ZELLE LLP LONESTAR LOWDOWN

Dedicated to Texas First-Party Property Claims

The Zelle Lonestar Lowdown | Friday, March 27, 2026 | ISSUE 35

Welcome to The Zelle Lonestar Lowdown, our monthly newsletter bringing you relevant and up-to-date news concerning Texas first-party property insurance law.

In 2025, we focused on Collaboration. We had people reach out with article ideas, their own articles, and ideas for industry events. In 2026, we will continue that effort. We continue to invite our readers to let us know what they are worried about, legal topics that pique their interest, and new advances in the industry – all with a Texas twang.

As always, if you are interested in more information on any of the topics below, please reach out to the author directly. Zelle attorneys are always interested in talking about the issues arising in our industry. If there are any topics or issues you would like to see in the Lonestar Lowdown moving forward, please reach out to our editors: Shannon O'Malley, Todd Tippett, and Steve Badger.

INSIDE THIS ISSUE

Upcoming Events

You don't want to miss this!

April 6 – Steven Badger will present "CAT Claim Fraud – What The Hail Is Going On?" at the Pennsylvania Association of Mutual Insurance Companies (PAMIC) 2026 Claims Summit in Lancaster, PA.

April 14 – Steven Badger will present "Make Appraisals Great Again" at the National Association of Mutual Insurance Companies (NAMIC) Claims Conference in Orlando, FL.

April 15 - DFW Insurance Industry Spring Happy Hour at Vidorra in Addison from 5:00 - 8:00 pm. Sponsored by Zelle LLP, ATI Restoration, Buchanan Clarke Schlader LLP, Nelson Forensics, and Phillips Consulting.

April 15 - Kristin Suga Heres and Kyle Espinola will present at the Massachusetts Insurance and Reinsurance Bar Association (MIReBA) 2026 Annual Symposium in Boston, MA.

April 16 – Michael Upshaw will present “Post-Casualty Energy Loss Complexity – Regulatory & Legal Drivers for Complex Claims” at the 2026 PowerConference in New York, NY.

April 19 – Steven Badger will participate in “The Great Merlin/Badger Debate” at the GenRe Claims Conference in Savannah, GA.

April 21 – Steven Badger will discuss legal considerations in appraisal during the ongoing "Battle of Merlin vs Badger" at the Insurance Appraisal And Umpire Association IAUA Appraisal Training in Dallas, TX.

April 23 – Steven Badger will present “The Carrier Perspective” at the Jack Hanks Florida Public Adjusting Summit 2026 in Tampa, FL.

April 28 – Shannon O’Malley, Bennett Moss, and Mariana Best will present a Loss Executives Association (LEA) Webinar, “Ethics in Claims Handling - Playing the Course as You Find It and Staying Out of the Bunkers” from 11:00 am - 1:00 pm EST. More information here.

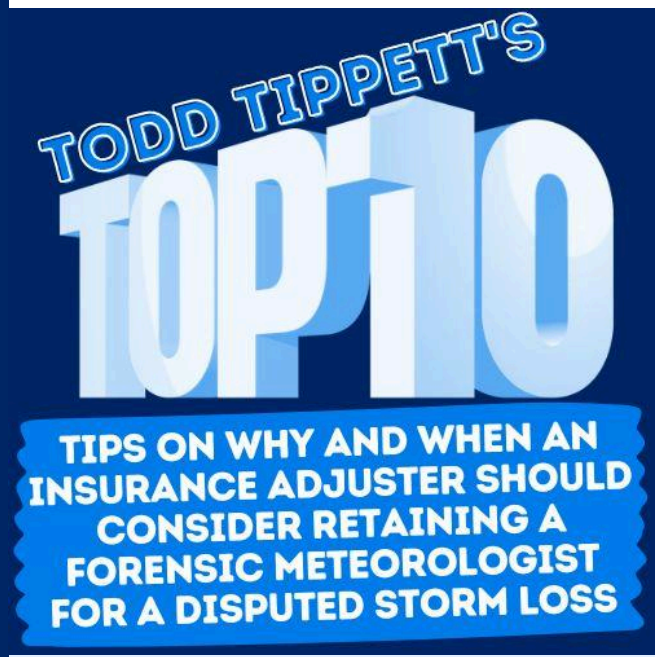
May 6 – Steven Badger will participate in the Appraiser/Umpire Training Course at the P.L.A.N. Property Loss Appraiser & Umpire Certification Conference in Phoenix, AZ.

