No 98-0084

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
THIRD DIVISION

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT NO. 211, COOK CO., ILLINOIS Plaintiff-Appellant v. INTERNATIONAL INSURANCE COMPANY, Defendant-Appellee	On Appeal From the Circuit Court of Cook County, Illinois County Chancery Division Department No. 93 CH 000771 The Honorable John K. Madden, Judge Presiding

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

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United Policyholders adopts the statement of Plaintiff, Township High School Discrict 211 (the "School District").

STATEMENT OF JURISDICTION

United Policyholders adopts the statement of Plaintiff, Township High School Discrict 211 (the "School District").

STATEMENT OF STATUTES INVOLVED

United Policyholders adopts the statement of Plaintiff, Township High School Discrict 211 (the "School District").

STATEMENT OF FACTS INVOLVED

United Policyholders adopts the statement of Plaintiff, Township High School Discrict 211 (the "School District").

ARGUMENT

I. "ALL RISKS" INSURANCE POLICIES PROVIDE THE BROADEST SCOPE OF COVERAGE THAT ENCOMPASS ALL INCURRED LOSSES NOT SPECIFICALLY EXCLUDED.

"To ascertain the meaning of the [insurance] policy's words and the intent of the parties, the court must construe the policy as a whole ... with due regard to the risk undertaken, the subject matter that is insured and the purposes of the entire contract." Outboard Marine Corp. v. Liberty Mutual Ins. Co., 154 Ill. 2d 90, 108, 607 N.E.2d 1204, 1212 (1992). In this case, the "risk undertaken, the subject matter that is insured and the purposes of the entire contract" are self-evident from the very type of insurance policy that International sold to the School District -- an "all risks" insurance policy.

The "all risks" insurance policies that International sold to the School District provide the broadest scope of insurance coverage imaginable. "All risk" insurance policies extends coverage to risks generally not provided for under other insurance policies. C.H. Leavell & Co. v. Fireman's Fund Ins. Co., 372 F.2d 784, 787 (9th Cir. 1967); 13A Couch on Insurance § 48:141 at 139 (M.S. Rhodes ed. 1982). "[A]ll risks insurance arose for the very purpose of protecting the insured in cases where difficulties of logical explanation or some mystery surround the [loss of damage to] property." Atlantic Lines Limited v. American Motorists Ins. Co., 547 F.2d 11, 13 (2nd Cir. 1976).

Although "all risk" policies may contain written exclusions, "all risks" policies must be given a broad and comprehensive interpretation in favor of coverage for incurred losses. Miller v. Boston Ins. Co., 218 A.2d 275, 278 (Pa. 1966);

Standard Structural Steel Co. v. Bethlehem Steel Corp., 597 F. Supp. 164, 191 (D. Conn. 1984). Under an "all risks" insurance policy "recovery is generally allowed for all losses of a fortuitous nature, absent fraud or other intentional conduct of the insured, unless the policy contains a specific exclusion precluding coverage." Slater v. United States Fid. & Guar. Co., 386 N.E.2d 1058, 1060 (Mass. App. Ct. 1979), aff'd in relevant part, 400 N.E.2d 1256 (Mass. 1980); see also, "Coverage Under 'All-Risks' Insurance," 88 A.L.R. 2d 112, 1125 (1983) ("recovery will usually be allowed ... unless the policy contains a specific provision expressly excluding loss from coverage").

The policyholder's only burden under an "all risks" insurance policy is to show that a loss was incurred. The policyholder does not even have to show how the loss was incurred. Pillsbury Co. v. Underwriters of Lloyds, 705 F. Supp. 1396, 1399 (D. Minn. 1989) (citations omitted).

Once the policyholder has shown that the loss was incurred, the burden shifts to the insurance company to clearly demonstrate that the loss fell within a specific exclusion in the insurance policy. Morrison Grain Co., Inc. v. Utica Mut. Ins. Co., 632 F.2d 424, 430 (5th Cir. 1980).

Under the Insuring Agreement at issue herein:

> [International] agrees, subject to the limitations, terms and conditions of this insurance, to indemnify the Insured for all risk of physical loss or damage to All Real or Personal Property of every kind and description wherever located occurring during the period of this Insurance.

