

CALIFORNIA PRACTICE GUIDE INSURANCE LITIGATION 2025 UPDATE

The 2025 softbound Update completely replaces the 2024 Update.

These Highlights summarize the most significant insurance-related developments over the past year. The paragraph numbers are keyed to the 2025 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was June 30, 2025. Some of the new cases cited were not final as of that date, so be sure to check the subsequent histories before citing or relying on them.

CRITICAL DEVELOPMENTS

This year saw several important developments in the field of California insurance law. Among the most noteworthy:

Coverage for COVID-19 Related Property Claims: The California Supreme Court's opinion in *John's Grill* sheds new light on "the illusory coverage doctrine" in the context of interpreting a limited virus endorsement in a property insurance policy. See *Chs. 4 and 6B*.

Waiver of the Right to Arbitration: In *Quach v. California Commerce Club, Inc.*, the State Supreme Court established a new approach to the analysis of when a party waives its right to contractual arbitration. See *Ch. 15*.

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2025 UPDATE HIGHLIGHTS

CHAPTER 2

CREATION OF INSURANCE RELATIONSHIP

[2:37.3] **Agents and Brokers, Ostensible Authority—Application:** A Farmers Agent sold the Insured both a California FAIR Plan fire policy and a Farmers homeowner policy that covered perils not insured by the FAIR Plan policy. Using Farmer’s cost estimating tool, the Agent recommended a FAIR Plan policy limit that was insufficient to cover repairs after a fire. Farmers was not vicariously liable for the Agent’s negligence. The Agent acted as an independent broker, did not have authority to act for Farmers in connection with sale of the FAIR Plan policy, and Farmers did nothing to cause the insured to reasonably believe otherwise. [*Hughes v. Farmers Ins. Exchange* (2024) 107 CA5th 73, 84, 327 CR3d 566, 575-576]

CHAPTER 4

POLICY INTERPRETATION

[4:29] **“Illusory Coverage Doctrine”:** Even if policy language is ambiguous, a term will not be deemed “illusory” unless the insured can demonstrate it had a reasonably objective belief that there was coverage. [*John’s Grill, Inc. v. Hartford Fin’l Services Group, Inc.* (2024) 16 C5th 1003, 1007-1008, 1018-1020, 323 CR3d 875, 879-880, 889-890 (noting Supreme Court “has never recognized an illusory coverage doctrine as such”)]

[4:220] **No Strained Construction to Create Ambiguity:** An interpretation that is nonsensical, or which renders the policy language indecipherable, “is not a reasonable construction and cannot create an ambiguity.” “Courts are required to interpret policy language in a reasonable manner so that it makes sense as applied.” [*John’s Grill, Inc. v. Hartford Fin’l Services Group, Inc.* (2024) 16 C5th 1003, 1014-1015, 323 CR3d 875, 884-886]

[4:221] **Application—Limited Virus Endorsement:** An endorsement to the Insured’s property policy covered loss from a virus only if the virus was the result of a “specified cause of loss” listed in the policy (e.g., wind or water). The Insured sought coverage after its business closed during the pandemic, arguing that none of the specified causes of loss could “cause” a virus and therefore the provision was ambiguous. However, a force or phenomenon such as wind or water may transmit a virus. In “ordinary usage,” a viral infection can be said to result from contaminated drinking water or contact with a contaminated object. Consequently, it was reasonable to construe the policy language as including transmission, and therefore the cause of loss limitation was not indecipherable or unclear when applied to viruses. [*John’s Grill, Inc. v. Hartford Fin’l Services Group, Inc.* (2024) 16 C5th 1003, 1014-1015, 323 CR3d 875, 884-886]

CHAPTER 5

TERMINATION, REFORMATION AND RESCISSION

[5:100] **Certification Request Granted—Notice of Life Policy**

Lapse: The California Supreme Court has granted review to decide whether Ins.C. §§10113.71 and 10113.72 apply to life insurance policies originally issued or delivered in another state but maintained by a policyowner in California. [*Pitt v. Metropolitan Tower Life Ins. Co.* (2025) 129 F4th 583, req. for certif.grntd. 4/16/25 (Case No. S289376)]

[5:100.1] **Insurer’s Violation of Grace Period Statute (Ins.C. §10113.71) Does Not Automatically Establish Breach of Policy:** Insureds suing for insurer’s failure to provide notice required by statute of impending policy lapse must prove the lapse was due to the insurer’s failure to provide the notice. [*Siino v. Foresters Life Ins. & Annuity Co.* (9th Cir. 2025) 133 F4th 936, 949-951]

CHAPTER 6A

FIRST PARTY COVERAGES—GENERAL CONSIDERATIONS

[6:168] **No Waiver or Estoppel Based on Insurer’s Payment of Similar Claims:** [See *Gharibian v. Wawanesa Gen. Ins. Co.* (2025) 108 CA5th 730, 739, 329 CR3d 574, 581]

