End of Year 2017 Issue

RECENT DEVELOPMENTS IN ALABAMA AND THE ELEVENTH CIRCUIT

Selected Insurance Cases and Other Matters of Interest

In this edition, we have included several cases we hope you find interesting. Included are cases dealing with abstention, amount in controversy related to diversity jurisdiction, application of water, assault and battery, firearms, and liquor liability exclusions, and insuredøs violation of policy conditions. We have also included an opinion from the Northern District of Alabama that our firm handled *Travelers Prop. Cas. Co. of America v. Brookwood, LLC*, 2017 WL 3896692 (N.D. Ala. Sept. 6, 2017) granting summary judgment in favor of the carrier for a water loss to a commercial building. We hope that you find these cases helpful.

Alabama State Law Update

UIM Insurer's Liability when Tortfeasor Files for Bankruptcy

Easterling v. Progressive Specialty Ins. Co., --- So. 3d ----, 2017 WL 4081097 (Ala. Sept. 15, 2017).

Facts: Ashley McCartney (õMcCartneyö) injured the insureds when she rear-ended their vehicle. As a result, the insureds filed a negligence and wantonness action against her, and also asserted claims against their uninsured/underinsured motorist carrier to recover insurance benefits. After one of the insureds passed away, the other insured was appointed as the personal representative of the estate and substituted as a party. Before the trial, McCartney filed a Suggestion of Bankruptcy and moved to dismiss the action, arguing that a bankruptcy discharge would remove her liability to pay damages. The insurer supported her motion and moved for summary judgment arguing that the insurer also no longer had a legal obligation to the insureds. The trial court agreed with the insurer and entered a final judgment. When the insureds asked the court to reconsider its ruling and the court did not respond, the insureds appealed the action.

Issue: ***Whether an UM/UIM insurer maintains an obligation to provide insurance coverage when the tortfeasor files a suggestion of bankruptcy.***

Holding: Yes. The insurer argued that a plaintiff may recover UIM benefits only when the plaintiff is õlegally entitled to recover damages,ö and, because bankruptcy would allow McCartney to avoid paying any damages, the insureds were not legally entitled to recover outside of the policy limits. However, the Court was not persuaded, as the Suggestion of Bankruptcy only limits the insuredsø ability to collect damages from McCartney if they receive a judgment against McCartney. It does not affect the ability of the trial court to determine whether McCartney is liable. The Court pointed out that the trial courtøs ruling conflicts with the purpose of the UIM statute and Bankruptcy Code. The insureds are still permitted to pursue the action in order to determine McCartneyøs and the insurerøs liability. Therefore, the Supreme Court held that trial court erred, reversed the summary judgment in favor of the insurer, and

remanded the case for further proceedings.

<u>Alabama Federal Law Update</u>

Amount in Controversy
Bennett v. Williams, 2017 WL 3781187 (N.D. Ala. Aug. 31, 2017).

Facts: Following a motor vehicle accident involving Connie Bennett (õBennettö) and Christopher Williams (õWilliamsö), Bennett filed a lawsuit in state court. Williams, his employer, and Bennettøs UM/UIM insurer removed the action to the United States District Court for the Northern District of Alabama. Bennett moved to remand the action to state court.

Issue: ***Whether the damages alleged meet the amount in controversy, and create subject matter jurisdiction for the court.***

Holding: No. Because the allegations in the complaint do not describe specific information about the extent of the damages sought, the court must consider information outside of the complaint. *See Williams v. Best Buy Co., Inc.*, 269 F.3d 1316 (11th Cir. 2001). Bennett alleges her medical expenses are less than $2,000. Although the insurer, relying on *Smith v. State Farm Fire & Cas. Co.*, 868 F. Supp. 2d 1333 (N.D. Ala. 2012), argued that if Bennett does not formally declare her claim is less than $75,000, her claim cannot be remanded, the court disagreed. Instead, the court held that, using factual allegations, the defendants were required to prove the damages exceed $75,000.

The insurer also argued that, because Bennett included claims against her UM/UIM carrier, and Williamsø employerøs policy provides $750,000 of insurance coverage, Bennett must be making a claim in excess of $75,000 since she included her UM/UIM carrier in the complaint. However, the court noted that there were many reasons Bennett may have included her UM/UIM carrier in the complaint, and it does not necessarily mean she seeks damages in excess of $75,000. For example, the employerøs insurer may not provide coverage for this occurrence, or the employerøs insurer may provide a defense under a reservation of rights. Therefore, the federal court remanded the case.

