CALIFORNIA PRACTICE GUIDE
INSURANCE LITIGATION
2026 UPDATE

The 2026 softbound Update completely replaces the 2025 Update.

These Highlights summarize the most significant insurance-related developments over the past year. The paragraph numbers are keyed to the 2026 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was May 1, 2026. Some of the new cases cited were not final as of then, so be sure to check the subsequent histories before citing or relying on them.

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

The role of extrinsic evidence in the interpretation of an insurance policy; amended Insurance Code provisions that extend the time for insureds to file a proof of loss following a declared state of emergency; liability of ERISA third party plan administrators; the effect of jury findings against the insured in an underlying action on the insured's coverage lawsuit against its insurer; the doctrine of independent concurrent causes; and the community of interest requirement in the context of insurance class actions.

Thank You. We always appreciate your input. *Please keep your comments and suggestions coming.*

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2026 UPDATE HIGHLIGHTS

CHAPTER 4

POLICY INTERPRETATION

[4:188] **Insurance Policy Interpretation—Role of Extrinsic Evidence:** Extrinsic evidence was not admissible when offered to show that a policy covering damage from the "sudden" discharge of pollutants should be read to include coverage for gradual discharge. Extrinsic evidence is admissible only to the extent it is relevant to prove a meaning to which the policy language is reasonably susceptible. [*Montrose Chemical Corp. of Calif. v. Sup.Ct.* (*Canadian Universal Ins. Co.)* (2025) 114 CA5th 889, 902, 917, 337 CR3d 222, 228, 242, rev.grntd. (cited pursuant to CRC 8.1115)]

Review Granted: In *Montrose* (discussed immediately above), the California Supreme Court will decide: (1) whether a court may conclude that contract language is not reasonably susceptible of a construction advanced by a party without first giving preliminary consideration to the extrinsic evidence that party is proffering; and (2) under what circumstances does a prior judicial construction of contract language render that language not reasonably susceptible to a construction advanced by a party and preclude preliminary consideration of extrinsic evidence proffered to support that construction. [*Montrose Chemical Corp. of Calif. v. Sup.Ct.* (*Canadian Universal Ins. Co.*) (2025) 114 CA5th 889, 337 CR3d 222, rev.grntd. 12/30/25 (Case No. S293914)]

CHAPTER 6A

FIRST PARTY COVERAGES—GENERAL CONSIDERATIONS

[6:43] **Special Proof of Loss Provisions for Emergencies:** Effective January 1, 2026, proof of loss requirements for a loss relating to a state of emergency have been amended. Insurers shall not require insureds to submit proof of loss less than 100 days after the loss, and they must provide one or more additional extensions of three months for good cause if the insured, acting in good faith and with reasonable diligence, encounters a delay in providing proof of loss that is beyond the insured's control. Circumstances beyond the insured's control include: unavailability of contractors to perform necessary work or create an estimate to rebuild, repair, or replace; the insured's disability, injury, or incapacity; and the insured's inability to access the insured property due to governmental action or because the property is located in an area exposed to hazardous materials posing a health risk. [Ins.C. §2051.5(b)(3) (eff. 1/1/26)]

CHAPTER 6E

HEALTH COVERAGES

[6:707] **Effect of Federal Anti-Discrimination Laws on ERISA Plan Administrator Liability:** An ERISA third party administrator may be liable under §1557 of the Affordable Care Act for enforcing sex-based exclusions from coverage even when it is implementing plan terms drafted by an employer ERISA plan sponsor. ERISA does not require third party administrators to implement unlawful plan terms. [*Pritchard on behalf of C.P. v. Blue Cross*

Blue Shield of Ill. (9th Cir. 2025) 159 F4th 646, 656, 661-663, 669-672 (but remanding to reconsider whether plan exclusions constitute sex discrimination under *United States v. Skrmetti* (2025) 605 US 495, 145 S.Ct. 1816)]

CHAPTER 6G

AUTOMOBILE INSURANCE

[6:2104] **Assignability of UM Claim:** [See *Dameron Hosp. Ass'n v. Progressive Cas. Ins. Co.* (2025) 111 CA5th 530, 535-537, 550, 332 CR3d 874, 879, 890 (declining to enforce assignment of benefits provision in hospital admission form where hospital never presented bill to Medi-Cal, and Medi-Cal patient had no reasonable expectation hospital would use assignment to collect its full bill from patient's capped first-party UM coverage, which also covered her lost wages and other damages)]

