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2025 Key Insurance Decisions, Trends, & Developments & A Look Ahead To 2026

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Commentary

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I. INTRODUCTION

The past year was action-packed for insurers and insurance coverage. In this commentary, we examine some of the key trends, developments, and decisions impacting the U.S. insurance industry in 2025 and forecast potential trends and developments for "America 250" – the Semiquincentennial – in 2026. Civil lawsuits and claims in the U.S. remain fueled by social inflation with nuclear and thermonuclear awards and large settlements continuing largely unabated, while economic inflation continues at a reduced level. The change in public policy from the Biden administration to the second Trump Administration (Trump 2.0) is perhaps the most impactful development of the year with Environmental, Social, and Governance considerations (ESG) and Diversity, Inclusion, and Equity (DEI) being scaled back at the federal level.

Artificial intelligence (AI) and cybersecurity continue to loom large for insurers and their policyholders. For insurers, the challenges presented by technological developments are multifold as they continue to integrate AI into their businesses across their operational, underwriting, pricing, fraud control, claims handling, and other functions. On the compliance side, insurers are contending with local, state, federal, and international regulations as businesses in general, as well as specific regulations aimed at the business of insurance. The impacts of AI and cybersecurity on policyholders are visited upon insurers in their loss control, risk management, and underwriting functions. Increasingly, AI is reverberating on the claims side, impacting claim types and activities directly and indirectly. The lightning pace of developments places a premium on skillsets. All of this is taking place against a backdrop of challenges faced by insurers in attracting and retaining employees with the requisite skillsets and potential reductions in force associated with AI. For example, one insurer announced in December that it plans to cut its workforce by as much as 20% over the next three to four years as part of a digital transformation to automate key insurance functions.[1]

Insurers and their policyholders continue to be challenged by a wide range of claims and coverage actions, including climate and weather-related claims, mass tort claims, PFAS claims, traditional asbestos and environmental claims, sexual misconduct claims, and D&O/securities claims, which dominated claims activities and court decisions in 2025. Cyber and privacy claims continue to proliferate with more coverage claims and decisions involving cyber specific coverages in addition to the silent cyber coverage claims under traditional first-party, liability, and crime/fraud policies that have dominated in the past. Silica claims have reemerged in recent years, while lead paint and COVID-19 business interruption coverage claims have waned. Insurers failed to retain the unprecedented level of attention from the United States Supreme Court that they garnered in 2024.

II. OVERRIDING TRENDS & DEVELOPMENTS IMPACTING INSURERS

Among the numerous trends and developments in 2025, a few stood out above all others. These include the impact of Trump 2.0, the downgrading of ESG and DEI at the federal level, the stubborn continuation of social inflation, and the supersized role of AI.

A. Impact Of Trump 2.0

The most impactful development of 2025 relates to the policies under Trump 2.0 and the vast departure many of those policies represent from the policies of the Biden administration. The impact on claim frequency and severity varies by insurance line, but on balance deregulation is expected to result in an overall decrease in enforcement actions by federal agencies. Commentators' predictions regarding the overall impact on litigation-related liabilities are more variable, but the appointment of more conservative federal judges figures to reduce litigation-related liabilities slightly. The One, Big, Beautiful Bill[2] – which permanently increases the maximum deduction for certain business property, allows full expensing of domestic research and experimentation expenditures, and makes permanent most of the 2017 tax cuts – generally affords more favorable treatment to companies than either pre-existing law.

Tariffs have injected some uncertainty as well as additional revenues, but many of the concerns expressed by some economists have not materialized to the extent feared so far. Credit, trade, and political risks historically have not presented significant losses domestically, but in recent years they are seen as presenting greater risks along with social unrest.

B. ESG Is Down But Not Out

As predicted, there has been a substantial rollback of ESG regulation from the "all of government" approach of the Biden administration. Trump 2.0 has adopted a responsible "drill baby drill" approach that is friendlier to fossil fuels in an effort to decrease energy costs and increase supplies needed to quench the energy demands of artificial intelligence data centers. Automobile emissions standards are likely to be reduced, and the push for electric vehicles and fuel efficiency will be decelerated under Trump 2.0 and due to practical considerations such as costs and technological limitations.[3]

Even before Trump 2.0, the Biden administration failed to push a final, enforceable climate disclosure rule across the finish line. The U.S. Supreme Court somewhat limited the unbridled authority of administrative agencies generally and specifically in the areas of ESG and DEI,[4] and ESG backlash became a well-developed resistance movement. The Trump administration – through tabling climate disclosure rules, executive orders, regulatory retraction, and budgetary priorities – has taken much of the bite out of ESG, at least for now.

Several states led by California have picked up the ESG baton. In November, the Ninth Circuit granted an injunction staying the enforcement of California SB 261 that requires companies to publish climate risk reports in January 2026 identifying their financial risks associated with climate change and their efforts to mitigate these risks.[5] The court, however, did not stay another law, SB 253, that requires companies to disclose their Scope 1 and Scope 2 greenhouse gas emissions by an unspecified date in 2026. Though California is taking the lead, pro-ESG measures and legislation have been enacted in other states including Colorado, Florida, Illinois, Maine, Maryland, New Hampshire, Oregon, and Utah, demonstrating that Newton's Third Law of Motion is bipartisan.

U.S. companies doing business internationally are subject to international laws and regulations that remain in place, although the European Union announced earlier this year that it was dialing back some

of its ESG initiatives. On November 20, the European Commission published a proposal to amend the Sustainable Finance Regulation that has been in effect since 2021 in response to market comments that the program is overly complex. For a detailed analysis of ESG, *see generally*, Scott M. Seaman and Jason R. Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (Thomson Reuters 13th Ed. 2025) at Vol. 1, Chapter 21 Sustainability/ESG (Environmental, Social, and Governance Considerations) & PFAS.[6]

It is important to recognize that companies must still comply with traditional environmental laws and environmental liabilities remain large.

C. Employment Practices And An End To "Illegal" Diversity, Equity, And Inclusion

The Biden administration also applied its "all of government" approach to advance its DEI initiatives throughout the U.S. government and sought to impose DEI on private companies and actors. The U.S. Supreme Court and some initiatives in so-called red states took aim at DEI during the Biden administration. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and the companion case *Students for Fair Admissions, Inc. v. University of North Carolina,* the Court issued its seminal decision striking down affirmative action admissions policies used by both Harvard and UNC, effectively barring the consideration of race as an independent factor in university admissions.[7] The decision raised questions regarding efforts aimed at increasing diversity in the application and hiring processes for other public institutions and for private sector entities as well. Many companies changed their employment practices as a result.

Trump 2.0 has targeted "illegal DEI." On inauguration day, President Trump issued Executive Order 14151 "Ending Radical and Wasteful Government DEI Programs and Preferencing."[8] The next day, Executive Order 14173 was issued "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."[9] Attorney General Pam Bondi subsequently issued a memorandum directing the Civil Rights Division of the U.S. Department of Justice (DOJ) to investigate, eliminate, and penalize "illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds." In March 2025, the DOJ and the U.S. Equal Employment Opportunity Commission began educating the public on unlawful discrimination related to DEI practices. The DOJ issued a final rule on Dec. 9, 2025, removing regulations issued under Title VI of the Civil Rights Act of 1964 that precluded recipients of federal funding from engaging in disparate impact discrimination on the basis of race, color, or national origin. This final rule does not address other federal laws prohibiting disparate impact discrimination, including Title VII, which prohibits unintentional disparate impact and authorizes private rights of action, nor does it directly impact state disparate impact laws.

Both the pro-ESG and DEI policies of the Biden administration and the counter policies of Trump 2.0 present challenges and opportunities that can both limit and increase exposures. Companies believing DEI and ESG policies are harmful or unhelpful to their missions have an easier time scaling back or eliminating these programs and activities. Companies wishing to continue their ESG and DEI programming, in large measure, are continuing them with relabeling and other adjustments. For example, some companies have revised statements and disclosures, renamed or eliminated programs, and revised policies in an effort to avoid unwanted scrutiny from both regulatory authorities and corporate activists. Underwriters continue to evaluate companies' practices and capabilities in employment, environmental, sustainability, governance, and supply chain areas, as the ability to manage these matters remains key to their success and to controlling their exposures.

