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Connecticut Supreme Court Holds That Insurance Broker Has No Duty to Inform Homeowners of Impending Nonrenewal

A majority of the Connecticut Supreme Court reaffirmed a long-standing rule on the scope of an insurance agent's duty to its client. The agent has no duty to notify the insured that its policy is at risk of being nonrenewed because the agent's obligations end once the insurance policy is procured. But the dissent didn't think that rule should apply, at least not in the unfortunate circumstances of this case.

For fifteen years, Lee and Keleen Deer purchased homeowners policies with Allstate through the Trahan Agency ("Trahan"), a captive Allstate agent. In 2017, they bought homeowners insurance with another insurer, using a different insurance agent. They returned to the Trahan Agency in 2019. At that time, Allstate stopped writing homeowners policies in Connecticut but allowed their captive agents to sell homeowners policies underwritten by other insurers. Trahan placed the Deers in a policy underwritten by Century-National and told the Deers that a house inspection might be required.

Century-National inspected the house and allegedly emailed the results only to Trahan. The Deers were unaware that the inspection took place. Century-National informed Trahan that the house was missing siding and had to be repaired as a condition of continued coverage. Proof of repair was required by March 27, 2020, three months before the policy renewed. Century-National asked that Trahan "discuss the situation" with the Deers.

According to the Deers, Trahan never sent the inspection results to the Deers or informed them that they needed to send proof of repairs to Century-National. After the March 27 deadline passed, Century-National informed Trahan that the policy would be renewed only if proof of repair was submitted before the policy expired. Trahan allegedly again failed to notify the Deers that they needed to send proof of repairs as a condition of continued coverage.

The Deers operated on the belief that their policy would automatically renew, just as their Allstate policies had. Century-National notified both the Deers and Trahan that the policy would not be renewed, but because of an oddity with their mailbox location, the Deers never received the notice. The postal service, after being unable to deliver the notice by certified mail, returned the notice to Century-National.

Shortly after the policy expired, the Deers' home was destroyed by a fire. The Deers first learned that they did not have active homeowners insurance when they reported the fire to Trahan. The Deers sued Trahan, contending that Trahan had a duty to notify them of the inspection results, the conditions for continuing coverage, and the subsequent nonrenewal that resulted from the Deers' failure to comply with the conditions for continuing coverage. (The Deers sued Trahan and Century-National under various theories, but the Connecticut Supreme Court only addressed the Deers' common-law negligence claim).

Trahan moved for summary judgment, arguing that it had no duty to notify the Deers of the impending nonrenewal. The trial court granted Trahan's motion, and the appellate court affirmed.

The Connecticut Supreme Court majority agreed. Unless an insurance broker promised to arrange for renewal, the broker has no duty to continue to obtain insurance for the client. That's because the insurance company is required to inform the insured of its intention not to renew.

The majority found that the Deers presented no evidence that Trahan agreed to help maintain continuous coverage and that Trahan's agency relationship with the Deers ended upon procuring the policy in June 2019. The Deers' argued that a duty should be imposed because of the long-standing relationship they had with Trahan. Unpersuaded, the majority noted that relationship terminated in 2017, and was restarted in 2019, such that the Deers and Trahan were only one year into a relationship with Century-National policies. But even if the Allstate policies were considered, the length of the relationship did not create an extended agency relationship without affirmative action by the broker in the renewal process. There was no evidence that Trahan ever assisted in the renewal process.

Although sympathetic to the Deers' situation, the majority declined to impose a duty on an insurance broker to inform its clients of an impending nonrenewal where there is no evidence that it agreed to take on that obligation.

The dissent saw it differently. It did not think that this situation fell within the scope of the general rule. The dispute was less about Trahan's duty to help procure a new policy from Century-National and more about Trahan's duty to notify the Deers of material information relevant to their existing policy that was necessary for continued insurance. Because Trahan knew early on that Century-National had threatened to cancel coverage because of the siding issue, the dissent felt that Trahan's duties to the Deers had not yet ended with respect to the initial policy. Instead, the dissent believed Trahan had a duty to tell the Deers about the condition for continuing coverage and the need to submit proof of repairs.

The majority was unwilling to create a new legal duty, saying that it was up to the legislature to do that.

The case is *Deer v. Nat'l Gen. Ins. Co.*, No. SC 21045 (Conn. Sept. 9, 2025).

Ohio Appeals Court Rules That Claimant May Not Bring a Bad Faith Claim Against Liability Insurer, Duty Runs Only to Insured

Clark was involved in an auto accident with a vehicle driven by Hobensack. Hobensack's insurer, Grange, allegedly offered to settle based on appraisal but then supposedly blocked access to the payment portal, preventing Clark from receiving the agreed-upon sum.

