

Indiana Supreme Court Adopts “Safe Harbor” Provision for Interpleader, Holds That Insurer Did Not Act in Bad Faith When Rejecting Time-Limited Settlement Demand

The Indiana Supreme Court adopted the Restatement’s “safe harbor” provision for interpleader, allowing insurers to deposit the full policy limit in court when coverage is insufficient to satisfy multiple claims. (Section 26 of the Second Restatement of the Law of Liability Insurance). Applying that rule, the Indiana Supreme Court held that an insurer did not breach the duty of good faith and fair dealing when it rejected a time-limited settlement demand by one claimant and filed an interpleader naming all claimants.

The case arose out of an auto accident. Hummel crashed into Baldwin’s vehicle. Baldwin was taken by ambulance to a hospital. Hummel and one of her passengers, Hopkins, were airlifted to a different hospital. Another passenger in Hummel’s vehicle, McCarty, fled the scene. (McCarty, who served time for dealing drugs, presumably left the scene because drug paraphernalia was found in the vehicle).

Hummel had an auto policy with Standard Fire Insurance Company with liability limits of \$50,000 per person, \$100,000 per accident. Standard Fire’s investigation revealed that Hummel potentially faced claims from Baldwin, Hopkins, and McCarty. McCarty, however, did not cooperate in Standard Fire’s investigation or respond to its inquiries.

Baldwin sued Hummel for injuries he sustained in the accident. Standard Fire hired counsel to defend Hummel. Two months later, Baldwin made a time-limited settlement demand for the full \$50,000 per person liability limit, good for 20 days. Standard Fire rejected the demand,

explaining that both Baldwin's and Hopkin's claims would exceed the \$50,000 per person limit. If Standard Fire paid Baldwin, it would prematurely erode the \$100,000 aggregate, leaving Hummel with potentially uninsured exposure for anticipated claims by McCarty and Hopkins.

Standard Fire then filed an interpleader action naming Baldwin, Hopkins, and McCarty as interested parties. Standard Fire thought interpleader was the best way to protect it insured, Hummel. In the interpleader, Standard Fire admitted that it was liable to pay the \$100,000 policy limit, but said it was uncertain as to how much to pay to each claimant. (McCarty defaulted, and the trial court later awarded \$50,000 to Baldwin and \$50,000 to Hopkins).

Baldwin's suit against Hummel continued. Without Standard Fire's consent, Hummel agreed to a \$700,000 judgment and assigned her insurance rights to Baldwin in exchange for a covenant not to execute. Baldwin then filed counterclaims in the interpleader action alleging that Standard Fire breached its duty of good faith and fair dealing owed to Hummel by rejecting Baldwin's \$50,000 settlement demand. Baldwin also alleged that Standard Fire acted in bad faith and sought punitive damages. Baldwin argued that Standard Fire placed its own interests ahead of its insured's and retained an expert who opined that Standard Fire's pursuit of interpleader in lieu of accepting Baldwin's settlement demand was for the purpose of eliminating any further expenses on the part of Standard Fire.

The trial court granted summary judgment to Standard Fire. The intermediate appellate court reversed in part, finding genuine issues of material fact on whether Standard Fire acted in good faith.

The Indiana Supreme Court recognized that claims by multiple claimants with serious injuries can create special problems regarding the duty to settle. This warranted a different approach than the "reasonable efforts to compromise" standard that applies to a single claimant.

The court acknowledged that an insurer faces a dilemma when there are multiple claimants and insufficient limits. Whether an insurer settles individual claims, thereby reducing funds available to others, or seeks a global settlement in hopes of equitably resolving all claims, someone is going to be unhappy and will accuse the insurer of bad faith.

Noting that Indiana caselaw “has never grappled in any depth with this issue of insurers facing many potential claims against an insufficient policy,” the Indiana Supreme Court adopted Section 26 of the Second Restatement of the Law of Liability Insurance as the governing standard in Indiana. The new standard both requires insurers to try to limit an insured's overall liability exposure and provides insurers with a “safe harbor” for limiting their own liability through an interpleader action. Interpleader prevents one of multiple claimants from obtaining the advantage of first judgment and protects the insured from multiple exposure to liability. An insurer that interpleads the policy limits to the court must continue to defend the insured until the suits against the insured are adjudicated or settled, or the insurer gets a declaration that it has no duty to defend.

