Rapid Fire Case Presentations

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CASE BRIEF | S.D.N.Y. | MARCH 31, 2026

Tyson Int'l Co. v. Partner Reinsurance Europe SE

No. 1:25-cv-03452 (ALC) | 2026 U.S. Dist. LEXIS 70723
Judge Andrew L. Carter, Jr.

1. **The Parties.**
Petitioner Tyson International Company, Ltd. (TICL) versus Respondent Partner Reinsurance Europe SE (PartnerRe).

2. **The Arbitration.**
A panel entered an award in TICL's favor against PartnerRe. The opinion does not describe the underlying coverage dispute.

3. **The SDNY Vacatur/Confirmation Proceeding.**
TICL petitions to vacate part of the award (alternatively, all of it, with remand to the panel). PartnerRe cross-moves to confirm.

4. **The Sealing Fight.**
Four motions to seal (three by TICL, one by PartnerRe) the petition, briefs, and exhibits. Judge Carter's order addresses those motions only, not the merits.

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LEGAL REASONING

The Court's Reasoning

STEP 1

"Judicial Documents"?

Petitions, briefs, and supporting papers on a motion to confirm or vacate an award are judicial documents (*Aioi Nissay*). The parties conceded this point.

STEP 2

What Presumption Applies?

A strong presumption of public access applies (*Lugosch*), and these materials were central to the adjudication.

STEP 3

Balance.

Movants must show sealing is needed to preserve "higher values." Arbitral and commercial confidentiality count, if tailored to public access.

Applied to the three categories of exhibits

Contracts And Policies.

The Court agreed with the parties' requests to seal this material.

STAY SEALED

Arbitration Transcripts And Opinions.

Largely non-confidential; confidential commercial material can be redacted.

REDACT

Internal Correspondence.

Contains strategic business information, but redaction is sufficient to balance confidentiality and public access.

REDACT

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Three Takeaways for Practitioners

1

Takeaway: The Core Holding.

Arbitral confidentiality has limits when a party goes to court. Both sides asked to seal the petition, briefs and nearly all exhibits, yet the court ordered public, redacted filings for arbitration transcripts, opinions and correspondence.

2

Takeaway: Plan For The Vacatur/Confirmation Stage.

A shared interest in confidentiality is a factor that courts will consider. But it is not a trump card. Practitioners should expect to justify sealing document by document, with narrowly tailored redactions. Judges may, however, differ in approach.

3

Takeaway: Know What Holds Up.

In *Tyson*, the underlying contracts and policies stayed sealed; broader arbitration records did not. Practitioners accordingly should isolate confidential commercial terms and strategy before filing and redact accordingly.

