

Claims Notes: August 2024

NEW YORK

Department of Financial Services Finalizes Guidance on Use of AI in Underwriting and Pricing

The New York Department of Financial Services (DFS) previously circulated proposed guidance on using AI in underwriting and pricing to address discrimination. DFS requested public comment. Commenters expressed concern over:

1. How insurers can effectively oversee consumer data and AI systems provided by vendors, and
2. Requiring senior management and boards to perform the day-to-day work of consumer data and AI systems development and implementation.

In the final version, DFS makes clear that:

1. Insurers must exercise significant oversight over vendors and are ultimately responsible for the outcomes of vendor-provided consumer data and AI systems, and
2. Senior management and the board are responsible for the overall outcome of the insurer's use of consumer data and AI systems. *Circular Letter*.

NEW YORK

Ins. Law § 3420's Timing Requirements Do Not Apply to Accidents Outside New York

The insured purchased a commercial auto policy delivered in New York with New York amendatory endorsements. An employee of the insured caused a car accident in Florida. The claimant provided notice to the auto insurer. The insured and its employee did not report the accident to their insurer and refused to cooperate, resulting in a non-cooperation denial. The auto insurer filed a declaratory judgment action against all involved to enforce its disclaimer. The claimant challenged the denial, contending that it was untimely under New York Insurance Law § 3420(d)(2). The trial court granted summary judgment to the claimant. On appeal, the appellate court reversed because New York Insurance Law § 3420(d)(2) does not apply to accidents outside New York. *Decision*.

OREGON

First-Party: Contamination Exclusion Precluded Coverage for Meth Residue

A tenant routinely smoked methamphetamine, causing damage to the dwelling that required remediation. The owner sought coverage from his first-party property insurer. The insurer denied coverage based on an exclusion for damage caused by contaminants. The owner sued, contending that the damage resulted from vandalism—a covered cause of loss. The appellate court reasoned that vandalism requires willful or malicious destruction and found no evidence that the tenant intended to damage the dwelling. Presumably, he intended to get high. As such, the loss was not vandalism, and the contaminants exclusion precluded coverage. *Decision*.

FLORIDA

First-Party: Replacement Policies Do Not Cover Repair Costs Where No Repairs Performed

Water damage claim. The insurer paid the mold sublimit and denied the remainder of the claim



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because the water damage occurred over months or years.

The insureds sold the property without making any repairs. They then sued their insurer, challenging the coverage denial. The policy's terms only required payment by the insurer "as work is performed and expenses are incurred." Before trial, the insurer moved to exclude the insureds' repair estimates because they reflected work that was never performed. The trial court allowed the estimates to be admitted into evidence, resulting in a verdict in the insured's favor. The appellate court reversed, ruling that the policy had been clear that the insureds are not entitled to repair costs unless the repairs are actually made. The court further remanded for a new trial on damages with the estimates precluded from evidence. It is difficult to see how the insured can survive a directed verdict or establish damages without the estimates. *Decision.*

TENNESSEE

First-Party: Cosmetic Damage Exclusion Precluded Coverage for Hail Strikes

A year after a hailstorm, the insured filed a claim for hail damage to its roof. The insurer paid the actual cash value of the loss. The insured challenged the coverage determination. In response, the insurer retained an engineer to assess the damage. The engineer found that the dents in the roof covering were "cosmetic in nature" and that the roof's functionality had "not been affected by the hail." Based on the engineer's findings, the insurer denied coverage for the rest of the claim based on a cosmetic-damage exclusion. The trial court enforced the insurer's denial, which the Sixth Circuit Court of Appeals affirmed. *Decision.*
