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Colorado Appellate Court Finds that Total Defense Rule Does Not Apply to Title Insurance

A Colorado intermediate appellate court weighed in on whether a broad duty to defend applies under a title insurance policy, or whether this class of insurance affords only limited defense coverage.

In 2018, a trust purchased an undeveloped parcel of land in Estes Park, Colorado. An unimproved private road (Homestead Lane), which crossed multiple adjacent properties, was the only access between the property and nearby state highway.

As part of the transaction, the trust purchased a title insurance policy from Attorney Title Guaranty Fund, Inc. ("ATGF"). Covered Risk 4 of the title insurance policy covered loss or damage to the trust as a result of "no right of access to and from the [property]."

After closing, the trust began to construct a residence on the property, which required it to improve the portion of Homestead Lane leading to the property. In the process, the local fire protection district determined that if any portion of Homestead Lane was improved, the entirety of Homestead Lane would have to be paved to bring it into compliance with the local district's fire code.

In 2021, the trust began paving Homestead Lane. Later that year, Nicholas Stark, the owner of a nearby parcel that Homestead Lane traversed, sued the trust, claiming that the trust had no legal right at all to access the road across his property. In early 2022, Michael Nassimbene, the owner of a second parcel adjacent to the property that included a portion of Homestead Lane, intervened in the Stark lawsuit.

ATGF successfully defended the trust against Stark's claim but refused to defend the trust against Nassimbene's claims. The trust sued ATGF in Colorado state court. The lower court granted ATGF's motion for summary judgment declaring it had no obligation to defend Nassimbene's claims. The trust appealed.

The Court of Appeals of Colorado affirmed. The court concluded that Nassimbene's claims against the trust didn't implicate Covered Risk 4 because the trust didn't allege that it had "[n]o right of access to and from the [Property]." Instead, Nassimbene claimed that the trust had trespassed onto his land by paving and expanding the road.

The court also rejected the trust's argument that even if Nassinbene's claims were not covered, ATGF was still required to defend the trust against both sets of claims because they couldn't easily be bifurcated from Stark's original claims. The court reasoned that, unlike general liability insurance policies that typically have broad language promising to defend against "a suit" or "any suit," ATGF's title insurance policy only promised to cover expenses "incurred in defense of any matter insured against by the policy, but only to the extent provided in the conditions." The court also observed that it was easy to split the claims here because attorneys retained by ATGF successfully defended the trust against Stark's claim and that resolution didn't resolve the claims by Nassinbene.

The court thus affirmed the district court's grant of summary judgment to ATGF.

The case is *Michel L. Schlup Revocable Tr. v. Attys. Title Guar. Fund, Inc.*, No. 23CA1886 (Colo. App. Mar. 19, 2026).

Eighth Circuit Finds Abuse of Process Claim Not Equivalent to Malicious Prosecution Claim for Purposes of Triggering Personal Injury Coverage

ASI, Inc. sued Toy Quest in Minnesota federal district court for abuse of process. ASI alleged that Toy Quest filed a "frivolous opposition" in a separate garnishment proceeding and entered an appearance in that proceeding with the ulterior motive of helping conceal assets.

Toy Quest had a liability policy with General Star Indemnity Company. The General Star policy covered personal injury arising out of various named torts, including malicious prosecution. The policy did not refer to the tort of abuse of process. General Star agreed to defend Toy Quest under reservation of rights. General Star then separately filed a lawsuit seeking a declaratory judgment that it had no duty to

defend Toy Quest against the ASI claim. The district court granted General Star's motion for judgment on the pleadings.

The Eight Circuit, applying Minnesota law, affirmed. The court determined that a reasonable person in Toy Quest's position would not think that malicious prosecution coverage extends to abuse of process claims. The policy listed specific torts and coverage for personal injury arising from them, but abuse of process (a distinct tort) was not listed.

Nor did ASI's complaint allege facts that could "arguably" be framed as a malicious prosecution claim. A malicious prosecution claim would have required that the insured be accused of "instituting" an action that terminated in favor of the other party. No such allegations were made. Toy Quest's opposition in the garnishment proceeding was not the "institution" of an action. General Star's duty to defend was not triggered by the ASI's abuse of process claim.

Accordingly, the court affirmed the district court's judgment.

The case is *Gen. Star Indem. Co. v. Toy Quest Ltd.*, No. 25-1265 (8th Cir. Mar. 17, 2026).

Illinois Federal Court Finds Mistaken Belief Over Use of Demolition Debris Did Not Give Rise to a Covered Occurrence

A recurring fact pattern that we see is when the insured acts deliberately under a mistaken belief of authority. This typically raises the issue of whether the harm was caused by an occurrence. In this case, the insured used construction debris as fill without understanding that it was unlawful to do so.

The Village of Plymouth hired VanFleet Trucking to demolish a building in its village square. Ryan VanFleet, the owner of the trucking company, also served as the road commissioner for Birmingham Township. He decided to use the demolition debris as fill for erosion control at three different locations in Birmingham Township.

