

Insurance Law Alert

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– Chambers USA 2025
(quoting a client)

Delaware Supreme Court Holds That “Bump-Up” Exclusion Does Not Bar Coverage For Securities Class Action Settlement

The Delaware Supreme Court affirmed a Superior Court judgment that a bump-up exclusion in a Directors and Officers (D&O) policy did not bar coverage for the settlement of securities litigation arising from an acquisition because the settlement did not increase the deal consideration. *Ill. Nat’l Ins. Co. v. Harman Int’l Indus., Inc.*, 2026 Del. LEXIS 30 (Del. Jan. 27, 2026). ([Click here for full article](#))

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The Nevada Supreme Court ruled that an excess insurer may seek equitable subrogation against a primary insurer that declined reasonable settlement offers within the primary insurer’s policy limits and ultimately settled within the total limits of the primary and excess policies combined. *N. River Ins. Co. v. James River Ins. Co.*, 2026 Nev. LEXIS 8 (Nev. Jan. 29, 2026). ([Click here for full article](#))

Eleventh Circuit Confirms No Coverage For Invasion-Of-Privacy Verdict Due To Untimely Notice

Applying Alabama law, the Eleventh Circuit held that late notice barred coverage for a \$10 million invasion-of-privacy award. The court found a 58-month delay precluded coverage even though the delay was the policyholder’s fault and not the tort plaintiff who had sued the insurer under Alabama’s direct action statute to satisfy the judgment against the policyholder. *A.B. v. Barrow*, 163 F.4th 1336 (11th Cir. 2026). ([Click here for full article](#))

English Commercial Court Decides Novel Mortgagee’s Interest Insurance Claim

The English Commercial Court has, for the first time, considered language in a mortgagee’s interest insurance (“MII”) policy based on the 1997 Institute Mortgagees’ Interest Clauses wording. The court considered the requirement that an insured peril occur without the “privity” of the assured and held that there was no “privity,” as the assured’s consent had been obtained by fraud. The court was also satisfied that the proximate cause of the claimant’s loss was a mine strike in Ukrainian waters—a loss that was prima facie covered under the MII policy. *Oceanus Capital SARL v Lloyd’s Insurance Company SA (Re M/V Vyssos)* [2025] EWHC 3293 (Comm) (17 December 2025). ([Click here for full article](#))

English Commercial Court Provides Guidance On Policy Limits In Multi-Party Insurance Arrangements

The English Commercial Court held that a policy with an indemnity limit for “*all Residential Property’s [sic] in one continuous structure*” gave rise to a single, aggregate, limit for all insureds in a block of flats rather than providing a separate indemnity limit for each individual flat. *Acasta European Insurance Company Ltd v Eshiett & Ors* [2026] EWHC 71 (Comm) (16 January 2026). ([Click here for full article](#))



Third Circuit And Illinois Supreme Court Each Hold That A Pollution Exclusion Bars Coverage For EtO Emissions, Rejecting Policyholder Arguments For Coverage Based On Government Permits

HOLDING

In a pair of recent decisions, the Third Circuit—applying Pennsylvania law—and the Illinois Supreme Court both ruled that pollution exclusion clauses in general liability insurance policies precluded coverage for claims alleging harm caused by emissions of ethylene oxide gas (EtO). In each case, the court rejected the policyholder’s argument that the exclusions should be construed not to apply because, according to the policyholder, its emissions of EtO were authorized by government permits. The decisions, addressed further below, are *Noetic Specialty Ins. Co. v. B. Braun Med., Inc.*, 2025 U.S. App. LEXIS 33911 (3d Cir. Dec. 30, 2025) and *Griffith Foods Int’l, Inc. v. Nat’l Union Fire Ins. Co.*, 2026 Ill. LEXIS 3 (Ill. Jan. 23, 2026).

Third Circuit Ruling – *Noetic Specialty Ins. Co. v. B. Braun Med., Inc.*, 2025 U.S. App. LEXIS 33911 (3d Cir. Dec. 30, 2025)

BACKGROUND

B. Braun Medical, Inc., a medical device manufacturer, faced lawsuits from Pennsylvanians who alleged that EtO emissions from its manufacturing facility harmed them. B. Braun sought defense coverage from its general liability insurer, Noetic Specialty Insurance Company. Noetic declined coverage and sought a declaratory judgment that it had no duty to defend or indemnify B. Braun.