Although compliance remains a fundamental concern, other factors impacting employment, governance, and DEI programming and practices include: attracting and retaining talent (Generation Z and Millennials are reportedly more likely to seek out and remain with employers with visible commitment to DEI and ESG); traditional discrimination and harassment litigation; reputational risks; and other business and financial risks. Not only are younger Americans dominating the workforce, but they are also playing a larger role in managing companies. The impact of younger workers and managers in corporate America was a significant factor in many companies shifting from supporting tradition and resisting change to

becoming agents of change, helping to usher in ESG practices with notable speed and depth.

D. Social Inflation Continues To Rage

We have previously discussed the scourge of social inflation in depth.[10] Social inflation continues largely unabated, with nuclear and thermonuclear verdicts raining down. A 2025 behavioral social inflation study by Swiss Re amply summarizes the state of social inflation in the U.S.[11] The study confirms that juror sentiment has shifted decisively toward plaintiffs, adversely impacting insurers and companies. For example, only 56% of respondents indicated that there are too many lawsuits in the U.S. (as compared to 90% in 2016), 76% of respondents stated that damages awarded in lawsuits are either too low or just right (up from 58% in 2016), and 85% of respondents agreed that large corporations prioritize profit over safety, demonstrating the success of plaintiffs' reptilian tactics, the susceptibility of jurors to these tactics, or both. Only about half of respondents expressed the profit over safety sentiment regarding small and medium-sized enterprises. Support for punitive damage awards appeared strong, with 79% agreeing punitive damages are the best way to deter misconduct by large corporations and 67% supporting punitive damage awards against smaller companies. Other studies have shown that punishment has bled into compensatory damage awards. Injury severity was said to be a stronger driver of verdict behavior than company size. Reptilian tactics are designed to make jurors focus on broad safety concerns rather than on whether the defendant is actually at fault.

In the Swiss Re study, self-identified Democrat respondents selected award amounts that were 25% to 65% higher than those proposed by Republicans, with the gap widening at higher plaintiff anchors. Independent respondents fell between the two groups in terms of award size, but showed less enthusiasm than Democrat respondents for aggressive legal action and large punitive awards. Younger respondents (particularly those under 40) were more plaintiff-oriented than older respondents (*e.g.*, 83% of participants under 40 stated that current damages are too low or just right, compared to just 41% of those over 60). As younger people make up a larger share of jury pools, this generational divide may contribute to a sustained increase in large awards. Lower-income respondents favored broader corporate accountability and were more likely to support legal action. Though not addressed in the study, it may be posited that a younger judiciary could also potentially fuel social inflation as improvident legal and evidentiary rulings contribute to nuclear verdicts and increase litigation costs.

Insurers and corporate policyholders are being outspent substantially by the plaintiffs' bar, which has averaged about $1.5 billion a year in advertising. The plaintiffs' bar is doing a much stronger job in messaging as well. Insurers, companies, and the defense bar must do a far better and more sustained job in educating the public on how these litigation dynamics impact the availability and affordability of coverage and products. In the courtroom, addressing damages and counter-anchoring by defendants is essential. Ambulance chasing has become more pronounced and sophisticated with Sedgwick reporting that 64% of general liability and 75% of auto liability claimants have legal representation within two weeks of claim assignment.

Social inflation exacts a large cost. One recent article reports that "excessive litigation" contracts the U.S. economy by up to $500 billion a year. Tort costs have increased at an annual increase of 7.1%, more than twice the inflation rate from 2016 to 2022. According to a 2025 Marathon Strategies report, nuclear verdicts rose by 52% and thermonuclear verdicts increased 81.4% in 2024, with the median mega verdict amount increasing by 15.9%, pushing the average to $51 million. Texas, California, Pennsylvania, Florida, New York, and Delaware lead the way with an increasing percentage of nuclear verdicts taking place in federal courts.[12] A Thomson Reuters survey showed that defense firm rates rose by 6% in 2023 and 6.5% in 2024.[13]

Meanwhile, the troubling practice of policyholders seeking to hold adjusters personally liable continues. Whether done to destroy diversity jurisdiction, intimidate adjusters, sow division between insurers and their employees, gain litigation leverage, or expand recovery, these tactics are improper and should be vigorously opposed by insurers. In one case, insureds sued their homeowners insurer and an individual adjuster in state court for breach of contract, fraud, and bad faith and the insurers removed the case to federal court, contending the adjuster was fraudulently joined to defeat diversity. The court disagreed, ruling that plaintiffs alleged a colorable claim of fraud and

stating the fraudulent joinder standard is higher than the Rule 12(b)(6) dismissal standard and remanded the case to state court.[14]

There are a couple of small rays of light in combating social inflation. First, as detailed below, recent tort reform legislation in states such as Florida, Georgia, and Louisiana have shown early signs of effectiveness.[15] Sustained tort reform efforts are required. Second, Bloomberg reports that the litigation finance industry is facing challenges as funds and other sources of capital are pulling back, causing some litigation finance firms to suspend fundraising rounds and explore alternatives for generating cash. They cite regulatory changes, lower payouts, and longer trial times. Litigation disclosure efforts may be helpful, but efforts to revive legislation that would levy a 41% tax on the industry's profits seem to be sending chills through the litigation funding industry. This has led to deal volume in the U.S. commercial litigation finance industry retracting by 16% in 2024 according to this report, resulting in a market that was nearly 30% smaller than levels reached in 2022.[16] Time will tell if this report is accurate and whether the level of litigation funding will continue to change. Finally, ISO has approved an endorsement requiring disclosure of litigation funding for inclusion as a policy condition.[17]

E. Living In An Artificial Intelligence World

AI has impacted society and businesses in ways that are both transformative and disruptive, and presents major opportunities and exposures for companies and their insurers. Insurers are using AI in connection with underwriting, risk management, fraud detection, and claims handling. A working group of the National Association of Insurance Commissioners (NAIC) issued a request for information in May 2025 to explore drafting a model law governing insurers' use of AI. Policyholder lawyers are targeting insurer use of AI in coverage and bad faith litigation.[18] Regulators in New York, Colorado, California, and other states have expanded oversight, emphasizing fairness, accountability, and transparency in the use of AI by insurers.[19] California's Privacy Protection Agency advanced draft rules requiring cybersecurity audits, risk assessments, and governance standards for automated decision-making systems.[20]

At the federal level, a proposed 10-year moratorium on state AI regulation was rejected 99-1 by the U.S. Senate due to concerns about the impact on federalism and about limiting the ability of states to protect their residents from fraud, deepfakes, and child sexual abuse material. On December 11, 2025, President Trump signed an Executive Order "Ensuring a National Framework for Artificial Intelligence." The order directs the Attorney General to establish an AI Litigation Task Force to identify and challenge state AI laws inconsistent with national policy of global dominance over AI within 30 days, directs the Secretary of Commerce to publish an evaluation of existing state AI laws that conflict with national policy within 90 days, provides for potential withholding of federal funds under the Broadband Equity Access and Deployment Program and discretionary grants, and directs the Chairman of the Federal Communications Commission to determine whether to adopt a reporting and disclosure standard for AI models that preempts conflicting state laws. The order also directs the preparation of a legislative recommendation establishing a uniform national policy framework for AI that preempts state AI laws that conflict with the policy set forth in the order.

A report from the Financial Services Institute sensibly recommends that regulators apply existing cyber and other rules and standards to artificial intelligence and enact new rules only where AI brings genuinely new issues or significantly alters existing risks.[21]

Although much attention has focused on generative AI, agentic AI (systems capable of operating and developing autonomously with little or no human oversight) presents significant risks when integrated into systems through application programming interfaces. Deepfakes are being adapted to foster identity fraud and to bypass security systems.

