

Indiana court rules watercraft exclusion bars Superfund coverage for barge company

Insurance Business

An Indiana appeals court has ruled that a watercraft exclusion in excess liability policies bars coverage for EPA Superfund cleanup costs.

The Court of Appeals of Indiana handed down its decision on April 28, 2026, reversing a trial court's finding that had sided with the policyholder on coverage. The ruling turns on how the phrase "liability arising out of" should be interpreted when the underlying claim is based on strict liability rather than negligence – a distinction that carries broad implications for how insurers assess environmental contamination claims under commercial liability policies.

The dispute centers on a barge cleaning facility in Jennings, Louisiana, operated by an entity known as SBA from 1965 to 1993. During that period, barges owned by National Marine – the predecessor to American Commercial Barge Line (ACBL), an Indiana-based barge transportation company – were sent to the site for cleaning. National Marine merged with ACBL in 1998. Following an investigation of the site, the EPA entered into an agreement in December 2002 with SBA and a group of former customers of SBA's barge cleaning operations, including ACBL. Then in 2015, the EPA notified ACBL of its ongoing investigation and identified the company as a potentially responsible party under CERCLA, the federal environmental law that governs Superfund site cleanups, because barges owned by its predecessor, National Marine, were among those delivered to the site. ACBL entered into a further agreement with the EPA and other responsible parties in 2016, and the coverage fight followed.

ACBL filed suit in November 2020 against a group of insurers – Underwriters of Lloyd's of London Syndicate 1861, Liberty International Underwriters, StarNet Insurance Company, Starr Indemnity & Liability Insurance Company, and XL Specialty Insurance Company – seeking coverage under four umbrella policies. The policies contained three insuring agreements covering both maritime and non-

maritime risks. ACBL pursued coverage only under the one that provided umbrella general commercial liability protection for personal injury and property damage.

The insurers pushed back, pointing to a clause in the policies known as the watercraft limitation provision. That clause excluded from coverage any property damage liability arising out of the ownership or maintenance of any watercraft. Their argument was straightforward: ACBL's environmental liability exists because its predecessor owned barges containing hazardous substances and sent them to the shipyard, and that falls squarely within the exclusion.

ACBL saw it differently. Relying on a long line of Indiana case law dating back to 1973, ACBL argued that "arising out of" means "being caused by" and requires a showing that the conduct in question was the "efficient and predominating cause" of the damage. Under that framework, ACBL maintained that the contamination was caused not by the barges themselves but by SBA's mishandling of hazardous waste after the cleaning took place. The barges were just barges, in other words – the real problem was what happened to the waste on land.

The trial court agreed with ACBL. It found that the shipyard contamination resulted from SBA's improper storage, handling, and treatment of hazardous waste, not from the cleaning of the barges. Applying the efficient and predominating cause test, the lower court concluded the watercraft limitation did not apply.

The Court of Appeals, in a unanimous opinion by Senior Judge Najam, reversed that finding. The reasoning came down to the nature of CERCLA liability itself. Unlike a negligence claim, CERCLA does not require anyone to prove that a particular party caused the contamination. Liability attaches based on a party's relationship to the contaminated site – in this case, the fact that ACBL's predecessor arranged for barges containing hazardous substances to be delivered there. Multiple federal circuit courts have confirmed that CERCLA effectively does away with a causation requirement altogether.

That distinction matters because the efficient and predominating cause test that ACBL relied on is rooted in negligence principles. The appeals court found that grafting a negligence-based causation standard onto a strict liability claim produces an interpretation of "liability arising out of" that no reasonable policyholder could have contemplated when the policies were issued. There was no Indiana law – then or now – applying that test to strict liability claims.

The court concluded that the phrase “liability arising out of” is unambiguous in the context of a CERCLA claim and means, in plain terms, legal accountability derived from. ACBL’s CERCLA liability was derived from its predecessor’s ownership of barges that contained hazardous substances and were sent to the shipyard. That connection triggered the watercraft limitation, and coverage was excluded.

On the separate question of which law governed the policies, the court affirmed the trial court’s finding that Indiana law applies. The insurers had argued that the policies were maritime contracts subject to federal admiralty law but failed to identify any established federal rule that would be undermined by applying state law. The court found the argument inadequately briefed and deemed it waived.

The case was remanded to the trial court with instructions to enter summary judgment in favor of the insurers.

For coverage professionals and underwriters, the decision offers a concrete example of how the theory of liability underlying a claim can reshape the interpretation of standard policy exclusions. A watercraft exclusion that might not apply under a negligence analysis can operate very differently when the claim is rooted in CERCLA’s strict liability framework – where the simple act of owning vessels containing hazardous substances and sending them to a facility is enough to create legal accountability, regardless of what happened afterward.

United Policyholders filed an amicus brief in the case, underscoring the broader industry interest in how these questions are resolved.