

### **Eleventh Circuit Rules That Parkland Shooting Was One Occurrence**

Sixty lawsuits were filed against the Sheriff of Broward County following the 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida. The shooter killed 17 students and teachers and injured many others. The suits alleged that the Sheriff was negligent in failing to secure the school once the shooting started.

The Sheriff's Office tendered the suits to its public entity excess insurer, Evanston Insurance Company. The policy had a \$500,000 self-insured retention for each occurrence. The policy defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general conditions."

The insurance dispute centered on how many Self-Insured Retention (SIRs) provisions the Sheriff had to satisfy. The Sheriff argued just one because there was only a single occurrence that caused all the injuries. Evanston argued that the Sheriff had to pay dozens of SIRs because each gunshot was a separate occurrence.

In disputes over the number of occurrences, courts often take two approaches. Some look to the nature of the insured's liability in determining cause. Under that approach, because the claim against the Sheriff is for negligent security, there would be only one occurrence because its liability arises from that single act or omission.

Other courts look to the immediate cause of the injury. Under the immediate cause approach, each gunshot would be viewed as a separate cause of injury, thus resulting in multiple

occurrences. The Florida Supreme Court seemed to subscribe to this approach in *Koikos*, having found two “occurrences” after two people were shot at restaurant by the same shooter during a single incident. The theory of liability against the restaurant owner was inadequate security. But the Florida Supreme Court held that it was the act – each gunshot – that caused the injury.

Evanston relied on *Koikos* in arguing that there should be multiple occurrences.

But the Eleventh Circuit disagreed. Although it acknowledged that the Florida Supreme Court looked to the independent immediate acts that gave rise to liability in finding two occurrences, the Eleventh Circuit interpreted *Koikos* as holding that the term “occurrence” was ambiguous, despite being a defined term. It thus found that the entire Parkland shooting was a single occurrence and that the Sheriff had to satisfy only a single SIR.

Perhaps the Eleventh Circuit arrived at the most equitable result. But its logic – that the term “occurrence” is ambiguous – could establish a dangerous precedent for insurers. If the court’s analysis were followed, it would mean that the insurer always loses on the number of occurrences. When it benefits the insured to have multiple liability limits available, then there will be multiple occurrences. When it benefits the insured to apply only a single deductible or SIR, then there will be a single occurrence. Such a result-oriented approach is disfavored.

The case is *Sheriff of Broward Cnty. v. Evanston Ins. Co.*, No. 24-13317 and 24-11230 (11th Cir. Nov. 10, 2025).

### **Eleventh Circuit Applies Employer’s Liability Exclusion Where Employee Is Shot in Parking Lot After Clocking Out**

Amanali Babwari worked as a clerk at the Pit Stop Grocery in Birmingham, Alabama. After closing the store at 11:00 pm, he was officially off the clock. Babwari was shot and robbed while

walking to his car. His car was parked in an unlit corner of the store's parking lot, where his employer required him to park.

Babwari sued Pit Stop for negligence and wantonness for failing to take adequate security measures. Pit Stop's insurer, State Farm, defended under a reservation of rights, but then withdrew. Pit Stop and Babwari later settled and entered into a consent judgment. Babwari sought to recover the judgment from State Farm as a judgment creditor.

The issue was whether the employer's liability exclusion applied. That exclusion bars coverage for injuries "arising out of and in the course of" the employment of the insured or the performance of duties related to the conduct of the insured's business.

Noting the similarity between the language of the employer's liability exclusion and Alabama's workers' compensation statute, the Eleventh Circuit explained that employer's liability exclusions were designed to allow coverage for the employer's liability to the public but not for an employer's liability for injuries to its employees.

The court focused on the "arising out of" and "in the course of" employment language in the exclusion and found that both conditions applied.

Babwari's injuries "arose out of" his employment because there was a causal connection between his employment and his injuries. Babwari was in a dark corner of Pit Stop's parking lot, late at night, next to a dumpster that provided cover for the assailant, because his employer required him to park there and assigned him to work the closing shift.