AI-washing claims have been brought against companies for publicly overstating their AI capabilities or making material misstatements or omissions regarding the reliability and oversight of complex technological systems. The $65 million pending settlement between Snapchat Inc. (SNAP) and its investors to resolve a putative securities class action served as an eye-opener for D&O underwriters with insured companies adopting AI into their core infrastructure.[22] The case was brought on behalf of investors who purchased SNAP securities under Sections 10(b) and 20(a) of the Securities Exchange Act and Rule 10b-5.

Companies and executives touting themselves as safe, transparent, or adhering to best practices without maintaining a robust compliance infrastructure may face such claims.

There has been a rise in AI-related securities class action litigation with at least 53 AI-related lawsuits filed since 2020. According to the *Stanford Law School Securities Class Action Clearinghouse*, during the first six months of 2025, 12 AI-related securities class action lawsuits were filed on top of the 15 filed in 2024.[23] AI-related securities actions have included lawsuits against companies that are providing AI products or services. Many have been AI-washing claims that contain allegations similar to those that have been the subject of SEC enforcement actions. AI-related securities class action lawsuits also may involve companies that, rather than allegedly overstating their AI capabilities or prospects, allegedly understated their AI-related risks and misled investors by downplaying them. Other AI-related actions involve the use or misuse of AI by companies and their managers, defamation, intellectual property claims, and shareholder derivative suits. Such claims are likely to continue to proliferate and AI could prove to be disruptive in the litigation arena.

Insurers are including AI exclusions, sub-limits, and endorsements to control AI-related risks in a variety of policy types and are providing affirmative AI coverages.[24] Notwithstanding the amount of attention given to AI over the past year, the AI story is only just beginning to unfold.

III. COVERAGE CLAIMS

It is hardly surprising that the frequency and severity of claims and the high stakes and costs of coverage litigation continue to escalate in the world's most litigious country. The nature of complex coverage litigation has changed with large losses often being litigated with fewer parties than decades earlier, due to a variety of factors including broader use of claims-made contracts. There is much to report regarding claims and coverage activities in 2025.

A. Cyber & Cybersecurity

Underlying cyber claim frequency remained stable while severity dropped by 50% year-over-year according to one report, reflecting improved incident response, widespread adoption of multi-factor authentication, and the increased use of real-time monitoring tools.[25] A 2025 Cyber Claims Report by Coalition highlighted that business email compromise and funds transfer fraud accounted for 60% of cyber claims, with ransomware continuing to represent the most costly and disruptive attack type.

Regulatory oversight also intensified as the transition period for the SEC 2023 cybersecurity disclosure rules ended and those rules became effective in 2025, requiring registrants to report material cyber incidents within four business days and disclose governance practices annually.[26] Enforcement actions expanded, targeting failures in board-level cyber risk oversight.[27] There has also been an increase in shareholder lawsuits over delayed or incomplete disclosures. Congress has temporarily extended the Cybersecurity Information Sharing Act of 2015 through the end of January 2026. The future of the law, which provides a critical underpinning for information sharing and collaboration across government and industry, remains in doubt.[28]

In 2025, the number of coverage disputes under cyber-specific policies has increased as courts continue to grapple with "silent cyber" claims under traditional liability, property, and crime/fraud policies. In January 2025, the U.S. Court of Appeals for the Sixth Circuit issued an important decision in *Home Depot Inc. v. Steadfast Ins. Co*.[29] The case arose from Home Depot's massive data breach, which triggered lawsuits by financial institutions seeking reimbursement for losses. Home Depot argued that its commercial general liability (CGL) policies should respond, but the Sixth Circuit held that electronic data does not constitute "tangible property" under traditional liability coverage and that insurers therefore had no duty to defend or indemnify.

Late in 2025, the Illinois Appellate Court rendered a decision on "extra expense" coverage in *Villa Financial Services, LLC v. Underwriters at Lloyd's of London*.[30] The case arose after Villa Financial made 'reasonable,' but contractually unnecessary payments in response to a cyberattack and sought reimbursement under its cyber policy. The court held that "extra expense" coverage applies only to costs that are strictly necessary. Although unpublished, the ruling may reflect a broader trend signaling that insureds cannot recover for nonessential measures taken during breach response.

B. Privacy Claims

In 2025, state-level activity surged with over 800 consumer privacy bills introduced and at least eight new state laws enacted in Delaware, Iowa, Nebraska, New Hampshire, New Jersey, Tennessee, Minnesota, and Maryland.[31] At the federal level, the Trump administration has reduced oversight and enforcement by the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau. Early in the year, the administration issued a regulatory freeze on some Biden-era initiatives, including proposed updates to the Children's Online Privacy Protection Act and broader FTC rulemakings on commercial surveillance and data security.[32]

In Illinois, insurers have prevailed in several appellate rulings applying "violation of law" exclusions to bar coverage under cyber and general liability policies. Although statutory damages under privacy laws like BIPA remain a major exposure for businesses, in some cases insurers are prevailing based upon exclusions that limit coverage for alleged violations of law.[33] Illinois also has a Genetic Information Privacy Act. Section 20(b) of that Act prohibits insurers from using or disclosing "protected health information" that is "genetic information" for underwriting purposes. The Act adopts HIPAA's definitions of both terms. "Genetic information" means information about: (i) an individual's genetic tests; (ii) the genetic tests of family members, the manifestation of a disease or disorder in family members, or any request for, or receipt of, genetic services, or participation in clinical research, which includes genetic services, by the individual or any family member. A decision of the Illinois Appellate Court held that Section 20(b), which applies to health care providers, health plans, employers, and clearinghouses, does not apply to life insurers.[34]

There was a wave of consumer privacy cases filed under various enacted state laws such as the California Invasion of Privacy Act (CIPA) and in New York under the SHIELD Act. These disputes often targeted policyholders for using website tracking tools and collecting personal information.[35] In 2025, several trial court decisions dismissed such claims, concluding that the alleged conduct did not rise to the level of a statutory violation.[36]

C. PFAS Or So-Called Forever Chemicals

PFAS cases pending in courts throughout the U.S. have been targeting manufacturers, distributors, and even downstream users of PFAS-containing products.[37] As of November 2025, approximately 19,600 cases were pending in a South Carolina federal court, consolidated into a multidistrict litigation (MDL) proceeding regarding exposure to firefighting foams.[38] Beyond the MDL cases, states and municipalities have filed lawsuits against chemical manufacturers, seeking compensation for the costs of water treatment, environmental remediation, and public health monitoring.[39] In 2025, New Jersey obtained a $2 billion settlement from DuPont to clean up environmental damages. The Environmental Protection Agency (EPA) finalized drinking water standards for six PFAS compounds and expanded reporting requirements under the Toxic Substances Control Act, while proposing broader disclosure rules.[40] At the state level, over 350 PFAS-related bills were introduced across 39 states, with 17 new regulations adopted in nine states by mid-year.[41] States such as New Mexico and Illinois enacted bans on PFAS in consumer products and packaging, while others focused on water quality and industrial discharge limits.[42]

In 2025, the U.S. District Court for the Northern District of California, in *Nat'l Foam, Inc. v. Zurich Am. Ins. Co.*,[43] issued a split ruling on coverage for PFAS-related claims under a commercial general liability policy. The policyholder, National Foam, Inc., faced 182 consolidated cases in MDL involving two types of exposures: (1) direct exposure to PFAS from Aqueous Film-Forming Foam (AFFF) products; and (2) indirect exposure through drinking water contaminated by PFAS. The insurer denied coverage under a pollution exclusion, which excluded damages that "would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants' at any time." The court granted the policyholder's motion for summary judgment in part, holding that the insurer had a duty to defend the direct exposure claims. However, the court also granted the insurer's motion for summary judgment in part, finding the insurer had no duty to defend the indirect exposure claims. This distinction highlights how some coverage disputes may turn on the type of alleged exposure.

