EXPANDED INTERPRETATION OF PRICE-ANDERSON ACT IS ANOTHER POSITIVE SIGN FOR COMMERCIAL NUCLEAR DEVELOPMENT IN THE UNITED STATES

Date: 10 March 2025

US Energy, Infrastructure, and Resources Alert

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On 10 February 2025, the US Court of Appeals for the Federal Circuit (Federal Circuit) issued a decision in *Cotter Corp. v. United States* that solidified a broad interpretation of the applicability of contractual and statutory indemnity under the Price-Anderson Act (PAA) for nuclear accidents.[1] The Federal Circuit's decision is a positive development for the commercial nuclear industry because it takes a broad view of when a noncontracting party can take advantage of an indemnification issued under a government contract.

Originally enacted in 1957, the PAA was designed to address the risk of substantial liability following a nuclear incident, as such liability was viewed as a major disincentive to private industry investment in nuclear power generation. The PAA authorized the federal government to "make funds available for a portion of the damages suffered by the public from nuclear incidents and to limit the liability of those persons liable for such losses."[2] The PAA also added several provisions concerning government indemnification of persons liable for harm from nuclear incidents, authorizing the federal government "to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident."[3]

Cotter Corporation (N.S.L.) (Cotter), which conducts mining and milling, incurred liability through a settlement based on allegations that it injured members of the public in the St. Louis area by releasing, between 1969 and 1973, radioactive materials and residues originally produced by another company, Mallinckrodt, pursuant to a contract with the federal government. That contract, to which Cotter was not a party, obligated the government to indemnify Mallinckrodt for nuclear accidents. Cotter filed a claim against the United States for statutory and contractual indemnification seeking the benefit of this indemnity.

In 2023, the US Court of Federal Claims dismissed Cotter's claims.[4] The Claims Court interpreted the PAA narrowly, effectively requiring "(a) a contemporaneous relationship between the liability-generating acts of the non-contractor indemnity claimant (Cotter) and the performance of the contract (by Mallinckrodt or the government) and, seemingly, (b) that the indemnity claimant's activities (generating liability to others) were related to the contractual activities in the particular sense of contributing to the performance of the contract."[5] According to the Claims Court, Cotter's activities occurred years after the contract at issue was terminated and did not sufficiently relate to the performance of the government contract.[6] "[M]ere later ownership and possession of

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radioactive material that resulted from [such a] Contract" was not sufficient to claim indemnity, according to the Claims Court.[7]

Cotter appealed the decision to the Federal Circuit, which rejected this narrow interpretation, holding that "'persons indemnified' [under the PAA] is defined broadly to cover not just the contractor but 'any other person who may be liable for public liability.'"[8] The Federal Circuit further held that "[p]ublic liability, in turn, broadly reaches the public by embracing '*any* legal liability arising out of or resulting from a nuclear incident,'... and that] 'nuclear incident' covers '*any* occurrence within the United States causing bodily injury... arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material.'"[9]

The Federal Circuit concluded that none of the statutory definitions "limit indemnity to the period before the government contract ended or includes a requirement that the indemnity claimant's (exposure-causing) activity was contributing to the contracting parties' performance."[10] Instead, the Federal Circuit held that the statutory scheme is "focused simply on the hazard from the material—a hazard that is not limited in time to the period of performance of a particular contract and may be long lasting, for at least some of the covered nuclear materials."[11] The Federal Circuit concluded that "a contract-termination temporal limit (*i.e.*, excluding government compensation if and when harm occurred after termination) would undermine the declared statutory purposes 'to protect the public' and remove an important deterrent to private investment in nuclear energy."[12]

The Federal Circuit concluded that causation was a requirement for indemnity purposes and that there needed to be a sufficient causal connection between the contract containing the indemnity and the claim. However, because the contract here dealt with the creation of the hazardous material that was the source of the damages—a radioactive release—the Federal Circuit found sufficient causation.

With the relatively recent renewed focus on nuclear power as a reliable baseload power solution (particularly to power data centers), the *Cotter Corp*. decision clarifies the expansive nature of indemnification under the PAA and will likely further encourage nuclear projects underway in the United States.

FOOTNOTES

[1] No. 1:22-cv-00414-DAT, 2025 U.S. App. LEXIS 2969 (Feb. 10, 2025), https://www.cafc.uscourts.gov/opinions-orders/23-1826.OPINION.2-10-2025_2465769.pdf.

[2] *Id.* at *6–7.

[3] *Id.*

[4] *Cotter Corp. (N.S.L.) v. United States*, 165 Fed. Cl. 138 (Fed. Cl. 2023).

[5] Cotter Corp., 2025 U.S. App. LEXIS 2969, at *28.

[6] *Id*. at *21.

[7] *Id*. at *29.

[8] *Id*. at *30.

[9] *Id*. at *32.

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[10] *Id*. at *31–32.

[11] *Id*.

[12] *Id*.

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