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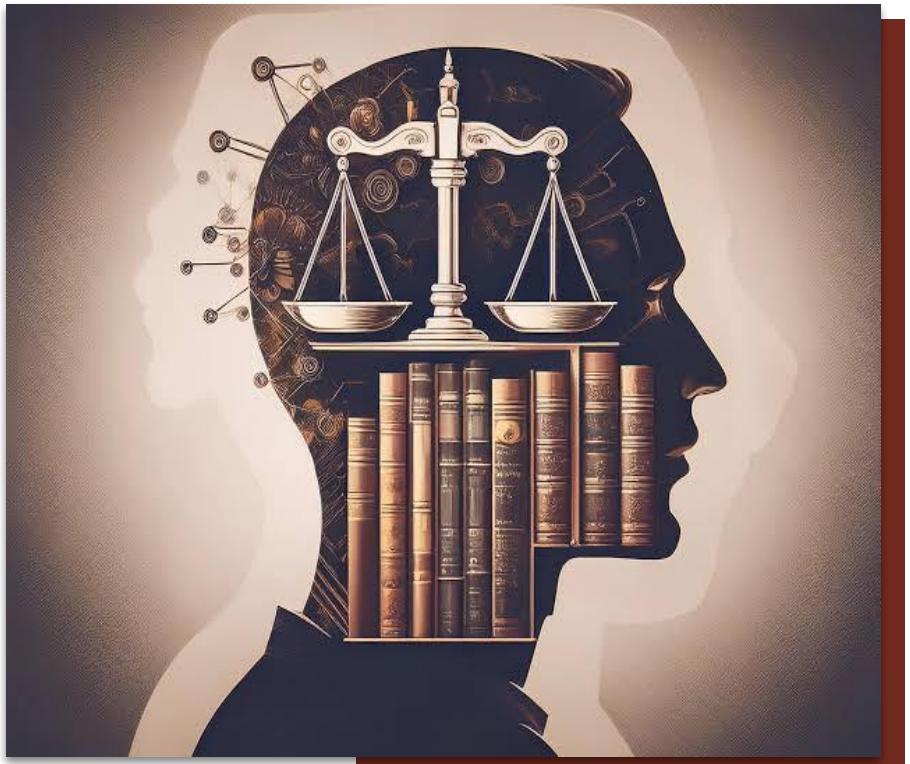
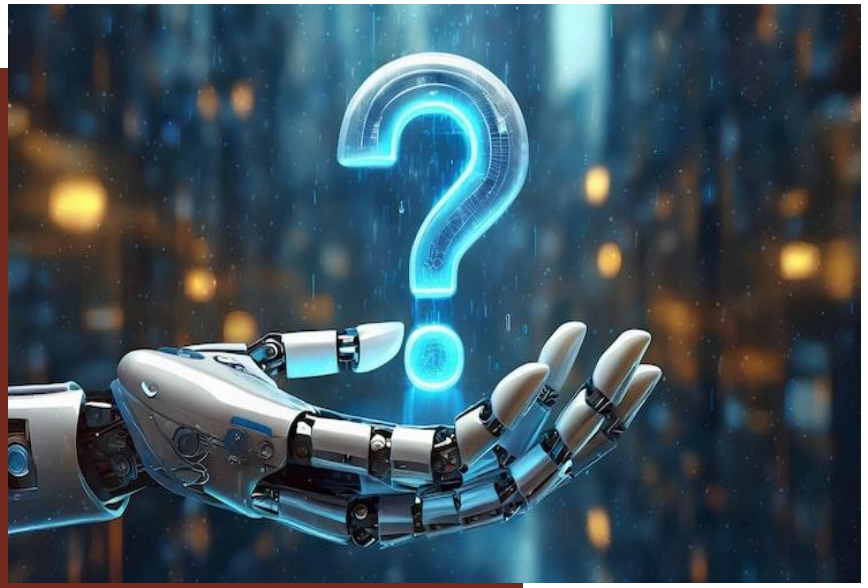
Michael Catina
Asst. General Counsel
Zurich Insurance Co.



FACTS OF THE CASE

- Defendant, Heppner, received a grand jury subpoena which he claimed made clear to him that he was the target of a fraud investigation.
- WITHOUT THE DIRECTION OF COUNSEL, Heppner input information he had learned from his attorneys into the generative A.I. Assistant Claude for the express purpose of talking to counsel in anticipation of a potential indictment.
- Claude prepared reports for Heppner that outlined defense strategy and points that he might argue with respect to the facts and the law. Heppner shared Claude's outputs with counsel which allegedly influenced counsel's strategy "going forward."
- After Heppner was arrested the FBI seized electronic devices from his home containing approximately 31 "A.I. documents" that were exchanges between Heppner and Claude.
- Claude users consent to the platform's privacy policy which expressly states that "data is collected on both users' inputs and Claude's outputs in order to "train" Claude.
- Claude discloses user data to third parties even in the absence of a subpoena compelling it to do so.

Questions Presented



1. Are Heppner's A.I. Documents protected by the Attorney-Client Privilege?

2. Are Heppner's A.I. Documents protected by the work product doctrine?

The Holding



The S.D.N.Y. ruled that the A.I. Documents were not protected by either the Attorney-Client Privilege or the Work Product Doctrine.

The Court's Rationale – Attorney-Client Privilege

- The AI documents lacked the attorney-client privilege's required elements.

1) The communications were not "between a client and his or her attorney" and Heppner did not use Claude at the direction of counsel. Because Claude is not an attorney, he could not have received legal advice. That alone was enough for the Court to deny Heppner's claim of privilege.

2) The AI documents were neither "intended to be," nor were they "in fact," "kept confidential." Heppner had no reasonable expectation of privacy. He was subject to Claude's privacy policy, which expressly provided that it "collects data on both users' inputs and Claude's outputs, that it uses such data to 'train' Claude, and reserves the right to disclose such data to a host of 'third parties,' including 'governmental regulatory authorities' . . . [or] in connection with claims, disputes[,] or litigation."