Applying this standard, the court found that Standard Fire did not breach the duty of good faith and fair dealing when it rejected Baldwin's initial settlement demand and filed an interpleader action. Standard Fire faced the prospect of multiple claimants whose injuries exceeded the policy limits. Accepting Baldwin's initial settlement demand risked excluding McCarty from any recovery from the policy's proceeds and leaving her with no choice but to sue Hummel personally. Facing these facts, Standard Fire filed an interpleader action to balance the interests of all parties given the constraints of the \$100,000 per-accident policy limit.

The Indiana Supreme Court found that Standard Fire neither breached its duty of good faith and fair dealing nor acted in bad faith. It affirmed the trial court's entry of summary judgment for Standard Fire.

One judge concurred in adopting the Restatement's safe harbor provision, but thought factual issues remained over whether Standard Fire acted in good faith, as the jury could find that Standard Fire did not reasonably fear that McCarty would make a claim against the policy.

The case is *Baldwin v. Standard Fire Ins. Co.*, No. 25S-CT-33 (Ind. Oct. 21, 2025).

Eleventh Circuit Applies Notice-Prejudice Rule to Claims-Made and Reported Policy, But Finds That Policyholder Did Not Rebut Presumption of Prejudice When Failing to Comply With 7-Day Notice Clause

L. Squared Industries operated gas stations in Florida. One of its underground storage tanks leaked. L. Squared submitted a claim to its pollution liability insurer, Nautilus Insurance Company, who issued a claims-made and reported policy effective July 18, 2018, to July 18, 2019.

Nautilus denied coverage because notice was untimely. L. Squared learned of the petroleum release in August 2018, but did not notify Nautilus until April 2019, eight months later. The policy required notice "as soon as reasonably possible, but in any event, not more than seven (7) days after the insured first became aware of, or should have become aware of, a pollution condition which may result in a claim or any action or proceeding to impose an obligation on the insured for cleanup costs."

L. Squared sued Nautilus. The district court ruled for Nautilus, finding that L. Squared breached the 7-day notice provision. L. Squared appealed.

The Eleventh Circuit affirmed, but for different reasons.

The Nautilus policy was a claims-made and reported policy. The policy covered pollution cleanup claims as long as the pollution conditions are first discovered during the policy period and reported to Nautilus during the policy period or extended reporting period. L. Squared notified Nautilus of the claim in April 2019, when the policy was still in effect. So, this requirement was satisfied.

The policy, however, also required that L. Squared notify Nautilus of a pollution condition as soon as reasonably possible, but not more than 7 days after L. Squared became aware of a pollution condition that might require cleanup. L. Squared learned of the pollution condition in August 2018 but did not report it to Nautilus until months later, thus violating the 7-day notice requirement. The Eleventh Circuit considered whether this breach resulted in no coverage and whether the notice-prejudice rule applied.

The court found no Florida cases addressing whether the notice-prejudice rule applies where the insured provides notice during the coverage period of a claims-made policy but fails to provide that notice within a specified period. But the court observed that most courts have found that coverage is not automatically lost where the insured provides notice during the policy period of a claims-made policy and breaches only the specific requirement. Most courts apply the notice-prejudice rule to traditional claims-made policies that require notice as soon as reasonably practicable.

The court found that Florida courts have addressed the more general issue of what presumptions apply when an insured breaches a notice provision. Under Florida law, there is a rebuttable presumption of prejudice. Applying that rule, L. Squared had the burden to show that its breach of the 7-day notice requirement did not prejudice Nautilus.

The court found that L. Squared did not do enough to rebut the presumption of prejudice.

First, it did not attempt to rebut the presumption of prejudice until its motion for reconsideration of the summary judgment order. The court noted that a losing party cannot use a motion for reconsideration to raise a new argument.

Second, it failed to cite evidence in the record. The Eleventh Circuit said that the district court was under no obligation to search the record for evidence that might create an issue of fact on prejudice.

The Eleventh Circuit thus affirmed summary judgment for Nautilus given L. Squared's breach of the 7-day notice provision.

The case is *L. Squared Indus. v. Nautilus Ins. Co.*, No. 23-13031 (11th Cir. Oct. 15, 2025).

Sixth Circuit Finds No Bad Faith When Insurer Settled Claim Within Policy Limits, Even Though Settlement Eroded Insured's Captive Insurance

Chemical Solvents tendered the defense of a bodily injury suit to its insurers, Greenwich Insurance Company and Illinois National Insurance Company. Chemical Solvents believed it could successfully defend the case, but Greenwich and Illinois National settled it. The policies allowed the insurers to settle for an amount not exceeding the policies' monetary limits.