May 27 – Steven Badger will present “Hot Topics and Emerging Trends in Weather Related Claims – 2026 Update” as part of the NAMIC Claims Webinar Series.

June 4 – Steven Badger will present at the Texas State Bar Insurance Law Conference in San Antonio, TX.

June 9-10 - Jessica Port will present "The Ethics of Automation: Avoiding Bad Faith Claims in AI-Driven Claims Handling” at the PLRB 2026 Eastern Regional Adjusters Conference in Hartford, CT with co-presenters Gene Strother (AdjustU) and Robin Roberson (Agentech).

June 17 – Jason Reeves and Hernán Cipriotti will present “Bodily Injury Climate Change Claims” at the 2026 IRMI Energy Risk and Insurance Conference (ERIC), taking place June 15 – 17, 2026 in San Antonio, TX



News from the Trenches

by Steven Badger

Resiliency.

We are going to be hearing more and more about “resiliency” in the next few years. Why? Because it is the only real solution to the looming insurance availability and affordability crisis. It is undeniable that with climate change the frequency and severity of storm related claims are both increasing significantly. And as claim totals and claim measures increase, the only solutions to the problem are either to increase premiums or reduce coverage. Or both. It’s not a complicated analysis. We all know the importance of “loss ratio” in the insurance business.

Yet think about this….

What if the loss never happened in the first place? What if the insured building wasn’t damaged in the storm? What if there was no claim ever filed? Obviously, both

1. Adjusters should always want accurate weather information to make informed claims coverage decisions.

2. When on-site observations don't match up with the weather data or storm severity is disputed, a detailed report from a Forensic Meteorologist may be helpful.

3. Automated hail and wind reports are based on proprietary algorithms and in some cases may not be as accurate as information compiled by a Forensic Meteorologist.

4. The weather data that gets ingested into these algorithms comes from NOAA storm reports that in some cases are plotted in the wrong location, or sometimes from inflated hail sizes that are reported to NOAA by some "professionals" or storm chasers.

5. Courts have in some cases scrutinized the use of automated hail and wind reports and have even issued decisions striking experts because they used these reports.

6. Unlike automated reports, Forensic Meteorologists analyze different types of weather data from numerous locations in conjunction with various Doppler radar images zoomed in over a property to determine what the weather conditions were using sound, scientific principles and accepted practices.

7. Forensic Meteorologists are in a position to tell you how large the hail was at a property and can also tell you the direction the storm was moving, if hail was falling from different angles, how strong the winds were, and many times if the hail was hard or soft.

8. An experienced Forensic Meteorologist is like a "Weather Detective" who will help you understand what the weather conditions were on a date of loss and/or during a specific policy period.

9. Unlike automated reports, Forensic Meteorologists can prepare reliable, detailed written technical reports that will hold up in court, can be given to engineers to rely on, or given to the insureds to show them the due diligence that was performed to support the adjuster's claims coverage decision.

10. Forensic Meteorology reports explain what data was used, the process that was employed, and how the hail sizes or wind speeds were determined, which is what is needed to "close the analytical gap" when it comes to litigation.

A Big Thank You goes to Howard Altschule with Forensic Weather Consultants for the assistance with this Top Ten.

Feel free to contact **Todd M. Tippett** at 214-749-4261 or ttippett@zellelaw.com if you would like to discuss these Tips in more detail.

the frequency and severity of claims go away. As do all the disputed claims over what is and isn't damage and the cost to repair that damage go away.

And how to keep claims from happening in the first place? Well, we can't change the weather (actually, we might be able to; that's for another discussion). But what we can do is construct buildings that will not fail in reasonably foreseeable weather events. If the building isn't damaged in the storm, there is no insurance claim to be filed.

