Colorado Defense Lawyers Association
The Civil Defense Bar

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Coverage Update

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Overview

Introduction

Coverage Cases: 2025-2026

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- *Cart Driver-Highlands, LLC v. Soc'y Ins.*, 2026 U.S. Dist. LEXIS 67926 (D. Colo. Mar. 30 2026)
- *Green Mountain Homes v. Mesa Underwriters*, WL 2025 2771578 , 2025 U.S. Dist. LEXIS 190807 (D. Colo. Sep. 27, 2025)
- *Hartford Casualty Insurance Co. v. Instagram, LLC,* 2026 WL 623387, 2026 Del. Super. LEXIS 95 (Del Sper. Feb. 27, 2026)

Final Thoughts + Q&A

United Servs. Auto. Ass'n & State Farm Mut. Auto. Ins. Co. v. Wenzell, 588 P.3d 711 (Colo. 2026)

Facts:

- UIM claim with primary (SF) and excess (USAA)
- Insurers asked for medical authorizations to allocate accidents – carriers claimed insured did not comply.
- District court granted summary judgment; COA flipped and found 1118 applied to all failure to comply with policy provisions, not just general cooperation and exhaustion.

United Servs. Auto. Ass'n & State Farm Mut. Auto. Ins. Co. v. Wenzell, 588 P.3d 711 (Colo. 2026)

Holding:

- 10-3-1118 only applies to general cooperation clause. Common law cooperation versus condition precedent.
- FN not invent novel or unduly onerous conditions precedent.
- No duty on excess until insured presented undisputed evidence his damages would exceed underlying policy – fact dispute; can't just rely on exhaustion of primary.

Berkenkotter Dissent:

- Would apply 10-3-1118 to all obligations

Bohanan v. Esurance Prop. & Cas. Ins. Co., 587 P.3d 670 (Colo. App. 2026)

Facts:

- Arteaga caused accident with Bohanan.
- Esurance insured Arteaga.
- Bohanan requested copies of any insurance policies issued by Esurance that "may" provide liability coverage for Arteaga.
- Esurance refused to produce claiming the policy was not in effect on DOL.
- Bohanan files suit against Esurance under 10-3-1117(3) seeking statutory damages of $100 for each day following the thirtieth day after the request through the date the policy was delivered.
- D.Ct. found Esurance liable but only for 6 days.
- Both parties appealed.

Analysis:

- Coverage under the Esurance policy was not immediately clear.
- When there is a fundamental question of whether a policy provides coverage for a loss, the facts surrounding the claimed loss and the policy's language have significant bearing on the coverage determination.

Bohanan v. Esurance Prop. & Cas. Ins. Co., 587 P.3d 670 (Colo. App. 2026)

Holding:

- The statute unambiguously required Esurance to provide Bohanan's counsel with a copy of the policy within thirty days of the date its registered agent received the request.
- While Esurance ultimately denied coverage, both (1) the amount of time it took to assess coverage and (2) the initial confusion on both sides as to whether the loss could make clear that during the statutory response period the policy was or may have been relevant to the claim.
- The Court rejected Esurance's argument that its decision that the policy did not provide coverage for the incident excused it from producing the policy.
- Section 10-3-1117(2)(a) applies the disclosure obligation to each insurer that "provides or may provide . . . automobile liability insurance coverage" to pay all or a portion of the injured party's claim.
- Bohanan entitled to damages until Esurance provided policy. At $100, this equates to $35,600.

Judge Jones Dissent:

- Says majority fails to afford the word "may" its plain and ordinary meaning.
- No degree of likelihood or possibility that an insurance policy that wasn't in effect at the time of the incident giving rise to a claim could provide coverage.
- Such a policy isn't relevant to such a claim, nor is it possibly relevant.
- A policy "may be relevant" only when there is a plausible argument that the policy provides coverage.

Hertz v. Babayev, 588 P.3d 682 (Colo. 2026)

Facts:

- Renter purchased rental car and paid for supplemental insurance.
- UM/UIM coverage.
- Chubb had policy.
- ESIS was TPA.
- D.Ct. granted summary judgment and COA flipped finding Hertz was a statutory insurer and might be a de facto insurer (fact disputes).
- Relied on Hertz's offer.

Hertz v. Babayev, 588 P.3d 682 (Colo. 2026)

Holding:

- Car rental companies that offer supplemental insurance do not fit within the statutory definition of insurers and were not de facto insurers.
- COA's reliance on *Passamano* in error because legislature amended the statute to exclude rental companies from 10-4-609.
- Defined insurers and rental car companies. Does not meat Cary's de facto insurer test – no control over administration of claims and financial stake. No special relationship.