Chemical Solvents contended that the insurers took advantage of Chemical Solvent's separate membership in a group captive insurer called Alembic, Inc. Because Illinois National had its own reinsurance contract with Alembic, the settlement left Chemical Solvents responsible for a substantial portion of the settlement.

Chemical Solvents sued Greenwich and Illinois National for breach of contract and bad faith. The district court granted summary judgment to the insurers on both claims. The bad-faith claim made its way to the Sixth Circuit.

Applying Ohio law, the Sixth Circuit affirmed the dismissal of the bad-faith claim. The court cited Ohio case law prohibiting bad faith claims where an insurer settles a lawsuit within policy limits.

The court acknowledged that the settlement indirectly created “further liability” for Chemical Solvents by exhausting its captive insurance but noted that a bad faith claim can only proceed if an insurer fails to settle within policy limits and a judgment in excess of the policy limits results. In other words, the “further liability” must take the form of a judgment for more than policy limits, not any costs to the insured whatsoever resulting from the settlement.

For these reasons, the court affirmed the district court’s judgment.

The case is *Chem. Solvents, Inc. v. Greenwich Ins. Co.*, 25-3366 (6th Cir. 2025)

California Appellate Court Finds No “Occurrence” Where Insured Was Found to Have Acted Both Intentionally and Negligently

This case reaffirms the principle that coverage under a liability policy depends on the facts, not the legal theories or labels.

Curtis Diblin, without provocation, repeatedly struck his housemate, Monee Gagliardo, in the back of her head with a rubber mallet. He also allegedly grabbed her in a wrestling hold and restrained her from leaving. Diblin was arrested and pled guilty to assault with intent to commit a sexual crime.

Gagliardo then filed a civil suit against Diblin for sexual assault, sexual battery, gender violence, civil rights violations, sexual harassment, and negligence. Gagliardo alleged that Diblin acted with malice and intent to injure. Each cause of action in Gagliardo’s complaint sought recovery based on the same alleged conduct – Diblin’s attack on Gagliardo.

At trial, Diblin admitted that he struck Gagliardo with a mallet but denied that the attack was sexual in nature. He explained that he pleaded guilty to the charge of assault to commit a sexual offense because he thought that would carry a lesser sentence than if he were found guilty of other charged counts. He also introduced expert evidence that his violent outburst was a hypomanic episode caused by the testosterone he was taking as part of his treatment for prostate cancer.

The jury found for Gagliardo on two theories: (1) that Diblin had committed an act of gender violence against Gagliardo (that his attack was in part based on Gagliardo's gender) and (2) that he had acted negligently, which caused her harm. The jury also found that Diblin acted with malice. The jury awarded Gagliardo \$2.5 million in compensatory damages (she waived her right to punitive damages).

Diblin sought defense and indemnity under a homeowners' policy with State Farm. The policy covered injuries arising from an "occurrence," defined as "an accident." State Farm was willing to fund Diblin's appeal. But Diblin instead settled with Gagliardo and assigned his insurance rights to her.

Four years after the final judgment was entered in her case against Diblin, Gagliardo filed an amended complaint in the trial court (without receiving leave of court to do so). The amended complaint revised the negligence cause of action by alleging that Diblin breached his duty of care to Gagliardo by losing self-control and battering her, in failing to seek medical assistance despite being aware of the side effects of prescription testosterone, and in failing to keep an adequate distance from her.

State Farm filed a declaratory judgment action against Gagliardo and Diblin. Gagliardo cross-claimed for breach of contract and bad faith. The trial court held that the jury's verdict

conclusively established that Diblin acted intentionally when he injured Gagliardo. Gagliardo's damages thus did not arise from a covered "occurrence" under the policy.

Gagliardo disputed that the jury found that Diblin acted intentionally when striking Gagliardo in the head with a mallet and appealed. She argued that because the jury found Diblin negligent, her injuries must have been caused by an accident. And even if Diblin intentionally harmed Gagliardo, the negligence finding should be considered an independent concurrent cause of her injuries.

The California Court of Appeal disagreed.

The jury's finding that Diblin committed gender violence meant that he committed an intentional tort. A person cannot act based on another's gender unless he or she acts intentionally. And the jury's finding that Diblin acted with malice and oppression further supported the idea that the jury had found intentional conduct.