Our number one storm peril in Texas is hail. Every year we see major hail events all across Texas. Surprisingly, however, and despite the fact that our applicable building codes have design requirements for wind, rain, and even snow, our applicable building codes say absolutely nothing about hail. Nada. Nunca. Nil. Not a word about our most frequent and most severe peril. There is no standard in Texas for the hail resistance of roofing materials.

That is shameful.

It is time for Texas to require that our roofs be capable of withstanding a reasonably foreseeable Texas hail storm. Roofing products are available that will not fail when hit by golf ball sized hail. Sure. They cost more. But it also "costs more" to design for wind, rain, and snow. That's all baked into construction costs. Hail resistant roofing should be as well.

I fully support requiring, either by building code amendment or legislation, that all roofs installed in Texas meet Class 4 hail rated impact resistance standards.

No Hail damage = No insurance Claim.

This is why I was so excited recently to see that Tamko Roofing has introduced their Hail Guard shingle product that comes with a warranty for up to 3-inch hail. Yes, a roofing shingle that is marketed and warranted to perform in most Texas hailstorms. And there are other similar products out there. Plus, if these products were required to be installed, others would enter the marketplace.

Importantly, Texas insurers are already authorized to offer a premium discount when Class 4 roofing materials are installed. Such discounts should become the norm. Premium discounts, lower deductibles, and full replacement value coverage. All of this is possible when the majority of our garden variety roof damage hail claims go away.

Resiliency is the only real solution to the insurance availability and affordability crisis. It's time for Texas to get aggressive in implementing the only real solution to this problem. It's time for Texas insurers to fully support the use of resilient construction.

AI Update

Litigant's Use of Consumer AI Tools May Waive Attorney-Client Privilege

by Jennifer Gibbs

In February 2026, two federal courts issued rulings that together illustrate the unsettled landscape of privilege and work-product protection for AI-generated materials in litigation. In *United States v. Heppner*, No. 25 Cr. 503 (JSR) (S.D.N.Y. Feb. 17, 2026), Judge Jed S. Rakoff held that documents a criminal defendant generated using the consumer version of Anthropic's Claude AI were protected by neither the attorney-client privilege nor the work-product doctrine. In *Warner v. Gilbarco, Inc.*, No. 2:24-cv-12333 (E.D. Mich. Feb. 10, 2026), Magistrate Judge Anthony P. Patti reached the opposite conclusion, holding that a pro se plaintiff's use of ChatGPT to prepare litigation materials was protected under the work-product doctrine. Although the decisions appear to conflict, the factual differences between them are instructive — and together they underscore that courts will apply traditional privilege principles to AI use in a highly fact-specific manner.

***Heppner*: Consumer AI Use Defeats Privilege**

Bradley Heppner was indicted on securities and wire fraud charges. FBI agents executing a search warrant seized devices containing approximately 31 documents Heppner had generated using the consumer version of Claude. Acting on his own initiative and without counsel's direction, Heppner had used the AI tool to prepare reports outlining potential defense strategies, incorporating information he had learned through discussions with his attorneys.

Judge Rakoff rejected Heppner's privilege claims on three grounds. First, Claude "is not an attorney," and privilege requires "a trusting human relationship" with a licensed professional — a relationship that cannot exist with an AI platform. Second, Heppner had no reasonable expectation of confidentiality because Claude's privacy policy permits Anthropic to collect user inputs, use them for model training, and disclose data to third parties, including "governmental regulatory authorities." Third, Heppner did not communicate with Claude "for the purpose of obtaining legal advice" — he used the tool on his own volition, and Claude itself expressly disclaims providing legal advice.

On work product, the court concluded that the documents were not "prepared by or at the behest of counsel" and drew a critical distinction between materials that merely "affect" counsel's strategy and those that "reflect" counsel's mental impressions at the time of creation. Notably, Judge Rakoff left the door open, suggesting the result might differ if counsel had directed the client to use the AI tool.