Dissent:

- Would find de facto insurer because revenue from selling, assists in adjusting and assumes complete financial risk for those claims – majority didn't address fronting policy.

Pinto v. USAA, 2026 CO 44

Facts:

- Breach of contract case for UIM benefits against USAA arising out of 2020 motor vehicle accident.
- Also employed by USAA for 19 years.
- Pinto received $500,000 policy limit from the tortfeasor's insurance.
- Discovery dispute implicating the *Shultz v. Geico* case.
- Pinto argues should not be compelled to provide unredacted medical records and insurance documents relating to a subsequent accident.
- D. Ct. says discoverable.
- Pinto seeks review under Rule 21.

Holding:

- *Schultz* does not extend to breach of contract claims.
- The only consideration is whether the insured can establish an entitlement to the benefits under the policy.
- Breach of contract claim not limited to information at time of denial.
- Unredacted medical records are relevant.
- *Schultz* does not preclude an insurer from reviewing documents made after its coverage decision with respect to breach of contract claims.
- Insurance documents for subsequent accident relevant for allocation.
- Good cause to require IME.

Progressive Direct Ins. Co. v. Ortiz, 590 P.3d 285 (Colo. 2026)

Facts:

- Insured sued uninsured motorist (Progressive had determined insured was at fault).
- Default entered
- Denied insurer's involvement in default but permitted in damages hearing.

Holding:

- Would not depart from Brekke – right of insured to participate in litigation with uninsured motorist. (Discussion on Rule 8/9(b))
- No abuse denying comparative fault defense. Insurer must as soon as practicable plead legitimate defenses. Can't be boilerplate.
- Timing issue – did not respond to motion for default.

N.H. Ins. Co. v. TSG Ski & Golf, LLC, 128 F.4th 1337 (10th Cir. 2025)

Facts:

- Dispute over liability-insurance coverage.
- Exclusions in policies foreclose defense and indemnity coverage if the insureds are sued for defamatory or disparaging statements when they have knowledge of the falsity of the statements.
- Three-part scheme to coerce the Underlying Plaintiffs into paying annual assessments that the TSG Parties knew were not owed.
- $15.5 million debt collection letter sent.
- Underlying lawsuit proceeded to trial. The testimony of several board members who approved the debt-collection letter established that they knew the Underlying Plaintiffs did not owe $15.5 million in unpaid assessments.
- Jury returned a verdict for the Underlying Plaintiffs for $225,000 in compensatory damages but declined to award punitive damages. The court awarded the Underlying Plaintiffs $2,298,225 in statutory attorney fees and $328,510.53 in costs.

Holding:

- Even though the claims against the insureds did not require proof that the alleged false statements were made knowingly, the knowledge-of-falsity exclusions precluded defense coverage because the underlying complaint alleged the insureds knowingly published the false statements.
- The exclusions also precluded indemnity coverage because the evidence at the underlying trial established the insureds knowingly published the false statements.

Spectrum Retirement Communities v. Continental Casualty, 574 P.3d 733 (Colo. 2025)

Facts:

- Spectrum operated 43 senior living communities in 10 states.
- All-risk commercial policy with a health care endorsement.
- During pandemic opened but business impacted by gov’t orders and alleged losses as parts of facility closed.
- Claim denied.
- Rule 12(c) motion granted due to no direct physical loss.

Spectrum Retirement Communities v. Continental Casualty, 574 P.3d 733 (Colo. 2025)

- **Analysis:**
  - *Western Fire v. MJB Motels, Sagome, and Monarch Casino*.
  - Court of Appeals follows *Western's* holding that insured doesn't need structural or visible damage but must make entire property uninhabitable and further use must be highly dangerous.
  - Did not adopt the *Sagome* line that damage must be physical.
  - Discussed MJB but did not adopt it in analysis.
  - Rejected argument that partially uninhabitable is sufficient to fall within *Western's* holding – concrend with analytical framework.
  - HCE endorsement fact dispute over decontamination as alternative line of coverage.

Spectrum Retirement Communities v. Continental Casualty, 574 P.3d 733 (Colo. 2025)

Disposition:

- Affirm Summary judgment for insured in part.
- Decision 2-1 and Judge Welling agreed *Western* controlled and would have concluded that further use was highly dangers. Shutdown of portions of facilities should be considered covered and *Western's* test is not clear on percentage needed to be closed.
- Petition for certiorari has been granted in part
  - [REFRAMED] Whether it was error to conclude under C.R.C.P. 12(c), as a matter of law, that there was no coverage for direct physical damage to insured property, separate and apart from physical loss.

