

## Claims Notes: February, 2024



John R. Ewell

**Counsel**

jewell@cozen.com  
Phone: (212) 908-1396  
Fax: (212) 509-9492

**Related Practice Areas**

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

**Industry Sectors**

- Insurance

### NEW YORK

#### Department of Financial Services Circulates Proposed Guidance on Use of AI in Underwriting and Pricing

New York Department of Financial Services (DFS) is concerned that AI's self-learning behavior increases the risks of unlawful or unfair discrimination. DFS will audit insurers' use of AI. Such insurers need to maintain "comprehensive documentation" of its use of AI systems and its consumer data. DFS encourages insurers to track its use of consumer data and AI systems over time, documenting any changes and the reasoning. DFS seeks comments from the industry.

**Proposed Guidance**

#### New York Court of Appeals Reaffirms Long-Standing Rule Property Insurance Requires Physical Alteration to the Property

New York's highest court confirms what insurers have long known. Coronavirus is not "direct physical loss or damage." Lost business income due to pandemic lockdown orders is not covered because premises not physically altered. **Decision**

### PENNSYLVANIA

#### "Regular Use" Exclusion Bars UIM Coverage for Accidents in Employer-Owned Vehicles

UIM policies routinely exclude UIM coverage for non-owned vehicles the insured regularly uses. A common scenario is where an insured drives an employer-owned vehicle. The trial court found the Regular Use exclusion violated Pennsylvania's Motor Vehicle Financial Responsibility Law (MVFRL) and invalidated the exclusion. The intermediate appellate court affirmed. The Pennsylvania Supreme Court ruled the "regular use" exclusion does not violate the MVFRL and is valid and enforceable. **Decision**

### TEXAS

#### Payment of Appraisal Award and Interest Precludes Attorney Fee Claim

The Texas Supreme Court ruled that insurers' payment of the appraisal award plus statutory interest precludes an attorneys' fee award under the Texas Prompt Payment of Claims Act. Karl A. Schulz, a member of Cozen O'Connor, recently authored an *Alert* detailing key takeaways.

**Decision**

### ILLINOIS

#### UIM: Appellate Court Rules Anti-Stacking Provision Not Ambiguous

Insured qualified as an insured on three UIM policies. State Farm issued all policies and each prohibited stacking UIM coverage under State Farm-issued policies. Insured contended policies were ambiguous because of the UIM limits stated on the declarations. Illinois appellate court rejected this argument, finding the policies clearly stated they do not stack. **Decision**

### 4TH CIRCUIT

#### Infestation Exclusion Barred Coverage for Roof Damaged by Vultures

First-party insurer denied coverage based on infestation exclusion where turkey vultures damaged roof. Substantial bird activity for many months, documented by eyewitnesses, constitutes an "infestation." Depositing the insured's roofer paid off for the insurer. Bad faith claim also dismissed.

**Decision**

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