Noetic argued the policies’ pollution exclusion barred coverage. The pollution exclusion excludes coverage for bodily injury caused by “pollutants,” defined as “any solid, liquid, gaseous, or thermal irritant or contaminant.” B. Braun contended that coverage was not precluded because the exclusion’s “regulatory clearance” exception applied because the company had obtained permits for its operations from the Pennsylvania Department of Environmental Protection and the FDA. The regulatory clearance exception provides that the pollution exclusion does not apply when either the insured’s “Product” or “Work” has been cleared by a regulatory authority “for marketing with a specific indication for medical, diagnostic, or therapeutic use.”

The district court granted Noetic’s motion for judgment on the pleadings, concluding the exclusion unambiguously applied under Pennsylvania law.

DECISION

The Third Circuit affirmed. As an initial matter, the court concluded that EtO, described in the underlying complaints as a “powerful cancer-causing gas” that is “dangerous, toxic, carcinogenic and mutagenic,” was at least an “irritant” and thus implicated the pollution exclusion.

Additionally, the court rejected B. Braun’s argument that the “regulatory clearance” exception to the pollution exclusion should apply. The court cited two reasons. First, the term “Product” is defined in the policy as something “designed, developed, manufactured, sold, handled, or distributed by” B. Braun, but EtO, which B. Braun used to sterilize its medical devices, was not its “Product.” Second, the court held that the two regulatory permits B. Braun had cited did not satisfy the exclusion’s “regulatory clearance” exception. The court reasoned that the permits were inapplicable because they did not address EtO emissions.

Illinois Supreme Court Ruling – *Griffith Foods Int’l, Inc. v. Nat’l Union Fire Ins. Co.*, 2026 Ill. LEXIS 3 (Ill. Jan. 23, 2026)

BACKGROUND The coverage dispute arose from underlying tort litigation alleging that a medical-equipment sterilization facility’s EtO emissions had harmed nearby residents. Griffith Foods International, Inc., and its corporate successor, Sterigenics U.S., LLC, brought a declaratory judgment action against its insurer, National Union, seeking a ruling that the insurer had a duty to defend under certain commercial general liability policies. The policies included a pollution exclusion barring coverage for “bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.”

The federal district court held that National Union had a duty to defend, finding that the pollution exclusion did not apply because the EtO was emitted pursuant to a permit issued by the Illinois Environmental Protection Agency.

On appeal, the Seventh Circuit certified the following question to the Illinois Supreme Court: “[W]hat relevance, if any, does a permit or regulation authorizing emissions (generally or at any particular levels) play in assessing the application of a pollution exclusion within a standard-form commercial general liability policy?” National Union argued that the permit was irrelevant because the pollution exclusion at issue did not include an exception for government-authorized pollution. The policyholders contended that the permit created an ambiguity as to whether permitted emissions constitute “pollution” for purposes of the exclusion.



DECISION

In answering the certified question, the Illinois Supreme Court ruled that whether the emissions were allowed under a permit was “irrelevant” to the application of the pollution exclusion.

The Illinois Supreme Court reasoned that the discharge of EtO emissions into the atmosphere “fits squarely within [the] plain language” of the pollution exclusion. The court noted that the exclusion says “*nothing* about permitted or authorized pollution,” and that the permit did not change the character of the EtO emissions as pollution. Quoting the Seventh Circuit’s decision in *Scottsdale Indemnity Co. v. Village of Crestwood*, 673 F.3d 715 (7th Cir. 2012), the Illinois Supreme Court stated that “[a]ll that counts is that the suits are premised on a claim that the [emissions] caused injuries for which the plaintiffs are seeking damages, and that claim triggers the pollution exclusion.”

COMMENTS

Taken together, these two appellate rulings from the Third Circuit and the Illinois Supreme Court suggest a recent trend to read the plain language of pollution exclusion clauses as broadly precluding coverage for any bodily injury “arising out of” the emission of pollutants—even including EtO emissions that were purportedly authorized by government permits. It is worth noting, however, that another recent decision by the Delaware Superior Court, *Syngenta Crop Prot. v. Travelers Cas. & Sur. Co.*, No. N21C-05-143 (Del. Super. Ct. Jan. 30, 2026), espoused a narrower view—holding that the pollution exclusion at issue applied only to “traditional environmental contamination” and not harms allegedly caused by ordinary use of the herbicide paraquat.