Policy at Section I.

Thus, the School District's sole burden below was to demonstrate that it suffered some "risk of physical loss or damage" to its real or personal property during the policy period. As set forth within, the School District met this burden by demonstrating that asbestos was incorporated into the buildings that were the subject of the insurance policy.

II. IN THE CONTEXT OF WHAT CONSTITUTES "PROPERTY DAMAGE" OR PHYSICAL LOSS", THERE IS NO MEANINGFUL DISTINCTION BETWEEN FIRST-PARTY PROPERTY POLICIES AND THIRD-PARTY LIABILITY POLICIES.

> In Board of Education, ... this court found: 'it would be incongruous to argue there is no damage to other property when a harmful element exists throughout a building or an area of a building which by law must be corrected. * * * **Thus, the buildings have been damaged."**[1]

United States Fid. & Guar. Co. v. Wilkin Insulation Co., 144 Ill.2d 64, 75, 578 N.E.2d 926, 931 (1991) (quoting Board of Education v. A. C. and S., Inc., 131 Ill. 2d at 449, 546 N.E.2d 580, 590 (1989) (citations omitted, emphasis supplied).

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1. [U]pon deterioration of the asbestos-containing product itself or upon disturbance from an outside force, asbestos fibers are released into the air. These fibers are extremely durable and lasting. The asbestos fibers are of the size and shape that permit them to remain airborne for periods of time, settle, and then become resuspended in the air to later settle at different locations throughout the buildings. Thus, the buildings and their contents ... are ... impregnated with asbestos fibers, the presence of which poses a serious health hazard to the human occupants.

Wilkin Insulation, 144 Ill. 2d at 74-75, 578 N.W.2d 926, 931.

The trial court properly recognized that under Illinois law the presence of asbestos in a building constitutes "property damage" within the meaning of a third-party liability insurance policy. See Order, at ¶7. The trial court rejected the Supreme Court's holdings on the dubious, unsupported basis that these holdings applied solely in the context of third-party liability insurance. First-party insurance, such as the "all risks" insurance policy at issue herein, provides insurance coverage for damage to one's own property. Third-party liability insurance provides insurance coverage for damage to the property of others. A policyholder that wishes to be completely covered from risks of loss, purchases both types of insurance. A reasonable policyholder would believe that the type of damage that constitutes "property damage" under one type of insurance policy would constitute "property damage" under the other. This fundamental truth is even stronger where, as here, a single form provides insurance coverage for first-party "property damage" and third-party property damage.

Notably, the Illinois Supreme Court has twice held that the presence of asbestos in buildings, school buildings in particular, constitutes "property damage". See A. C. and S., Inc., 131 Ill.2d at 446, 546 N.E.2d at 588 (there is property damage "when a harmful element exists throughout a building . . . which by law must be corrected"); Wilkin Insulation, 144 Ill.2d at 75-76, 578 N.E.2d at 931) (where the presence of asbestos poses a health hazard throughout buildings and their contents "physical injury" to tangible property exists and it is "property

damage" within the meaning of insurance). These holdings are unsurprising and are consistent with rulings on the meaning of "property damage" or "physical loss" across the country. See e.g., Stonewall Ins. Co. v. Asbestos Claims Mgmt. Corp., 73 F.3d 1178, 1208 (2d Cir. 1995), modified on other grounds and reh'g denied, 85 F.3d 49 (2d Cir. 1996), cert. denied, 117 S.Ct. 2512 (1997) ("buildings have suffered 'physical injury' as a result of the installation of [the abestos building materials]").[2]

As the Court of Appeals, affirmed by the Supreme Court, held in A.C and S. Inc., property damage exists where, as here, "the incorporation of the asbestos physically altered the buildings in a manner which made the structures harmful to their occupants." 171 Ill. App. 3d 737, 738, 525 N.E.2d 950, 9565 (App. Ct. 1988). In such circumstances, "the physical damage caused by the asbestos may be measured by the costs of repairing the buildings to make them safe."[3] Id. The holding in A.C and S. Inc., that the presence of harmful asbestos fibers in school

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2. See also, Farmers Ins. Co. of Oregon v. Trutanich, 858 P.2d 1332, 1335 (Or. Ct. App. 1993) (odor problem in building structure requiring remediation constituted "direct physical loss" under an "all risks" insurance policy); Western Fire Ins. Co. v. First Presbyterian Church, 165 Colo. 34, 37, 437 P.2d 52, 54 (Co. 1968) (same).