Additionally, Babwari's injuries were "in the course of" his employment because they occurred on employer-maintained premises while he was leaving work. The court acknowledged that injuries sustained while commuting to and from work generally do not occur "in the course of" employment but noted that Alabama law recognizes an exception for injuries sustained

immediately before or after work at parking lots owned and maintained by an employer. As Babwari's injuries occurred immediately after work while he was still on Pit Stop's premises, they occurred "in the course of" his employment.

The employer's liability exclusion thus applied.

The case is *Babwari v. State Farm Fire & Cas. Co.*, No. 24-11396 (11th Cir. Nov. 26, 2025).

### **Ohio Supreme Court Holds That Bad-Faith Claim Must Be Arbitrated**

Insurance policies sometimes have clauses stating that any disputes related to this policy will be resolved by binding arbitration. But policyholders have argued that arbitration clauses do not apply to claims for bad faith, which are torts beyond the contract. The Ohio Supreme took up the issue and found that the policy's language and Ohio's public policy favoring arbitration requires bad faith claims to be arbitrated, even if they are torts.

The Doctors Company Risk Retention Group Insurance Company (TDC) issued a medical malpractice policy to U.S. Acute Care Solutions, LLC (Acute). A patient sued Acute for medical malpractice. TDC defended, but the parties disagreed over settlement strategy. Acute self-funded a settlement with the claimant. It then sought to recover the payout from TDC by filing a suit in Ohio state court for bad faith.

The policy's arbitration clause originally stated that it included disputes regarding "extra-contractual obligations." But an endorsement deleted the word "extra" and stated:

Any dispute between [Acute] and [TDC] relating to this Policy (including any disputes regarding [TDC's] contractual obligations) will be resolved by binding arbitration in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association.

TDC moved to compel arbitration. The trial court granted the motion, but the intermediate appellate court reversed, finding that the bad faith claim was an extra-contractual claim to which the arbitration clause did not apply.

On appeal, the Ohio Supreme Court reversed and reinstated the trial court's order compelling arbitration.

The court began by recognizing Ohio's strong public policy favoring arbitration. Because a presumption of arbitrability exists, the high court instructed that a court should deny a party's request to compel arbitration only if the arbitration clause cannot reasonably be read to cover the dispute in question.

The court acknowledged that bad faith claims may be considered torts but said that does not mean they cannot be arbitrated. It depends on the language of the arbitration clause.

The language in TDC's arbitration clause was broad. It applied to "any disputes" regarding TDC's contractual obligations. Nothing in the clause expressed an intent to exclude bad faith insurance claim handling from arbitration. And the court emphasized that Acute's bad faith claim could not be maintained without referring to the insurance policy or the insurer-insured relationship between TDC and Acute.

The case is *U.S. Acute Care Solutions, LLC v. Doctors Co. Risk Retention Grp. Ins. Co.*, No. 2024-0450 (Ohio Nov. 6, 2025).

### **Montana District Court Finds No Coverage for Contamination That Began Before and Continued Past Retroactive Date**

Ballard Petroleum and Murphy Exploration and Production executed a 2002 Purchase and Sale Agreement (PSA). Under that agreement, Ballard acquired Murphy's interests in the East Poplar Oil Field (EPOF) in Montana.

A few years earlier, around 1999-2000, EPA identified environmental contamination in the EPOF caused by Murphy's oil and gas operations since the 1950s.

In 2020, property owners sued Murphy for alleged pollution of the drill sites.

An arbitration panel determined that Ballard was required under the PSA to defend Murphy in the property owners' suits. The panel also held that Ballard breached its duty to defend and indemnify Murphy.

Ballard had a primary claims-made policy with Vigilant Insurance Company and an excess policy with Federal Insurance Company, both effective from May 21, 2020, to May 21, 2021. The policies had a retroactive date of May 21, 2001.

Vigilant and Federal refused to pay the costs related to the property owners' suits given that the oilfield had been contaminated before the retroactive date. Ballard sued in federal court in Montana and the parties cross-moved for summary judgment.

Applying Montana law, the court held that the common-law contribution claim that Murphy asserted against Ballard was not covered by the Vigilant policy.

The policy stated that a "pollution incident" must "commence" on or after May 21, 2001. "Pollution incident" included any "related pollution incidents" and "series of continuous, repeated or related pollution incidents."