Garrison Prop. & Cas. Ins. Co. USAA Cas. Ins. Co. v. Horton, 2026 WL 819491, 2026 U.S. App. LEXIS 8704 (10th Cir. Mar. 25, 2026)

Facts:

- Horton and Abeyta involved in a motorcycle collision that severely injured them both.
- Motorcycle owned by Horton's father and insured by Progressive.
- Motorcycle was not listed on either the USAA or Garrison declarations page.
- USAA responded, stating that the policies did not afford coverage, specifically making reference to Exclusion B.2.
- USAA refused to provide a defense to Horton under a theory of no coverage, Garrison provided a defense under a reservation of rights.
- $42 million verdict – Horton responsible for 5%.
- USAA and Garrison brought a declaratory judgment action to determine the rights and obligations under their respective insurance contracts as it relates to coverage for a motorcycle accident.
- D. Ct. grants summary judgment finding no coverage under either policy.
- Undisputed that the motorcycle does not fall within any of the exceptions listed under Exclusion B.1.
- Appellants argue exceptions to Exclusions B.2 and B.3 conflict with Exclusion B.1creating an ambiguity in the policies which must be resolved in favor of coverage.

Garrison Prop. & Cas. Ins. Co. USAA Cas. Ins. Co. v. Horton, 2026 WL 819491, 2026 U.S. App. LEXIS 8704 (10th Cir. Mar. 25, 2026)

Holdings:

- Exceptions to Exclusions B.2 and B.3 restore coverage for vehicles not listed on the declarations under certain ownership situations.
- The language of Exclusions B.2 and B.3 expressly limits the exceptions to their respective exclusions.
- The plain language of the exceptions to Exclusions B.2 and B.3 dictates that the exceptions only apply to their respective exclusions.
- Exclusions operate independently of one another, and coverage can be denied under any exclusion regardless of whether any other exclusion does or does not apply.
- When reviewing an insurance contract, "[c]ourts should read the provisions of the policy as a whole, rather than reading them in isolation."
- Waiver or estoppel can enforce coverage provided for under the policy but cannot be used as a means to create or extend coverage.

Tracy v. State Farm Mut. Auto. Ins. Co., 2025 U.S. Dist. LEXIS 140062 (D. Colo. July 22, 2025)

Facts:

- UIM claim with $25K underlying and UIM and umbrella policy.
- Dispute concerns father's $2M umbrella policy.
- Tracy was an adult daughter with her own apartment but kept bedroom at father's house, who had umbrella policy.
- The umbrella policy lists UM/UIM limits and had a UM/UIM premium.
- Resident relative had "reside primarily language."

Analysis:

- Not similar to *Apodaca v. Allstate Ins. Co.*, 232 P.3d 254 (Colo. App. 2009), *aff'd* 255 P.3d 1099 (Colo. 2011) because premium for UIM coverage on this policy.
- Definition from CRS § 10-4-601 apply so "primarily reside" language is void under *Grippin v. State Farm Mut. Auto. Ins. Co.*,m 409 P.3d 529 (Colo. App. 2016).
- Conflicting factors as whether residing. *Boatrigight non-exclusive* factors: intent of individual, formality of the relationship, existence of another place of lodging, relative permanence.

Disposition:

- Summary judgment for insured in part.

Am. Econ. Ins. Co. v. Sepic, 2026 WL 1642801, 2026 U.S. Dist. LEXIS 126442 (D. Colo June 8, 2026)

Facts:

- Homeowners policy – dec action with bad faith counterclaims following a fire.
- Residence premises – "where you reside and which is shown in your Policy Declarations"
- Declarations showed an address (Belcaro) for a house, which was demolished, and for 3 years did not tell insurer and built new home (Madison) on same lot.
- Present at house weekly and sometimes daily, but did not stay the night.
- Maintained another place of lodging during the demolition of the Belcaro Drive Home and the construction of the Madison Street Home.
- Fire occurred at the Madison Street Home while it was under construction.