Clark then sued Grange for fraudulent misrepresentation, bad faith, intentional infliction of emotional distress, and vicarious liability.

Ohio law prevents direct actions against insurers unless the claimant obtains a judgment against the insured that remains unsatisfied for 30 days. But the court also found that a bad faith claim cannot be brought against an insurer by a third-party claimant.

The duty to act in good faith runs only from the insurer to its own insured. An insurer owes a duty to its insured to negotiate in good faith with a party injured by the insured, but the insurer owes no independent duty to the injured party, nor is the injured party a third-party beneficiary to the insurance contract. Thus, the court found that Clark could prove no set of facts warranting recovery under a theory of bad faith.

The case is *Clark v. Grange Ins.*, No. 24AP-765 (Ohio Ct. App. Sept. 9, 2025).

Georgia Court Rules That Uncontaminated Stormwater Is a Pollutant Under Pollution Exclusion

A homeowners' association (HOA) in Georgia was sued by neighboring landowners. The neighbors contended that the HOA used and maintained retention ponds that caused flooding and damage to their properties.

The HOA reported the matter to its commercial general liability insurer, Auto-Owners Insurance Company, who agreed to defend the HOA subject to a reservation of rights. Auto-

Owners then brought a declaratory judgment action against the HOA in Georgia federal court to resolve its coverage obligations. The district court granted summary judgment to Auto-Owners because the policy's pollution exclusion barred coverage.

The court framed the question as this: Is "clean" stormwater alone (not mixed with anything else) an "irritant" or "contaminant" and thus a "pollutant" under the pollution exclusion? The court answered yes. The court relied on cases holding that contamination is not a prerequisite for stormwater to qualify as a "pollutant." And "pollutant" under the policy included an "irritant" or "contaminant."

It did not matter that many allegations were based on a purported increase of the groundwater table under the neighbors' properties. The pollution exclusion did not qualify pollutants based on their source, location, or how they manifested. It was ultimately the stormwater – even if there were "mounding" before discharge – that created the alleged damage. And "stormwater" was a pollutant under Georgia law.

The court thus concluded that the pollution exclusions barred coverage and granted summary judgment to Auto-Owners.

The case is *Auto-Owners Ins. Co. v. Tabby Place Homeowners Ass'n*, 4:21-cv-346 (S.D. Ga. Sep. 3, 2025).

Indiana Federal Court Finds Voluntary Cleanup Program Not a "Suit" under Commercial General Liability Policy

Watermark at Peoria AZ, LLC and Thompson Thrift Development, LLC owned and managed an apartment complex in Arizona. Thomspon Thrift voluntarily performed testing at the property, which revealed contaminated toxic chemicals.

Thompson Thrift reported the condition to its insurer, Cincinnati Insurance Company. Cincinnati asked to be notified immediately if Thompson Thrift received any third-party claims or notices from any governmental agency. A week later, Thompson Thrift informed Cincinnati that it would report the PCE contamination to the Arizona Department of Environmental Quality (ADEQ), as Arizona law required, and would notify the property's tenants.

An ADEQ Section Manager later sought confirmation from Thompson Thrift that Unit 1061 would remain vacant due to the high PCE levels. Thompson Thrift viewed this as a "soft command" to keep the unit vacant. In Thompson Thrift's view, it was implied that if this was not done, ADEQ would take action, including shutting down other units. ADEQ also requested that it be given on an "ASAP" basis, the results of Thompson Thrift's environmental testing. Thompson Thrift also enrolled in ADEQ's Joint Voluntary Remediation Program.

Thompson Thrift next brought a coverage suit against Cincinnati. The court granted summary judgment for Cincinnati. Applying Indiana law, the court ruled that ADEQ's actions did not rise to a "suit" under the Cincinnati policy. To qualify as a "suit" under Indiana law, a matter "must [involve] some cognizable degree of coerciveness or adversariness" or a "substantial entry-level burden" of coercion.

But ADEQ never told Thompson Thrift that it faced liability, formal enforcement actions, or civil penalties for not complying with ADEQ's requests. While Thompson Thrift called ADEQ's communications about Unit 1061 a "keep vacant order," ADEQ called it an "investigation." And there was no evidence of an administrative order or "formal demand" that could subject Thompson Thrift to liability. Similarly, ADEQ's requests for data from Thompson Thrift's testing was the type of information gathering expected in an ongoing "investigation," not a formal

proceeding aimed at legal liability. In fact, Thompson Thrift's "goal" throughout the whole process was to avoid imposed liability.

As there was no "suit," Cincinnati's duty to defend was not triggered, and Cincinnati was entitled to summary judgment on this issue.

The case is *Thompson Thrift Dev., Inc. v. Cincinnati Ins. Co.*, 23-cv-00140 (S.D. Ind. Sept. 23, 2025).