Abstention/Parallel State Court Action
Arch Ins. Co. v. Ace Ins. Co., 2017 WL 3902562 (M.D. Ala. June 7, 2017) (opinion adopted in *Arch Ins. Co. v. Ace Ins. Co.*, 2017 WL 3908684 (M.D. Ala. Sept. 6, 2017).

Facts: Dothan Security, Inc. (õDSIö) contracted with Tyson Foods, Inc. (õTysonö) to provide security at Tyson plants located in Alabama. Allen Hayes, an employee with DSI, was killed when a tractor, driven by an employee at Tyson, struck him. The

administratix of Hayesøestate filed a wrongful death action (õunderlying tort actionö) against Tyson and two supervisory employees (the õTyson Defendantsö), and Hayesø widow later joined the lawsuit as a plaintiff.

The contract between DSI and Tyson required DSI to indemnify Tyson and maintain insurance. Arch Insurance Company (õArchö) provided a commercial general liability (õCGLö) policy to DSI. Tyson requested a defense and indemnification from Arch, and Arch denied the request, stating that there was no coverage. The Tyson Defendants filed an action against Arch and DSI to recover damages for Archøs failure to defend and provide indemnity in state court (õstate court insurance actionö). The court concluded that Arch owed a duty to defend the Tyson Defendants in the underlying action until a final judgment was entered, but the court did not decide the indemnity or bad faith claims, which remained pending. Arch appealed this judgment. In the meantime, Arch agreed to settle the underlying action for the Tyson Defendants for $1 million, and the underlying tort action was dismissed.

After settling the underlying tort action, Arch filed a separate declaratory judgment, subrogation, indemnity, and unjust enrichment action against DSI, Ace Insurance Company (õAceö) (Tysonøs CGL insurer), and the Tyson Defendants in the United States District Court for the Middle District of Alabama (the õfederal court insurance actionö). The Tyson Defendants filed motions to dismiss and motions to stay. Tyson also filed a motion to realign the parties and dismiss for lack of diversity jurisdiction.

Issue: ***Whether Arch's federal court insurance action should be stayed in favor of the state court insurance action, as the Wilton/Brillhart and Colorado River doctrines require abstention.***

Holding: Yes. Federal courts are permitted to choose whether to entertain a declaratory judgment action. 28 U.S.C. § 2201. Relying on *Brillhart v. Excess Insurance Company*, 316 U.S. 491 (1942) and *Wilton v. Seven Falls Company*, 515 U.S. 277 (1995), the Middle District federal court held that federal courts have the discretion to stay or dismiss a declaratory judgment action when there is a parallel state court action. Arch argued that the two actions are not parallel because Ace is not a party in the underlying state court coverage action. The court disagreed because Ace could be added as a party to the underlying state court coverage action.

Relying on *Ameritas Variable Life Insurance Company v. Roach*, 411 F. 3d 1328 (11th Cir. 2005), the court held that the state has a stronger interest in the issues being litigated, as they arise out of an accident that occurred in Alabama, many of the parties in the underlying action are residents in Alabama or were incorporated in Alabama, the Arch insurance policy was issued and delivered in Alabama, the appeal for the issue of whether Arch has a duty to defend is being appealed in Alabama, and all of the claims are state law claims. Moreover, the Middle District federal court held

that if it reached a final judgment, it still would not settle the controversy and would probably confuse the issues because of the two outstanding issues ó the duty to indemnify and bad faith ó in the underlying state court coverage case. Moreover, the judge in the state court insurance action warned that it wold not allow any party to attempt to circumvent the state courtøs jurisdiction by filing an action in federal court. Moving forward with the federal court action would likely increase friction between federal and state courts since the litigation is õnear-identical.ö

The Middle District federal court also examined *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976) as abstention should occur (1) õin cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law,ö (2) õwhere there have been presented difficult questions of state law bearing on policy problems,ö or (3) where õfederal jurisdiction has been invoked for the purpose of restraining state criminal proceedings.ö These considerations led the federal court to hold that abstention was favorable, as the court is less convenient, and parallel actions can lead toward õpiecemeal litigation.ö Therefore, the Middle District federal court granted Tysonøs motion to stay. It also denied the motions to dismiss and motion to realign parties without prejudice should those issues arise in the future.

Faulty Workmanship and Contractual Liability Exclusions in Property and CGL Policies
Travelers Prop. Cas. Co. of America v. Brookwood, LLC, 2017 WL 3896692 (N.D. Ala. Sept. 6, 2017).

