claims, to cover both current and future asbestos liabilities under the Delaware LLC Act. She contended that, at the time of dissolution, RWG's principal assets constituted unexhausted insurance policies and related insurance coverage claims. She argued that RWG's failure to preserve these rights rendered its dissolution invalid under Sections 18-803 and 18-804 of the Delaware LLC Act.

DECISION

The court's analysis focused on whether the alleged insurance rights qualified as assets under Delaware law. Citing *In re Krafft-Murphy Co.*, 82 A.3d 696, 701 (Del. 2013), the court held that contingent rights, such as insurance policies, can only be considered assets if they are "capable of vesting" and "represent significant potential indemnification value to the company." The petitioner failed to meet this standard.

First, the court found insufficient evidence that specific asbestos-era insurance policies even existed. The record contained only fragmentary references—such as correspondence and internal insurer memoranda—lacking concrete policy details. Without evidence of the policies' existence, the court concluded they could not be treated as assets.

Second, the court rejected the argument that insurance coverage for historical asbestos exposure transferred to RWG through a 1981 asset sale. The purchase agreement referenced the policies but did not provide sufficient documentation to confirm their transfer. Accordingly, the court concluded that RWG could not claim coverage for pre-sale asbestos liabilities.

Third, the court held that post-sale Travelers umbrella policies offered no value for asbestos claims. These policies only applied after the exhaustion of underlying primary coverage, and the petitioner offered no evidence that this prerequisite had been met. The court also noted that RWG lacked the resources to exhaust primary coverage. Although the court acknowledged the theoretical possibility that someone other than RWG could exhaust the underlying policies, it found no evidence making that scenario realistic. Because the umbrella policies could not be invoked on the record presented, they were not assets that could vest.

Finally, the court rejected the petitioner's claims related to potential insurance litigation and fiduciary duty breaches. Without viable insurance coverage, the court ruled these claims lacked value. Concluding that RWG had no assets to preserve, the court affirmed the validity of the dissolution.

COMMENTS

This decision underscores a critical aspect of asbestos litigation, where insurance frequently serves as the primary source of recovery. However, Delaware courts may not recognize speculative or unverifiable insurance rights as assets, particularly when such coverage cannot be proven to exist or realistically accessed.

Eighth Circuit Affirms No Coverage Under Pollution Exclusion For Carbon Monoxide Injuries

HOLDING

The Eighth Circuit affirmed summary judgment in favor of an insurer, holding that a liability insurance policy's pollution exclusion bars coverage for injuries caused by carbon monoxide emissions. *N. Star Mut. Ins. Co. v. Rodin*, 2026 U.S. App. LEXIS 9969 (8th Cir. Apr. 7, 2026).

BACKGROUND

An employee of a farm sued its owners, the Rodins, for cardiovascular and neurological injuries resulting from exposure to carbon monoxide emissions from a space heater. After the underlying suit was filed, the Rodins' insurer, North Star Mutual Insurance Company ("North Star"), filed a declaratory judgment action in federal district court seeking a declaration that coverage was barred by the policy's pollution exclusion. The policy excludes coverage for: "'bodily injury' or 'property damage' that results from the actual, alleged, or threatened discharge, dispersal, seepage, migration, spill, release, or escape of 'pollutants' into or upon land, water, or air." It defines "pollutant" as: "any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste."

Both parties moved for summary judgment. The district court granted North Star's motion and denied the Rodins' motion. On appeal, the Rodins sought certification to the North Dakota Supreme Court of whether, under North Dakota law, "North Star Mutual Insurance Company's 'pollution' exclusion appl[ies] to exclude coverage for an individual bodily injury claim allegedly due to carbon monoxide exposure caused by a portable heater being used to heat a farm shop[.]"

DECISION

The Eighth Circuit first denied the Rodins' request for certification. The court emphasized that post-judgment certification is disfavored and appropriate only in limited circumstances, warning that permitting certification after an adverse ruling would render district court decisions "nothing but a gamble."

