

# Alert

November 11, 2024



## Claims Notes: November 2024

### LOUISIANA

#### Bad Faith Delay Award Struck Down Because Insurer Had Been Actively Investigating Complex Loss

After several hurricanes, a church submitted a first-party property claim. The church also had pending coverage litigation from prior tornado damage. On October 12, 2020, the independent adjuster (IA) inspected and recommended retaining an engineer. The insurer did. On November 20, the IA recommended issuing a 170k undisputed payment. On December 3, the insurer received the engineer's report and asked the IA to review it and submit an estimate. On January 4, 2021, the IA submitted his report. The insurer paid the undisputed amount on January 14 — 10 days later.

The insured sued, asserting claims for breach of contract and bad faith delay. Following a trial, the judge awarded a \$1.1 million award for bad faith delay. The Fifth Circuit Court of Appeals struck it down because a question over the amount of covered damages existed and the timeline supported timely investigation. The Fifth Circuit emphasized that active claims investigation is not arbitrary or capricious. *Decision*. For a deeper dive, Cozen O'Connor's Ashley Eldridge wrote an analysis with practice pointers.

### CALIFORNIA

#### Denial of Pipe Break Claim Not Bad Faith Because Insurer Acted Reasonably

The insured's home sustained water damage resulting from a pipe break. The insured's plumber repaired the line and discarded the failed section of pipe. When the insured reported the claim, the plumber's invoice was the only evidence of the loss. It stated the pipe had a pinhole leak. The homeowners' insurer denied the claim based on its long-term water seepage exclusion.

The insured sued. The trial court granted summary judgment to the insurer, stating that no reasonable jury could conclude that the insurer had acted in bad faith. The Ninth Circuit Court of Appeals found that the insurer acted reasonably in (1) not examining the failed pipe because it had been discarded; (2) not interviewing the plumber who never responded to the insurer's questions; (3) not retaining an independent plumber to inspect because the failed pipe had been discarded. The Ninth Circuit affirmed summary judgment dismissal of the bad faith claim. *Decision*

### MISSISSIPPI

#### Denial of Flood Insurance Claim Not Bad Faith Where Claim Was Time-Barred and Bad Faith Not Pleaded

Hurricane Zeta damaged the insured's property. The insured submitted a claim under its flood insurance policy, which contains a one-year suit limitation. The flood insurer rejected the insured's proof of loss and twice notified the insured that it had not provided a properly executed proof of loss. Years later, the insured filed suit. The insurer moved to dismiss. In opposition, the insured contended that the insurer's "conflicting and confusing" communications amounted to bad faith. The Fifth Circuit Court of Appeals affirmed the district court's dismissal. The insured's suit was



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#### Related Practice Areas

- Bad Faith
- Casualty & Specialty Lines Coverage
- Insurance Coverage
- Property Insurance

#### Industry Sectors

- Insurance

time-barred because the lawsuit was not filed more than one year after the denial. Since the insured did not allege a bad faith claim in its complaint, it could not contend the insurer acted in bad faith, for the first time, in its opposition papers. [Decision](#)

## **VIRGINIA**

### **First-Party Property: Cryptocurrency Theft is Not “Direct Physical Loss”**

The insured purchased a homeowners policy covering his home and personal property. He transferred \$170,000 worth of cryptocurrency to a company purportedly in the United Kingdom. The company stole his cryptocurrency, which he never recovered. He submitted a claim to his first-party property insurer, who paid a \$500 sublimit for “theft ... of an electronic fund transfer card or access device used for deposit, withdrawal or transfer of funds...” He sued. The trial court granted summary judgment to the insurer, reasoning the policy does not cover the loss of intangible property. On appeal, the Fourth Circuit Court of Appeals affirmed for a different reason. The Fourth Circuit concluded that cryptocurrency theft is not “direct physical loss” and that the insurer’s payment of the sublimit satisfied all its obligations under the policy. [Decision](#)

## **NEW JERSEY**

### **Proposed Bill Requiring UM/UIM Limits Equal to Liability Limits Advancing**

A New Jersey State Senator and personal injury attorney, Nicholas Scutari, introduced a bill requiring auto insurance policies to provide uninsured and underinsured motorist (UM/UIM) coverage equal to the liability limits purchased. As drafted, it would not apply to the New Jersey Basic policy. The bill has been advancing through various subcommittees. The Civil Trial Bar and the Auto Litigation and No-Fault Committee support its passage. The proposed legislation has now been referred to the Insurance Law Section for comment. New Jersey’s neighbor, New York, enacted similar legislation in 2018. [Proposed Legislation](#)

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