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FIRST COME, FIRST SERVED: SUBROGATING MULTIPLE CLAIMS IN EXCESS OF POLICY LIMITS IN ALL 50 STATES

Insurance subrogation professionals are routinely faced with minimum limits scenarios which complicate otherwise straightforward subrogation cases. When a third-party liability carrier's insurance limits are insufficient to pay the claims of multiple claimants, the carrier must begin to assess the hierarchy of the claimants – how to slice the insured's pie. In order to do this, the carrier must be familiar with the specific laws and procedures in their jurisdiction regarding multiple claims in light of insufficient liability limits.

Where liability is clear and there are multiple claimants making a claim for the limited pool of liability limits, courts have chosen to deal with the dilemma differently. There are several approaches to solving the dilemma. Below are the most common approaches followed by the states to handle multiple claims in excess of policy limits. No matter how you slice it, each state has its own way of distributing the pie.

First Come, First Served

The practical result in many jurisdictions is that a liability insurer may settle with fewer than all claimants, even if doing so exhausts or substantially diminishes the policy limits available to others. However, this should not be described as an unqualified or mechanical 'first come, first served' rule. In most jurisdictions, the insurer's ability to prefer one claimant over another is constrained by the insurer's duty to act reasonably and in good faith toward its insured, to evaluate the competing claims, to consider the insured's exposure to excess judgments, and, where appropriate, to seek a global settlement or interpleader. Some states, such as Texas, Connecticut, Georgia, North Carolina, and Maryland, permit reasonable selective settlements. Other states, such as Florida and Indiana, impose more developed claim-management duties or provide statutory or common-law safe-harbor procedures.

First to Judgment

A number of states follow the first to judgment approach. This approach allows a liability carrier faced with multiple claims to distribute the proceeds of its insurance to judgment creditors in the order in which they obtain their judgments. Much like the first come, first served approach, this approach can leave those who are late to get a judgment without access to the policy limits. Serious injury cases take longer to settle and tend to leave those more seriously injured without recourse. Oklahoma has chosen to follow the first to judgment approach.

Pro-Rata

In a smaller group of jurisdictions, pro-rata allocation may be required when policy limits have been deposited with the court, liability and damages have been adjudicated, or a statute or court-controlled procedure requires proportional distribution. This category must be distinguished from pre-verdict claim handling. A state may require pro-rata distribution after verdict or in interpleader, while still allowing an insurer to settle with fewer than all claimants before verdict. Wisconsin is the clearest example of this

distinction. *Wondrowitz v. Swenson*, 132 Wis.2d 251, 392 N.W.2d 449 (Wis. App. 1986); *Lovelien v. Austin Mut. Ins. Co.*, 2018 WI App 4, 379 Wis.2d 733, 906 N.W.2d 728.

Good Faith

Many courts have held that an insurer must act in good faith, reasonably, and/or non-negligently in entering into settlements that deplete or exhaust the policy limits. This approach means that insurers must approach each of the multiple claimants individually and must avoid giving more weight to its own interests than to the interests of its insured. Every contract contains an implied duty of good faith and fair dealing, so even in states that don't specifically follow the good faith model, insurers must be sure to uphold these duties, as violating them could give rise to a claim for bad faith. Some states analyze the issue primarily through the insurer's duty of good faith toward its insured. Florida historically did so under *Farinas v. Florida Farm Bureau General Ins. Co.*, 850 So.2d 555 (Fla. App. 2003), but Florida now also has a statutory safe harbor for competing third-party claims under Fla. Stat. § 624.155(6). Arkansas has recognized the general duty to act in good faith and without negligence, but does not appear to have a specific multiple-claimant priority rule. Arkansas and Florida have taken this subjective approach. When determining if a carrier has acted in bad faith, courts in Florida have stated the carrier must (1) fully investigate all the claims to determine how to best limit the insured's liability; (2) seek to settle as many claims as possible with the policy limits; (3) make reasonable settlements; and (4) avoid indiscriminately settling select claims and leaving the insured at risk of excess judgments. *Farinas v. Florida Farm Bureau General Ins. Co.*, 850, So.2d 555 (Fla. App. 2003). If, through either negligence or bad faith, the liability carrier fails to settle a claim against the insured within the limits of the policy, when it could have done so, it is liable to the insured for any judgment recovered against him or her in excess of the policy limits.

Interpleader

Many states allow, and some even require, a liability carrier to file an interpleader action. Interpleader is an action between multiple claimants to determine a claim or right to the policy limits. The policy limits are deposited with the court and the claimants are joined as defendants. The funds are then distributed under the authority of the court. Since filing an interpleader action is equivalent to the plaintiff admitting it is willing to pay the legitimate claimants, it is the safest way for the liability carrier to resolve multiple claims without exposing itself to bad faith claims.