Facts: After repairs began to an insuredøs roof, rain leaked inside the commercial property and caused damage. Following an investigation, the property insurer and commercial general liability (õCGLö) insurer (collectively õthe insurerö) denied coverage for the damage. The property and CGL insurer filed a declaratory judgment action in the United States District Court for the Northern District of Alabama to determine the rights of the parties. The insured filed a counterclaim alleging bad faith. The insurer filed a motion for summary judgment for all claims.

Issue: ***(1) Whether the insurer must provide coverage under the property policy. (2) Whether the CGL policy provides coverage for the damage caused by rain. (3) Whether the insured can maintain a bad-faith claim against the insurer.***

Holding: (1) No. The property policy provides coverage for damage to the property unless the reason for the loss is specifically excluded. The Rain Limitation õexcludes coverage for rain damage to the interior of the covered building or personal property *unless* the building first sustains damage by a covered loss to its roof.ö The court concluded that rain caused the water damage to the interior of the building.

Although the insured argues that wind, temperature change, and thermal shock are

covered causes of loss that may have caused the leak, the court found that none of these reasons could have caused the damage. The court noted that only temperature change could cause thermal shock, and thermal shock is described by the insuredøs expert as õexpansion and contraction of the roof system *due* to extreme temperature changes.ö The policy excludes damage caused by õshrinkingö or õexpansion.ö Therefore, even if temperature change and thermal shock caused the loss, neither one is a covered cause of loss. Although wind damage is a covered cause of loss, the court held that the insured only produced a scintilla of evidence showing that wind damage might have caused the loss. Since a scintilla of evidence is not enough to survive summary judgment, the court granted summary judgment in favor of the insurer on this issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

(2) No. The insured requested coverage for the cost of repairing the damage inside the building, the cost to replace the tenantøs damaged furniture, and the cost of giving the tenant a rent reduction. The CGL policy provides coverage for damages caused by õbodily injuryö or õproperty damage.ö Coverage is excluded for property the insured õown[s] . . ., including any costs or expenses incurred by [the insured], or any other . . . entity, for repair, . . . or maintenance of such property for any reason, including . . . damage to anotherøs property . . .ö Property damage is defined as õ[p]hysical injury to tangible property, including all resulting loss of use of that property.ö The court held that the policy specifically excludes coverage for the reimbursement for repairs to the building and loss of rental income. Also, since the insured was not contractually required to replace damaged furniture, the insurer is not required to do so either.

Citing *Owens Insurance Company v. Alabama Powersport Auction, LLC*, 2015 WL 3439126 (N.D. Ala. May 28, 2015), the court held that any damages the insured owes its tenant due to an indemnity agreement are not covered because of the contractual liability exclusion. However, coverage is not excluded by the contractual liability exclusion if the insured breached its contract with the tenant. Since the policy does not provide coverage for repairs to the insuredøs property, and the rental contract gives the tenant the responsibility to replace damaged furniture, summary judgment is owed to the insurer for this issue as well.

(3) No. In order to maintain a bad-faith claim against an insurer, the insurer must owe coverage under the contract. Since no coverage is owed to the insured, the bad-faith claim cannot be maintained and the insurer is awarded summary judgment.

Assault and Battery, Firearms, and Liquor Liability Exclusions
Chappell v. Colony Ins. Co., 2017 WL 4021124 (M.D. Ala. Aug. 10, 2017) (opinion adopted in *Chappell v. Colony Ins. Co.*, 2017 WL 4019423 (M.D. Ala. Sept. 12, 2017) .

Facts: Club O (the insured) served alcohol to a patron after he was already intoxicated. The

intoxicated patron shot another patron, Kerry Chappell, multiple times. Chappell filed an action to recover damages from the insured and other involved parties in state court. Chappell obtained a $5 million verdict, then filed a declaratory judgment action in state court against Club Oøs general liability insurer, Colony Specialty Insurance Company/Colony Insurance Company, seeking to collect as a judgment creditor. Colony removed the case to the federal court for the Middle District of Alabama and filed a motion for summary judgment based on exclusions in the policy.