The court found that the underlying allegations related to Murphy's decades-long knowledge of contamination, which it failed to clean up. The suits did not allege any unique contamination that began after May 21, 2001. That the pollution continued after the retroactive date simply represented a failure by Murphy to remediate the same releases that began in the 1950s. All the pollution discharges occurring after the retroactive date constituted continuous, related discharges from the pollution that began in the 1950s.

Nor was there coverage for the contractual indemnity claim against Ballard. The relevant coverage was limited to liability for a pollution liability incident at an “insured” site, which meant property owned, leased, or occupied by Ballard. The underlying suit did not allege liability from land owned by Ballard. Rather, the underlying suit sought indemnification by Ballard for pollution Murphy caused before Murphy sold the EPOF land to Ballard.

Lastly, the court rejected Ballard’s reliance on an exception to an exclusion for liability assumed in an indemnity contract. An exception to an exclusion could not provide coverage on its own. Ballard failed to show coverage within the insuring agreement. So, the exception in an exclusion could not save it.

For these reasons, the court found no coverage and held that Vigilant had no duty to defend or indemnify Ballard.

The case is *Murphy Expl. & Prod. Co. v. Ballard Petro. Holdings, LLC*, CV-20-67 (D. Mont. Nov. 12, 2025).

### **Louisiana Appellate Court Applies Assault and Battery Exclusion to Claim Involving a Bouncing Beer Bottle**

Taylor was a patron at The Office Bar in Lafayette, Louisiana. So was Smith, who threw a glass beer bottle at another patron. The bottle bounced off the other patron and struck Taylor in the head, causing him to bleed profusely. Taylor sued the bar, Smith, and others in Louisiana state court. The bar cross-claimed against its insurer, Crum and Forster Specialty Insurance Company (C&F).

The Bar’s insurance policy with C&F had an assault and battery exclusion. The exclusion had many subparts that broadly excluded “assault,” “battery,” and “assault and battery,” including

“a failure to suppress or prevent Battery” and “failure to provide an environment safe from Battery.”

The policy defined “battery” as “an intentional or unintentional act” that “brings about harmful or offensive contact to another.”

The parties had a dispute over coverage that made its way up to the Louisiana Court of Appeals.

The court ruled for the insurer, finding that the policy unambiguously defined “battery” to include both intentional and unintentional acts that bring about harmful contact. The exclusion thus applied to the injuries sustained, even though Taylor was not the intended target of the thrown bottle.

The exclusion also applied to the specific allegations made against the Bar – that is, that it had allowed the battery to occur. It didn’t matter that an assault had not been alleged. The exclusion applied to assaults or batteries. C&F had no duty to defend.

The case is *Taylor v. Smith*, No. 25-323 (La. App. Ct. Nov. 12, 2025).

### **Eighth Circuit Finds Microscopic Soot Caused by Fire Constitutes “Direct Physical Loss or Damage”**

The Metropolitan is a multi-building apartment complex in Birmingham, Alabama. It was at various stages of completion when a fire destroyed one building and damaged others.

Maxus, the owner of the complex, had a policy with Travelers. Travelers denied payment for some of the remediation costs. Maxus sued and was awarded \$27 million in damages. Travelers appealed to the Eighth Circuit.

The main dispute was over whether soot from the building destroyed in the fire reached other buildings, and if so, whether microscopic soot can constitute “physical loss or damage.”

The Eighth Circuit found that soot can cause physical loss or damage. The court distinguished Covid-19 cases that found no physical loss or damage because Covid-19 did not cause a “physical alteration or tangible impact to” the insured property.

But soot is different. It is more like asbestos, a form of contamination that is permanent, absent some intervention. The court said that it did not matter that the physical damage was not extensive. The only question, for purposes of triggering the policy, was whether there was a “direct physical loss . . . or damage.”

The case is *Maxus Metro., LLC v. Travelers Prop. Cas. Co. of Am.*, No. 24-1176 (8th Cir. Nov. 17, 2025).



Rivkin Radler LLP  
926 RXR Plaza, Uniondale NY 11556  
[www.rivkinradler.com](http://www.rivkinradler.com)  
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