On the merits, and in the absence of North Dakota precedent, the Eighth Circuit applied North Dakota rules of contract interpretation. The court noted that the North Dakota courts "will not rewrite a contract to impose liability on an insurer if the policy unambiguously precludes coverage." Applying that framework, the court held that the exclusion unambiguously barred coverage. The court focused on whether the alleged carbon monoxide injuries constituted a "discharge" of a "pollutant." Relying on dictionary definitions, the court concluded that the heater's emission of carbon monoxide constituted a "discharge," as the term encompasses the release of fumes. The court further held that carbon monoxide qualified as a "pollutant" under the policy. Specifically, it determined that carbon monoxide is a "gaseous . . . contaminant" that can "render air 'unfit for use' if introduced at high levels." Because the injuries arose from the discharge of a pollutant into the air, the court held that the pollution exclusion applied and affirmed judgment for North Star.

COMMENTS

Courts addressing coverage for carbon monoxide claims have reached divergent results, often depending on how they interpret the scope of the pollution exclusion. Some jurisdictions, invoking the reasonable expectations doctrine, limit such exclusions to "traditional environmental pollution." Other courts, including the Eighth Circuit in this case, apply the exclusion according to its plain language to cover indoor emissions such as carbon monoxide.

California State And Federal Courts Address Application Of Silica And Pollution Exclusions In Commercial General Liability Policies

HOLDING

Several courts in California have declined to dismiss, at the pleadings stage, coverage actions by stone manufacturers and distributors seeking defense and indemnity for hundreds of underlying lawsuits by workers alleging silicosis and related injuries from exposure to silica-containing dust released during stone fabrication. *Arizona Tile, LLC v. Travelers Prop. Cas. Co. of Am.,* Case No. 25STCV02521 (Cal. Super. Ct. L.A. Cty. Mar. 10, 2026); *C & C North Am., Inc. v. ACE Prop. and Cas. Ins. Co.*, Case No. 24STCV18642 (Cal. Super. Ct. L.A. Cty. Mar. 10, 2026); *Sompo Am. Ins. Co. v. LX Hausys Am., Inc.*, 2025 U.S. Dist. LEXIS 271754 (C.D. Cal. Dec. 22, 2025); *Hanover Am. Ins. Co. v. Francini, Inc.*, 2026 U.S. Dist. LEXIS 84338 (C.D. Cal. Mar. 31, 2026); *Regent Ins. Co., et al. v. Cambria Enter., et al.*, No. 2:25-cv-4142 MRA (MAAx) (C.D. Cal. Mar. 31, 2026); *Pac. Shore Stones, LLC, et al. v. Allied Prop. & Cas. Co., et al.*, 2026 U.S. Dist. LEXIS 86260 (C.D. Cal. Mar. 31, 2026); *Surface Warehouse LP v. Charter Oak Fire Ins. Co.*, 2026 U.S. Dist. LEXIS 85579 (C.D. Cal. Mar. 31, 2026).

BACKGROUND

More than 400 lawsuits nationwide allege that stoneworkers were exposed to respirable crystalline silica, metals, and organic compounds released from stone products containing 95-99% silica. The workers claim that the fabrication process generated large amounts of highly concentrated respirable silica dust which caused silicosis and related diseases.

The underlying defendants contend that their insurers owe a duty to defend and indemnify these claims. Insurers contend that coverage is barred by silica and/or pollution exclusions. In response, insureds argue that: (1) alleged exposures involve both silica and non-silica substances, rendering the silica exclusions inapplicable; (2) enforcing the exclusions would render coverage illusory; (3) pollution exclusions do not apply because the alleged release of toxic matter occurred within fabrication facilities and therefore does not constitute "traditional environmental pollution"; and (4) certain pollution exclusions requiring contractor involvement are not triggered. Insurers counter that: (1) the silica exclusions apply whether silica is the sole cause or not; (2) injuries are inherently tied to silica exposure; (3) the illusory coverage doctrine cannot override clear policy language; (4) California appellate courts have recognized industrial silica dust as pollution; and (5) the locational requirement of certain pollution exclusions is satisfied because fabrication occurred on behalf of insureds.

DECISION

A California state court declined to dismiss two coverage actions, finding that resolution of the exclusions requires evidence outside the pleadings. With respect to a silica exclusion barring coverage for bodily injury "arising out of or in any way related to" the "handling, contact with, exposure to or inhalation or respiration of silica or products or substances containing silica," the court noted that application of the exclusion depends on facts such as whether insureds' products contained

silica, the scope of available products liability coverage, and the parties' course of dealing. The courts stated that application of pollution exclusions similarly depends on factual questions regarding the extent of dust dispersion and, where applicable, whether stoneworkers were contractors or subcontractors working directly or indirectly on the insureds' behalf.