3. In addition to proving coverage for "property damage," the International policies also provide insurance coverage for "physical injury." There is no definition of "physical injury" in the insurance policies. There is, however, no meaningful distinction in the A.C and S. Inc. holding that the presence of harmful asbestos in school buildings constitutes "physical damage" and the insurance coverage International provided for "physical injury." Furthermore, "for the purposes of determining coverage," the Court of Appeals has previously held that "injury from the installation of ACBM qualifies as 'physical injury'" under insurance policies. U.S. Gypsum, 268 Ill. App. 3d at 623, 643 N.E.2d at 1242.

buildings constitutes "property damage," is consistent with the majority of jurisdictions. Wilkin Insulation, 193 Ill. App. 3d 1087, 1094, 550 N.E.2d 1032, 1036 (App. Ct. 1989). "[P]roperty damage is present once the likelihood of future [asbestos] fiber release is established necessitating immediate remedial action." United States Gypsum Co. v. Admiral Ins. Co., 268 Ill. App. 3d 598, 617, 643 N.E.2d 1226, 1238 (1994), appeal denied, 161 Ill.2d 542, 649 N.E.2d 426 (1995) (citations omitted).

The trial court, although recognizing that this is the law in Illinois, held, without rationale, that these cases are inapplicable because they were decided in the context of a third-party "property damage" claim, not a first-party "property damage" claim. The trial court fails to explain why there should be any difference. There simply is no reason why "property damage" that is clearly covered under International's insurance policies in the context of third-party liability is not covered "property damage" under the first-party, "all risks" coverage International provided the School District in the very same insurance policy form. United Policyholders respectfully submits that in this context the trial court's opinion rests on a distinction that is without meaningful substance and leads to illogical results.

A. The International "All Risks" Insurance Policies Contain A Definition of "Property Damage" Broader Than Those Construed in Wilkin Insulation and A. C. and S., Inc.

As alluded to above, the insurance that International sold to District No. 211 was a package form which contained several individual insurance policies. The policies contained

separate sections, each of which provided the School District with a different type of insurance policy and coverage. Section 1 of the Package provided "all risks" property insurance, i.e. the first-party property insurance. Section II provided third-party liability insurance of various types, including general liability, liquor liability, automobile liability, and errors and omissions insurance coverage. Section III provided crime insurance, and Section IV provided insurance coverage for loss of rents and gross earnings. All of these insurance coverages were combined in one package with a single declarations page. See., Policy Nos. 500 20520 2 (effective from April 1, 1981 through April 1, 1984) and Policy No. 500 205230 1 (effective from April 1, 1984 through March 31, 1986).

Section I contains is no definition of "property damage," nor any limitation on the scope of that term. See e.g., 81-84 Policy at page 3. Thus, the term must be given the broadest possible meaning. The general liability insurance policy, Section II, however, has a more restrictive definition of property damage: "damage to or destruction or loss of property . . . ."[4] In A.C. and S., Inc., the Illinois Supreme Court specifically held that where buildings containing asbestos must be remediated according to state law "the buildings have been damaged." 131 Ill.2d at 449, 546 N.E.2d at 590. A.C and S. Inc. is particularly relevant because it concerned the exact fact scenario at issue herein, the presence of friable asbestos in a

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4. Of course, being a general liability insurance policy, Section II excludes "property damage" to the Named Insured's own policy.

school building which had to be removed pursuant to the Asbestos Abatement Act, Ill. Rev. Stat. 198, ch. 122, para. 1404. See, id., 131 Ill.2d at 448-449, 546 N.E.2d at 589-90.