3) Heppner did not prepare the AI documents "for the purpose of obtaining legal advice." If counsel had directed Heppner to use Claude. The court might have been persuaded that Claude functioned as a lawyer's highly trained agent, covered by attorney-client privilege under the Kovel doctrine. But this was not the case.

The Court’s Rationale – Work Product Doctrine

The A.I. Documents were neither (1) prepared by or at the behest of counsel; or (2) reflective of counsel’s strategy. Therefore the A.I. Documents did not qualify as attorney work product.

The core purpose of the work-product doctrine is to protect an attorney's mental processes and litigation strategy. Because Heppner conducted his searches without his lawyers' knowledge or direction—the resulting 31 documents failed to reflect any protected attorney strategy.

Cases Following and Distinguishing Heppner

- **Warner v. Gilbarco 820 F.Supp.3d 629 (E.D. Mich. 2026)** – Pro se litigant's A.I. assisted litigation materials qualified as work product (Pro se was equivalent to counsel). ***Rejected the argument that disclosure to ChatGPT waived the protection reasoning that waiver requires disclosure to an adversary or in a way likely to reach an adversary***. "Tools are not persons".
- **Morgan v. V2X, Inc., 2026 WL 864223 (U.S. Dist. Ct. Colorado (March 30, 2026)** distinguishes **Heppner** as a criminal matter not controlled by the Federal Rules of Civil Procedure which are broader in scope. ***Because Morgan was a pro se litigant the work product doctrine applied***. "A.I. systems like ChatGPT, Claude, Gemini, and others widely available to the public, collect user data for training and other purposes. But in this Court's estimation, that does not eliminate all expectations of privacy or automatically waive protections." Even though A.I. use technically "discloses" information to a third party, it is highly unlikely the information will fall into the hands of an adversary absent some legal process to compel it. Thus, ***A.I. interactions do not automatically compromise work product protections.***
- **Dunn v. Lexisnexis Risk Solutions, Inc., 2026 WL 2568346 U.S. Dist. Ct. Colorado (August 31, 2026)** Protective order requiring that confidential information be kept out of publicly available consumer-grade "open" A.I. tools that do not offer the same assurances and configurations found in "closed" or "secure" commercial enterprise offerings.

Practical Implications



- Need for A.I. Governance – Determine whether the A.I. system is suitable for use with confidential or privileged information.

- Ensure organizations conduct proper due diligence when selecting tools and determining permissible applications.

- Before using any A.I. Systems review:

1) Data retention policies;
2) Use of inputs and outputs for model training (contractually prohibit this);
3) Data dissemination to third-parties (only if essential for service delivery);
4) The ability to delete or segregate data (included in contract for use).

- Train personnel and audit your organizations A.I. usage policies

- Implement strict guidelines and restrict input of privileged, confidential or investigation related information into consumer grade A.I. systems.

Griffith Foods International, Inc. v. National Union Ins. Co. (Ill. 2026)

Pollution Exclusion:

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.



While half of the United States interprets this broadly, a large minority of states restrict the exclusion to solely apply to “traditional environmental pollution”.

States applying that standard do not uniformly agree on what that means, but is typically considered a “traditional environmental harm” governed by CERCLA or similar state laws, when there is external contamination of air, water, or ground by a pollutant resulting in environmental damage:

“Given the historical background of the absolute pollution exclusion and the drafters' continued use of environmental terms of art, we hold that the exclusion applies only to those injuries caused by traditional environmental pollution. The accidental release of carbon monoxide in this case, due to a broken furnace, does not constitute the type of environmental pollution contemplated by the clause.”

American States Ins. Co. v. Koloms (Ill. 1997)

Does Traditional Environmental Pollution include permitted discharges?

- Illinois appellate court in ***Imperial Marble*** found exclusion ambiguous as to whether manufacturing emissions of "noxious odors, volatile organic materials (VOMs) and hazardous air pollutants (HAPs), including, but not limited to STYRENE and Methyl Methacrylate (MMA), air contaminants and other hazardous material" constitute traditional environmental pollution since emissions were all within Illinois permitted levels.