***Warner*: AI as a Tool, Not a Third Party**

Warner arose in the context of a *pro se* employment discrimination lawsuit. The defendants moved to compel production of "all documents and information concerning [plaintiff's] use of third-party AI tools in connection with this lawsuit."

Magistrate Judge Patti denied the motion on multiple grounds. The court held that Warner's AI-assisted litigation materials were protected by the work-product doctrine and, critically, rejected the argument that using ChatGPT constituted disclosure to a third party that would waive that protection. The court stated plainly that "ChatGPT (and other generative AI programs) are tools, not persons, even if they may have administrators somewhere in the background." The court further found that the defendants' theory "would nullify work-product protection in nearly every modern drafting environment, a result no court has endorsed," and characterized the request as a "fishing expedition" untethered from Rule 26 relevance.

Implications for Litigation

Despite their seemingly opposite outcomes, *Heppner* and *Warner* can be reconciled. In *Heppner*, the defendant acted unilaterally and without counsel's involvement, used a consumer platform with broad data-sharing terms, and the government sought access to already-seized documents. In *Warner*, a *pro se* litigant effectively acting as her own counsel used AI as a drafting tool, and the opposing party sought affirmative discovery into that usage.

From these two cases, several takeaways emerge. First, the selection of the AI tool matters: enterprise platforms with contractual confidentiality protections present a materially different risk profile than consumer tools whose terms of service permit broad data collection. Second, attorney direction is critical — *Heppner* strongly suggests that AI use at counsel's direction will receive more favorable privilege treatment than a client's unilateral use. Third, organizations should update their AI governance policies to address these risks, including restricting the input of privileged or confidential information into consumer platforms. Finally, litigants should anticipate that opposing parties may increasingly seek discovery into AI usage, and should be prepared to defend against — or strategically pursue — such requests.

These decisions represent an early but significant chapter in the law's effort to apply established privilege principles to rapidly-evolving technology. The critical factors going forward will be the contractual and technical features of the AI platform, the degree of attorney involvement, and whether the materials genuinely reflect litigation strategy prepared in anticipation of litigation.

Bona Fide Dispute Displaces Bad Faith

by Shannon O'Malley

In *Joseph Johnson v. State Farm Lloyds*, No. 03-24-00314-CV, 2026 WL 827624, at *2 (Tex. App. Mar. 26, 2026), the Austin Court of Appeals considered an insurer's liability for bad faith when that insurer denied a claim on the basis of inconsistent statements by the insured. The insured in this case operated a skydiving business and stored his business equipment in a rented space in a hangar. At some point, the property was stolen and the insured reported the loss to his insurance carrier.

The policy provided coverage for theft but noted that peril did not include "loss caused by theft committed by an insured." When the theft was reported, the insurer investigated the loss and noted that there were discrepancies in the insured's story, including evidence that the theft was staged, leading the carrier to deny the claim.

Suit was brought alleging bad faith and breach of contract. The insurer filed a motion for summary judgment arguing that "multiple witnesses testified that [the insured] staged the theft and [the insured] was still in possession of the allegedly stolen items after reporting the theft." The insurer maintained that the witness testimony created a bona fide dispute "conclusively establishing that its liability was not 'reasonably clear.'" The trial court agreed, granted summary judgment, and rendered a take nothing judgment against the insured.

On appeal, the court plainly reiterated the evidence the insured must present to meet its burden in showing bad faith:

> In a bad faith case, the plaintiff has the burden to prove that the insurance company had no reasonable basis for denying the claim. The insured's evidence must relate to the tort issue of no reasonable basis for denial, not just to the contractual issue of coverage. "The focus on the evidence and its relation to the elements of bad faith is necessary to maintain the distinction between a contract claim on the policy and a claim of bad faith delay or denial of that claim, which arises from the tort duty we imposed on insurers in *Arnold* and *Aranda*." "Evidence that merely shows a bona fide dispute about the insurer's liability on the contract does not rise to the level of bad faith." An insurer cannot, as a matter of law, be liable for bad faith insurance practices if it had a reasonable basis to withhold payment. A bona fide dispute about the insurer's liability on the insurance contract supplies that reasonable basis.
>
> *Id.* (internal citations omitted).