Am. Econ. Ins. Co. v. Sepic, 2026 WL 1642801, 2026 U.S. Dist. LEXIS 126442 (D. Colo June 8, 2026)

Holding:

- Property did not meet the definition of "residence premises."
- Reside means to dwell permanently or continuously – plain meaning.
- Looks to other courts' multi factor tests – key separate home and never spent a night at the Madison house.
- No personal property coverage because did not comply with condition precedent of coverage.
- Statutory claim dismissed because no contract claim but common law claim reserved because new arguments on reply – concerned course of dealings not benefit.

Scott v. Nationwide, 744 F. Supp. 3d 1206 (D. Colo. 2024)

Facts:

- Plaintiff injured by resident relative (mother) of policyholder (son).
- Vehicle was not listed in the policy at the time of the accident.
- Policy limited liability coverage to described vehicles.

Analysis:

- Policy limitation was not void against public policy.
- Policy complied with 10-4-601 definition of insured.
- Court determines other parts of statutory scheme allow insurer to limit coverage for an insured to specified vehicles.
- Liability coverage differs from UM/UIM coverage.

Disposition:

- Affirm district court summary judgment for insurer.

Cart Driver-Highlands, LLC v. Soc'y Ins., 2026 U.S. Dist. LEXIS 67926 (D. Colo. Mar. 30 2026)

Facts:

- Restaurant hired contractor to do plumbing work when leased property, which they alleged was negligent.
- Foul odor noticed – discovered raw sewer water had accumulated in a crawl space and was due to an uncapped or improperly capped sewer pipe – pumped out 5,000 gallons of raw sewer water.
- Odor remained – pipes pouring water into crawlspace because cracked.
- Had to close business.
- Carried denied because loss predated policy, continuous seepage, negligent/faulty work

Cart Driver-Highlands, LLC v. Soc'y Ins., 2026 U.S. Dist. LEXIS 67926 (D. Colo. Mar. 30 2026)

Holdings:

- Fact dispute of loss predating the policy. Musty smell didn’t mean sewage leak and unknown when negligent work led to leaks.
- Continuous seepage exclusion precluded coverage. Evidence showed had to be more than 14 days.
- Did not address work exclusion.
- EC claims failed because no coverage.

Green Mountain Homes v. Mesa Underwriters, WL 2025 2771578 , 2025 U.S. Dist. LEXIS 190807 (D. Colo. Sep. 27, 2025)

Facts:

- SGM owned townhome community hit by 2 hailstorms.
- SGM hired Marshall Bros. Construction to perform repairs.
- Prior to completion, residents complaining of leaking roofs.
- Marshall agreed to correct and completed project.
- SGM unsatisfied with repairs and workmanship, sued Marshall for:
  - Negligence & negligence per se;
  - BOC;
  - Breach of express and implied warranty; and
  - Unfair and deceptive trade practices (only claim that allowed for attorneys' fees)

Facts

- Marshall was defended under ROR by MUSIC.
- Marshall filed a counterclaim against SGM for $1.5M in unpaid work through PC.
- Enforceable MUSIC policies had limits of $1M per occurrence and $2MM aggregate.
- SGM's claim for unfair and deceptive trade practices was dismissed.
- Each party retained expert to opine on scope and cost of repair.
  - SGM's expert said scope of repair included replacing all roofs on the 37 residential buildings and 37 garages/carports at a cost of $9.6MM.
  - Marshall's expert said scope of repair was much narrower and could be accomplished for $78K. Also said SGM's scope of work could be completed for $6.5MM; later said could be completed for $3.1MM.

Facts

- Parties entered into negotiations.

SGM	Marshall/MUSIC
$10,000,000	$78,000
$6,000,000	$250,000
$4,700,000	$650,000
Asked Marshall to propose a Nunn agreement	
$3,000,000	Marshall proposed *Nunn* agreement to SGM and told Music it would sign if no settlement
	$750,000
Signs *Nunn* agreement	Marshall signs *Nunn* agreement

- Marshall testified it signed the *Nunn* agreement to avoid continued payment to its PC – not out of fear of future liability – and that it did not negotiate the numbers in the *Nunn* agreement, just the agreement itself.

Facts

- The *Nunn* agreement:
  - stipulated to a total confessed judgment against Marshall of $13.4MM, which included the $9.6M cost of repair, $400K in litigation costs, and $3.4MM in attorneys' fees for SGM's counsel (calculated as 1/3 the sum of the cost of repair plus costs);
  - provided SGM a full release of Marshall's counterclaim, an assignment of Marshall's rights against MUSIC, and an assignment of claims against Marshall's subcontractors; and
  - numerous recitals that negatively characterize MUSIC's conduct in defending Marshall, including:
    - descriptions of MUSIC's "unreasonable failures," "unsatisfactory conduct, and "nonsensical" position;
    - accusations that MUSIC had "divided loyalties," "turned a blind eye" and conducted an "inadequate damages investigation"' and
    - claims that MUSIC's conduct created a "substantial conflict of interest to the detriment" of Marshall and that MUSIC "failed to properly differentiate between its obligations to" SGM and Marshall.