Illinois Federal Judge Rules That Psychological Harm from Witnessing Workplace Violence Does Not Assert a Claim Seeking Damages Because of Bodily Injury

A McDonald's employee sued the company over witnessing repeated acts of violence at one of its Chicago restaurants. The employee complained that she was regularly exposed to violent and criminal behavior by customers, that she suffered psychological harm, and feared that she would face future episodes of violence. McDonald's believed that these allegations triggered its commercial general liability insurer's duty to defend.

The policy imposed a duty to defend on the insurer for sums the insured becomes legally obligated to pay as damages because of "bodily injury." The term "bodily injury" was defined as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time."

The insurer disputed that it had a duty to defend. McDonald's then sued the insurer in Illinois federal court.

McDonald's theory was that the bodily injury of others caused the employee emotional distress. But the court said that such allegations did not establish that the employee was asserting an actual physical injury as required by the policy. The court pointed to caselaw for the principle that physical injury does not include emotional injuries.

The court held that second-hand injuries such as fear and emotional distress caused by viewing other persons' bodily injuries are not covered by the policy. Nor was it clear that the employee even asserted a claim for damages for her observances. The insurer thus had no duty to defend.

The case is *McDonald's Corp. v. Homeland Ins. Co. of N.Y.*, No. 23-C-16297 (E.D. Ill. Sept. 10, 2025).

First Circuit Finds Multiple Occurrences Arising Out of Class Action Alleging Damage to Home Heating Equipment from Excess Biodiesel Fuel

In March 2019, customers of Peterson's Oil Service, Inc. sued the company, alleging that Peterson's had added home heating oil with excess biodiesel, thereby harming their heating equipment.

A court certified a class comprised of two subclasses: one comprised of customers who received heating oil with more than five percent biodiesel from 2012 to February 2019, and another comprised of customers who received such heating oil from March 2019 to the "present."

Peterson's asked its commercial general liability insurer, Federated Mutual Insurance Company, to defend it in the class action. Federated refused, citing the policy's known loss and loss-in-progress provisions. Federated believed those provisions applied because Peterson's knew about the claim before coverage commenced.

Federated's policy covered property damage during the policy period so long as "[p]rior to the policy period, no insured . . . knew that the . . . 'property damage' had occurred, in whole or in part" (the "known loss" provision).

While "property damage" was not itself defined, it had to be something caused by an "occurrence." "Occurrence" meant "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

Also, if the insured "knew, prior to the policy period, that the . . . 'property damage' occurred, then any continuation, change or resumption of such . . . 'property damage' during or after the policy period will be deemed to have been known prior to the policy period" (the "loss-in-progress" provision).

Federated filed a diversity action in Massachusetts federal court for a declaration that it had no duty to defend or indemnify Peterson's in the underlying case. The district court denied Federated summary judgment on the duty to defend issue. Federated appealed.

The First Circuit affirmed. The court framed the question as follows: Were claims by class members who first incurred damage after coverage began excluded from coverage by the known loss and loss-in-progress provisions because Peterson's knew about the same type of damage experienced by earlier class members? The answer to this question, the court said, turned on a proper understanding of the occurrence because (1) the known loss provision foreclosed coverage for "property damage" that the insured knew about before the policy period began, and (2) "property damage" had to be something caused by an "occurrence."

So, was there an "occurrence" every time Peterson's delivered biodiesel-enriched oil that allegedly damaged a customer's heating equipment, as Peterson's suggested? Or, as Federated argued, was Peterson's entire course of conduct in delivering allegedly defective oil to its customers a single "occurrence"?

The court said the provision of heating oil to each new customer constituted a separate occurrence. Although the word "occurrence" was defined in the policy, the court consulted

dictionary definitions of the term. That approach is unusual where the contract gives specific meaning to a term. According to the court, dictionary definitions connoted a "concrete, time-bound quality," which it viewed as being different than providing oil to multiple customers over multiple years. Framed this way, the court held that the known loss and loss-in-progress provisions did not impute Peterson's prior knowledge of "property damage" caused by one "occurrence" to another, separate "occurrence." Because the alleged damage to different customers reflected distinct "occurrences," each customer experienced distinct "property damage," regardless of whether the different occurrences were generally caused by the same decision to sell biodiesel-enriched oil.

In so holding, the court emphasized that this ruling was limited to situations in which "new damage" occurred to "new customers" during the policy period. It also appears that, given the unique policy language at issue, the court blurred the distinction between an occurrence and property damage.

The court thus agreed with the district court that because not all the claims asserted in the underlying action fell outside the policy's coverage, Federated had a duty to defend the action.

The case is *Federated Mut. Ins. Co. v. Peterson's Oil Serv.*, No. 24-1660 (1st Cir. Sep 8, 2025).