In *Town of Harrietstown v. Westchester Fire Ins. Co.*, the Northern District of New York held that liability insurers owed a duty to defend the Town of Harrietstown against a PFAS-related environmental con-

tamination claim arising at the Adirondack Regional Airport.[44] The insurers relied on a "noise and pollution and other perils" exclusion that excludes from coverage "claims directly or indirectly occasioned by, happening through, or in consequence of: . . . (b) pollution and contamination of any kind whatsoever . . .," subject to the "combined claims" exception. The court found that the claim potentially fell within an exception preserving coverage for pollution "caused by or resulting in a crash, fire, explosion, or collision." Because at least one alleged source of contamination involved AFFF used in response to aircraft crashes, the exception was triggered, requiring the insurers to defend unless they could later show with certainty that the New York State Department of Environmental Conservation (NYSDEC) claim fell outside the exclusion.

The Town had been targeted by the NYSDEC, which issued a Superfund Site Classification Notice deeming the airport a significant threat to public health and the environment due to PFAS contamination. The insurers argued that the pollution exclusion barred coverage and that, even if part of the claim arguably fell within an exception, the "combined claims" provision relieved them of a defense obligation. That provision states that insurers need not defend claims covered under the policy when combined with claims that are excluded, though they may need to reimburse defense costs attributable to covered components.

The court rejected that argument, concluding that the NYSDEC matter constituted a single claim rather than a "combined claim" involving separate covered and uncovered components. Because the insurers could not demonstrate that the contamination claim was "solely and entirely" excluded, and because an alleged crash-related source of PFAS was enough to invoke the exception to the pollution exclusion, the court ruled that the insurers had a present duty to defend the Town in the underlying environmental proceeding.

So far, court rulings on pollution exclusions in the context of PFAS claims, like rulings in the context of other environmental claims, generally have been mixed. More insurers are adding PFAS-specific exclusions to their policies.

D. COVID-19 Business Interruption Litigation

The COVID-19 business interruption litigation is slowly winding to a close. Approximately 2,400 COVID-19 business interruption coverage cases were filed in the U.S. since the pandemic with no new cases currently being filed. Insurers have achieved overwhelming success in the litigation, prevailing in the vast majority of motions to dismiss in state and federal trial courts across the country, before every United States Court of Appeal, in most intermediate state appellate court decisions, and before every state supreme court to address the issue, except in Vermont and North Carolina. Insurers prevailed on the grounds that the claims do not involve "direct physical loss or damage" to property as required by the language contained in most U.S. first-party policies or based upon the application of virus or other similar exclusions.[45]

E. Drugs, Guns, And Insurrections

In January 2025, a $7.4 billion settlement involving thousands of claimants against Purdue Pharma and the Sackler family was approved in the U.S. Bankruptcy Court for the Southern District of New York.[46] Settlements involving opioids have totaled more than $57.7 billion as of November 2025.[47]

We previously reported on several decisions favoring insurers in the context of opioids. This trend continued in 2025. A Delaware Superior Court, *In re CVS Opioid Insurance Litigation,* ruled that CVS Health was not entitled to insurance coverage for thousands of separate opioid-related lawsuits. The court held that the claims brought by governments, hospitals, and benefit plans sought damages for economic losses, not individualized "bodily injury" or "property damage" covered under the general liability policies.[48] Insurers of Bloodworth were granted summary judgment with respect to underlying lawsuits claiming the distributing, marketing, and placing of opioids into the stream of commerce without fulfilling the duty to prevent diversions and reporting suspicious orders constituted a public nuisance and was otherwise unlawful. The Georgia federal court held this did not constitute an "occurrence" and the underlying plaintiffs (health care provider and governmental entities) were seeking recovery for economic losses and costs of abating the opioid epidemic, which are not "damages because of bodily injury."[49]

The U.S. Court of Appeals for the Second Circuit affirmed a lower court's ruling that insurers had no duty to defend or indemnify a firearms retailer in

three underlying lawsuits alleging public nuisance and other claims relating to their intentional marketing and sales of "ghost gun" kits to individuals that could not buy firearms through legitimate channels. Governmental entities claimed that the activities led to increased gun violence and imposed increased costs and financial burdens on them in a variety of ways, including investigating and responding to crimes and gun-related injuries. The Second Circuit held that the claims did not arise from an "accident" or "occurrence" under Texas law. The court focused on the gravamen of the complaints alleging intentional activity and ignored the inclusion of conclusory legal labels of negligence in analyzing coverage.[50] These coverage victories are important considering the unwelcome development of public nuisance claims emerging as a super-tort.

From drugs and guns to insurrection. The Second Circuit determined that a New York federal court did not err in finding that Venezuelan President Nicolás Maduro's actions against the American-recognized government of Juan Guaidó constituted an "insurrection" within the meaning of Citgo's marine cargo reinsurance policy, as the Maduro regime's actions were violent and constituted an uprising to overthrow the recognized government. The court affirmed a $54 million judgment in favor of Citgo.[51]

F. Construction Defect

Both federal and state courts issued significant rulings regarding construction defect claims. The Oregon Supreme Court in *Twigg v. Admiral Ins. Co.*, for example, reversed lower court rulings that had denied coverage for construction defect claims under a CGL policy.[52] The insurer denied coverage for defective garage floor construction, arguing the claims arose solely from breach-of-contract obligations. The court held that coverage may exist even when framed as contract claims if the underlying facts support tort liability and property damage caused by negligent workmanship.

The U.S. Court of Appeals for the Eighth Circuit addressed builder's risk coverage in *Bob Robison Commercial Flooring Inc. v. RLI Ins. Co.*,[53] where the insured subcontractor installed a gym floor with painted lines that were defective. The insurer denied coverage, citing the defective workmanship exclusion. The policyholder argued that the "ensuing loss" provision restored coverage. The court disagreed, holding that the ensuing loss clause did not apply because no separate covered peril caused the damage, underscoring the concept that builder's risk policies will not cover costs of correcting faulty workmanship absent a distinct covered peril.

An Illinois Appellate Court affirmed a trial court's grant of summary judgment in favor of a general contractor's insurer and against the subcontractor's insurer, holding that a worker's injury potentially "arose out of" the subcontractor's ongoing operations and noted that it is a low threshold to implicate an insurer's duty to defend. The court rejected the late-notice argument of the subcontractor's insurer, finding it had early knowledge of the worker's injury and had already denied coverage before suit was even filed. The court noted that the underlying complaint inherently implied negligence by the subcontractor creating a potential for coverage.[54]

A decision of the U.S. Court of Appeals for the Eighth Circuit stands as a reminder that coverage for an "additional insured" is not necessarily coextensive with the coverage afforded to a "named insured." The court affirmed the grant of summary judgment to the insurer holding that the additional insured contractor was not covered for its alleged losses of rental income and soft costs from damages and delays resulting from the failure of a retaining wall. The court noted that an additional named insured does not necessarily have the same rights and responsibilities as the named insured and the coverage sought here only extended to the named insured.[55]

The rising costs of construction and replacement have imposed challenges in claims handling and underwriting.

G. D&O & Securities

As we recently reported in a separate commentary, the past year has been interesting and action-packed in the world of Directors & Officers (D&O) liability and coverage.[56] U.S. Securities and Exchange Commission's (SEC) enforcement actions reached their lowest level in ten years overall, though insider trading and market manipulation enforcement activities have increased. The SEC appears to be focusing greater scrutiny on foreign companies listed on U.S. stock exchanges. SEC Chair Paul Atkins has indicated that

the agency is prepared to move forward with President Trump's proposal for changing the mandatory periodic reporting requirements for public companies from quarterly to bi-annually. Efforts to avoid securities class action litigation by adopting bylaws requiring securities law claims to be submitted to arbitration have been historically opposed by the SEC, but have gained traction with a policy statement that the effectiveness of a registration statement will not be impacted by the presence of provisions requiring the arbitration of investor claims arising under the federal securities laws.

DExits, the name coined for the corporate movement away from Delaware, have continued the exodus from the state that has been the leading corporate home for U.S. companies. The perception that Delaware courts have been less supportive in limiting corporate liability and more inclined to challenge corporate board decisions, coupled with efforts by states such as Texas and Nevada to encourage companies to incorporate in their states by enacting laws making it more difficult for claimants to sue and prevail against companies, have contributed to DExits. In an attempt to stem the tide of corporate departures, the Delaware legislature enacted S.B. 21, making numerous changes to the Delaware General Corporation Law.[57] This legislation is subject to pending constitutional challenges.