CHAPTER 6B

PROPERTY INSURANCE

[6:276] **“Direct Physical Loss or Damage”:** [See *Gharibian v. Wawanesa Gen. Ins. Co.* (2025) 108 CA5th 730, 738, 329 CR3d 574, 579—since presence of wildfire debris in insured home “did not alter the property itself in a lasting and persistent manner” and “was easily cleaned or removed,” the debris did not constitute “direct physical loss to property”]

[6:321.2-322] **Faulty Workmanship Exclusion:** [See *11640 Woodbridge Condominium Homeowners’ Ass’n v. Farmers Ins. Exchange* (2025) 110 CA5th 211, 230-231, 331 CR3d 319, 335-336, rev.grntd. 7/9/25 (Case No. S290750)—triable issue whether faulty workmanship exclusion in all-risk property policy applied where insurer failed to show contractor negligence was the sole cause of roof damage; term “workmanship” not ambiguous]

[6:329.6] **Review Granted—Water Damage During Roof Replacement:** The all-risk property policy in issue stated the insurer would pay for “water damage to the interior of any building or structure caused by or resulting from rain if the building or structure first sustains damages to the roof or walls through which the rain enters.” The issue presented on review is whether this provision operates to exclude coverage for damage caused by rain that entered a building while its roof was being replaced. [*11640 Woodbridge Condominium Homeowners’ Ass’n v. Farmers Ins. Exchange* (2025) 110 CA5th 211, 331 CR3d 319, rev.grntd. 7/9/25 (Case No. S290750)]

[6:390.8c] **Limited Virus Coverage Endorsement Upheld:** A virus coverage endorsement that limits coverage to circumstances where the virus resulted from certain specified causes of loss enumerated in the policy is not ambiguous and the coverage afforded is not illusory. [*John’s Grill, Inc. v. Hartford Fin’l Services Group, Inc.* (2024) 16 C5th 1003, 1007, 1014-1016, 23 CR3d 875, 879, 885-887]

CHAPTER 6C

LIFE AND ACCIDENTAL DEATH INSURANCE

[6:460.11] **Certification Request Granted—Statutes Requiring Notice of Life Policy Lapse, Scope of Statutes’ Applicability:** The California Supreme Court has granted review to decide whether Ins.C. §§10113.71 and 10113.72 apply to life insurance policies originally issued or delivered in another state but maintained by a policyowner in California. [*Pitt v. Metropolitan Tower Life Ins. Co.* (2025) 129 F4th 583, req. for certif.grntd. 4/16/25 (Case No. S289376)]

CHAPTER 6F

SPECIAL ISSUES RE GROUP INSURANCE

[6:1695] **ERISA—Healthcare Providers as Assignees (“Derivative Standing”):** [See *South Coast Specialty Surgery Ctr., Inc. v. Blue Cross of Calif.* (9th Cir. 2024) 90 F4th 953, 958-960—healthcare provider may sue plan under §502 for nonpayment of benefits as assignee of the right to benefits generally, even though assignment does not expressly confer the right to sue]

CHAPTER 6G

AUTOMOBILE INSURANCE

[6:2157, 6:2231] **Uninsured Motorist Coverage Minimum Financial Responsibility Law:** For policies issued on or after January 1, 2025, the minimum coverage limits increase to: \$30,000 per person/\$60,000 per accident for bodily injury or death; \$15,000 for injury to or destruction of property. [Amended Veh.C. §16056(a)]

[6:2421.1] **Time for Completion of Arbitration—No Tolling of Five-Year Period under COVID Emergency Rule:** A UM or UIM arbitration is not a “civil action” within the meaning of California’s COVID Emergency Rule 10, and therefore the time is not subject to tolling. [*Prahl v. Allstate Northbrook Indemnity Co.* (2025) 110 CA5th 118, 123-126, 331 CR3d 312, 315-318—Emergency Rule 10 did not extend 5-year deadline to complete arbitration]

CHAPTER 6H

TITLE INSURANCE

[6:2764] **Diminution in Value—Valuation Based on Highest and Best Use:** Absent contrary policy language, “the measure of a property owner’s loss from a cloud on title is the diminution of a property’s value caused by the title defect on the date the insured discovers it, measured according to the property’s highest and best use.” [*Tait v. Commonwealth Land Title Ins. Co.* (2024) 103 CA5th 271, 284-287, 322 CR3d 877, 886-888—since policy required compensation for “actual loss” but did not define term, it was ambiguous and interpreted according to insured’s objectively reasonable expectation]

CHAPTER 7A

THIRD PARTY COVERAGES (LIABILITY INSURANCE)— GENERAL PRINCIPLES

[7:335.1] **Abuse or Molestation Exclusions:** The insured need not have exclusive or complete control over the victim in order for the care, custody or control exclusion regarding abuse or molestation to apply. [*Gordon v. Continental Cas. Co.* (2024) 107 CA5th 89, 95, 105-108, 327 CR3d 797, 802, 811-813—exclusion applied to claim that masseur molested customer during massage since customer was in masseur’s care; negligent employment/supervision exclusion applied to claims against spa manager for negligent hiring, training and supervision]