In the case that followed A.C and S. Inc., Wilkin Insulation, the insurance companies argued that "the presence of health-threatening, asbestos-containing products" in buildings was not property damage in the context of third-party liability insurance policies. 144 Ill.2d at 75, 578 N.E.2d at 931. The Supreme Court rejected the insurance companies' argument and held that the presence of asbestos in buildings was property damage, relying on its earlier holding in A.C & S. Inc. Wilkin Insulation, 144 Ill.2d at 75, 528 N.E.2d at 931.

The relevance of the A.C. and S. and Wilkin Insulation Courts' holdings that the presence of asbestos in buildings constitutes "property damage" is underscored when it is recognized that the insurance policy "property damage" provision construed in Wilkin Insulation was "the strictest definition of property damage," a definition of property damage much stricter than that contained in the insurance policies at issue herein. The policy construed in Wilkin Insulation defined property damage as "physical injury to or destruction of tangible property, which occurs during the policy period, including the loss of use thereof at any time resulting therefrom." 144 Ill.2d at 75, 578 N.E.2d at 931. The definition of property damage construed in Wilkin Insulation contains several restrictions not present even the International insurance policies' definition of "property damage" in the third-party liability section, let alone in

International's unqualified first-party insurance coverage promise to cover "all risks of property damage." Wilkin Insulation stands for the proposition that even under a definition of "property damage" that is much stricter than that at issue herein, the presence of harmful asbestos in buildings is "property damage" within the meaning of an insurance policy. The fact that the definition of "property damage" was contained in a third-party policy, rather than in a first-party policy, does not reduce the precedential weight of the Supreme Court's holding. The trial court erred when it failed to follow the Supreme Court's consistent construction of the insurance policy term "property damage" to include the presence of asbestos in buildings. The trial court opinion must be reversed.

III. The Trial Court Erred in Holding That the International Insurance Policies Only "Provided Coverage for Actual and Risk of Direct Physical Loss Of or Damage To Real . . . Property."

The trial court held that "[t]he property insurance policies issued by [International] provided coverage for actual and risk of direct physical loss of or damage to real and personal property." Order at ¶3 (emphasis supplied). In so holding, the trial court improperly engrafted onto the policy an exclusion that does not appear in the policy language, specifically that only risks of direct physical loss or damage is covered. The limitation of the policies coverage to "direct physical loss" only appears in Agreement B of Section I, which pertains solely to "loss or damage to automobiles." See, e.g., 1981 policy at 3, Section I, Agreement B. In contrast to the

"direct physical loss" restriction that International placed in its policy with respect to automobile coverage, International agreed to "indemnify the Insured for all risks of physical loss or damage to All Real or Personal Property of every kind and description . . . . ." See id. at Agreement A.

It is clear that International could have restricted the real property insurance coverage for buildings and their contents under Agreement A to only "risks of direct physical loss" as it did in Agreement B for automobile coverage. International clearly failed to do so, and the trial court improperly re-wrote the insurance policy to the benefit of International, the drafter of the insurance policy. This is in violation of standard Illinois rules of insurance policy construction requiring construction of insurance policies against the drafter. The trial court clearly erred in this regard and must be reversed on this point. Furthermore, as the trial court's entire opinion is premised on an incorrect understanding of the overall scope of coverage of Section I., the trial court Order must be reversed in its entirety. In particular, the trial court's central and final holding, contained in ¶8 of the Order, holds that "the risk of physical harm or loss alleged by Plaintiff in the present case does not constitute a risk of direct physical damage to property damage that is covered by the property . . . . " (emphasis supplied). Even if one credited the findings of the court contained in ¶¶4 through 7 concerning the nature of coverage "property damage", it is entirely possible that the trial court could have determined that all of the risks

and damage alleged by the School District was merely "indirect" physical loss or damage. Therefore, had the trial court properly recognized that the insurance policies provided coverage for indirect physical loss or damage, as well as direct physical loss or damage, the trial court might have ruled in favor of the School District, notwithstanding its otherwise incorrect view of what constitutes property damage under the insurance policy.