Numerous important court decisions impacting D&O have been rendered on a full range of issues in 2025. The U.S. Court of Appeals for the Ninth Circuit recently adopted the "materiality" test for determining when intra-quarter reporting is required in the context of initial public offerings under the Securities Act of 1933, joining the Second Circuit in applying this test. It rejected the "extreme departure" standard applied by the lower court and long followed in the First Circuit.[58]

Similar to the issue of number of occurrences under occurrence-based policies, the issue of related claims under claims-made D&O insurance policies is subject to varying decisions that are sometimes difficult to reconcile. The different results may be driven by the facts associated with the claims, the language of the policy definitions of "claims" or provisions regarding "related claims," the test applied by the court in determining whether the claims are related, and whether the insured or insurer is benefited by the determination. Earlier this year, the Delaware Supreme Court adopted the "meaningful linkage" standard in finding claims to be related.[59] Other courts, such as a federal court in Virginia, ruled that two claims were not related, applying the more restrictive "common nexus" test.[60] A federal court in Montana found claims were related because they were based on the same general business practice and course of conduct.[61]

In other decisions, the New York Court of Appeals rejected the application of New York law to disputes between stockholders and companies incorporated in foreign countries.[62] The U. S. Court of Appeals for the Ninth Circuit held that coverage for settlement amounts and defense costs incurred in an underlying employee and client poaching lawsuit was barred by California Insurance Code Section 533, which precludes coverage for losses caused by the willful act of the insured.[63] The Delaware Supreme Court ruled that payment of defense costs by a non-insured did not count toward the insured's self-insured retention and that the insured's payment of the self-insured retention was a condition precedent to the insurer's obligation to cover losses under the policy.[64] In another action, the Delaware Supreme Court affirmed the dismissal of claims against some D&O insurers based on the Prior Acts Exclusion, but remanded the case for further proceedings on the "no action" clause, finding there were various policy provisions, particularly with respect to the advancement and allocation of defense expenses, that potentially could be relevant to the determination of the meaning and application of the "no action" clause.[65]

The U.S. Court of Appeals for the Fourth Circuit held that the bump-up exclusion applied to bar coverage for a $90 million settlement of litigation relating to Towers Watson's 2016 merger with Willis Group Holdings.[66] In contrast, a Delaware Superior Court decision refused to apply a bump-up exclusion to bar coverage.[67]

The old adage that "cash is king," appears to be fading fast in Delaware. Earlier this year, a Delaware Superior Court, in *AMC Ent. Holdings, Inc. v. XL Specialty Ins. Co.*,[68] determined that the insured movie theater's settlement payment made in the form of its stock valued at $99.3 million qualified as a covered "Loss" under its D&O policy. The court rejected the insurer's argument that there was no coverage for the

settlement payment because it was not a "Loss" under the terms of the policy. The policy defined "Loss," as "damages . . . settlements . . . or other amounts . . . that any Insured is legally obligated to pay." Further, the policy provides that the insurer will "pay 'Loss' on behalf of AMC." The insurer contended that, because the settlement involved the issuance of stock, not cash, and because the insurer could not pay the settlement on AMC's behalf, it was not a covered "Loss." The court disagreed, finding that "Loss" was not limited to cash payments. It emphasized that, under Delaware law, stock is a form of currency that can be used for a variety of corporate purposes, including settling debts. Thus, AMC's issuance of stock was deemed a covered "Loss," which the court refused to limit in a way not explicitly provided for in the D&O policy. Further, the court looked to the policy's bump-up exclusion, which uses the word "paid" twice. The court stated, "[t]his exclusion is not applicable to the issue presented, but its use of the word 'paid' is relevant" because words used in different parts of a policy are presumed "to bear the same meaning throughout[.]" The court reasoned that, because under Delaware law the bump-up exclusion, and its use of the word "paid," can apply to stock transfers, it is "necessarily implied that stock can be an amount AMC 'pays' which creates a covered 'Loss'."

The court also rejected the insurer's argument that AMC did not suffer economic harm, noting the policy did not condition coverage on the existence of such harm. The court refused to "insert a restricting clause into the Policy." Finally, the court ruled that, whether AMC sought the insurer's consent to settle, or waiver of consent, on a phone call presented a factual issue to be decided by a jury. However, the court noted that Delaware law allows a policyholder that does not comply with consent requirements to obtain coverage by rebutting the presumption that the insurer was prejudiced by the breach and showing that the settlement was reasonable.

On December 9, the Delaware Supreme Court entered an order affirming the lower court's decision and adopting its reasoning. Perhaps more than anything this case illustrates the accuracy of the "pro-insured" label that commentators often ascribe to Delaware courts when addressing D&O coverage issues. Apart from bending the "Loss" provision beyond recognition and ignoring the consent to settle requirement, the reliance on language in the "bump-up" exclusion (which Delaware courts have demonstrated hostility towards) to justify its ruling on "Loss" was a stretch. Decisions such as this may cause insurers to revise policies to prevent or limit the forms or methods of payments that satisfy "Loss" or "exhaustion" requirements. Insureds, on the other hand, may seek endorsements to accommodate cryptocurrency or other forms of payments.

A Texas bankruptcy court determined that a D&O insurer wrongfully refused to accept a $4.65 million settlement demand from a plan administrator and litigation trustee. The court stated that, under Texas law, a prudent insurer must consider the foreseeable costs of defense in evaluating a within-limits settlement demand, which the insurer failed to do. It stated further that the evidence showed defense costs would deplete the relevant policy limits and every available defense does not have to be aggressively pursued for a settlement to be deemed reasonable. The court noted the insurer will be exposed to limitless potential liability for both defense costs and indemnity if it fails to pay the settlement amount. Nonetheless, the court held that it could not compel the insurer to accept the demand as the insurer's refusal to settle a reasonable demand gives rise only to post-judgment or post-settlement monetary relief, not to prospective specific performance.[69]

Finally, in *Flextronics Int'l. Ltd. v. Allianz Glob. Corp.*,[70] the United States District Court for the Southern District of New York upheld an $11 million arbitration award in favor of an international supply and manufacturing company. Under the terms of the subject third layer excess D&O policy, where a claim involved both covered and uncovered claims or entities, the parties "shall use their best efforts to determine a fair and proper allocation of loss covered under this policy." The policies applied New York law, except as to "insurability of damages," where "any applicable" law favoring the insured on that issue would apply. The matter arose out of a trade secrets lawsuit against the company and four executives, which settled for over $42 million. The insured sought to recover $10,963,951 from one of its insurers (plus pre-award interest), representing the loss that remained after subtracting the $45 million in underlying limits. The insurer argued that Flex's recoverable loss did not exceed $45 million – and therefore could not reach

its layer – because some percentage of the total loss should be allocated to the two non-covered corporate defendants. The arbitration panel, however, ruled for Flex, holding that the parties' insurance policy entitled it to receive the entirety of its $10,963,951 claim against the insurer. Flex argued for Delaware law's "larger settlement" rule, under which a loss is fully recoverable unless the insurer can show that the non-covered conduct increased its liability. The insurer countered that New York's "relative exposure" rule governs, under which the insurer and insured allocate settlement costs between covered and non-covered parties, with the insurer bearing the burden to prove the amount that should be excluded from coverage. The panel agreed with the insurer, finding New York's relative exposure rule to apply. Applying the relative exposure rule, however, the panel concluded that the insurer should bear the entire covered loss. It determined that the liability of the two uninsured corporate entities was "concurrent and conterminous" with that of the four insured directors and officers, such that those four insured parties had exposure for acts and omissions of the noninsured corporate entities. The panel concluded that the insurer had not met its burden of proving that any part of the settlement should be excluded from coverage. According to the panel, the only evidence that the insurer had offered was an expert's testimony and report that the panel found to be unpersuasive. The panel noted that the expert had never read the policy at issue, did not consider any correspondence among the parties as to allocation, and premised his opinions on the assumption given to him that "the liability of the defendants on any claim should be allocated on a 'per capita basis' without any effort to analyze and evaluate the relative exposure of the defendants." The court confirmed the award and denied the insurer's cross-motion to vacate, demonstrating the limited grounds and high showing required to vacate an arbitration award. The decision speaks more to the power of an arbitration panel and the limited scope of vacating an arbitration award than to the substance of allocation.