Delaware Supreme Court Holds That “Bump-Up” Exclusion Does Not Bar Coverage For Securities Class Action Settlement

HOLDING The Delaware Supreme Court affirmed a Superior Court judgment that a bump-up exclusion in a Directors and Officers (D&O) policy did not bar coverage for the settlement of securities litigation arising from an acquisition because the settlement did not increase the deal consideration. *Ill. Nat’l Ins. Co. v. Harman Int’l Indus., Inc.*, 2026 Del. LEXIS 30 (Del. Jan. 27, 2026).

BACKGROUND This coverage dispute stems from the 2017 acquisition of Harman International Industries, Inc. by Samsung Electronics Co., Ltd. Following the transaction, former Harman shareholders filed a class action alleging that Harman made false and misleading statements in violation of Section 14(a) of the Securities and Exchange Act of 1934 in order to secure their approval of the acquisition.

After Harman settled the class action for \$28 million, it sought coverage from three insurers. The insurers declined coverage, relying on a bump-up exclusion in the D&O policies.

The bump-up provision provides, in relevant part:

In the event of a Claim alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, Loss with respect to such Claim shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased . . .

On summary judgment, the Superior Court held that, for the exclusion to apply to an “acquisition,” an insurer must establish that: (1) the underlying settlement is related only to the allegation of inadequate deal consideration; and (2) the underlying settlement represented an effective increase in consideration. As reported in our [January 2025 Alert](#), the Superior Court ruled in Harman’s favor, concluding that neither requirement was satisfied and that the exclusion did not apply. The insurers appealed.

DECISION The Delaware Supreme Court articulated a two-step test to determine whether the bump-up exclusion applied. The first step requires consideration of whether the claim underlying the settlement alleged inadequate deal consideration for the transaction. If so, then the second step requires consideration of whether the settlement amount, or any portion thereof, represented an effective increase in consideration.

The court concluded that the first requirement of the bump-up exclusion was satisfied. The court reasoned that allegations of inadequate consideration are “intrinsic” to the theory of the Section 14(a) claim. The court noted that the

class action complaint alleged that the false and misleading proxy deprived the shareholders of the full value of their shares and that the shareholders' losses were the difference between the price the shareholders received and Harman's true value at the time of the acquisition.

Nevertheless, the court concluded that the second requirement—whether the settlement amount represented an effective increase in deal consideration—was not met. The court determined that the settlement did not effectively increase consideration because the settlement class was not limited to shareholders who held stock through the transaction's closing date. As a result, not all class members relinquished shares in the transaction in exchange for consideration that could be increased. The court also noted that there was no expert analysis of stock valuation difference and that the settlement amount fell within the \$25 million to \$30 million in litigation costs Harman estimated it would have incurred if the case had continued.

Chief Justice Seitz and Justice Traynor dissented as to the majority's analysis of the second requirement. The dissent found the Fourth Circuit's reasoning in *Towers Watson & Co. v. National Union Fire Insurance Co. of Pittsburgh*, 138 F.4th 786 (4th Cir. 2025) (*Towers II*) more persuasive. As reported in our [June 2025 Alert](#), in *Towers II*, the Fourth Circuit concluded that, if shareholders receive additional consideration for their relinquished shares, then the bump-up exclusion applies. Applying that approach, the dissent reasoned that "at least some of the class held their shares through closing and received their *pro rata* portion of the Settlement Consideration—effectively increasing the consideration they received for the Transaction." The dissent also warned that a fact-intensive inquiry into settlement motivations risks inefficiency and may encourage collusive settlements, favoring instead a more straightforward examination of the settlement's practical effect.

COMMENTS

The Delaware Supreme Court's ruling departs from a line of cases in other jurisdictions holding that bump-up exclusions bar coverage for settlements of shareholder suits challenging the transaction price in a merger or acquisition. However, as the dissenting justices noted, there are significant concerns that the majority opinion could lead to policyholders attempting to manipulate settlements in an effort to obtain coverage. It is likely that the applicability of bump-up exclusions will continue to be litigated in coverage disputes in Delaware.



