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Maryland Federal Court Finds That D&O Policy's Extended Reporting Period Terminated Upon Issuance of Replacement Policy

Under claims-made policies, insureds have extra time to report claims made after the policy expired, so long as the alleged wrongful conduct happened during the coverage period. In this case, the extended reporting period said that it would "immediately terminate on the effective date and time of any other insurance issued to the insureds which replaces this insurance." The court had to decide what the terms "other insurance" and "replaces" meant in this context.

The case arose from a fraudulent scheme, where The Jewish Federation of Greater Washington, a non-profit charitable organization, was tricked into wiring funds to an imposter's account. The Federation had a directors and officers liability policy with Cincinnati Insurance Company, effective until August 15, 2020. The Federation notified Cincinnati of the incident three days before the policy was about to end. That notice, however, was ultimately found to be insufficient.

The Federation managed and invested funds for other charities. One of those charities lost more than $7 million because of the fraudulent wire transfer and sued the Federation about 45 days after the policy expired. The automatic extended reporting period allowed for a 90-day reporting period.

But Cincinnati denied coverage, contending that the 90-day extended reporting period did not apply because the insured purchased replacement insurance. The Federation purchased a

D&O policy from Chubb, effective from August 1, 2020 to August 1, 2021 (which overlapped with the Cincinnati policy for 15 days).

The parties disagreed over whether the automatic extended reporting period applied. Cincinnati argued that the extended reporting period was not in effect when the claim against the Federation was made because the Chubb policy had replaced the Cincinnati policy. The Federation argued that to be considered a replacement policy, such "other insurance" must also cover the claim. The Chubb policy, however, did not cover the claim, and according to the Federation, did not replace the Cincinnati policy.

The Federation based its argument on "other insurance" clauses that allocate responsibility among insurers in cases of overlapping coverage.

The court rejected the Federation's argument. It found that the plain meaning of the phrase "any other insurance" is insurance that is separate and distinct from the Cincinnati policy. This phrase does not require that the "other insurance" specifically cover the same claim. The other insurance just has to provide a similar type of coverage. The court found that the Chubb D&O policy was a separate and distinct policy that took the place of the Cincinnati D&O policy.

And it found that the "other insurance" clause addressing apportionment of liability was irrelevant. The parties were disputing an entirely different clause that also used the words "other insurance," but only to indicate when the extended reporting period ended, not to allocate coverage over a particular claim.

The court agreed with Cincinnati that the Federation's interpretation would lead to absurd results. If the extended reporting period depended on whether another insurer covers the claim, then it would create a situation where the extended reporting period ends at different times for different claims and could even be reinstated depending on another company's coverage

decisions. The Chubb D&O policy began on August 1, 2020, which terminated the Cincinnati policy's extended reporting period. This clear, predictable termination date, the court emphasized, follows the plain language of the insurance contract and creates clear expectations for contracting parties.

The court thus held that the extended reporting period was not active when the Federation submitted the claim to Cincinnati. It terminated once the Chubb policy began.

The case is *Jewish Federation of Greater Washington, Inc. v. Cincinnati Ins. Co.*, No. DKC 23-1816 (D. Md. Dec. 5, 2025).

Illinois Federal Court Finds That Financial Interest and Consumer Protection Law Exclusions Bar Coverage for Alleged Real Estate Scheme, Applies "But For" Test

A real estate company and its agents (collectively "Chase") were accused of making false representations about investment properties to induce plaintiffs to buy them at inflated prices. Thirteen suits were filed against Chase. In each suit, the alleged scheme was said to include false statements that the real estate sellers were unrelated third parties when in fact defendants or their affiliates were the sellers of the properties.

Chase sought defense and indemnity under a professional liability policy issued by Hartford. Hartford filed a declaratory judgment action and moved for summary judgment under two exclusions: the financial interest exclusion and the consumer protection law exclusion.

Under the financial interest exclusion, the policy excludes coverage:

> [i]n connection with any Claim based upon, arising from or in any way related to property developed, constructed, owned or to be purchased by any insured or by any entity in which any Insured has a financial interest, or by any entity coming under the same financial control as an insured.

Harford argued that the suits were excluded from coverage because each claim arose from an investment property scheme where at least one insured was alleged to have either owned the property or was part of an entity that would monetarily benefit from the sale of that property.

Chase argued that the exclusion was ambiguous because "financial interest" can also mean the amount of equity an insured has in the property." The court disagreed that the exclusion was ambiguous. Because Chase's interpretation excluded any financial interest other than equity, it was inconsistent with the everyday meaning of "financial interest," and thus not a reasonable interpretation.

Hartford's interpretation, on the other hand, was reasonable and consistent with the plain language of the policy. The court found that Hartford's interpretation made sense considering the broader purpose of a professional liability policy, which generally covers negligent acts, errors, or omissions in an insured's performance of a professional real estate service. It made sense that self-dealing would be excluded from coverage.

The court rejected Chase's argument that every real estate sale fits this definition because realtors always get commissions from sales. There is a significant difference between having a financial stake in the property itself, the court said, and having a financial stake only in a successful sale of the property. Realtors who are also builders, developers, and owners bring far more litigation risk than do realtors engaging in standard arm's-length transactions.

As each suit involved an interest having a monetary impact on the insured, the court found that the financial services exclusion applied.

The court next held that the consumer protection law exclusion applied to twelve of the thirteen suits. That exclusion barred coverage, "[i]n connection with any Claim based upon, arising from, or in any way related to any actual or alleged . . . violation of any consumer protection laws."