CHAPTER 7D

AUTOMOBILE LIABILITY

[7:1153] **Financial Responsibility Law Coverage Limits:** For policies issued after January 1, 2025, the limits increase to \$30,000/\$60,000/\$15,000. [Amended Veh.C. §16056(a)]

[7:1155.1] **Excluded Use of Vehicle:** [See *Murphy v. AAA Auto Ins. of Southern Calif.* (2025) 108 CA5th 476, 482-483, 329 CR3d 316, 321-322—unambiguous exclusion was consistent with public policy and barred coverage for delivery driver who used personal auto to make deliveries on employer’s behalf (first party case)]

CHAPTER 8

MULTIPLE INSURERS ON RISK

[8:232] **Review Granted—Excess Policy Exhaustion and Bad Faith:** The California Supreme Court has agreed to decide the following issues: (1) where a policyholder alleges loss sufficient to reach an excess policy, but that insurer’s obligation to pay is not yet triggered because underlying layers are not yet exhausted, may the policyholder seek declaratory relief against the insurer; and (2) whether a policyholder can ever state a bad faith claim against an excess insurer if the underlying policy layers are not yet exhausted. [*Fox Paine & Co. v. Twin City Fire Ins. Co.* (2024) 104 CA5th 1034, 325 CR3d 173, rev.gmted. 12/11/24 (Case No. S287404)]

CHAPTER 11

EXTRACTIONAL LIABILITY

[11:266.2] **RICO—Personal Injury Resulting in Injury to Business or Property:** Relief under RICO is available where personal injuries result in injuries to plaintiff’s business or property. [*Medical Marijuana, Inc. v. Horn* (2025) 604 US __, __, 145 S.Ct. 931, 939—while RICO implicitly excludes recovery for harm to the person, the “business or property requirement” operates with respect to the kinds of harm for which the plaintiff can recover, not the cause of the harm for which relief is sought]

CHAPTER 15
PRACTICE AND PROCEDURE

[15:137.2e, 15:137.4a] **Class Actions—Common Issues:** Class certification was improperly granted in a federal lawsuit alleging the insurer wrongly terminated life insurance policies because it failed to first give notice, as required by California statutes, of pending lapse for nonpayment of premium. Plaintiffs could not demonstrate that common questions predominated because they must show not only a violation of the statute but also that the violation caused them harm, i.e., that they did not intentionally let their policies lapse. [*Small v. Allianz Life Ins. Co. of North America* (9th Cir. 2024) 122 F4th 1182, 1199-1200—determining whether policyholders knowingly let their policies lapse due to nonpayment is an individualized inquiry and cannot be made on class-wide basis; predominance not satisfied with respect to whether the statutory violation caused injury to each class member]

[15:341.1 ff.] **California—Waiver of the Right to Arbitrate:** California now puts arbitration agreements on an equal footing with other types of contracts when determining if a party has waived its right to arbitrate. No special rules are used to analyze arbitration waivers. Only the waiving party's words or conduct are relevant to determining waiver of the right to arbitrate; prejudice to the party opposing arbitration is no longer part of the waiver analysis; and courts should consider only those factors that are relevant to the specific defense of waiver, separately evaluating each generally-applicable state contract law defense raised by the party opposing arbitration. [*Quach v. California Commerce Club, Inc.* (2024) 16 C5th 562, 569, 584-585, 323 CR3d 126, 131, 142-144]

[15:359.6] **Federal Court—Appraisal Must Be Completed to Satisfy Article III Standing and Ripeness Requirements:** Article III standing and ripeness requirements are not satisfied when the appraisal required by the policy to determine the amount of the insured's loss is still pending. [*50 Exchange Terrace LLC v. Mount Vernon Specialty Ins. Co.* (9th Cir. 2025) 129 F4th 1186, 1187-1189—insured's action for breach of contract and bad faith premature until completed appraisal determines amount of loss]

[15:505] **Federal Court—Effect of Joinder of Other Claims:** [See *Siino v. Foresters Life Ins. & Annuity Co.* (9th Cir. 2025) 133 F4th 936, 947-948—district court properly considered both declaratory judgment and breach of contract claims since the two claims had different elements and sought different relief]

[15:545.1] **Federal Court Diversity—Policy Limit Not Necessarily Controlling on Amount in Controversy:** When an insurer seeks a declaration that it no longer has a duty to defend its insured in an underlying tort action, the insurer's anticipated fees and costs in defending the insured in that underlying action, and evidence of a claim that the insurer was extra-contractually liable, are relevant to determining the amount in controversy. [*Farmers Direct Property & Cas. Ins. Co. v. Perez* (9th Cir. 2025) 130 F4th 748, 756-757]

[15:858] **CCP §664.6 Settlement Agreement Signature Requirement:** Effective January 1, 2025, a writing is considered signed by a party if it is signed by: the party; an attorney who represents

the party; or, if an insurer is defending and indemnifying a party, an agent who is authorized in writing. However, this last provision does not apply when the party the insurer is defending would be liable under the terms of the settlement for any amount above the policy limits. [Amended CCP §664.6]