Nevada Supreme Court Holds That Excess Insurer May Seek Equitable Subrogation Against Primary Insurer For Failure To Reasonably Settle

HOLDING

The Nevada Supreme Court ruled that an excess insurer may seek equitable subrogation against a primary insurer that declined reasonable settlement offers within the primary insurer's policy limits and ultimately settled within the total limits of the primary and excess policies combined. *N. River Ins. Co. v. James River Ins. Co.*, 2026 Nev. LEXIS 8 (Nev. Jan. 29, 2026).

BACKGROUND

In the course of defending an underlying lawsuit against an insured, primary insurer James River Insurance Co. declined three settlement offers at or below its \$1 million policy limit, and the case ultimately settled for \$5 million. Because the settlement exceeded James River's policy limit, James River contributed its \$1 million limit and excess insurer North River Insurance Co. funded the remaining \$4 million under protest.

North River then sued James River in California federal court for equitable subrogation, alleging that James River violated its duty of good faith and fair dealing by rejecting reasonable settlement offers within the primary policy limits, and sought \$4 million in damages. Relying on two unpublished Nevada Supreme Court orders, the district court dismissed the case, concluding that North River had no equitable subrogation claim because the underlying suit settled within the total limits of the primary and excess policies combined, and, therefore, North River could not assert damages on behalf of its insured.

North River appealed to the Ninth Circuit, which determined that the unpublished orders did not constitute binding precedent and certified the following question to the Nevada Supreme Court: "Under Nevada law, can an excess insurer state a claim for equitable subrogation against a primary insurer where the underlying lawsuit settled within the combined policy limits of the insurers?"



DECISION

The Nevada Supreme Court answered that “an excess insurer may seek equitable subrogation against a primary insurer who fails to settle within primary policy limits when the insured, but for the excess insurer’s contribution to the settlement, would have had a claim against the primary insurer for its failure to reasonably settle.” The court further explained that “equitable subrogation allows the excess insurer to stand in the shoes of the insured and assert all claims against the primary insurer that the insured itself could have asserted.”

The court reasoned that “[a]n insurer’s duty to act in good faith does not simply disappear when a prudent insured has obtained excess coverage.” Because James River would face \$4 million in liability in an action brought by the insured for its alleged bad faith failure to settle, the court held that James River faces the same liability in a suit brought by North River. The court also explained that “[i]t is not a prerequisite to equitable subrogation that the subrogor suffered actual loss; it is required only that he would have suffered loss had the subrogee not discharged the liability or paid the loss.”

COMMENTS

The decision establishes binding precedent in Nevada on previously unsettled issues concerning equitable subrogation rights between insurers. The court also addressed fairness and public policy concerns that could arise if excess insurers lacked subrogation rights:

[I]f the primary carrier is relieved of its duty to accept reasonable offers by the existence of excess insurance, it would put an additional financial liability on the excess carrier which would be reflected in increased premiums. It would also have the effect of reducing the incentive of a primary insurer to settle when the settlement offer is near or over its policy limits. This is contrary to the interests of the public and the insured in obtaining prompt and just settlement of claims.

The decision aligns Nevada with other jurisdictions—California, Hawaii, Missouri, Oregon and Texas—that have allowed excess insurers to seek equitable subrogation from primary carriers that unreasonably refuse settlement offers within policy limits.



Eleventh Circuit Confirms No Coverage For Invasion-Of-Privacy Verdict Due To Untimely Notice