The Illinois Environmental Protection Agency caught wind of this and wasn't pleased. The IEPA's investigation determined that the demolition debris was not "clean fill" under Illinois law and that the

disposal was unlawful. EPA cited Plymouth for violating state and federal environmental regulations. Plymouth spent over $200,000 remediating the three properties.

Plymouth then sued VanFleet, alleging various counts, including willful and wanton conduct and negligence. VanFleet had a commercial general liability policy with Great West Casualty Company. After Van Fleet tendered, Great West filed a declaratory judgment action in Illinois federal court. Great West asserted the asbestos exclusion, the pollution exclusion, and the expected or intended injury exclusion.

VanFleet defaulted in the declaratory judgment action and Plymouth stepped forward to oppose Great West's claims.

Plymouth conceded that the asbestos, pollution, and expected or intended injury exclusions applied to some of the allegations in Plymouth's complaint against VanFleet. But Plymouth said that it also asserted claims for non-intentional conduct and for property damage beyond asbestos or pollutants. In its underlying complaint, Plymouth alleged that VanFleet used "demolition debris as fill for erosion control" and that VanFleet's use of that demolition debris would have violated the IEPA even if it did not contain asbestos or other hazardous materials. In other words, Plymouth argued that the mere presence of debris was harmful.

Great West argued that any allegations based on the mere presence of debris did not seek relief for property damage caused by an occurrence. There was no allegation that VanFleet accidentally placed the demolition debris at the three properties.

The court found that the presence of demolition debris constituted property damage ("physical injury to tangible property").

But there was no dispute that Van Fleet intentionally placed the demolition debris at the three sites. Plymouth argued that although VanFleet might have deliberately placed the demolition debris at each site, the complaint alleged that VanFleet was negligent in not knowing that the demolition debris could not be used as erosion fill under the IEPA. But the court held that even if VanFleet placed the debris at the sites without knowledge that it was illegal dirty fill, that did not turn this into a suit seeking damages for property

damage caused by an occurrence not otherwise excluded under the asbestos or pollution exclusions. If the mere presence of demolition debris is the claimed property damage, the court explained, that was not accidental.

The court thus awarded Great West summary judgment, finding that it had no duty to defend or indemnify VanFleet in Plymouth's suit.

The case is *Great West Cas. Co. v. VanFleet*, No. 4:24-cv-04161-SLD-RLH (C.D. Ill. March 25, 2026).

New Jersey Federal Court Finds That Class Action over Toxic Hair Products Did Not Allege Damages Because of Bodily Injury or Property Damage

Hair Zone sold various hair products including synthetic braiding, extensions, and wigs. A class action suit was filed against it in California for fraudulent, deceptive, and unsafe business practices. The plaintiffs alleged that the hair products contained high levels of carcinogens and other toxins that were unsafe for human exposure.

But the claims centered on Hair Zone's failure to disclose that these toxins were in its products. The complaint alleged that had the purchasers known the truth about the hair products, they would not have purchased them or would have paid less.

Hair Zone sought a defense from its liability insurers and sued the insurers in New Jersey federal court after they denied coverage. The issue was whether the class action allegations sought damages because of "bodily injury" or "property damage."

Hair Zone argued that there was bodily injury coverage because the class action complaint described the dangers and possible harm from exposure to toxic chemicals within the hair products. The court disagreed, finding that the complaint alleged injury based only on fraud, breach of the implied warranty of merchantability, and similar theories. The complaint sought no relief for harm caused by exposure to toxins. Instead, plaintiffs claim they would not have bought the products (or at least paid less) had they known of the dangers.

Even when broadly viewed, the court found that the relief sought by the complaint did not require any class member to show that they in fact used the hair products and were exposed to dangerous chemicals. The court explained: "A class member who purchased the Hair Products but never so much as opened a single bottle is identically situated to a class member who used the Hair Products on a daily basis."

The court next turned to the "property damage" coverage. But again, the court found no allegation in the complaint that the class members' property was harmed nor that they will need to remediate any such harm. Hair Zone pointed only to nebulous allegations regarding the dangerous nature of the hair products, not a claim for damages because of "property damage."

The court refused to speculate that the class action suit may one day morph into a claim for bodily injury and property damage. The complaint was carefully crafted to assert damages based only on the purchase of a defective product that the class members would not have bought if they had known of the defect. The court suggested that this was likely an intentional decision to avoid class certification issues that could arise from a claim for personal injuries or property damage.

The court held that the insurers had no duty to defend Hair Zone in the class action suit.

The case is *Hair Zone Inc. v. Hartford Fire Ins. Co.*, No. 25-14960 (SRC) (D.N.J. Feb. 25, 2026).

Louisiana Court Applies Psychotropic Substances Exclusion to Nitrous Oxide Inhalation Claim

Jenna Combel filed a suit for bodily injuries against Tahoe Investments, LLC and twenty other alleged nitrous oxide distributors or manufacturers. Combel alleged that nitrous oxide is often "sold and inhaled as a drug by users to obtain a high." Combel alleged that she began inhaling nitrous oxide she purchased from Tahoe in 2019 and continued to do so until 2023. Combel alleged that because of her inhalation of nitrous oxide, she suffered paralysis and nerve damage.