H. Health Insurance

Health insurance continues to present concerns in terms of scope and costs of coverage, with the Affordable Care Act of 2010 not living up to its name. Premium subsidies were funded during the pandemic, but are scheduled to expire at year-end. Congress recessed for 2025 without passing legislation to address the issue. Legislative action is required, but may prove difficult in view of the sharp divides between the political parties. The upcoming year promises to present changes in the health insurance landscape.

I. Silica

Silica-related claims and litigation have resurged in recent years due to a variety of factors including the popularity of engineered stone (a man-made material composed primarily of crushed natural stone combined with a polymer resin binder and pigments) for kitchen and bath countertops over the last two decades. This engineered stone contains a higher content of respirable crystalline silica (which can cause silicosis) compared to natural stone. Following a $52 million verdict awarded to a stone fabricator by a Los Angeles jury in the *Reyes-Gonzalez* case,[71] hundreds of cases were filed in California.

Silica-related coverage claims often raise several issues, including trigger, allocation, number of occurrences, absence of an occurrence, fortuity, and other knowledge-based defenses, and the application of several exclusions including Silica or Silica-Related Dust Exclusions, other dust exclusions, silicosis exclusions, and pollution exclusions.

In *Hanover Am. Ins. Co. v. Francini, Inc.*,[72] insurers filed a declaratory judgment action against their insured, a stone importer and distributor, seeking a determination that they had no duty to defend or indemnify Francini in connection with 17 state lawsuits filed against them and others between 2021 and 2023. The underlying plaintiffs allegedly suffered from silicosis and other conditions due to their exposure to silica and silica-related dust while working with the defendants' products. The court determined that the claims fell squarely under the silica exclusion. The exclusion provides that the policies do not apply to bodily injuries arising "in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, 'silica' or 'silica-related dust.'" The court did not have occasion to consider the application of the pollution exclusion. The court granted the insurers' judgment on the pleadings. Although the court stated it was skeptical that Francini could amend its answer to cure the deficiencies, it nonetheless granted leave to amend. In *Sompo Am. Ins. Co. v. LX Hausys Am. Inc.,*[73] however, the court denied an insurer's motion to dismiss based on silica dust exclu-

sion. The court reasoned that an insurer cannot avoid its duty to defend where an insured risk and excluded risk are alleged to constitute concurrent proximate causes of the underlying bodily injuries.

J. Weather-Related Claims

Climate change continued to drive insurance instability in 2025, particularly in California, Florida, and Louisiana, where extreme weather events such as wildfires, hurricanes, and flooding led to rising premiums and large insurer withdrawals and insolvencies. Between 2018 and 2023, insurers canceled or non-renewed nearly 2 million policies in these states. In response, California regulators began allowing insurers greater flexibility in setting premiums after multiple insurers announced they would stop or limit writing homeowners' policies. Tort reform in Florida included steps to address insurer insolvencies.

Property insurers processed 28% fewer claims in the third quarter of 2025 compared to the third quarter of 2024, according to Verisk's Q3 2025 Quarterly Property Report. The industry is on track to have the lowest claim volume in five years. The drop appears to be attributable to a mild 2025 hurricane season in North America. Catastrophe claims declined 32.7% while non-catastrophe claims decreased 26.1% year-over-year. Wind and hail-related perils dominated, accounting for 51% of all combined claims in the third quarter. Texas maintained its position as the state with the highest claim volume at 136,870 claims, though this represented a 53% decline from third quarter of 2024. Wyoming experienced the most dramatic shift with a 6,479% increase in catastrophe claims due to a major hail event near Cheyenne. Alaska saw a 429% increase driven by fire claims, while Vermont posted the largest decrease at 87%.

Individual claim costs are projected to reach between $17,258 and $18,431 once fully matured, potentially making it one of the most expensive quarters on record. In the second quarter of 2025, average replacement cost value increased 8.5% from $16,944 to $18,384. The gap between declining volumes and increasing costs per claim suggests that favorable weather patterns may provide only temporary relief.[74]

In January 2025, the Palisades Fire and Eaton Fire in Los Angeles destroyed over 16,000 structures and caused industry-wide insured losses of an estimated $45 billion. With respect to claims arising out of wildfire losses, a California appellate court decision ruled that minor infiltration of wildfire debris and smoke into a home that does not alter the property in any lasting or persistent manner and that is easily cleaned, is not considered covered property damage within the meaning of the homeowners' policy.[75] A federal court decision likened smoke to asbestos while differentiating smoke from viruses for insurance coverage purposes.[76] The U.S. Court of Appeals for the Eighth Circuit determined that soot damage – like asbestos damage and unlike a virus – is both "directly material, perceptible, or tangible" and "permanent, absent some intervention."[77]

K. Bad Faith & Extracontractual Liability

The area of claims involving the duty of good faith and fair dealing, commonly referred to as bad faith claims and extracontractual liability, continues to present significant challenges to insurers in the U.S. The use and integration of AI in claims handling presents a burgeoning area for bad faith claims by policyholders. Insurers may also face claims for failing to use AI. Balancing claims handling efficiency and accuracy with the need for individualized claim attention will prove important. Accuracy in evaluation and monitoring algorithms will prove beneficial to insurers in connection with avoiding bad faith liabilities and with respect to regulatory compliance in the areas of pricing, underwriting, fraud detection, and claims handling. A primer on the use of AI, AI regulatory compliance, and AI best practices is beyond the scope of this Commentary; however, the following directives will likely serve insurers well:

- transparency in the use of AI;
- accuracy in marketing materials and communications with policyholders;
- adopting internal procedures for review and approval of AI-generated reports and customer messaging;
- avoiding unfairness and bias in decisions; making sure hallucinations are locked out;
- ensuring AI complies with insurance policy terms and regulatory requirements;
- implementing, monitoring, and updating controls and safeguards;
- educating and training personnel;
- reviewing any decisions made by automated processes;

- ensuring that sufficient flexibility exists to consider and respond to facts, circumstances, and developments and to allow claims and underwriting professionals to exercise professional judgment;
- having procedures in place for customers to challenge decisions; and
- ensuring that AI is encompassed within the insurers' culture of excellence.

Insurers are likely to retain responsibility for the actions or inactions of contractors, consultants, and vendors they use, so selection and monitoring of these entities will be important considerations.

Tort reform legislation enacted in various states over the past couple of years has provided insurers with opportunities to limit their exposure to bad faith liabilities. In Florida, for example, Section 624.1551, enacted in December 2022, will likely reduce specious bad faith claims against property insurers by requiring an adverse adjudication by a court confirming that the insurer breached the insurance contract followed by a final judgment or decree against the insurer before any extracontractual damages claim may be filed. A bad faith finding is precluded where an insurer tenders the policy limits or the amount demanded within 90 days of receiving notice and supporting evidence and makes clear that negligence does not constitute a basis to impose bad faith liability. Section 624.155(6), enacted in March 2023, allows insurers to interplead insurance funds when faced with competing liability claims that collectively exceed policy limits, providing a mechanism for insurers to reduce the risk of being held liable beyond the available policy limits. In December 2025, Florida Insurance Commissioner Michael Yaworsky reported that overall litigation is down about 30% since lawmakers approved the property insurance reforms in late 2022 and 2023, though still higher than in other states.