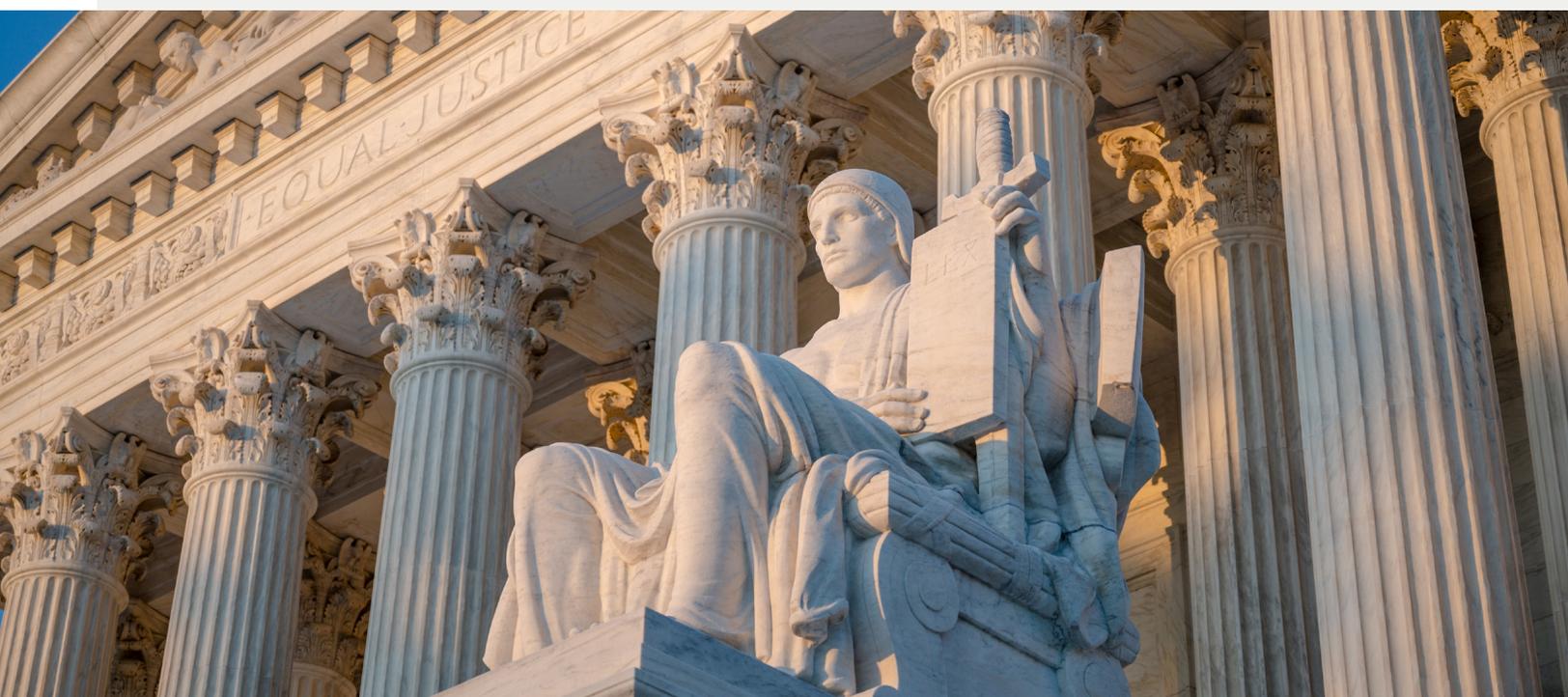
HOLDING

Applying Alabama law, the Eleventh Circuit held that late notice barred coverage for a \$10 million invasion-of-privacy award. The court found a 58-month delay precluded coverage even though the delay was the policyholder’s fault and not the tort plaintiff who had sued the insurer under Alabama’s direct action statute to satisfy the judgment against the policyholder. *A.B. v. Barrow*, 163 F.4th 1336 (11th Cir. 2026).

BACKGROUND

The policyholder, Barrow, was insured under an umbrella liability policy issued by Nationwide Mutual Insurance Co. Barrow allegedly abused a minor, A.B. A.B. filed two lawsuits against Barrow, one for invasion of privacy and the other under Alabama’s Fraudulent Transfer Act. A.B. was awarded \$10 million in damages in the invasion-of-privacy suit. During discovery in the fraudulent transfer litigation, A.B.’s attorney became aware of the Nationwide policy. A.B. then sued Nationwide under Alabama’s Direct Action Statute to satisfy the \$10 million judgment. The district court entered summary judgment for Nationwide.

Although Nationwide received constructive notice in 2018 of Barrow’s 2013 conduct when A.B.’s attorney served a subpoena on Nationwide, the district court determined that the 58-month delay in giving notice required a reasonable excuse and that Barrow “offered no excuse or explanation for his failure to notify Nationwide.” The district court further held that A.B.’s ignorance of the policy’s existence did not excuse the delay because Alabama law is clear that “the excuse is tied to the policy holder.”



DECISION

The Eleventh Circuit affirmed, holding that notice was untimely under Alabama law. In its timeliness determination, the court examined two issues: (1) whether the policy permitted A.B.’s attorney to provide notice on Barrow’s behalf; and (2) whether notice was given “as soon as reasonably possible,” as required by the policy.