Federal district courts in the Central District of California reached similar conclusions, denying insurers' motions for judgment on the pleadings, either in whole or in part. With respect to certain silica exclusions barring coverage for injury arising in whole or in part out of silica or silica-related dust, these courts emphasized that, under the concurrent proximate cause doctrine, where injuries arise from both silica and non-silica matter, coverage cannot be excluded at this stage. They also noted that certain broad silica exclusions barring coverage for injury related to a product or substance containing silica could render coverage illusory if applied strictly based on current allegations. Notably, however, the courts granted judgment on the pleadings where silica exclusions barred coverage for claims involving non-silica substances that are part of any claim or suit alleging silica-based injuries. Rulings on the pollution exclusions were largely consistent with the state court decisions. In several cases, insurers have sought interlocutory appellate review, which remains pending.

COMMENTS

These cases raise significant issues regarding the interpretation of silica and pollution exclusions in commercial general liability policies. The determination of whether the concurrent proximate cause and "illusory" coverage doctrines are applicable may shape the resolution of current and future disputes involving insurers' duties to defend and indemnify silica-related claims.

Chubb Permitted To Exclude Shareholder Climate Proposal From Proxy Materials

HOLDING

The U.S. District Court for the District of Columbia denied a preliminary injunction seeking to compel Chubb Ltd. to include a shareholder's climate-related proposal in its proxy materials, finding that the proposal arguably falls in the "ordinary business" exemption to the SEC rule that requires companies to include shareholder proposals in their annual proxy materials. *As You Sow v. Chubb Ltd.*, 2026 U.S. Dist. LEXIS 69901 (D.D.C. Mar. 31, 2026).

BACKGROUND

As You Sow, a non-profit shareholder advocacy organization and Chubb shareholder, submitted a proposal for inclusion in Chubb's proxy materials which "request[ed] that Chubb issue a third-party report assessing if and how pursuing subrogation claims for climate-related losses would benefit the Company and its insureds." Under SEC Rule 14a–8, companies are required to include qualified shareholder proposals in their proxy materials unless they fall into one of thirteen enumerated exemptions. Relevant here is the "ordinary business operations" exemption, which permits exclusion of proposals relating to a company's day-to-day operations. Chubb notified the SEC that it intended to exclude the As You Sow proposal, asserting that it fell into the "ordinary business" exemption to Rule 14a-8 and "impermissibly [sought] to micromanage the company." The shareholder filed suit, alleging that Chubb violated Rule 14, and moved for a preliminary injunction requiring inclusion of the proposal in the proxy materials for the May 2026 shareholder meeting. Chubb opposed the motion and moved to dismiss the complaint for failure to state a claim.

DECISION

The court emphasized the limited and inconsistent guidance on the scope of the "ordinary business" exemption, noting tension between two SEC interpretive releases: one suggesting that a proposal must center on a significant social policy issue to avoid the exemption, and another indicating that merely "involv[ing]" such an issue may suffice. Chubb argued that decisions regarding whether to pursue subrogation claims are part of its day-to day business operations and that these decisions are made on a "case-by-case basis *after* a particular loss has occurred." Applying the heightened standard for preliminary relief, the court stated that a preliminary injunction is an "extraordinary remedy" requiring a clear showing of entitlement. It concluded that, even under its preferred interpretive approach, As You Sow failed to demonstrate that "a report assessing climate-related subrogation claims transcends Chubb's routine subrogation-claim practices." Accordingly, the court denied the motion for a preliminary injunction. The court also denied Chubb's motion to dismiss without prejudice.

COMMENTS

As climate-related losses rise, shareholders have been pushing companies, including insurers, to address how their business practices respond to climate risk. The court's reasoning suggests that climate-focused proposals may be excluded if they target operational decisions like claims handling or subrogation. How courts and regulators navigate this overlap will shape the future of shareholder influence in the insurance sector.

