

We've Got You Covered



Douglas P. Skelley  
Shidlofsky Law Firm PLLC  
512.685.1400  
doug@shidlofskylaw.com

## INSURANCE LAW UPDATE

### THE CASES

- ✘ *U.S. Metals, Inc. v. Liberty Mutual Group, Inc.*, 490 S.W.3d 20 (Tex. 2015), *reh'g denied* (Tex. June 17, 2016)
- ✘ *Patton v. Mid-Continent Casualty Co.*, 2016 WL 3900799 (S.D. Tex. July 19, 2016)
- ✘ *Mid-Continent Casualty Co. v. Petroleum Solutions, Inc.*, 2016 WL 5539895 (S.D. Tex. Sept. 29, 2016)

**U.S. METALS, INC. V. LIBERTY MUT. GROUP. INC.,**  
**490 S.W.3D 20 (TEX. 2015)**

**U.S. METALS V. LIBERTY MUTUAL**

- ✘ Exxon contracted with U.S. Metals to manufacture and sell to Exxon weld-neck flanges.
- ✘ The flanges were “irreversibly incorporated” into NRD units by welding and bolting the flanges into unit pipes and then covering them with a special high temperature coating and insulation.
- ✘ Exxon discovered leaks in several of the installed flanges and subsequent investigation revealed that the flanges had been improperly manufactured against ASTM standards.
- ✘ Exxon replaced all the flanges.

### ***U.S. METALS V. LIBERTY MUTUAL***

- ✘ Liberty Mutual disclaimed coverage based on the “your product” exclusion and “impaired property” exclusion.
- ✘ District court ruled for Liberty Mutual.
- ✘ Fifth Circuit determined that the issues before it turned on two questions of law that have not been directly addressed: (i) whether the term “physical injury” and “replacement” found in the “your product” and “impaired property” exclusions are ambiguous; and (ii) if not, what do these terms mean pursuant to Texas law?

### ***U.S. METALS V. LIBERTY MUTUAL***

- ✘ Question 1: In the “your product” and “impaired property” exclusions, are the terms “physical injury” and/or “replacement” ambiguous?
- ✘ Question 3: If the above question 1 is answered in the negative as to “physical injury,” does “physical injury occur to the third party’s product that is irreversibly attached to the insured’s product at the moment of incorporation of the insured’s defective product or does “physical injury” only occur to the third party’s product when there is an alteration in the color, shape, or appearance of the third party’s product due to the insured’s defective product that is irreversibly attached?
- ✘ Question 4: If the above question 1 is answered in the negative as to “replacement,” does “replacement” of the insured’s defective product irreversibly attached to a third party’s product include the removal or destruction of the third party’s product?

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: We've Got You Covered

First appeared as part of the conference materials for the  
21<sup>st</sup> Annual Insurance Law Institute session  
"Insurance Coverage for Construction Claims Update"