The policy language required Barrow, the insured, “or someone on [his] behalf” to provide written notice to Nationwide of the occurrence as “soon as reasonably possible.” After detailing Alabama precedent recognizing that an injured party may provide notice, the court held that “A.B.’s attorney was authorized to provide notice under the policy and did so in Barrow’s interest and benefit” because the attorney was “attempting to satisfy a condition precedent that would increase Barrow’s chances of obtaining coverage.”

Despite finding the notice provided by A.B.’s attorney was authorized, the Eleventh Circuit concluded that it was untimely. The court explained that, under Alabama law, the timeliness inquiry “turns not on equitable considerations but on the *reason* for the delay itself,” and that the relevant perspective is the insured’s—not a third party’s. It was therefore irrelevant that A.B.’s attorney had a reasonable excuse for giving notice 58 months after the occurrence and acted promptly after discovering the policy. Under Alabama law, even a five-month delay “require[s] the insured to offer evidence of a reasonable excuse for the delay,” and neither Barrow nor A.B. provided any excuse for Barrow’s delay between the 2013 occurrence and the 2018 notice.

COMMENTS

In ruling that the policyholder’s delay in providing notice precluded the tort plaintiff from recovering from the insurer directly, the Eleventh Circuit noted that, although the policy authorized notice from a person on behalf of Barrow, “it does not reset the notice clock for that person.” The court also emphasized that, as a third-party claimant proceeding through Barrow, A.B. could not “obtain greater rights under the policy than Barrow himself possessed.”



English Commercial Court Decides Novel Mortgagee’s Interest Insurance Claim

HOLDING

The English Commercial Court has, for the first time, considered language in a mortgagee’s interest insurance (“MII”) policy based on the 1997 Institute Mortgagees’ Interest Clauses wording. The court considered the requirement that an insured peril occur without the “privity” of the assured and held that there was no “privity,” as the assured’s consent had been obtained by fraud. The court was also satisfied that the proximate cause of the claimant’s loss was a mine strike in Ukrainian waters—a loss that was prima facie covered under the MII policy. *Oceanus Capital SARL v Lloyd’s Insurance Company SA (Re M/V Vyssos)* [2025] EWHC 3293 (Comm) (17 December 2025).

BACKGROUND

The owners of a ship had taken out a war risks insurance policy, which was subject to warranties, including that the vessel could not enter the territorial waters of Ukraine unless otherwise agreed with the insurer (the “War Risks Policy”). The claimant mortgagee provided financing to the owners of the ship, secured by way of a first-preference mortgage over the vessel. The claimant mortgagee also took out an MII policy from the defendant underwriters. An MII policy typically protects lenders if the borrowers’ primary insurance over the insured asset fails to respond, due to issues like trading warranty breaches or unseaworthiness—unless the assured is privity to such issue.

In December 2023, the claimant mortgagee was informed that the vessel was to trade in Ukrainian waters, which would be a breach of the trading warranties under the War Risk Policy. A breach of these trading warranties constituted an insured peril under the MII policy, provided that the assured was not privity to such breach. The mortgagee insisted on a number of occasions that the appropriate additional war risk cover be put in place, as this trade would be in breach of the warranties in the War Risks Policy. A purported additional war risks cover document was provided by the vessel’s charterers. Relying on the cover note, the claimant mortgagee allowed the voyage, but the ship struck a mine while in Ukrainian waters and was declared a constructive total loss. It was later discovered that the additional war risks cover was a forgery.

The mortgagee claimant argued that it was entitled to an indemnity under the MII Policy, as the failure of the War Risks Policy to respond due to breach of the trading warranties was an insured peril. The MII Policy underwriters disputed the claim, arguing that: (i) the cause of the mortgagee’s loss was its inability to recover under the forged additional cover, which was not an insured peril; and (ii) the mortgagee claimant had been privity to the vessel’s journey into Ukrainian waters.



DECISION

The two key issues determined by the High Court were:

1. whether the proximate cause of the mortgagee's loss was the loss of or damage to the vessel or the forged policy; and
2. whether the breach of the trading warranties in the owner's war risks policy occurred or existed without the privity of the mortgagee.