English Commercial Court Addresses Scope Of Solicitors' Professional Indemnity Cover In Litigation Funding Scheme Dispute

HOLDING

The English Commercial Court held that obligations owed by solicitors' firms to an after-the-event ("ATE") insurer under terms of business agreements were commercial—not solicitorial—in nature and therefore fell outside the scope of the firms' professional indemnity ("PI") cover. The court also held that the ATE insurer's right to subrogation under the PI insurance policy depended on whether the insurer's payments were made under the ATE policies or a separate deed of indemnity. *Novitas Loans Limited v AmTrust Specialty Limited (& Ors)* [2026] EWHC 592 (Comm) (16 March 2026).

BACKGROUND

The dispute arose from a failed litigation funding scheme (the "Scheme") involving approximately 20,000 underlying consumer claims.

Under the Scheme, each client entered into: (1) a conditional fee agreement with a solicitors' firm; (2) a non-recourse loan with Novitas Loans Limited ("Novitas") to fund litigation expenses; and (3) an ATE policy issued by AmTrust Specialty Limited ("AmTrust") to cover disbursements and adverse costs.

If a claim succeeded, Novitas, the lender, would be paid from recoveries. If the claim failed, the ATE policy was intended to both repay the Novitas loan and cover adverse costs. A separate deed of indemnity (the "Deed of Indemnity") required AmTrust to indemnify Novitas in respect of any loan sum that the client could have claimed under the ATE policy, had AmTrust not rejected the claim or avoided the ATE policy.

The two principal solicitors' firms in the Scheme were Pure Legal Limited and High Street Solicitors Limited. Both firms became insolvent and were insured under standard form PI policies.

AmTrust settled with Novitas for £48.5 million under the Deed of Indemnity in relation to sums loaned to clients that had not been repaid. AmTrust then sought to recover its losses from the PI policy insurer, alleging that the firms had breached duties owed under their Terms of Business Agreements ("TOBAs") with AmTrust's agent, and asserting subrogated claims on behalf of the firms' underlying clients.

DECISION

Of the nineteen issues before the Commercial Court, the key preliminary issues were decided as follows:

First, the court determined that AmTrust's claims fell outside the insuring clause of the PI policies, which required the relevant liabilities to arise "out of and/or in connection with the conduct of any Professional Business." The court distinguished the duties owed by the firms to AmTrust under the TOBAs from those the firms owed to their clients. The court found that duties arising under the TOBAs were not solicitorial duties but rather commercial obligations under a litigation funding

arrangement. This decision aligns with the distinction recognized in *Impact Funding Solutions Ltd v Barrington Support Services Ltd* [2016] UKSC 57 between solicitor-client obligations and separate commercial dealings.

Second, the court ruled that AmTrust's claims against each firm constituted a single "Claim," limiting AmTrust's potential recovery to a single £3 million per firm under the ATE policy. The court noted that even if multiple claims had been made, they would have been aggregated under the PI policies as they stemmed from "one matter or transaction"—namely, the relevant TOBA.

Third, the court held that AmTrust's subrogation rights depended on the legal basis of payment; payments AmTrust made under the Deed of Indemnity with Novitas (which was premised on the client not being entitled to claim under the ATE policy), rather than pursuant to the ATE policy, did not give rise to subrogation rights. The question of whether AmTrust's payments were, in fact, made under the Deed of Indemnity or under the ATE policies remains to be resolved in further proceedings.

COMMENTS

The court's finding that AmTrust's claims fell entirely outside the scope of PI cover because the duties owed under the TOBAs were commercial rather than solicitorial in nature is significant for PI insurers assessing their exposure in litigation funding disputes.

The subrogation analysis also offers a cautionary lesson for ATE insurers operating within complex funding structures. The court made clear that an ATE insurer's right of subrogation turns on the legal basis of its payments, not the identity of the recipient. Where an ATE insurer makes payments under a separate contract, such as a deed of indemnity with a lender, rather than pursuant to the ATE policy itself, those payments may (subject to the terms of the applicable contracts) not give rise to subrogation rights. For insurers and participants in litigation funding schemes, the case underscores the need for careful drafting of agreements and a clear understanding of how risk is allocated across multiple parties.

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Simpson Thacher has been an international leader in the practice of insurance and reinsurance law for more than a quarter of a century. Our insurance litigation team practices worldwide.

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Simpson Thacher

In February 2026, Simpson Thacher announced plans to expand its presence in Texas with an office in Dallas.
*** In April 2026, Simpson Thacher announced plans to expand its presence in Asia with an office in Singapore.*

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