CHAPTER 6H

TITLE INSURANCE

[6:2687.1] **Title Insurer's Defense Obligation:** Title insurer owed a duty to defend even where the underlying complaints expressly disclaimed existence of an easement of the type covered by the policy and alleged only excluded easements, because a deed attached as an exhibit to the complaints raised the possibility that the easement at issue was in fact a covered deeded easement. [*Bartel v. Chicago Title Ins. Co*. (2025) 111 CA5th 655, 686-687, 333 CR3d 38, 63]

CHAPTER 7A

THIRD PARTY COVERAGES (LIABILITY INSURANCE)—GENERAL PRINCIPLES

[7:44.8a] **Effect of Jury Verdict that Insured Acted Both Intentionally and Negligently:** Where the jury determined in the underlying action that the insured committed an intentional tort against the victim, but also found the insured acted "negligently," the negligence finding did not establish that the insured's injury-producing conduct was an "accident" within the meaning of the policy's coverage clause. An insured who intentionally injures another also may be said to have failed to use reasonable care to prevent injury, i.e., the two findings are not necessarily mutually exclusive. [*State Farm Fire & Cas. Co. v. Diblin* (2025) 114 CA5th 1245, 1260-1262, 1265, 337 CR3d 688, 700-701, 703—jury finding that insured acted negligently for striking victim repeatedly with mallet did not negate intentional nature of the conduct; negligence finding did not change character of the act]

[7:224.4] **Independent Concurrent Causes—Application:** Insured attacked Victim, repeatedly striking her with a mallet. He contended he had negligently mismanaged his medication, resulting in a drug-induced aggression that led to this violent conduct. But this alleged negligence could not have caused the victim's injuries unless the insured also intentionally and violently attacked her. These were not true concurrent causes that each originated from an independent act of negligence, and therefore coverage was properly denied. [*State Farm Fire & Cas. Co. v. Diblin* (2025) 114 CA5th 1245, 1250, 337 CR3d 688, 703]

CHAPTER 7I

HOMEOWNERS LIABILITY

[7:2190] ***Review granted—FAIR Plan Liability Coverage:*** The California Supreme Court has granted review to decide whether the Insurance Commissioner may require the California FAIR Plan to offer an expanded homeowner insurance policy that includes liability coverage with respect to the insured property. [*California FAIR Plan Ass'n v. Lara* (2025) 116 CA5th 869, 339 CR3d 689, rev.grntd. 3/11/26 (Case No. S294806)]

CHAPTER 12B

BAD FAITH—THIRD PARTY CASES

[12:618.5 ff.] **Genuine Dispute Doctrine—Third Party Cases:** [See *Bartel v. Chicago Title Ins. Co*. (2025) 111 CA5th 655, 703-704, 333 CR3d 38, 76-78 (questioning whether genuine dispute doctrine applies in third party cases)—genuine dispute defense unavailable to title insurer that erroneously denied defense where refusal was based on "persistent but misguided belief" it need only evaluate whether underlying lawsuit allegations created potential for coverage, and it disregarded insured's request for reconsideration that identified the uncertainty that created the possibility of a covered claim]

CHAPTER 15

PRACTICE AND PROCEDURE

[15:137.1b] **Class Actions—Community of interest:** Where there are common issues of liability in a class action brought by insureds, the fact that there must be an individual determination of damages does not necessarily preclude class certification, because individual insureds who are dissatisfied with the potential relief available in a class action have various remedies, including opting out of the class. [*Cobos v. National Gen. Ins. Co.* (2025) 112 CA5th 1272, 1282-1283, 335 CR3d 90, 99-100—trial court abused discretion to deny class certification in case alleging insurer used improper standardized basis to deny claims and rescind policies, where denial of certification was on basis that many damage claims "were individualized" and it was improper for plaintiffs to forego certain categories of damages to render case more manageable; compare *Ambrosio v. Progressive Preferred Ins. Co.* (9th Cir. 2025) 154 F4th 1107, 1111-1112—class certification inappropriate in case alleging insurer used improper methods to evaluate actual cash value of damaged vehicles, and thus very existence of injury, as well as its amount, would require individual vehicle-by-vehicle evaluation]