Issue: ***Whether the (1) assault and battery, (2) firearms, and (3) liquor liability exclusions exclude coverage under the commercial general liability policy.***

Holding: Yes. The federal court held that, based on these exclusions, Colony did not owe coverage for the $5 million judgment. Colony issued a liability policy that included commercial general liability and liquor liability coverage parts. The policy excluded coverage involving õbodily injuryö arising out of an assault or battery, including the failure to prevent assault or battery and the failure to provide a safe environment. The court held that this exclusion applied, as a patron at Club O shot Chappell, and Chappell alleged that Club O and others were to blame since they did not prevent his injury and made the situation worse by serving the shooter alcohol after he was already intoxicated.

The court held that the firearms and liquor liability exclusions also applied. The policy excluded bodily injury caused by the use of a firearm. Because Chappelløs injuries were caused by a firearm, the court held the firearm exclusion applied. Finally, the liquor liability exclusion applied if the insured violated Alabamaø Dram Shop Act, which prohibits an establishment from selling alcohol to an intoxicated person. (Although the policy included a liquor liability coverage part, õit effectively carves out injuries caused by negligence in serving alcoholic beverages.ö). Because Chappelløs underlying claims against the insured included a violation of Alabamaøs Dram Shop Act, the court held that the liquor liability exclusion applied. Therefore, the federal court granted Colonyøs motion for summary judgment, and found that it did not have coverage for the underlying judgment.

Homeowner's Policy- Cancellation

Davis v. State Farm Fire and Cas. Co., 2017 WL 4038407 (N.D. Ala. Sept. 13, 2017).

Facts: After separating from her husband, the insured moved out of her family home, which was insured by State Farm, to live at her motherøs house most days of the week. Her son then moved into the insured dwelling. The insuredøs husband did not contribute to the familyøs financial obligations, so the insured did not have the funds to pay for her homeownerøs insurance on the house. After several communications between State Farm and the insured, State Farm cancelled the homeownerøs policy. Shortly after the cancellation, a fire damaged the house. State Farm had sent a notice of

cancellation, but it arrived after the fire. After State Farm declined to pay for damage to the house because of the cancellation, the insured filed a breach-of-contract and bad-faith action against State Farm. State Farm moved for summary judgment.

Issue: ***Whether the homeowner's policy was in effect at the time of the fire.***

Holding: No. Alabama law requires the insurer to prove that the policy was cancelled. The policy is cancelled if an insured notifies the insurer in writing. However, a formal written notification is not required if the insurer can show that the homeowner cancelled the policy orally and then the insurer õconfirm[s] the date and time of cancellation to [the insured] in writing.ö The insured disputed that she asked the insurer to cancel the policy; however, her deposition testimony revealed that she called the insurer and cancelled the policy because she did not have enough money to pay the bill. She also did not pay her homeownerøs policy bill that month, but she did pay life and automobile insurance premiums. Moreover, State Farm was able to show that it confirmed the cancellation in writing to the insured.

The court held that the cancellation section of the policy was simple and unambiguous. Because no policy was in effect at the time of the fire, there was no contract that could be breached; therefore, the insured could not maintain a breach-of-contract claim against the insurer. Breach of contract is an element of a bad-faith claim and, because there was no breach of contract, the insurer also prevailed on the bad-faith claim.

Automobile Policy- Failure to Appear for EUO
Harris v. ACCC Ins. Co., 2017 WL 4172954 (M.D. Ala. Sept. 20, 2017).

Facts: The insuredøs car broke down on the side of a road, and a friend picked her up. When she returned several hours later, her car was gone. She filed a police report and made a claim with her automobile insurer. During the course of investigation, the insurer requested an EUO, but the insured did not appear on the scheduled day, and her lawyer did not respond to the insurerøs requests for an EUO. The insurer then denied coverage, and the insured filed a breach-of-contract and bad-faith action against the insurer, the claims service, and agents in state court. The insurer removed the action to the United States District Court for the Middle District of Alabama and the agents filed a motion to dismiss due to fraudulent joinder. After the court granted the motion to dismiss, the insurer and claims service filed a motion for summary judgment.

Issue: ***Whether failing to sit for an EUO, a condition precedent, bars recovery for the insured under the automobile policy.***

Holding: Yes. The policy states that õ[a] person claiming any coverage of this policy must also . . . submit to an examination under oath as often as may be reasonably required.ö

Therefore, when the insurer requests an EUO, sitting for the EUO is a condition precedent to coverage. When a condition precedent to coverage is not met, then a breach-of-contract action cannot be maintained. *See Nationwide Ins. Co. v. Nilsen*, 745 So. 2d 264 (Ala. 1998). Alabama case law supports the enforcement of EUOs as a condition precedent to coverage. *Id.* Moreover, a bad-faith claim cannot be sustained if there is no breach-of-contract, since breach-of-contract is an element of a bad-faith claim. Therefore, the court granted summary judgment for both defendants.