IV. LEAFLAND AND GREAT NORTHERN ARE INAPPOSITE, CONSTRUED PROPERTY DAMAGE POLICIES FUNDAMENTALLY DIFFERENT FROM THOSE HEREIN, AND ARE CONTRARY TO WILKIN

In its motion below, International primarily rested its argument on two non-Illinois cases, Leafland Group - II, Montgomery Towers Limited Partnership v. Insurance Company of North America, 881 P.2d 26 (N.M. 1994) and Great Northern Insurance Co. v. Benjamin Franklin Federal Savings & Loan Ass'n, 953 F.2d 1387 (9th Cir. 1992) for the proposition that the presence of asbestos in school buildings was not "direct physical loss or damage." See Defendant International Insurance Company's Motion for Summary Judgment at pgs. 13-16. The trial court apparently agreed with International because it ruled that "the risk of physical harm or loss as alleged by Plaintiff in the present case does not constitute a risk of direct physical damage to the property that is covered by the property insurance property. . . ," without citing any Illinois authority to support its holding. See, Order at 2, p. 2.

Leafland is inapposite, as well as clearly contrary to Illinois law as expressed in Wilkin Insulation and A., C. & S.. Leafland did not hold that the presence of friable asbestos in a

building requiring remediation was not property damage. Notably, Leafland was not seeking to recover costs necessary to replace or repair friable asbestos in its building. "Rather, Leafland [was] claiming coverage . . . due to the discovery of undisclosed problem with the property that was present at the time of purchase and was subsequently found to have diminish the property's value." Leafland construed an insurance policy that only provided coverage for "direct loss or damage from cause of loss...," unlike the policy here which covers all risks of property damage or physical loss, direct or indirect. 880 P.2d at 28; see also, International's Motion for Summary Judgment at 14 (describing the Leafland policy as one which insured "against direct loss or damage ")(emphasis supplied).

Similarly, the Great Northern policy also only "covered a loss which results 'from direct physical loss, . . . " Great Northern Ins. Co. v. Benjamin Franklin Savings & Loan Ass'n, No. 90-35654, 1992 U.S. App. at LEXIS 1593, at *2 (9th Cir. Jan. 31, 1992) (emphasis supplied). There is no indication in Great Northern that the insurance policy construed in that case was an "all risks" insurance policy. Furthermore, the Oregon case law that the court purportedly followed "defines property damage as a 'physical injury to . . . tangible property.'" Again, this is fundamentally different from the insurance policies at issue herein which cover either "physical loss or damage to All Real or Personal Property." See 1981 policy, at 3, Agreement A, Building and Contents. As Illinois law clearly holds that the presence of harmful asbestos in buildings is "property damage", the Great

Northern prediction of that under Oregon law that the necessity to remove friable asbestos is not "physical injury . . . to tangible property" has no predential value herein.[5] Furthermore, even Great Northern's prediction of Oregon law appears to be incorrect. See, Farmers Ins. Co. of Oregon v. Trutanich, 858 P.2d at 1335 (Or. Ct. App. 1993) (odor problem in building structure requiring remediation constituted "direct physical loss" under an "all risks" insurance policy). Finally, Great Northern was predicated upon the "economic loss" theory, 1992 U.S. App. LEXIS 1593, at *2, at theory that has been specifically rejected in Illinois. See Point V, below.

Simply put, Great Northern and Leafland are inapposite and contrary to applicable, well-established Illinois law.

V. INTERNATIONAL'S "ECONOMIC LOSS" ARGUMENT HAS BEEN SQUARELY REJECTED UNDER ILLINOIS LAW.

One of the major arguments raised by International below was that the School District's costs in repairing the asbestos damage and complying with the Asbestos Abatement Act were "economic losses" rather than "property damage" or "physical loss." International's "economic loss" argument is misleading because it attempts to shift the Court's attention away from the real property damage--the incorporation of and continued presence of harmful asbestos in buildings--onto the costs caused by that property damage, the costs of repairing the buildings. Asbestos

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5. Additionally, there is absolutely no indication that the policies construed in either Benjamin Franklin or Leafland Group had the Debris Removal Clause, Ordinance Deficiency Clause or the Expense to Reduce or Prevent Loss insurance coverage provisions found in the present policies. See Point VI.

pyhsically alters the buildings and causes "property damage." A.C and S. Inc., 171 Ill. App. 3d at 748, 525 N.E.2d at 956. The costs of repairing the "property damage" is merely a measure of "the physical damage to the property...." Id.; accord, U.S. Gypsum, 268 Ill. App. 3d 598, 643-44, 643 N.E.2d at 1255 (the incorporation of asbestos into a building the "damage," rather than the resulting loss in market value).

