

## Supreme Court Case AC Ocean Walk: Is the Absolute Pollution Exclusion a Bar for Insurance Coverage?

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Consistent with many courts nationwide, the Supreme Court held in [AC Ocean Walk, LLC v. American Guarantee and Liability Insurance Company](#) (“AC Ocean”) that the economic harm caused by the presence of COVID-19 and efforts to control its spread does not constitute a direct physical loss or damage to property. But the interesting part to note is the Supreme Court’s reaffirmation of its previous opinion in [Nav-Its](#) that a pollution exclusion clause is not an absolute bar to coverage for an insured’s products and completed operations.

In [AC Ocean](#), Justice Paterson provided the following statement:

*First, the policy exclusion at issue in [Nav-Its](#) was exclusively a “pollution exclusion...” We determined that the provision disputed in [Nav-Its](#) was intended to create “a broad exclusion for traditional environmentally related damages...” but that it did not exclude coverage for the specific claim at issue in that case, which was brought by an individual who alleged exposure to toxic fumes during a floor coating and sealant project conducted by the insured...*

*Further we found significant in [Nav-Its](#) that the defendant insurers and their representatives had assured New Jersey regulators in seeking approval for the pollution exclusion, that the exclusion would not operate as an absolute bar to coverage for insured’s products and completed operations.*

Based on [Nav-Its](#) and the reaffirming language of [AC Ocean](#), a pollution exclusion clause should not be an absolute bar to insurance coverage to an insured’s products and completed operations – even if those final products may have ended up in an environmental cleanup site. This is consistent with the Superfund carve out for the sale of a useful product.

So, if an insured has completed operations coverage and sold its useful product to an entity which then disposed of it, consideration should be given even to post 1986 liability policies when the absolute pollution exclusion was added to most liability policies.

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