The appellate court reviewed the evidence presented by both parties to determine whether the insurer had a reasonable basis to deny the claim. It concluded that there was "ample evidence" to create a bona fide dispute and found the insurer was not liable for bad faith, "even if a jury could have resolved the coverage issue in [the insured's] favor." *Id.* at *3.

The court further analyzed whether the insurer conducted a "reasonable investigation." The court noted that the insurer did not simply deny the claim without any investigation. The claim file, which was extensive and detailed, provided evidence of the investigation into the circumstances of the theft, interviews, conversations, attempts to communicate, and notes regarding same. The court recognized that "[e]ven the most thorough investigation must stop somewhere; there is always something else the investigators could have done." *Id.* at *4. But the court further recognized that an insurer is not required to pursue every lead. Instead, the investigation must simply be reasonable and nonbiased.

Ultimately, the court noted that if there is evidence of a "robust and bona fide dispute," then there is no bad faith liability. *Id.* at *5. Notably, the court did find there was more than a scintilla of evidence that the loss was indeed theft and reversed the take nothing judgment. The matter was remanded to the trial court on the breach of contract claim. But the threat of bad faith is gone.

The Lowdown: Texas has a bad reputation for its bad faith laws. But when an insurer can demonstrate a robust investigation that is objectively reasonable, as long as there is a bona fide dispute, there is no bad faith liability—even if an insurer may be wrong about a fact or coverage. Texas insurers should always conduct a reasonable and unbiased investigation. And with such a reasonable investigation, when there is a bona fide dispute as to the existence of coverage, insurers should feel comfortable taking the position they believe is correct without the fear of unfair bad faith allegations.

Appraisal Award Stands Firm in *Petropoulos*

by Andrew Hilgenkamp

Appraisal awards seem to be a hot topic in Texas courts as of late, and *Petropoulos v. Safeco Ins. Co. of Indiana*, No. 4:23-CV-00500-ALM-BD, 2026 WL 408597 (E.D. Tex. Feb. 12, 2026), *report and recommendation adopted*, No. 4:23-CV-00500, 2026 WL 640977 (E.D. Tex. Mar. 6, 2026) is one of the latest decisions to address them. Emphasizing the burden parties have in setting aside such an award, the *Petropoulos* court upheld an appraisal award against a challenge that it did not reflect an honest evaluation and did not consider all available evidence.

Background

The insureds submitted a claim for alleged damage to their home due to an April 2021 storm in north Texas. In its investigation of the claim, Safeco retained a roofing consultant company to examine the insureds' property. The insureds claimed that, during the inspection, the consultant company's representative determined that their home had suffered hail damage. The insureds further asserted that Safeco had informed them that it would take care of this damage. The consultant company's actual report, however, attributed the observed roof damage to a 2016 storm and not the claimed April 2021 weather event.

After reviewing this report, the insureds hired engineers to evaluate the property. An engineering report pertaining to the alleged damage was later sent to Safeco based on the engineers' inspections. Unpersuaded by these findings, Safeco denied the insureds' claim.

Believing Safeco had acknowledged the presence of damage to their roof only to later incorrectly attribute such damage to an earlier storm, the insureds sued Safeco in Texas state court, asserting causes of action for breach of contract, breach of the duty of good faith and fair dealing, violations of the Texas insurance code, and violations of the Texas Deceptive Trade Practices Act ("DTPA"). After filing an answer and removing this case to federal court, Safeco invoked the policy's appraisal provision. The case was subsequently abated pending appraisal.

The Appraisal

Both parties retained their own appraisers, and an umpire was eventually appointed to resolve the dispute. Facing differing estimates, the umpire sided with Safeco's appraiser for the ultimate award. The insureds moved to vacate this award and to appoint a new umpire, specifically asserting that the award did not reflect "an honest assessment of necessary repairs," and that "the umpire did not completely consider all evidence submitted." In response, Safeco argued that these allegations amounted to an inadequate challenge on the basis of an alleged mistake or accident. Safeco additionally filed a motion for summary judgment to dismiss the insureds' claims.