Unfortunately for International, the "economic loss" theory has been already been recognized for what it is and has been rejected by Illinois Courts as invalid in the specific context of the presence of asbestos in buildings. See, A.C and S. Inc., 171 Ill. App. at 745-48, 525 N.E.2d at 954-56.

VI. EVEN IF THE TRIAL COURT DID NOT ERR IN ITS HOLDING ON THE MEANING OF "PROPERTY DAMAGE," THE TRIAL COURT STILL ERRED IN GRANTING SUMMARY JUDGMENT; THERE ARE TWO OTHER APPLICABLE COVERAGE PROVISIONS WHICH ARE NOT DEPENDENT UPON THE FINDING OF "PROPERTY DAMAGE."

Even if, "arguendo", the presence of friable asbestos in the School District's buildings did not constitute a risk of "property damage" or "physical loss" under Section I, there are several other insurance coverage provisions within Section I that require that coverage be afforded the School District.

A. Because The Removal of the Asbestos Material Was Required by Illinois Statute, The School District Is Entitled to Insurance Coverage Under the "Ordinance Deficiency Clause."

The International policies also have a self-contained coverage provision providing for complete insurance coverage for "loss occasioned by the enforcement of any state or municipal law, ordinance or code, which necessitates, in repairing or rebuilding, replacement of material to meet such requirements."

See 1981 policy at 6, ¶6. It is clear that the School District was required to remove the asbestos-containing materials pursuant to the Illinois Asbestos Abatement Act, Ill. Rev. Stat. 198, ch. 122, para. 1404. It cannot be argued that the Illinois Asbestos Abatement Act is not a statute requiring the "repairing or rebuilding [or] replacement" of those portions of the building containing the asbestos materials.

There is no requirement in the Ordinance Deficiency Clause that limits the coverage of this provision to either "property damage" or "physical loss."[6] Neither of those terms are contained in this provision. Indeed, the Initial Ordinance Deficiency Clause overrides all other provisions of Section I: "[notwithstanding] anything contained herein to the contrary, the company shall be liable also for the loss occasioned by the enforcement of any state or municipal law, ordinance or code . . . " (emphasis supplied).

The School District clearly alerted the trial court to the fact that coverage was also provided under the Ordinance Deficiency Clause. The trial court clearly neglected to address this argument in its Opinion and solely granted summary judgment on the basis of its view, albeit incorrect, of the meaning of "property damage" in Section I. As the Ordinance Deficiency Clause unequivocally provides coverage for the removal and repair of the asbestos-containing materials in the School District's

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6. International argues that there first has to be "property damage" or "phsical injury" before the clause applies.

buildings, summary judgment should have been granted to the School District.

B. The School District Was Entitled to Insurance Coverage Under the Provision Providing Coverage for "Expense to Reduce or Prevent Loss."

Section I of the International insurance policies also provide insurance coverage for "expenses as are necessarily incurred for the purpose of reducing or preventing any loss under this Insurance. . . ." See e.g., 1981 policy at 7, ¶7 (emphasis added). This provision does not limit the scope of its coverage to "property damage" or "physical loss." Instead, it is specifically designed to cover any expense that is "necessarily incurred for the purpose of reducing or preventing any loss . . . ." Id. (emphasis supplied). Thus, the key to interpreting the scope of the provision is to determine what is meant by "any loss."