Parallel Action and Duty to Defend and Indemnify
Penn-Star Ins. Co. v. Swords, 2017 WL 4180889 (N.D. Ala. Sept. 21, 2017).

Facts: Eric Swords was an employee of the insured who suffered a severe injury in an accident at work. He then filed a workersø compensation, employerøs liability, negligence, wantonness, and willful conduct action against the insured and an employee of the insured in state court. The insured and employee requested a defense and indemnification from the commercial general liability insurer. The insurer filed a declaratory judgment action in the United States District Court for the Northern District of Alabama and asked the court to declare it had no duty to defend or indemnify the insured or employee. The insured and employee moved to dismiss the action for failure to state a claim upon which relief may be granted. The insurer opposed the motion, but did not object to staying the issue of duty to indemnify.

Issue: ***(1) Whether the federal declaratory judgment action is parallel to the underlying state court action and therefore should be dismissed.***
(2) Whether the insurer's request for declaratory relief on the duty to indemnify should be stayed or dismissed without prejudice, when the insurer conceded that it was not ripe for adjudication.

Holding: (1) No. The court noted that Alabama law supports adjudicating an insurerøs duty to defend before judgment is reached in the underlying lawsuit. The federal and state actions did not involve the same parties, because the insurer was not a party in the underlying action. Also, the issues in the underlying action were not the same as the federal action, since the state action involved claims to recover damages for Swordøs injury from the insured and the insuredøs employee, while the federal action involved insurance coverage issues. Because the outcome of the underlying tort action did not affect a decision in the federal declaratory judgment action regarding the duty to defend, the court held that the two actions were not parallel actions.

(2) Yes. In this case, the insurer agreed that the duty to indemnify was not ripe at the present time. Therefore, the insurer asked the court to stay the action instead of dismissing the claim. A duty to indemnify is determined by the õfacts adduced at the trial of the [underlying] action.ö *Hartford Cas. Ins. Co. v. Merchants & Farmers*

Bank, 928 So. 2d 1006 (Ala. 2005). Because the trial in the underlying action had not happened, the court held that the duty to indemnify was not ripe, and the court lacked subject matter jurisdiction at this time. The court then found that, because it lacked subject matter jurisdiction, it lacked the power to stay the action. *See Univ. Of S. Alabama v. Am. Tobacco Co.*, 168 F. 3d 405 (11th Cir. 1999). Therefore, the court dismissed the duty to indemnify issue without prejudice.

Water Exclusion
Smith Lake Marina & Resort LLC v. Auto-Owners Ins. Co., 2017 WL 4167448 (N.D. Ala. Sept. 20, 2017).

Facts: Following a large storm that damaged the insuredøs property, the insured made a claim to recover damages from its insurer. The insurer investigated the claim and, relying on reports of two independent engineers, denied the claim based on the water damage exclusion. The insured then filed a breach-of-contract and bad-faith action in state court, and the insurer removed the action to the United States District Court for the Northern District of Alabama. The insurer subsequently filed a motion for summary judgment.

Issue: ***(1) Whether the insurer's reliance on the engineers defeated the insured's bad-faith claim.***
(2) Whether the insurer is entitled to summary judgment on the insured's breach-of-contract claim.

Holding: (1) Yes. In order to prevail on a õnormalö bad-faith claim, the insured must show that the insurer denied coverage in the absence of any reasonably legitimate or arguable reason. Here, the insurer relied on two reports from independent engineers to determine there was no coverage; therefore, the court found that the insurer made the decision with a reasonably legitimate or arguable reason. Moreover, there is no evidence that an õabnormalö bad-faith claim can survive summary judgment. This is because it requires a failure to investigate, and the insurer conducted an investigation that included two independent engineers. Therefore, the court granted summary judgment to the insured on the bad-faith claim.

(2) No. The insurer argued that the court should grant summary judgment on the breach-of-contract claim because the insuredøs evidence that the damage was caused by wind and not water is inadmissable. However, the court disagreed, and found that the evidence was admissible. Because the court held that a material question of fact existed, it was for a jury, not the court, to determine causation. Accordingly, the court denied the insurerøs motion for summary judgment on breach of contract.