- 7th Circuit instead held in ***Scottsdale*** that there is no duty to defend for municipalities that failed to close water wells contaminated with perc (dry cleaner solvent), did not matter that perc was below regulatory threshold or that municipalities did not cause the contamination.

Illinois Supreme Court in ***Griffith Foods*** follows the ***Scottsdale*** view, with no duty to defend for discharge of Ethylene Oxide even if contamination is below Illinois regulatory threshold:

In sum, in determining whether the pollution exclusion in a CGL policy applies, we hold that it is irrelevant whether the underlying pollution is permitted or not. Rather, as the *Scottsdale* court said: "[a]ll that counts is that the [underlying] 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."

Court also noted that pollution insurance can be purchased to cover this risk, addressing a main concern justifying the Traditional Environmental Pollution Condition, that any risk involving a pollutant or contaminant will be uninsurable.

Griffith Helps Manage PFAS' Conflicting Regulatory Landscape



Under the *Griffith* ruling, pollution exclusion applies regardless of any conflicting federal and state groundwater regulations for PFOA/PFAS, including when contaminant is discharged in one state's groundwater and travels to other states via rivers and tributaries:

Federal: 4 ppt for PFOA or PFOS

Michigan: 8 ppt for PFOA, 16 ppt for PFOS

New York: 10 ppt for PFOA or PFOS

New Jersey: 14 ppt for PFOA, 13 ppt for PFOS

Rhode Island: Combined sum of all PFOS/PFOA at 20 ppt

EPA attempting to rescind prior administration's guidelines for other forever chemicals-PFHxS, PFNA, and GenX



Matter of Liquidation of Home Ins. Co., 362 A.3d 630 (N.H. 2026)

Allison Scott

Chaffetz Lindsey LLP

Facts

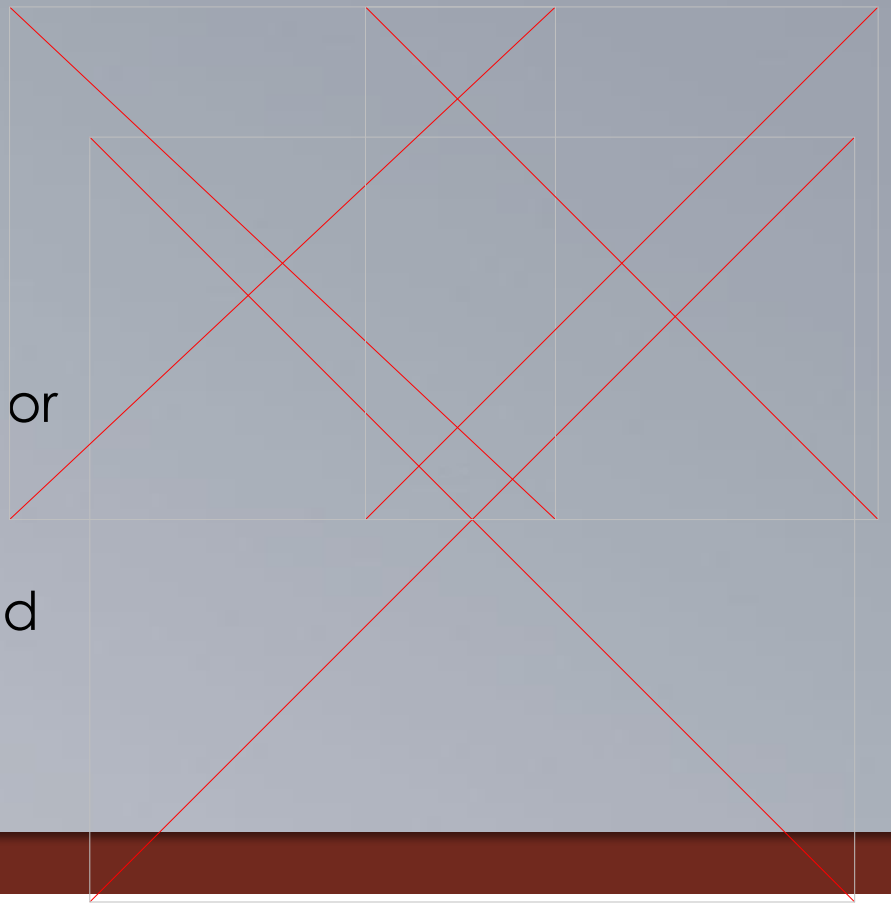
Parties:

- Liquidator of Home Insurance Company ("Home")
- Common Indemnity Company ("CIC") (co-insurer, reinsurer)

Dispute: CIC's contribution claim –

(2) What governs it? Common law or the Insurers Rehabilitation and Liquidation Act?