In Louisiana, La. R.S. Section 22.1892(I) provides that an insured may seek to hold an insurer liable for "any proven economic damages sustained as a result of the breach" or for immovable property claims, penalties in an amount not to exceed fifty percent of the damages sustained or $5,000, whichever is greater. Such penalties are in addition to any amounts actually incurred due to the breach and the resulting attorneys' fees and costs. Penalties from an insurer's failure to pay in a timely manner will be awarded where it is found to be arbitrary, capricious, or without probable cause. An insured may seek up to 50% damages on the amount found to be due from the insurer, plus any proven economic damages sustained as a result of the breach or $1,000, whichever is greater. Where partial payment or tender was made previously, an insured may only be entitled to 50% of the difference between the amount paid and the amount found due, plus reasonable attorneys' fees and costs, and any proven economic damages sustained as a result of the breach.

The Louisiana amendments create a "reverse bad faith" provision, imposing a requirement on insureds and their representatives to exercise the duty of good faith and fair dealing in submitting coverage claims. Although an independent cause of action is not created, insurers may use this as an affirmative defense that may be considered by a jury when considering whether to impose penalties on the insurer for breaching its duty to the insured. Failure to comply with affirmative contractual duties, misrepresenting pertinent facts or policy provisions, and submitting estimates or claims for damages that lack a basis for coverage or evidentiary support, constitute grounds for a "reverse bad faith" claim. The Act creates a new 60-day "Cure Period Notice" for insurers, which applies to catastrophic loss claims involving immovable property. Claimants are precluded from filing bad faith claims arising out of catastrophic losses without first complying with a Cure Period Notice.

In 2024, Georgia amended its "Bad Faith Failure-to-Settle" statute, clarifying the structure of time-limited settlement demands: what "material terms" mean, how insurers should respond, and when they can avoid bad faith. In Montana, S.B. 236 (2023) requires that time-limited settlement demand letters reasonably describe the claim, allow 60 days for acceptance by the insurer, and requires claimants to provide reasonable records and information to insurers; emphasizing the need for timely, reasonable claims settlement. S.B. 165 restricts certain third-party (common law) bad faith causes of action.

California added a statutory framework (CA Civ. Pro. Code Section 999) for time-limited demands. It requires demands to be in writing, remain open for a minimum time period of 30 or 33 days, depending on how the demand was delivered, include material

terms; including the release to be provided, information about the injuries sustained, and the amount demanded along with reasonable proof. If a demand fails to substantially comply with these requirements, it generally will not constitute a "reasonable" offer for a bad faith lawsuit.

Numerous decisions have been rendered on bad faith claims in 2025. For example, 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 of policy funds naming all claimants. [78] A Montana federal court denied a professional liability insurer's motion for summary judgment, finding that questions of fact existed for the jury to decide a bad faith claim seeking punitive damages brought by a doctor alleging the insurer allowed a malpractice case to proceed even though it estimated less than a 10% chance of defeating the claim. The malpractice case ultimately settled at mediation. [79] The U.S. Court of Appeals for the Fifth Circuit affirmed the dismissal of a bad faith claim without leave to appeal where the complaint contained conclusory allegations that the insurer failed to "thoroughly investigate" the property damage and pay the requested amounts without containing specific factual allegations to support the claim.[80]

A breach of fiduciary duty claim based on allegations that the insurer undervalued the loss was dismissed on the grounds that it was duplicative of the bad faith claim and Washington courts have not yet recognized a breach of fiduciary duty as an independent claim in the context of insurance.[81] A Pennsylvania court granted an insurer's motion to dismiss parts of a complaint relying on the insurer's litigation conduct by allegedly violating discovery and making a misrepresentation in a discovery report narrative. An insurer's litigation conduct can be evidence of bad faith only where "the insurer is intentionally avoiding its obligation under a policy or is undermining the truth-finding process and where the conduct involves the insurer in its capacity as an insurance company, not as a legal adversary." [82] An insurer was entitled to summary judgment determining the insurer's election to proceed with appraisal did not constitute grounds for a bad faith claim because the policy expressly provided for appraisal, which the insured agreed to contractually.[83]

In California, an insurer was granted summary judgment on a bad faith claim alleging the insurer failed to conduct a reasonable investigation by not contacting any of the insured's major customers to discuss projected sales when determining the amount of covered business income loss. The court determined the insurer's reliance on a forensic accounting expert's opinion provided the insurer with a reasonable basis for its determination of the amount of loss.[84] The U.S. Court of Appeals for the Ninth Circuit affirmed summary judgment awarded to an insurer on a bad faith claim for failure to settle within policy limits due to the claimants' failure to provide medical records in response to ten requests from the insurer.[85]

A California intermediate appellate court held that the trial court erred in finding a title insurer was not liable for bad faith breach of its duty to defend an easement claim because the complexity of the underlying factual and legal issues did not excuse breach of the duty to assess the possibility of coverage fairly and in good faith based on the available facts. The appellate court found that the genuine dispute doctrine, which generally holds that an insurer does not act in bad faith when it mistakenly withholds policy benefits if there is a reasonable basis for the withholding or legitimate dispute regarding the insurer's liability, was incompatible with the principles governing third party duty to defend where the mere possibility of coverage triggers the duty. It may be that this decision is incompatible with long-standing California law on the genuine dispute doctrine. The court correctly found the evidence failed to establish the heightened culpability necessary to support an award of punitive damages as a matter of law.[86]

The U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's order granting summary judgment for an insurer holding that under the totality of the circumstances, the insurer did not act in bad faith in its handling of an auto accident claim with multiple claimants as a matter of Florida law. A two-week delay in reviewing the police report was not bad faith. Further, the insurer was entitled to conduct a reasonable evaluation before making a settlement offer in light of conflicting opinions on liability. By withholding distribution of the policy limits until a global settlement conference, the insurer acted in its policyholder's best interests by minimizing the magnitude of possible excess judgments against the

policyholder.[87] A Florida Court of Appeal reversed a jury verdict in favor of the insured, holding that the trial court improperly admitted irrelevant and unduly prejudicial evidence of claims handling in an action that only alleged breach of contract. The evidence included a public adjuster's remarks that the insurer "dropped the ball" and "did not take [the claim] seriously" and repeated arguments by the insured's counsel that "there was no investigation." Because this theme permeated the trial, the court concluded that the admission of such evidence and arguments constituted reversible error rather than harmless error. [88]

IV. WHAT TO LOOK FOR IN 2026

Insurance, as fundamental economic engine of growth and stability, will play a central role in addressing the full range of challenges that ricochet throughout the economy. In 2026, these are expected to include supply chain vulnerabilities, mental and physical health, workforce shifts, climate change, affordability, and technological advances. With a divided federal government, insurers may play an outsized role in addressing health care coverage and premium challenges.

Cybersecurity and AI will continue to provide an overriding backdrop for insurers and policyholders. AI is transforming risk profiles of companies across industries and the insurance market is only beginning to adapt. The limited loss activity and historical data complicates underwriting and pricing. The pace of technology and application of AI presents evolving challenges as policyholders and insurers adopt AI protocols, practices, and loss controls. Policyholders will continue to examine their traditional coverages such as professional liability, general liability, workers' compensation, intellectual property, products liability, media liability, D&O, crime/fraud, employment practices, and property insurance in connection with insurance renewals to identify and fill potential gaps in coverage for AI-related losses. After an AI-related loss is experienced, policyholders will search for "silent AI coverage" in their traditional policies. In many ways, coverage litigation involving "silent AI coverage" may mirror the "silent cyber" coverage experience. Insurers are adding exclusions and endorsements with sub-limits on traditional policies to expressly address AI to extend and to limit coverage. New AI-specific coverages are emerging and represent a multi-billion dollar market. There may be some initiatives for mandated AI coverage and government backstops for major AI events. Although AI will interpose unique challenges, for many issues cyber and AI risks may best be addressed in tandem.

A host of new data privacy laws took effect on January 1, 2026, including the Indiana Consumer Data Protection Act, the Kentucky Consumer Data Protection Act, and the Rhode Island Data Transparency and Privacy Protection Act. The right to cure periods under the existing Delaware and Oregon privacy acts expired on January 1, 2026. The revised California CCPA regulations became effective on January 1, 2026, along with the California Delete Act regulations.

Insurers will continue to address social inflation through tort reform and education in 2026. They will push for third-party litigation funding disclosure and limitations and track third-party funding bills (one requiring disclosure of litigation funding in federal court cases and another precluding litigation funding by foreign entities) that are currently before the House Judiciary Committee.