Insurance Policy as Evidence in Motion to Dismiss
Maiden v. Star Indemn. and Liability Co., 2017 WL 4265496 (N.D. Ala. Sept. 26, 2017).

Facts: After a fire damaged Teresa Maidenøs apartment, Maiden obtained a default judgment in state court against her landlord, BOG, Inc. She then filed a claim to recover damages from BOGøs insurer, Cook Claim Services, Inc. Cook Claim Services informed her that Starr Indemnity and Liability Company (õStarrö) õacquiredö the claim from Cook Claim Services and was the insurer. When Starr declined to pay for her damages, Maiden filed a declaratory judgment action to obtain coverage from Starr. Starr disputed that it was BOGøs insurer and moved to dismiss and alternatively moved for summary judgment. To support its motion, Starr attached a copy of õthe relevant insurance policyö issued to Ruffner Mountain Management, LLC. The court initially denied the motion for summary judgment without prejudice, considered it a motion to dismiss, and ordered briefing.

Issue: ***Whether the declaratory judgment action should be dismissed, as the relevant policy was not issued to the defendant landlord in the underlying action.***

Holding: No. Starr argued that the policy providing coverage to the apartment was issued to a previous landlord, Ruffner, and was not issued to BOG. However, the complaint does not mention Ruffner, it only mentions BOGøs policies with Cook Claim Services and Starr Indemnity. The court held that on a motion to dismiss, the Ruffner policy could not be considered evidence that Starr did not insure BOG. Because the complaint stated a claim upon which relief could be granted, it survived the motion to dismiss. The court also noted that the motion for summary judgment was premature and dismissed it without prejudice.

Amount in Controversy - Multiple Defendants
Betts v. Progressive Specialty Ins. Co., 2017 WL 4678471 (S.D. Ala. Oct. 17, 2017).

Facts: An uninsured motorist struck Gregory Betts while Betts was driving his employerøs tanker in Texas. Betts filed a lawsuit in state court against three uninsured (õUMö) insurers to recover damages, and the insurers removed the case to federal court. The federal court action was subsequently dismissed without prejudice, but the plaintiff re-filed the case in the United States District Court for the Southern District of Alabama, alleging diversity jurisdiction. After one of the insurers filed a motion for summary judgment, the federal court questioned whether it had subject matter jurisdiction, and asked Betts to prove whether the $75,000 amount-in-controversy requirement in diversity actions was satisfied. Betts conceded that claims against two of the insurers did not meet the amount in controversy, but argued that, because the total amount claimed totaled $75,000, the court should have jurisdiction.

Issue: ***1) Whether a plaintiff's claims against each separate defendant must meet the amount-in-controversy requirement for subject matter jurisdiction in***

diversity cases.

2) Whether the court may exercise supplemental jurisdiction over the two insurers whose claims do not meet the amount in controversy requirement.

Holding: 1) Yes. Two of the three insurers only had coverage limits of $25,000 per person and $50,000 per accident. Although a plaintiff may combine two unrelated claims that are individually less than $75,000, this is typically limited to cases in which a plaintiff alleges numerous claims against one defendant or when a plaintiff sues multiple defendants for joint liability. *See Jones v. Bradford*, 2017 WL 2376573 (S.D. Ala. June 1, 2017); *De La Rosa v. Reliable, Inc.*, 113 F. Supp. 3d 1135 (N.D.M. 2015). In the present case, neither of those situations applied. In this case, the plaintiff sued three separate defendants for their own (not joint) contractual liability, and the amount in controversy regarding each was less than $75,000. The court held that the three defendants could not be jointly liable because each of their liability depended on their own individual policy.

2) No. Supplemental jurisdiction allows courts to assert jurisdiction over similar claims even if original jurisdiction is lacking. The insurer that filed the motion for summary judgment conceded that it and the other insurer with $25,000 in limits were required to be parties to the case under either Federal Rule of Civil Procedure 19(a)(1) or Federal Rule of Civil Procedure 20(a)(2). Federal law prohibits supplemental jurisdiction in diversity lawsuits that involve Federal Rule of Civil Procedure 19 or 20. *See* 28 U.S.C. § 1367(b). The court held that, even though allowing supplemental jurisdiction would be in the interests of judicial economy, it would violate 28 U.S.C. § 1367(b). Therefore, the court held that it did not have jurisdiction over the two insurers, and dismissed those two insurers as defendants. The case remained pending between the plaintiff and the third insurer, which had limits above the $75,000 threshold.