(3) What number ($) should be used to calculate the claim?

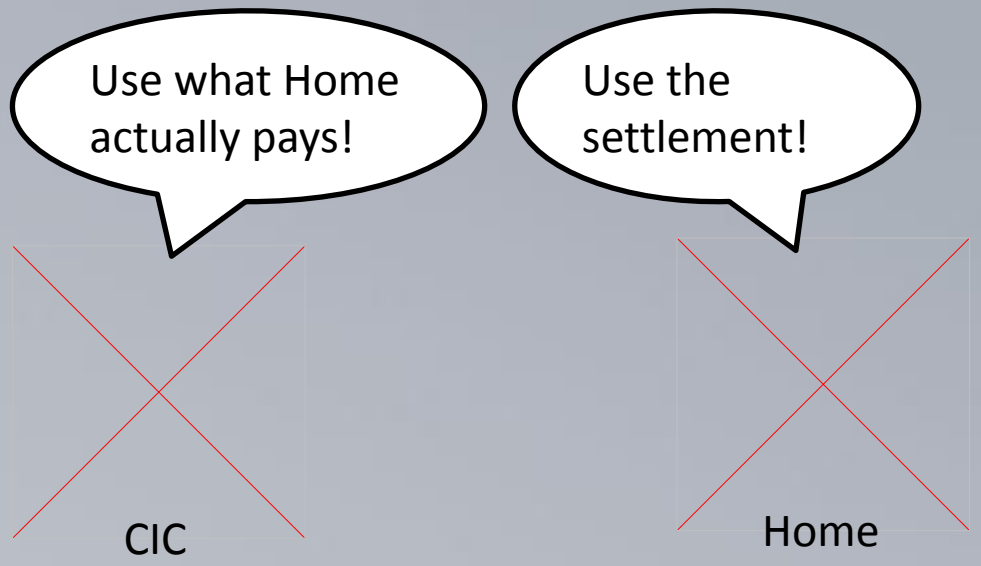


Equitable Contribution

- Apportion to pay fair share of common obligation
- Agreed = settlement equaled Home's fair share



Calculation Dispute

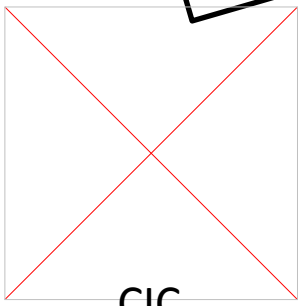


Referee and trial court side with Home

- Under the Act, for the purpose of CIC's right to contribution, Home had paid its "fair share" by settling.
- CIC could not assert contribution rights for **shortfall** between the **full settlement** figure and Home's **actual distributions** to the insured.

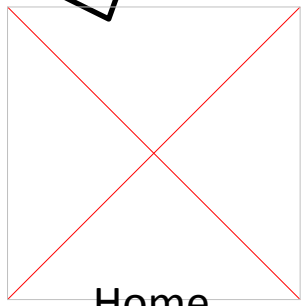
Arguments on Appeal

Look to the common law! What the common (California) law says about contribution is that you calculate using the amounts actually paid.



CIC

This is an insolvency case, so we should be looking to the Act. We also disagree with what CIC says about the common law…



Home

Outcome

The Act governs.

- Provides a "complete scheme" governing determination of claims against a liquidating insurer, including a co-insurer's common law claim for contribution.
- Has set of provisions with rules about filing/proving claims, as well as paying claims (including priority scheme).
- Determines how much of settlement amount Home will actually pay, so a circumstance where Home pays more than that stems from the Act.

How should contribution rights be calculated under the Act? With the settlement amount.