Litigation

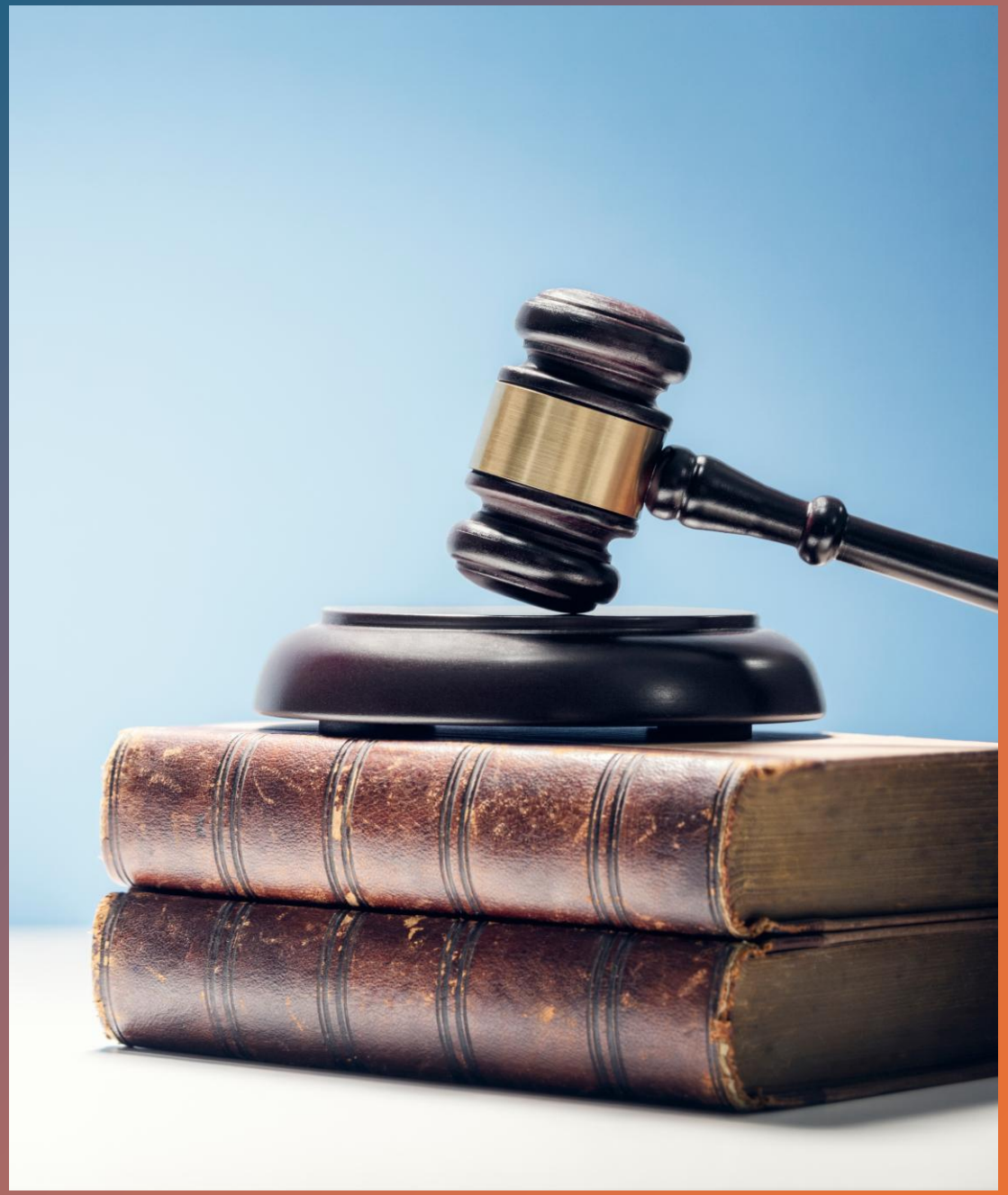
- SGM files suit against MUSIC as assignee of Marshall claiming BOC, common law BF and violation of C.R.S. § 10-3-1115/1116.
- MUSIC moved for SJ on all claims, arguing that the *Nunn* agreement was the result of collusion and thereby unenforceable.
- The court (Crews) agreed.