Diversity Jurisdiction

Armbrester v. Lloyds London Ins. Underwriters, 2017 WL 4611702 (N.D. Ala. Oct. 16, 2017).

Facts: After his home was destroyed by a fire, the insured submitted a claim to his insurer, Lloyds London Insurance Underwriters (õLloydsö). When Lloyds did not pay the claim, the insured filed a lawsuit in the United States District Court for the Northern District of Alabama to recover damages from Lloyds and his insurance agency. Lloyds and the agency moved to dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(1), arguing that the federal court lacked subject matter jurisdiction because the parties were not diverse.

Issue: ***Whether the fact that the plaintiff and one member of an insurance syndicate are citizens of the same state destroys diversity jurisdiction in federal court.***

Holding: Yes. Although the insured was incarcerated at the time the action was filed, the location of his incarceration does not dictate citizenship. Instead, the court must rely on his residence before he was incarcerated. The insured was a resident of Alabama before his incarceration. His insurer is an insurance syndicate. Insurance syndicates are citizens in any state in which a member has his or her name. *Underwriters at Lloyds's London v. Osting-Schwinn*, 613 F. 3d 1079 (11th Cir. 2010). One member of Lloyds was a citizen of Alabama when the lawsuit was filed. Therefore, the parties lacked diversity, and the court did not have jurisdiction under 28 U.S.C.§ 1332. The federal court dismissed the action for lack of subject-matter jurisdiction.

Commercial Property Policy- Wind Damage
Walker v. Auto-Owners Ins. Co., 2017 WL 4810699 (N.D. Ala. Oct. 25, 2017).

Facts: The insured was in the process of obtaining estimates to repair the roof of a commercial building that was leaking in two places when a storm occurred. The insured alleged that the storm caused significant damage to the roof and the interior of the building. The insured filed a claim with his commercial property insurer for damages. After the insurance adjuster inspected the property, the insurer hired a structural engineer to determine the cause of damage to the roof. The structural engineer concluded that the condition of the roof was due to wear and tear, but an aluminum awning was damaged by wind. Because repairs to the awning would amount to less than the deductible, the insurer denied the claim. The insured then filed a breach-of-contract and bad-faith action in state court, and the insurer removed the action to the United States District Court for the Northern District of Alabama. The insurer then moved for partial summary judgment with regard to the bad-faith claim.

Issue: ***Whether summary judgment should be granted in favor of the insurer on the bad-faith claim based on evidence that it engaged a structural engineer as part of its investigation.***

Holding: Yes. The policy excludes coverage for damage caused or resulting from wear and tear, deterioration, settling, cracking, or any interior damage caused or resulting from damage not covered under the policy. A plaintiff can only maintain a bad-faith claim if the insurer denied the claim without a õreasonably legitimate or arguable reason.ö *State Farm Fire and Cas. Co. v. Brechbill*, 144 So. 3d 248, 258 (Ala. 2013). õ[M]ore than bad judgment or negligence is required in a bad-faith action.ö *Id.* at 258. The insurer had, at a minimum, an arguable reason to deny the insuredøs claim, because it had a structural engineer investigated the loss and the engineer concluded that wind did not cause the roof damage. The district court granted partial summary judgment in favor of the insurer.

CGL Policy - Mobile Equipment and Personal Property Exceptions
Alabama Municipal Ins. Corp. v. Scottsdale Ins. Co., 2017 WL 5171854 (N.D. Ala. Nov. 8, 2017).

Facts: A city entered into a contract with a contractor to demolish a smokestack. The city loaned the contractor a tractor to perform the work. While the contractor was using the tractor to demolish the smokestack, the smokestack fell, damaging the tractor. The cityøs insurer, Alabama Mutual Insurance Corporation (õAMICö), paid to repair the damage to the tractor and then sued the contractorøs liability carrier, Scottsdale Insurance Company (õScottsdaleö) to recover amounts paid. Scottsdale argued on summary judgment that it did not owe coverage cause of the mobile equipment and personal property exclusions to its CGL policy.

Issue: ***1) Whether the Mobile Equipment Exclusion excluded coverage for the damaged tractor.***
2) Whether the Personal Property Exclusion excluded coverage for the damaged tractor.