As previously discussed, the insurance Package contains a large number of coverages, including third-party, general liability insurance coverage. The School District has alleged that the presence of the friable asbestos and its release into the building "poses a risk of harm and loss to the Plaintiff School District, the school children, and to certain personnel, occupants and visitors to the school." Order at ¶4. It cannot be seriously contended that continued exposure to the asbestos fibers in the School District's buildings did not impose a high degree of risk of loss that the School District would be subject to numerous and expensive lawsuits by school children and other persons exposed to asbestos within the building. Nor can it

seriously be argued that these lawsuits would not constitute a "loss" that was covered under the general liability section of International's insurance policy. The general coverage is provided for "Personal Injuries, including death at any time resulting therefrom suffered or alleged to be suffered by any person or person's [sic]."[7] 1981 policy at ¶7, Agreement C. Furthermore, personal injury is very broad and includes: "Bodily Injury, Mental Injury, Mental Anguish, Shock, Sickness, Disease, Disability, among others." See 1981 policy at 8 Section II-Definitions, ¶1(a).

A plain reading of the "Expense to Reduce or Prevent Loss" coverage provision is that it applies to "reducing or preventing any loss..." (emphasis supplied). For this reason, as long as the School District's expenses "were necessarily incurred for the purpose of reducing or preventing any loss" under the general liability coverages, the expenses are covered under the loss reduction provision of Section I, regardless of whether they are related to "property damage" or "physical loss." It would be anomalous that a provision designed to indemnify the policyholder for necessary expenses to prevent losses covered under the insurance policy would not apply to the asbestos abatement work which was specifically required by the Illinois legislature in order to prevent the serious risk of injury to third parties, a risk which would then constitute a loss under "Section II-

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7. The General Liability section exempts from its scope of coverage employees of the School District. Id..

Casualty Insurance."[8] Even if there was no "property damage" or "physical loss," the School District is entitled to coverage under the independent coverage provisions pertaining to expenses to reduce losses or costs incurred in complying with state law.

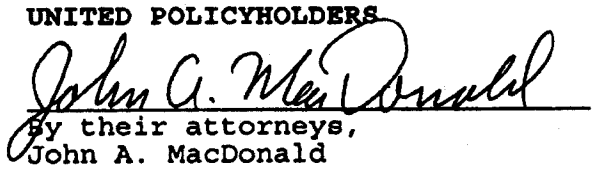
CONCLUSION

For the reasons stated herein, the trial court's opinion must be reversed and summary judgment entered for the School District.

Respectfully submitted,

Dated: May 19, 1998

UNITED POLICYHOLDERS



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8. The general liability insuring agreement promises to indemnify the policyholder for those "for damages direct or consequential, and expenses, all as more fully defined by the term 'Ultimate Net Loss', because of Personal Injuries . . . ." See 1981 policy at 7, Section II, Agreement C. The term 'Ultimate Net Loss' shall mean the total sum which the Insured becomes obligated to pay by reason of personal injury . . . ." Id. at 9, ¶23

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served three copies of the foregoing **Brief of Amicus Curiae United Policyholders** on:

James F. Ferrini, Esquire
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by causing a copy thereof to be served via U.S. Mail to Clausen, Miller, Gorman, Caffrey & Witous, P.C., McElroy, Deutsch and Mulvaney and Hager & Siegel, P.C. on this 19th day of May, 1998.

John A. MacDonald

No 98-0084

IN THE
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BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT NO. 211, COOK CO., ILLINOIS Plaintiff-Appellant v. INTERNATIONAL INSURANCE COMPANY, Defendant-Appellee	) On Appeal From the) Circuit Court of Cook) County, Illinois) County) Chancery Division) Department))) No. 93 CH 000771)) The Honorable) John K. Madden,) Judge Presiding

NOTICE OF FILING

TO: James F. Ferrini, Esquire
Edward M. Kay, Esquire
James R. Swinehart, Esquire
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Please take notice that on the 19th day of May, 1998, I caused to be filed with the Appellate Court of Illinois, First Judicial District, the attached **Brief of Amicus Curiae United Policyholders**, three copies of which are hereto attached and are hereby served upon you.

JOHN A. MACDONALD, ESQUIRE
Attorneys for Amicus Curiae,
United Policyholders

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served a copy of the foregoing **Notice of Filing** on:

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John A. MacDonald