- Although there is “little guidance from the CO appellate courts regarding the elements of collusion as an affirmative defense to *Nunn* agreements,” Crews relied on other authorities (state courts, federal courts, treatises) to find that the agreement was collusive on its face.

- In so doing, Court held that collusion or fraud “are often defined broadly and are not necessarily tantamount to the tort of fraud in that there need not be a misrepresentation of material fact.” Instead, “collusion may be found where the evidence demonstrates an absence of conflicting interests – the “lack of opposition between a plaintiff and an insured that otherwise would assure that the settlement is the result of hard bargaining.”

This agreement was procured by collusion because:

- Marshall did not negotiate any of the dollar amounts in the agreement.
- Marshall signed the agreement out of concern for ongoing attorneys' fees; not potential liability.
- Despite having 2 expert reports that calculated the cost of repair lower than the $9.6MM SGM damages estimate, Marshall accepted this full amount and expressly stated in the agreement that he did not dispute the existence and reasonableness of those damages.
- Without negotiation, Marshall agreed to pay $3.4MM in attorney's fees, calculated off the $9.6MM cost of repair. SGM could not have collected these fees if it had prevailed at trial. The only claim that allowed SGM to collect attorneys' fees in the underlying case was the unfair and deceptive trade practices claim, which was dismissed.
- Marshall agreed to liability for replacing at least one roof SGM did not claim in the lawsuit was defective.
- Marshall signed the agreement just 8 days after SGM offered to settle for $3MM; he agreed to a number that was 347% more.
- Marshall appeared to have meritorious defenses and a $1.5M counterclaim.
- The superfluous recitals about MUSIC – the only aspect of the agreement Marshall did negotiate – suggest an attempt to influence the insurance coverage and harm MUSIC's interests.



DISPOSITION

SJ granted in favor of MUSIC.

SGM’s claims dismissed.

Hartford Casualty Insurance Co. v. Instagram, LLC, 2026 WL 623387, 2026 Del. Super. LEXIS 95 (Del Super. Feb. 27, 2026)

Facts:

- Meta is involved in thousands of lawsuits, mostly consolidated into two actions in California (Social Media Litigation), regarding the harm its platforms allegedly cause children.
- Causes of action generally allege that Meta designed platforms to maximize engagement by exploiting psychological vulnerabilities and embedding addictive features into the platforms and intentionally targeted minors with these design choices.
- Meta tendered the claims to its insurers for defense. The insurers largely denied coverage, though agreed to defend certain claims subject to a reservation of rights.
- Insurers seek a ruling that the allegations in the Social Media Litigation do not trigger a duty to defend.

Hartford Casualty Insurance Co. v. Instagram, LLC, 2026 WL 623387, 2026 Del. Super. LEXIS 95 (Del Super. Feb. 27, 2026)

Analysis:

- To determine whether an accident occurred, the Court focuses on the conduct of Meta.

- Under California law, this involves a two-step inquiry:

(1) whether the complaints allege anything other than strictly deliberate conduct; and

(2) if not, whether the complaints nonetheless identify "some additional, unexpected, independent, and unforeseen happening" that may have produced the damage.

Hartford Casualty Insurance Co. v. Instagram, LLC, 2026 WL 623387, 2026 Del. Super. LEXIS 95 (Del Super. Feb. 27, 2026)

Holding:

- **Step One**: The underlying actions exclusively allege harm arising from deliberate conduct.
  - Meta concedes that the conduct at issue is its intentional design and implementation of the platform features aimed at maximizing user engagement.
  - Negligence allegations alone don't trigger Duty to Defend. Court must determine whether the complaints still allege exclusively deliberate conduct.
  - Meta failed to identify any allegations that provide a basis for negligence liability independent of its intentional business decisions.
- **Step Two:** The complaints adequately allege that it was not "mere fortuity" that youth-oriented platforms, deliberately designed to maximize engagement through algorithmic consumption, would result in children becoming addicted or otherwise suffering the alleged harms.
  - Because the creation and consumption of third-party content is the functional and intended result of Meta's deliberate platform architecture (as alleged), it is similarly not a fortuity that third parties would create engaging, yet potentially harmful, content for use on the platforms.
- Allegations in the Social Media Litigation do not meet the definition of an "accident."

Questions and Comments?

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Thank You!