In the court's view, the jury's finding on negligence was not inconsistent with its finding on gender violence. Viewing the jury verdict as a whole, the jury may have concluded that Diblin engaged in intentional conduct when he attacked Gagliardo, and that this same conduct also met the standard for negligence. In other words, a jury could conclude that a person who intentionally injures another person has also "failed to use reasonable care" to prevent injury to another. Critically, the only conduct alleged to have caused Gagliardo's injuries was the assaultive conduct, nothing else. And the jury was never told that the gender violence and negligence findings were mutually exclusive.

The court also rejected Gagliardo's reliance on the concurrent cause theory. The court did not think that the jury found Diblin liable for two separate types of conduct. But even if the jury's verdict could be interpreted as two separate acts or omissions (Diblin's intentionally violent

conduct and the mismanagement of his medication or failure to warn Gagliardo about the side effects he was experiencing), the concurrent independent causes rule did not apply because the purported noncovered and covered causes of the injury were not independent of each other.

Diblin's failure to address the side effects of his testosterone treatment or his failure to warn Gagliardo about his experience of violent side effects were not risks that themselves could have caused Gagliardo harm. It was only when these omissions were coupled with Diblin's violent conduct that any injury could have possibly resulted. Any testosterone-related negligence was thus integrally connected to Diblin's intentionally violent conduct, not independent of it.

For these reasons, the court affirmed the trial court's judgment.

The case is *State Farm Fire & Cas. Co. v. Diblin*, D083765 (Cal. Ct. App. Oct. 7, 2025).

California Federal Court Applies Prior Act Exclusion Where Fraudulent Scheme Began Before Retroactive Date and Continued After

Errors and omissions policies typically have "prior acts" exclusions that bar coverage for wrongful acts committed before the policy's retroactive date. Courts have sometimes grappled over whether to apply prior act exclusions when there are wrongful acts both before and after the retroactive date. Here, a California federal district court found that the policy's language clearly precluded coverage.

Reconstruction Experts, Inc. (REI) worked on a construction project at Excelsior, a luxury condominium community in Glendale, California. A payment dispute arose, and litigation ensued.

Excelsior accused REI of a fraudulent scheme that began with a restrictive preconstruction contract. The contract precluded other contractors from bidding so that REI would be awarded a lucrative reconstruction contract. REI allegedly orchestrated the termination of Excelsior's construction manager to eliminate oversight and was then able to overcharge for work through

excessive change orders disguised as construction change directives and fraudulent payment applications for work that was never performed. Excelsior contended that REI intended from the beginning to pad their work with fraudulent change directives.

REI had a directors and officers liability policy with Travelers. Travelers defended under a reservation of rights. But REI filed a declaratory judgment action against Travelers that included claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

Travelers moved to dismiss, asserting the policy's prior acts exclusion. The exclusion applied to "any Claim based upon or arising out of any Wrongful Act committed or alleged to have been committed, in whole or in part, prior to the applicable Retroactive Date." The retroactive date was December 31, 2021.

The court found a litany of allegations that referred to false and misleading representations during the preconstruction contract in 2021 that eventually induced Excelsior to sign the reconstruction contract in 2022. So, the court found that Excelsior alleged wrongful acts before the retroactive date, and an overarching scheme connected to wrongful acts committed after the retroactive date.

The court found that the prior acts exclusion applied for two reasons.

First, the policy provided that all "Related Wrongful Act" will be "deemed to have occurred at the time of the first of such Related Wrongful Acts occurred." Because Excelsior alleged an overarching scheme that began in 2021, all later wrongful acts must be deemed to have occurred in 2021 as well, and thus, before the retroactive date.

Second, even without the policy's Related Wrongful Acts provision, the prior acts exclusion itself barred coverage for any claim "based upon or arising out of" a wrongful act committed "in whole or in part" before the retroactive date. Enforcing this broad language, the court found that

the prior acts exclusion applied because the overarching fraudulent scheme was committed “in part” in 2021.

The court held that the terms “based upon or arising out of” and “in whole or in part” removed any hint of ambiguity. Thus, the court granted Travelers’ motion and found it had no duty to defend because of the prior acts exclusion.

The case is *Reconstruction Experts, Inc. v. Associated Indus. Ins. Co.*, No. CV-25-07872-MWF (SSCx) (C.D. Cal. Oct. 8, 2025).



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