- The Act separates the determination of the insolvent insurer's liabilities from the process of making payments
- Claim/obligation derives from liability to a third-party claimant = determined based on that established liability (the allowed claim) without regard to distributions
- Here, obligation derives from liability to the insured look to Insured's allowed Class II claim (the settlement figure—not what Home actually ends up paying)

Significance

- In the world of insolvency/liquidation, the rules may be different, even with common law causes of action
- Under the Act, settlement figure determines the extent of contribution rights, even where settlement figure is not paid in full



Hamilton Managing Agency Ltd. et al. v. ICI Mutual Ins. Co., RRG
No. 2:25-mc-00079-cr, 2026 WL 1006464 (D. Vt. Apr. 14, 2026)

Key Issues

- In the absence of an express follow-the-settlements (FTS) clause, what standard governs a reinsurer's challenge to a cedent's coverage determination?
- Could the arbitrator reject both FTS and full de novo review in favor of a middle-ground, reasonableness-based standard?
- Did the arbitrator's prior expert testimony on reinsurance custom and practice make him evidently partial?

Holding: No FTS. No de novo review. No evident partiality. Award confirmed.

Underlying Claim

- ICIM issued a $100 million professional liability policy to a fund sponsor/manager.
- The insured sought coverage for the cost of correcting a fund financial restatement.
- ICIM investigated the claim for 18 months with two outside law firms and an accounting firm.
- ICIM concluded the claim was covered and paid its policy limits.

Reinsurance Dispute

- Hamiton and Antares challenged the resulting cession
- They argued, among other things, that the policy's Prior Acts Exclusion barred coverage
- The slip required reinsurers to "follow the terms, clauses, exceptions, warranties[,] and conditions as per the original policy... and shall pay as may be paid thereon, subject, however, to the terms and conditions of the agreement."
    - No express FTS clause.

Central Arbitration Question

- What level of deference, if any, was owed to ICIM's coverage determination in the absence of an express FTS provision?

The Arbitration Award

Arbitrator's Key Holdings

- No express FTS clause
- No implied FTS clause
- No entitlement to a "full, unfettered" de novo review

Framework: ICIM's Burden

- Absent FTS, ICIM had to show its payment was:
  - Reasonable
  - Made in good faith
  - Non-collusive
  - Not ex gratia
  - The product of a professional, competent investigation

Why Not De Novo?

- Would bring reinsurance to a "grinding halt"
- Reinsurers may contest the cession, but not conduct "ground-up re-litigation"
- Serves the slip's "general purpose"

Key Holding

- The question is not whether ICIM was *correct*, but whether its coverage determination was *reasonable* under the circumstances.
- ICIM met that standard. Reinsurers were ordered to pay, plus expenses and interest.

District Court Review — Exceeded Authority / Manifest Destiny

- Reinsurers' Agreement
  - Absent an FTS provision, they were entitled to de novo review of whether the claim was covered
  - By applying a reasonableness standard instead, the arbitrator exceeded his authority and manifestly disregarded NY law
- Court's Holding
  - The arbitration clause authorized the arbitrator to consider:
    - custom and usage
    - the agreement's general purpose
    - honorable-engagement principles
  - Arbitrator did not hold a reinsurer can never get de novo review; he rejected implied FTS and unrestricted de novo review
  - No manifest disregard of precedent in concluding ICIM's coverage determination was reasonable
  - The award had at least a colorable basis

District Court Review — Evident Partiality

- Reinsurers' Agreement
  - Arbitrator previously testified as an expert that industry custom is to impute FTS into reinsurance contracts
  - He did not disclose it, which they said breached the ARIAS U.S. Code of Conduct
- Court's Holding
  - Waiver: arbitrator's prior testimony was easily discoverable and, when reinsurers learned of it, they never sought recusal
  - No Bias anyway: views on legal issues are not partiality; nondisclosure alone does not require vacatur
  - Also: he did not impute FTS into the slip
- Result
  - Petition to vacate denied; award confirmed in full.

Poll – What do you think was the most important case this year?

1. Tyson Int'l Co. v. Partner Reinsurance Europe SE
2. United States v. Heppner
3. Griffith Foods International, Inc. v. National Union Ins. Co.
4. Matter of Liquidation of Home Ins. Co.
5. Hamilton Managing Agency Ltd. et al. v. ICI Mutual Ins. Co.


Thank you!
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