Tahoe had insurance policies with United Specialty Insurance and Century Surety Company. United and Century agreed to defend Tahoe subject to a reservation of the right to deny coverage under a

psychotropic substances exclusion in their policies. That exclusion applied to injury arising from "the inhalation of, ingestion of, contact with, exposure to, existence of, or presence of psychotropic substances." "Psychotropic substance" meant "any legal or illegal drug or substance that: (1) [a]ffects the mind, mood or other mental process; or (2) [i]mpacts the brain or central nervous system; or (3) [i]s hallucinogenic." The policies provided that "[p]sychotropic substances include . . . whippets, laughing gas [and] poppers . . . ."

United and Century filed a declaratory judgment suit in Louisianan federal court for a determination of their coverage obligations. United and Century moved for summary judgment.

The court granted the insurers' motion. The court found that the psychotropic substances exclusion unambiguously precluded coverage. The underlying suit alleged that nitrous oxide inhalation "euphoric" and "dissociated" experiences and "affect[ed] the mind." The alleged injuries clearly "impact[ed] the brain or central nervous system" within the meaning of the policy. The court added that, when nitrous oxide is inhaled to get a high, it is commonly referred to as "whippets, poppers, or laughing gas" which are expressly excluded by the policy. In the court's view, "the policy could not be clearer that injury from the inhalation of nitrous oxide products is excluded."

It did not matter, the court added, that nitrous oxide has other legitimate, non-harmful uses. The exclusion was not limited to substances that exclusively have a mind-altering purpose. Because the policy unambiguously excluded coverage, United and Century had no duty to defend or indemnity Tahoe in the underlying suit.

The case is *United Specialty Ins. Co. v. Tahoe Invs., LLC*, 25-1501 (E.D. La. Mar. 19, 2026).

Federal District Court Finds Texas's Prompt Payment Statute Inapplicable Where Indemnity for Bodily Injury Settlement Is Sought

Bluefire Insurance Services was the managing general agent for Home State County Mutual Insurance Company. Home State's insured, Peters, caused a multi-vehicle accident. Peter's auto policy with Home State carried the minimum liability limits.

Bluefire adjusted the claim for Home State and settled with several claimants. But Bluefire allegedly mishandled a time-limited settlement demand made by the Palmas. Home State and Bluefire ultimately paid above the policy limits to resolve the Palmas' claim.

Bluefire had a professional liability policy with Allied World Surplus Insurance Company. Among other things, the policy covered wrongful acts committed in the performance of insurance services as a managing general agent or claims adjuster. Bluefire sought to recover from Allied the sums paid above policy limits to resolve the Palmas' claim.

Allied raised several defenses and filed a declaratory judgment action. Bluefire and Home State filed counterclaims alleging violations of Texas Insurance Code Chapter 542. Bluefire and Home State allege that Allied wrongfully refused to indemnify them for the Palmas' claim, misrepresented coverage, failed to promptly settle, and delayed payment. The statute imposes a steep interest penalty for insurers that fail to pay first party claims timely.

Allied moved to dismiss the counterclaims on the grounds that Bluefire and Home State lacked standing under Texas's first party claims statute. Allied argued that Chapter 542 applies to a claim that must be paid by the insurer directly to the insured alone. Here, Allied argued, the claim is for third party injury payments, not for a direct payment to an insured for its own loss. Thus, Allied contended that Bluefire is not a first party claimant.

The statute defined the terms "claim" and "claimant" as follows:

> (2) "Claim" means a first-party claim that:
>
> > (A) is made by an insured or policyholder under an insurance policy or contract or by a beneficiary named in the policy or contract; and
> >
> > (B) must be paid by the insurer directly to the insured or beneficiary.
>
> (3) "Claimant" means a person making a claim.

The court found that the Texas Legislature restricted the statute to first party claims and that the Texas Supreme Court has drawn the line between first party and third party claims based on the claimant's

relationship to the loss. First party claims are those that are personal to the insured. A first party claim exists when an insured seeks recovery for its own loss, while a third party claim exists when the insured seeks coverage for injuries suffered by someone else.

The court agreed with Allied that Bluefire's and Home State's prompt-payment claim fails because it does not involve a "claim" or "claimant" within the meaning of Chapter 542. Bluefire and Home State sought indemnity for settling the Palmas' bodily injury suit – reimbursement of amounts paid to injured third parties – not prompt payment of money owed directly to an insured for its loss. Indemnity for bodily injury settlements, the court noted, is a classic third party claim outside of Chapter 542's reach.

The court thus dismissed Bluefire's and Home State's Chapter 542 counterclaims for lack of subject matter jurisdiction.

The case is *Allied World Surplus Lines Ins. Co. v. Multi-State Gen. Agency, Inc.*, No. 1:25-CV-576-DAE (W.D. Tex. March 4, 2026).