All but one of the suits alleged violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "Consumer Fraud Act"). Chase argues that a violation of the Consumer Fraud Act requires a finding the defendant knew of the falsity of the information provided, which Hartford had not shown. But again, the court disagreed, stating that the consumer protection law exclusion did not require that Chase actually violate a consumer protection law, only that the claim be "based upon" an alleged violation. As twelve of the thirteen suits alleged a Consumer Fraud Act violation, the exclusion applied to those claims.

Chase next argued that even if the consumer protection law exclusion barred some claims, Hartford still owed a defense because the negligent misrepresentation claims were covered. But the court found that the exclusion reaches more than just violations of a consumer protection law. It applies to any underlying "claim based upon, arising from, or in any way related to any actual or alleged . . . violation of any consumer protection laws."

As the court observed, the "arising out of" language required a "but for" analysis: if the plaintiff would not have been injured but for the conduct that violated the law, then the exclusion applied to all claims flowing from that underlying conduct regardless of the legal theory used. Applying that test, the court found that the claims in the underlying suits all flowed from alleged schemes to defraud the underlying plaintiffs by inducing them to purchase real property at inflated prices by misrepresenting facts about the properties. The same facts constitute the basis of the negligent misrepresentation claims and the Consumer Fraud Act claims.

As for the one suit that did not allege violation of the Consumer Fraud Act, the court held that Hartford had no duty to defend Chase in that suit because it was barred by the financial interest exclusion.

The case is *Hartford Fire Ins. Co. v. Chase Real Estate, LLC*, No. 24-cv-8367 (N.D. Ill. Nov. 26, 2025).

New Jersey Court Dismisses Bad Faith Claim in PFAS Coverage Dispute

Shamrock Tech produced and processed specialty micronized powders at three manufacturing facilities. The manufacturing process produced per- and poly-fluoroalkyl substances (PFAS) as a byproduct.

Shamrock entered into a consent order with Kentucky regulators to remediate PFAS contamination in groundwater and soils. Shamrock's insurer, Illinois Union Insurance Company, declined to cover the consent order or to defend Shamrock for its investigative costs.

Illinois Union's policy paid "those sums [Plaintiff] becomes legally obligated to pay as a result of 'government action' arising out of a 'pollution condition' on, at, under or migrating from a 'covered location,'" and provided that the Illinois Union will "have the right and duty to defend the insured against any 'government action.'"

After Illinois Union denied coverage, Shamrock sued Illinois Union in New Jersey federal court for breach of contract and bad faith. Illinois Union moved to dismiss the bad faith claim.

The court granted Illinois Union's partial motion to dismiss. To state a claim for bad faith under New Jersey law, the court noted, a plaintiff must allege the insurer "(1) did not have a 'fairly debatable' reason for its failure to pay the claim, and (2) that the insurer knew or recklessly disregarded the lack of a reasonable basis for denying the claim."

Under the "fairly debatable" standard, a plaintiff must establish as a matter of law a right to summary judgment on the substantive claim, even at the motion to dismiss stage. The court held that Shamrock Tech could not do so because its bad faith claims were duplicative of its breach of contract claim. Both claims could not be pursued if they arose out of the same facts.

While Shamrock Tech's allegations that Illinois Union unreasonably delayed were not duplicative of the breach of contract claim, that claim was inadequately pleaded. Plaintiff did not allege that the insurer knew its processing delay was unreasonable or that it recklessly disregarded its unreasonable conduct.

For these reasons, the court dismissed the bad faith claim.

The case is *Shamrock Techs., Inc. v. Ill. Union Ins. Co.*, Civil Action No. 25-00105 (D. N.J. Dec 17, 2025).

Ninth Circuit Rules That Wear and Tear Exclusion Bars Coverage for Hot Water Pipe Leak in Single-Story Home

A small hole developed in a pressurized hot water pipe in the insured's single-story home. The hole was "[j]ust a little bit larger than … a pen tip," but resulted in a leak that lasted for roughly 5.8 days, releasing enough water to saturate, and ruin, all the home's flooring and subflooring.

The insured had a homeowners' policy with State Farm.

Under Coverage A, loss to their dwelling was covered unless specifically excluded.

Under Coverage B, loss to personal property was covered only if caused by a covered "peril," which included an "[a]brupt and accidental discharge or overflow of water."

State Farm denied the insured's claims under both coverages. The insured sued State Farm in California federal district court. State Farm prevailed on summary judgment and the insureds appealed.

The Ninth Circuit affirmed. The court agreed with the district court that the water damage was excluded from Coverage A as a matter of law by an exclusion for damages caused by "wear, tear, . . . [or] deterioration" and by a separate exclusion for "damage" that is caused by . . .

[w]ater, meaning . . . seepage or leakage of water . . . that occurs or develops over a period of time . . . and is . . . continuous . . . [and] from a . . . plumbing system." The court emphasized the multi-day duration of the leak, the small size of the hole, and the widespread nature of the damage.

For the same reason, the court held, the district court did not err in granting summary judgment on the personal property claims under Coverage B because the insureds could not show that their losses were caused by an "[a]brupt and accidental discharge or overflow of water." The release was not abrupt.

For these reasons, the Ninth Circuit affirmed the award of summary judgment for State Farm.

The case is *Mojica v. State Farm Gen. Ins. Co.*, No. 24-5597 (9th Cir. Dec 11, 2025).