Holding: 1) No. Although the tractor met the definition of õmobile equipment,ö the policy on excluded coverage for õ÷property damageø arising out of: . . . (2) The use of ÷mobile equipmentø in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.ö Scottsdale argued that the word õdemolitionö in the exclusion applied to the tearing down or destroying activity at issue in the case. However, AMIC argued that, in the context of the exclusion, õdemolitionö meant õracing, speed and stunting activityö with cars. The district court agreed with AMIC, noting that Alabama follows the õ*noscitur a soccis*ö principal, which requires an interpretation of the words surrounding the subject word to properly interpret the meaning of the word. Applying this rule, the court found that the word õdemolitionö in this context meant racing activity; therefore, the exclusion did not apply to the tractor in the present case.

2) Yes. The Personal Property Exclusion excludes property damage to property loaned to the insured and/or personal property in the õcare, custody or control of the insured.ö õPropertyö and õpersonal propertyö are not defined in the policy. Scottsdale argued that the exclusion could not apply because the tractor cannot be õmobile equipmentö and õpropertyö or õpersonal propertyö at the same time. However, AMIC did not provide any case law supporting this opinion, and the court held that the exclusion was unambiguous. Applying the language to the facts of the case, the court held that, because the tractor was õpropertyö and/or õpersonal propertyö the city loaned to the contractor and was in the contractorøs õcare, custody and controlö at the time of the loss, the exclusion applied. The court granted summary judgment to Scottsdale, finding no coverage.

Motion to Dismiss Insurer's Declaratory Judgment Action - "Occurrence" under a CGL Policy
Acadia Ins. Co. v. Southernpointe Group, Inc., 2017 WL 5890350 (N.D. Ala. Nov. 29, 2017).

Facts: The insured contracted with an individual and Encore Tuscaloosa, LLC (collectively

õEncoreö) to develop a restaurant chain in Jefferson County, Alabama. After the relationship soured, Encore filed an action in state court against the insured alleging numerous claims, including breach-of-contract, fraud, breach of fiduciary duty, and negligence. When the insured asked its CGL insurer to provide a defense and indemnification, the insurer agreed to defend under a reservation of rights and filed a declaratory judgment action in the United States District Court for the Northern District of Alabama. The insured moved to dismiss the action, and the insurer opposed the motion.

Issue: ***Whether the insured's motion to dismiss should be granted, as the allegations in the underlying complaint constitute an occurrence under the policy.***

Holding: No. The policy describes an õoccurrenceö as an õaccidentö and does not define an õaccident.ö The insured argued that the insuredøs subjective intent is the only factor that should be considered when determining whether the issue at hand was an õaccident.ö Because the insured did not expect its relationship with Encore to fall apart, and the complaint does not make any allegations with regard to the insuredøs intent, the business dispute is an õoccurrence.ö Alabama law describes an õaccidentö as õ[a]n unintended and unforseen injurious consequence; something that does not occur in the usual course of events or that could be reasonably anticipated.ö Because most of the claims in the underlying complaint require purposeful intent, the court disagreed with the insured. Notably, the insurer argued that õproperty damage,ö which is required for coverage under the policy, does not exist, and is another valid reason to deny coverage. The insured did not provide a response to this argument. For these reasons, the court denied the insuredøs motion to dismiss.

Diversity Jurisdiction- Amount in Controversy and Ripeness
Thomas v. Aigen, 2017 WL 6034197 (N.D. Ala. Dec. 6, 2017).

Facts: The plaintiffs filed a personal injury action in the United States District Court for the Northern District of Alabama. They later filed a motion for leave to amend the complaint to add additional defendants, including an insurance company. The proposed amended complaint includes a declaratory judgment action requesting insurance coverage and punitive damages.

Issue: ***Whether the Court had jurisdiction over the declaratory judgment count in the proposed amended complaint such that the motion should be granted.***

Holding: No. The Court identified two specific issues indicating that the declaratory judgment part of the amended complaint was not ripe. First, the Court noted that plaintiff had failed to expressly allege that the insurer had taken a coverage position that was adverse to the plaintifføs position regarding coverage for the punitive damages. The Court stated that no actual controversy had been alleged and that a ruling on the

declaratory judgment count under those circumstances would amount to the issuance of an advisory opinion on coverage, which it could not do. Second, the Court noted that the question of indemnity was not ripe even if it could be argued that there was an actual dispute over coverage because the liability of the insured had not been determined. The Court noted its own prior holding in *Penn-Star Ins. Co. v. Swords,* 2017 WL 4180889 (N.D. Ala. Sept. 21, 2017) where it determined that it could not retain jurisdiction over an unripe indemnity claim which claim as its basis for its denial of the motion for leave without prejudice.