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Survey of Key Management
Liability and Professional
Liability Insurance Coverage
Decisions

February 4, 2026

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Questions

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Meet Your Presenters

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Bailey Cavalieri LLC

Marisa DeMartini, Senior Vice President, Head of AscotEXEC Claims

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Bowhead Specialty Underwriters, Inc.

Agenda

- **Definition of Loss**
- **What Constitutes a Claim?**
- **Bump Up Redux**
- **Questions of Relatedness**
- **Breach of Contract Exclusion**
- **Section 533**
- **What Constitutes Best Efforts?**
- **By or on behalf of?**
- **What Constitutes a Penalty?**

Definition of Loss – Uninsurable

Scottsdale Ins. Co. v. McGrath, No. 19-cv-7477 (LJL), 2025 LX 334105
(S.D.N.Y. Sep. 2, 2025)

Definition of Loss – Uninsurable

Tandem Fund II, L.P. v. Scottsdale Ins. Co., No. 23-16187, 2025 LX 314337 (9th Cir. Aug. 4, 2025)

Definition of Claim

Scott v. Certain Underwriters at Lloyd's, No. 24-12441, 2025 LX 352032
(11th Cir. Aug. 25, 2025)

Definition of Claim

Cigna Grp. v. XL Specialty Ins. Co., No. N23C-03-009 SKR CCLD, 2025 LX 437182 (Super. Ct. Dec. 8, 2025)

Definition of Claim

Medmarc Cas. Ins. Co. v. Fellows Labriola LLP, No. 25-10837, 2025 LX 475606 (11th Cir. Oct. 10, 2025)

Definition of Claim

Joy Constr. Corp. v. Starstone Specialty Ins. Co., No. 24-cv-5078 (PKC),
2025 LX 131370 (S.D.N.Y. June 13, 2025)

Definition of Securities Claim

Clear Channel Outdoor Holdings, Inc. v. Ill. Nat'l Ins. Co., No. N24C-02-208 PAW CCLD, 2025 LX 221263 (Super. Ct. June 30, 2025)

Bump Up – Redux

Harman Int'l Indus. v. Ill. Nat'l Ins. Co., 2025 Del. Super. LEXIS 3

- The central legal issue concerned whether the "bump-up" exclusion in Harman's Directors and Officers (D&O) insurance policies barred coverage for a \$28 million settlement of a securities class action (the Baum Action).

Bump Up – Redux

The bump up exclusion provides:

In the event of a Claim alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, Loss with respect to such Claim shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to Defense Costs or to any Non-Indemnifiable Loss in connection therewith.

Bump Up – Redux

Towers Watson & Co. v. Nat'l Union Fire Ins. Co., 138 F.4th 786 (4th Cir. 2025)

The central legal issue concerned whether the "bump-up" exclusion in Towers Watson's directors and officers (D&O) liability insurance policy barred coverage for settlements paid to former shareholders following a merger. The exclusion precludes coverage for any settlement or judgment that "represents the amount by which [the] price or consideration is effectively increased" in connection with claims alleging inadequate consideration paid for an acquisition.

Questions of Relatedness

Nat'l Amusements, Inc. v. Endurance Am. Specialty Ins. Co., No. N22C-06-018-SKR CCLD, 2025 LX 60886 (Super. Ct. Feb. 17, 2025)

- The central legal issue concerned whether a 2019 lawsuit ("2019 Suit") and several 2016 lawsuits ("2016 Suits") were "interrelated claims" under the terms of 2019 directors and officers (D&O) insurance policies.

Questions of Relatedness

In re Alexion Pharm., Inc. Ins. Appeals, 339 A.3d 694 (Del. 2025)

Meaningful linkage standard applied to SEC investigation and securities class action

Questions of Relatedness

Navigators Specialty Ins. Co. v. Avertest, LLC, No. 1:24-cv-932
(LMB/WBP), 2025 LX 273201 (E.D. Va. July 18, 2025)

Scope of Breach of Contract Exclusion

Pangea Equity Partners, LP v. Great Am. Ins. Grp., No. N23C-12-060
MAA CCLD, 2025 LX 79213 (Super. Ct. Mar. 12, 2025)

Scope of Breach of Contract Exclusion

AIG Specialty Ins. Co. v. Agee, No. 24-30245, 2025 LX 254699 (5th Cir. Feb. 28, 2025)

Scope of Breach of Contract Exclusion

Zaftr Inc. v. Kirk, 2025 WL 3025675 (E.D. Pa. Oct. 29, 2025).

Section 533

United Talent Agency, Ltd. Liab. Co. v. Markel Am. Ins. Co., Nos. 23-3168, 23-3359, 2025 LX 285152 (9th Cir. Mar. 20, 2025)

Section 533

San Bernardino Cnty. v. Everest Nat'l Ins. Co., 2025 Cal. Super. LEXIS 66402; 2025 LX 580095

What Constitutes “Best Efforts?”

Flextronics Int'l, Ltd. v. Allianz Glob. Corp., 2025 LX 562315 (S.D.N.Y. Nov. 13, 2025)

The United States District Court for the Southern District of New York, applying New York law, upheld an arbitration award allocating 100% of amounts incurred jointly by insured individuals and non-insured entities to covered loss and confirmed that the arbitration panel (1) properly determined that the insured satisfied the policy’s requirement that it use “best efforts” to negotiate an allocation with the insurer, and (2) properly applied New York’s “relative exposure” rule rather than the “larger settlement” rule.

What Constitutes “By or on behalf of?”

Twin City Fire Ins. Co. v. RK Family, Inc., No. 2:24-cv-2275-ALM, 2025 LX 480153 (S.D. Ohio Sep. 29, 2025)

What Constitutes a Penalty?

Yaquinto v. CNA Ins. Co., Civil Action No. 3:24-CV-2728-X, 2025 LX 540208 (N.D. Tex. Nov. 18, 2025)

The Policy's definition of Loss includes: "damages, settlements, judgments (including any award of pre-judgment and post-judgment interest on a covered judgment) and Defense Costs for which the Insured is legally obligated to pay on account of a covered Claim[.]"

Policy expressly did not include "civil or criminal fines, penalties, taxes, sanctions, or forfeitures imposed on an Insured whether pursuant to law, statute, regulation, or court rule, other than those civil fines or penalties imposed under 42 USC 1320d-5(a) of the Health Insurance Portability and Accountability Act of 1996[.]"

No coverage for usury lawsuit

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Thank you!