All of the claim types discussed above are expected to be subject to additional rulings in 2026, particularly in areas of cyber-specific policies, AI, and PFAS. Emerging claims areas include IT outages, glyphosate-related claims (Roundup), formaldehyde (chemical hair straighteners), and processed-food claims.

Endnotes

1. "Chubb to cut up to 20% of workforce in 'radical' AI drive" *Business Insurance* (Dec. 12, 20225, available at insurancebusinessmag.com/us/news/breaking-news/chubb-to-cut-up-to-20-of-workforce-in-radical-ai-drive-559950.aspx.

2. "One Big Beautiful Bill Act" H.R. 1, 119th Cong. (2025), available at: https://www.govtrack.us/congress/bills/119/hr1/text.

3. *See* Scott M. Seaman, "Sustainability Recalibration: What Insurers And Policyholders Should Know About ESG (Environmental, Social, and Governance Considerations) Under Trump 2.0, Part 1 Mealey's Litigation Report: Insurance, Vol. 39, #17 March 5, 2025; and Scott M. Seaman, "Sustainability Recalibration: What Insurers And Policyholders

Should Know About ESG (Environmental, Social, and Governance Considerations) Under Trump 2.0, Part 2 Mealey's Litigation Report: Insurance, Vol. 39, #18 March 12, 2025.

4. *West Virginia v. Environmental Protection Agency,* 597 U.S. 697 (2022); *Sackett v. Environmental Protection Agency,* 598 U.S. 651 (2023); *Loper Bright Enters v. Raimondo,* 603 U.S. 369 (2024); *Securities and Exchange Commission v. Jarkesy,* 603 U.S. 109 (2024); *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.,* 603 U.S. 799 (2024). For a detailed discussion of these cases, their impact, and ESG in general, *see* Scott M. Seaman, "Sustainability Recalibration: What Insurers And Policyholders Should Know About ESG (Environmental, Social, and Governance Considerations) Under Trump 2.0, Part 1 Mealey's Litigation Report: Insurance, Vol. 39, #17 March 5, 2025 and Scott M. Seaman, "Sustainability Recalibration: What Insurers And Policyholders Should Know About ESG (Environmental, Social, and Governance Considerations) Under Trump 2.0, Part 2 Mealey's Litigation Report: Insurance, Vol. 39, #18 March 12, 2025.

5. *See United States Chamber of Commerce v. Randolph*, No. 25-5327 D.C. (Nov. 18, 2025), available at https://www.uschamber.com/assets/documents/Order-re-Motion-for-Injunction-Pending-Appeal-Chamber-v.-Sanchez-C.D.-Cal.pdf.

6. *See generally*, Scott M. Seaman and Jason R. Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (Thomson Reuters 13th Ed. 2025) at Vol. 1, Chapter 21 (Sustainability/ESG Environmental, Social, and Governance Considerations & PFAS).

7. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College,* 600 U.S. 181, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023).

8. Exec. Order No. 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing* (Jan. 2025), available at https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/.

9. Exec. Order No. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 2025), available at https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/.

10. *See generally*, Scott M. Seaman and Jason R. Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (Thomson Reuters 13th Ed. 2025) at Vol. 1, Chapter 19 (The Impact of Social Inflation on Insurers and Policyholders).

11. Martin Boerlin & Surbhi Gupta, *Verdicts on Trial: The Behavioral Science Behind America's Skyrocketing Legal Payouts*, Swiss Re (Sept. 24, 2025), available at https://www.swissre.com/reinsurance/insights/verdicts-on-trial.html.

12. *See* https://marathonstrategies.com/wp-content/uploads/2025/05/Nuclear-Verdicts-Report-2025.pdf

13. *See* https://www.thomsonreuters.com/en-us/posts/legal/law-firm-rates-bull-bear-base-case/.

14. *Hersh v. State Farm Fire & Cas. Co.*, 2025 U.S. Dist. LEXIS 4451 (D.N.J. Jan. 9, 2025).

15. Milliman, *"*How Tort Reforms Are Shaping Insurance Claims in Florida and Georgia*," Milliman Insight*, 2025, available at https://www.milliman.com/en/insight/how-tort-reforms-shaping-insurance-claims-florida-georgia.

16. Gautam Naik, *"*Litigation Finance Hits a Wall as Bets on Huge Gains Falter*," Bloomberg*, November 30, 2025, updated December 1, 2025, available at https://www.bloomberg.com/news/articles/2025-11-30/litigation-finance-hits-a-wall-after-bets-on-huge-gains-falter.

17. The endorsement reads:

> Litigation Funding Mutual Disclosure
>
> If we and an insured do not agree whether or to what extent a claim or "suit" is covered by this Policy, either party may make a written demand for mutual disclosure of any "third-party litigation funding agreement(s)" regarding that claim or "suit".
>
> When this demand is made, each party must disclose in writing within 30 days whether they or their attorney(s) have executed any "third-party litigation funding agreement(s)". If a party or their

attorney(s) have executed any "third-party litigation funding agreement(s)", the written disclosure must include:

a. A copy of such "third-party litigation funding agreement(s)";
b. The names of each person or organization who has entered into such "third-party litigation funding agreement(s)";
c. Whether such person or organization is required to approve of or be consulted on litigation or settlement decisions, and if so, the nature of the terms and conditions relating to that approval or consultation; and a brief description of the financial interest of any person or organization who provided such funding.

Each party must provide to the other party a copy of any update of their written disclosure within 30 days of:

a. Any change in the above information in Paragraphs through d.; or

b. When the parties or their attorney(s) have executed any "third-party litigation funding agreement(s)" after the initial demand.

The endorsement contains a definition of "Third-party litigation funding agreement" that includes any agreement to provide litigation funding to a party or its attorneys.

18. Big Data and AI (H) Working Group, *AI Request for Information*, available at https://content.naic.org/sites/default/files/inline-files/RFI%20-%20AI%20Model%20Law.pdf.

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24. For example, ISO endorsement, CG 40 48 01 2, for CGL Coverage B excludes coverage for "Personal and advertising injury" arising out of "generative artificial intelligence." ISO exclusion CG 35 08 01 26 for products/completed operations bars coverage for "bodily injury" or "property damage" arising out of generative artificial intelligence. In both, "Generative artificial intelligence" is defined as a machinebased learning system or model that is trained on data with the ability to create content or responses, including but not limited to text, images, audio, video or code." Other policies may contain other form or manuscript exclusions or endorsements.

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26. Form 8-K, Item 1.05, General Instructions, U.S. Sec. & Exch. Comm'n, available at https://www.sec.gov/files/form8-k.pdf.

27. Form 10-K, Item 1.06, General Instructions, U.S. Sec. & Exch. Comm'n, available at https://www.sec.gov/files/form10-k.pdf.

28. The Cybersecurity Information Sharing Act of 2015: Expiring Provisions, Cong. Rsch. Serv., IF12959 (Apr. 8, 2025), available at https://www.congress.gov/crs-product/IF12959.

29. *Home Depot v. Steadfast Ins. Co.*, 2025 U.S. App. LEXIS 687 (6th Cir. Jan. 13, 2025).

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31. Nat'l Conference of State Legislatures, *Consumer Privacy 2025 Legislation*, available at https://www.ncsl.org/technology-and-communication/consumer-privacy-2025-legislation (2025).

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36. *See Rodriguez v. Autotrader.com, Inc.,* 2025 U.S. Dist. LEXIS 70074 (C.D. Cal. Apr. 4, 2025)*; Wright v. TrueCare Prop. Holdings, LLC*, 2025 U.S. Dist. LEXIS 229707 (S.D. Cal. Nov. 21, 2025); *Sanchez v. Cars.com, Inc.,* 2025 Cal. Super. LEXIS 710 (L.A. Cnty. Super. Ct. 2025).

37. Drugwatch.com, *PFAS Settlements: Payouts, Updates and Eligibility*, available at https://www.drugwatch.com/pfas-lawsuits/water-contamination/settlements/.

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