The Court's Ruling

The *Petropoulos* court analyzed the insureds' motion to vacate the appraisal award prior to assessing their other causes of action. In doing so, the court agreed that the insureds' motion consisted of a challenge on the basis of mistake, since the lack of an honest assessment is not a separate ground to vacate an appraisal award under Texas law. Thus, to succeed on this mistake challenge, the insureds had the burden of establishing that the appraisal award did not reflect the intention of the appraisers. In other words, they needed to show that the appraisers were operating under a mistake of fact rather than an error of judgment.

The Court elected to uphold the appraisal award, finding that it did not involve the requisite "mistake" pursuant to Texas law. Specifically, the court held that the umpire's decision to side with Safeco's appraiser reflected his own informed judgment. Although the insureds submitted letters from contractors stating that the appraisal estimate was both "poorly written" and "severely lacking," these statements only alleged a mistake of judgment and not the required mistake of fact. Therefore, because the insureds did not allege that the award was made without authority or was not in compliance with the policy, the award could not be set aside and the motion was denied.

The court next turned to the insureds' breach of contract claim. It explained that a breach of contract claim under an insurance policy is barred upon a showing of (1) an enforceable appraisal award; (2) timely payment of the appraisal award; and (3) the acceptance of the award. Here, because Safeco timely paid an enforceable award and the insureds did not reject the payment on any grounds, the court ruled that this breach of contract claim was barred. Further, because the insureds did not allege injuries outside of those allegedly involved in their original insurance claim, Safeco's timely payment of the award also served to preclude the insureds' causes of action for the breach of the duty of good faith and fair dealing, violations of the Texas insurance code, and violations of the DTPA. Given this, the court granted Safeco's motion for summary judgment and dismissed the insureds' claims.

The Lowdown

Appraisal may not always be the most sought-after course of action for either a policyholder or its insurer due to the potential unknowns that come with involving a third-party in the handling of a claim, but *Petropoulos* highlights both the finality and protections appraisal awards often offer parties. As this case and other recent decisions establish, so long as a valid appraisal award is issued and the ensuing award is timely paid, it may be difficult to argue that the award should be set aside and that contractual and/or extra-contractual damages apply.

BEYOND THE BLUEBONNETS

4th Circ. D&O Ruling Shows Why Textual Policy Args Are Best

by Bryant Green and Noah Wolfenstein (Washington, D.C. office)

In litigated claims, courts can lose their footing when it comes to determining the number of claims or occurrences at issue.

The stakes are high. If there are multiple claims or occurrences, it could multiply available limits, maximizing the insured's recovery. Or, conversely, it could multiply the number of per-claim deductibles the insured must satisfy, limiting recovery. If there is a single claim, it can compress exposure into a single limit or dictate that the insured need only satisfy a single deductible.

A Jan. 20 decision from the U.S. Court of Appeals for the Fourth Circuit involving Under Armour's investor litigation is a welcome reminder that no matter the amount in controversy or the complexity of the disputed factual issues, an insurance coverage analysis begins and ends with the text of the policy at issue.

Rather than tailoring outcomes to maximize coverage, the court laced its analysis to the policy's plain language — particularly the "interrelated wrongful acts" provision — ensuring the same rules apply to limits and deductibles alike. It is a reminder to both insurers and policyholders to "protect this house" by anchoring arguments in the contract's language, not in outcome-oriented impulses.

Navigators Insurance Co. v. Under Armour Inc. involved a dispute over a directors and officers liability policy's related claims provision. D&O policies typically include a per-claim limit of liability and an aggregate limit for all claims. A related claims provision combines multiple claims into a single policy period when their underlying factual allegations overlap.

Most D&O policies also have interrelated wrongful acts provisions that define a related claim.

Together, these provisions create the framework for determining whether directors and officers can seek separate coverage for investigations or lawsuits spanning multiple years, or whether the claims relate back to the same facts and fall under the single coverage policy and limits in effect at that time.