On causation, the court found that the MII policy insured the loss of/damage to the Vessel—and the proximate cause of the mortgagee's loss was the mine strike, not the invalidity of the forged policy. The court held that the loss would have been prima facie covered under the owner's valid War Risks Policy, but for the breach of the trading warranties thereunder. The court rejected the insurers' position that the loss was only suffered because the forged policy did not respond and fraud of this sort is not the risk that the insurers assumed.

On the second issue, no prior authority defined "privity" in the context of an MII policy. The court considered that privity in this context would require a relatively high degree of connivance or blameworthiness. The court determined that the key question was whether the claimant mortgagee had consented to or concurred in this voyage being made in breach of trading warranties. The court concluded that the consent of the claimant to allow the vessel to enter Ukrainian waters could not be valid as it was induced by fraud.

COMMENTS

The court, when faced with a straightforward causation argument (the mine strike causing the loss) and a more complex argument relating to an intervening event (the forged policy), adopted the straightforward answer.

This judgment also contains the first and only judicial commentary on what is meant by the words "privity of the assured" in an MII policy. The court granted permission to appeal, recognizing that this wording has not been interpreted before and that the Court of Appeal may well reach a different conclusion.



English Commercial Court Provides Guidance On Policy Limits In Multi-Party Insurance Arrangements

HOLDING

The English Commercial Court held that a policy with an indemnity limit for “*all Residential Property’s [sic] in one continuous structure*” gave rise to a single, aggregate, limit for all insureds in a block of flats rather than providing a separate indemnity limit for each individual flat. *Acasta European Insurance Company Ltd v Eshiett & Ors* [2026] EWHC 71 (Comm) (16 January 2026).

BACKGROUND

This case concerned the interpretation of policy limits under a structural defects insurance policy that covered an apartment block in North London and seven flats within it, each of which was separately owned. The policy provided an indemnity limit of £1,000,000 for “*all claims relating to a Residential Property*” and a higher limit of £1,500,000 for “*all Residential Property’s [sic] in one continuous structure.*”

The policyholders, who each had an interest in the apartment block or one of the seven flats within it, argued that the policy afforded separate cover for each flat, with an individual indemnity limit of £1,000,000 each. The policyholders contended that a separate policy had been issued for each flat (as a separate Insurance Period Certificate was issued for each, rather than one joint certificate) and each Insurance Period Certificate simply referred to one flat, so the “*continuous structure*” limit was not engaged. The insurer argued that the policy was a single composite policy of insurance, and that, because the flats formed part of one “*continuous structure,*” the limit of indemnity under the policy was £1,500,000.



DECISION

The parties' arguments focused heavily on the question of whether the insurance policy was a composite policy or comprised of separate individual policies. However, the High Court held that this was not the key question to be answered given: (i) a composite policy is effectively a series of separate contracts insuring each insured separately in all events; and (ii) entirely separate insurance policies could be drafted in such a way to create cover with a shared aggregate limit. Instead, the court held that the key question was whether the limit of indemnity wording applied in the aggregate or individually.

The High Court held in favor of the insurer, finding that the indemnity wording gave rise to an overall aggregate limit shared by all insureds. The High Court considered that the reference to "Residential Property's" was a typographical error, and should have read "Residential Properties", a term used elsewhere in the cover to refer to other flats. It was clear that the flats were one continuous structure, as required by the policy's wording, and the separate limit of £1,000,000 per flat meant that the natural meaning of the £1,500,000 limit was that it applied to all flats. The court also considered it unsurprising that an aggregate level of cover would apply in respect of interconnected properties at the same location that were likely to be impacted in the same way by a structural defect.

COMMENTS

This case follows a series of COVID-19 related business interruption cases, such as *Corbin & King Ltd v Axa Insurance UK Plc* [2022] EWHC 409 (Comm) and *Liberty Mutual v Bath Racecourse* [2025] EWCA Civ 153, both of which are referred to in the judgment. Those business interruption cases concerned group policies issued to cover insureds who owned and operated different properties, such as restaurants, cafes, bars, racecourses, and golf courses, which would be impacted in distinct ways by COVID-19.

Upon interpretation of the specific policy wording, the courts in those cases held that each insured whose premises were temporarily closed due to the pandemic was entitled to a separate indemnity limit. The courts in both of those cases emphasized that these outcomes were specific to the wording of the policies in question and did not imply a general rule that a composite policy means that separate limits are applied, and the holding in *Acasta* further reiterates this point.



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