Given their significance, related claims provisions frequently cause disputes. Sometimes, an insured seeks to escape a cap limiting liability by arguing that multiple claims are unrelated (and vice versa for the insurer); other times, an insurer argues that multiple claims are unrelated to apply multiple deductibles (and vice versa for the insured).

Further muddying these waters, jurisdictions have created their own distinct tests to measure relatedness, regardless of policy-specific language. For example, in the 2009 decision in *Quanta Lines v. Investors Capital Corp.*, the U.S. District Court for the Southern District of New York looked at whether claims have a "sufficient factual nexus" to determine relatedness.[1] And, with last year's decision in In re: Alexion Pharmacies Inc., the Delaware Supreme Court recently replaced its "fundamentally identical" standard[2] with a "meaningful linkage" test.[3]

Because "cases are constantly adopting different legal theories depending on the potential outcomes," developing a coherent theory on these issues "is somewhat like the proverbial task of nailing jello to a wall," as termed by Tung Yin in a California Law Review article.[4]

Policyholders and insurers alike face incentives to take unprincipled, short-sighted positions to achieve their desired outcome in a specific case. This temptation, if indulged, risks haunting a party when its desired ends change. Similarly, case reporters are full of seemingly inconsistent applications of relatedness, with outcomes often depending on factors such as the jurisdiction where the dispute is pending, the type of insurance coverage at issue, common law adaptations of various policy provisions, the perceived subjective expectations of the parties, and, no doubt, outcome-oriented sympathies. What is coverage counsel to do?

With that context, the Fourth Circuit's Under Armour decision feels like a breath of fresh air.[5] There, the popular athletic apparel company faced investor suits and a subsequent U.S. Securities and Exchange Commission enforcement action alleging a series of misstatements about its finances.[6]

Under Armour was insured under successive D&O policies, with each providing an aggregate liability limit totaling $100 million per claim.[7] The policies deemed all claims that "arise out of the same or related facts, circumstances, or Wrongful Act" and that are "logically or causally related" to be a single claim for limits and retention purposes.[8]

Motivated by a desire not to be capped at a single set of policy limits, Under Armour argued that the shareholder litigation and government enforcement actions were separate claims, entitling it to a fresh $100 million for each.[9] The insurers maintained the alleged misstatements shared a common thread — interrelated wrongful acts concerning the same financial performance — and were therefore one claim subject to a single $100 million cap.[10]

Reversing the U.S. District Court for the District of Maryland, the Fourth Circuit sided with the policy text and the insurer, finding that because the suits were tied together by logically and causally related conduct, the related claims provision compressed them into a single claim.[11]

By adhering to a textual approach to policy interpretation, the court did not have to perform a jurisdictional survey or compare the merits of judge-created tests divorced from the policy's text. It did not need to characterize differing rules of various jurisdictions, nor did it have to speculate about the parties' subjective intentions or reasonable expectations.

Instead, the court's analysis began exactly where it ought to — with the plain text of the policy — and did not stray beyond the text when other interpretation methods were not required.

For good measure, the court turned to a dictionary to confirm that "two things are logically related when they are reasonably or rationally connected to or associated with one another."[12] Armed with this definition, the court concluded that the two actions over the same misrepresentations were "logically or causally related" per the policy's plain text, even though they were two actions spanning separate policy periods.[13] Easy-peasy.

Contrast the Fourth Circuit's approach with the district court from which the appeal arose. Although the lower court's opinion began by stating a court should "analyze the plain language of [an insurance] contract," it veered from that North Star.[14]

Instead, the fact that "a relationship between two claims ... might be so attenuated or unusual that an objectively reasonable insured could not have expected they would be treated as a single claim" moved the trial court.[15] The Fourth Circuit corrected the district court's error, explaining that proper contract construction concerns the objective meaning of the words. Notably absent was any mention of the insured's subjective expectation of coverage.

The Fourth Circuit's analysis in Under Armour is a welcome reminder that unnecessarily resorting to interpretive methods beyond the contract's text undermines parties' ability to negotiate the terms of their relationships using the language of their choosing. While it is proper for counsel to analogize cases the best they can with the authorities available when the policy language does not, on its face, resolve a dispute, there can be no true and definitive jurisdictional standards applicable to the interpretation of different provisions used in different contracts covering different risks, because not all policies contain the same language.

Bright-line rules are sometimes appropriate with respect to uniform static legal obligations. But such distinctions are inappropriate where the scope of the underlying obligation is policy specific — it simply is not an apples-to-apples comparison.

In a single case, a party may have short-term, microeconomic interests that may motivate its desired construction of a policy based on interpretation tools beyond the text of a policy. But the long-term consistency and predictability of policy interpretations based on the policy text without regard for more subjective interpretation methodologies provide greater macroeconomic benefits to parties.

A policy-based analysis like the one the court employed in Under Armour is the best means toward those ends. Indeed, greater certainty and predictability come from maintaining fidelity to textual interpretation and contribute to better outcomes for both policyholders and insurers.

When courts stray from the plain text of a policy and instead resort to tasseography to conjure the parties' subjective notions, they invite increased litigation and uncertainty by encouraging disputes over matters extrinsic to the contractual promises actually agreed to. Everybody loses. By contrast, when courts stick to analysis rooted in policy language, they promote certainty and reduce litigation. Everybody wins.

We are not so naive as to believe that coverage disputes can always be resolved by "myopically focus[ing] on a word here or a phrase there."[16] Words are symbols for ideas, and any meaning derived from symbols requires interpretation. There are, however, myriad objective tools to ascertain an instrument's meaning by examining "a word in the context of a sentence, a sentence in the context of a paragraph, and a paragraph in the context of the entire agreement," in the words of the Virginia Supreme Court's 2019 decision in *Erie Insurance Exchange v. EPC MD 15 LLC.*[17]

The Fourth Circuit's decision provides a commendable application of the objective tools at its disposal for interpreting a policy provision, without unnecessarily turning to subjective interpretive methods. The court denied Under Armour's rehearing request on Feb. 18.

Under Armour reminds us of where insurance coverage disputes should always begin and end: with the plain language of the policy itself.

For relatedness provisions and per-claim disputes, the language of the policy at issue — not the creativity of a legal argument or comparisons between dissimilar policies — should dictate the outcome. Plain-text policy interpretation protects party autonomy and improves predictability. In those regards, the analytical approach employed by the Fourth Circuit in Under Armour benefits courts, practitioners, insurers and insureds alike.

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[1] *Quanta Lines Ins. Co. v. Investors Capital Corp.* , 2009 WL 4884096, at *14 (S.D.N.Y. Dec. 17, 2009) (applying New York law)

[2] *E.g., Pfizer Inc. v. Arch Ins. Co.* , 2019 WL 3306043, at *9 (Del. Super. July 23, 2019).

[3] See *In re Alexion Pharms., Inc. Ins. Appeals* , 339 A.3d 694, 703 (Del. 2025).

[4] Tung Yin, *Nailing Jello to A Wall: A Uniform Approach for Adjudicating Insurance Coverage Disputes in Products Liability Cases with Delayed Manifestation Injuries and Damages*, 83 Cal. L. Rev. 1243, 1246 (1995).

[5] 2026 WL 137123 (4th Cir. Jan. 20, 2026).

[6] *Id.* at *1.

[7] *Id*. at *4.

[8] *Id*. at *5.

[9] *Id*. at *6.

[10] *Id*. at *5.

[11] *Id*. at *8-9.

[12] *Id*. at *8.

[13] *Id*. at *9.

[14] *Endurance Am. Ins. Co. v. Under Armour, Inc.* , 2024 WL 1640565, at *8 (D. Md. Apr. 15, 2024).

[15] *Id*.

[16] *Erie Ins. Exch. v. EPC MD 15, LLC*, 822 S.E.2d 351, 355 (Va. 2019).

[17] *Id*.

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For more information on any of the topics covered in this issue, or for any questions in general, feel free to reach out to any of our attorneys. Visit our website for contact information for all Zelle attorneys at zellelaw.com/attorneys.

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