When negotiating over a shrinking pie where not everyone involved can get a slice, a liability carrier's good faith is likely to be called into question by those who did not receive a piece of the pie. So, what can a liability carrier do to make sure it is not subjected to a bad faith claim and required to pay above and beyond the policy limits? First, the liability carrier should review the policy language governing the limits and its duty to defend and right to settle. It is imperative that the carrier know what it is contractually bound to. The carrier then needs to identify what approach its jurisdiction follows when there are multiple claims in excess of the liability limits. This will be important as what may be required in one jurisdiction is frowned upon or forbidden in another jurisdiction. Next, the carrier should identify all claimants and potential claimants. It is essential that the carrier fully investigate the claims so it can make an informed decision during settlement negotiations. Once the carrier realizes the policy limits may be exceeded it should promptly notify the insured and the claimants in writing that the value of the claims may exceed the policy limits. However, the carrier should still attempt to settle the claims within the policy limits. Throughout the process the carrier must make sure it continues to keep its insured informed, in writing, of the claims negotiations and settlement process. The carrier should also make sure it promptly responds, in writing, to all communications from the claimants and keeps them advised of competing demands for policy limits. It is important that a liability carrier facing multiple claims in

excess of policy limits follow these steps to avoid facing a bad faith claim and paying out beyond the insured's pie.

The below chart will outline the laws for each state in regards to how each state handles multiple claims in excess of policy limits.

ALABAMA: Insurance carriers often face the difficult situation of resolving claims among several claimants despite minimum or limited liability policy limits. Alabama courts have held that when multiple insurance claims exceed the maximum coverage provided by the policy, each claimant's right to his pro-rata share of the proceeds is limited by the maximum "per person" coverage provided by the policy.[1] In *Sheehan*, the court held that the chancellor erred in equally dividing interpleaded funds among claimants of uninsured motorist proceeds who sustained unequal losses. It said that the equal division was improper because of the differences in actual damages suffered by the claimants.[2] Where the claimants' claims are equal, but the net amounts to be recovered by the respective parties are different because of offsets – such as under the UM provisions of their own policies – certain parties are not legally or equitably entitled to recover from the proceeds of the policies under and the holding in *Sheehan* would not be appropriate.[3]

In such multiple claimant situations, Alabama recognizes that interpleader is the safest procedure.[4] It prevents claimants from arguing that the insurer was unwilling to pay the full amount of its coverage. Because filing an interpleader action is equivalent to the plaintiff's admitting that it is willing to pay the legitimate claimant, an interpleading stakeholder cannot logically be subjected to a claim alleging bad faith refusal to pay.[5]

Under the Alabama Rules of Civil Procedure, any party seeking interpleader may deposit with the court the claimed amount and the court then decides who gets what.[6] Furthermore, the insurer can be released upon payment of the limits into the court.[7] However, payment of liability insurance limits might not release the separate duty to defend the insured. The duty to defend extends beyond the exhaustion of the policy limit.[8] If the carrier pays its limits to one claimant, knowing that there are several claimants with legitimate claims, it risks bad faith and/or could be required to pay out claims in excess of its stated policy limits.[9]

ALASKA: There does not appear to be any case law dealing with the responsibility of a liability carrier when faced with multiple claimants and limited policy limits. However, Alaska's Administrative Code provides:

> *(b) A person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a third-party claim may not make any statement that indicates that the rights of a third-party claimant may be impaired if a form, compromise, release, or similar document is not completed within a given period of time, unless the statement is given for the purpose of notifying the third-party claimant of an applicable statute of limitation.*

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[1] *Sheehan v. Liberty Mut. Fire Ins. Co*., 258 So.2d 719 (Ala. 1972).
[2] *Id.*
[3] *Putman v. Womack,* 607 So.2d 166 (Ala. 1992).
[4] *Monumental Life Ins. Co. v. Lyons-Neder,* 140 F. Supp.2d 1265 (N.D. Ala. 2001).
[5] *Id.*
[6] Ala. R. Civ. P. 22(b).
[7] *Ex Parte Lewis,* 571 So.2d 1069 (Ala. 1990).
[8] *Lambert v. State Farm Mut. Auto. Ins. Co.,* 576 So.2d 160 (Ala. 1991).
[9] *National Mutual Ins. Co. v. Hall,* 643 So.2d 551 (Ala. 1994).

(c) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim may not continue negotiations for settlement of the claim directly with any claimant who is neither an attorney nor represented by an attorney to a time when the claimant's rights might be affected by a statute of limitation, coverage provision, or other time limit, unless written notice is given to the claimant clearly stating the time limit that might be expiring and its effect upon the claim; such a written notice shall be given at least 60 calendar days before the date on which the time limit might expire.[10]

ARIZONA: Arizona has not expressly recognized a duty on the part of an insurer to manage policy limits when there are multiple plaintiffs. To the extent there is such a duty, however, an insurer satisfies its duty when it promptly and in good faith interpleads its policy limits into the court, naming all known claimants in the action, and continues to provide a defense to its insured.[11] The *McReynolds* case stated:

We think the favored approach to managing multiple claims in excess of the policy limits must include some provision for certainty to insureds, insurers, and litigants short of submitting each case to a jury. In that regard, as a matter of Arizona law, we hold that (1) the prompt, good faith filing of an interpleader as to all known claimants with (2) payment of the policy proceeds into the court and (3) the continued provision of a defense for the insured as to each pending claim, acts as a safe harbor for an insurer against a bad faith claim for failure to properly manage the policy limits (or give equal consideration to settlement offers) when multiple claimants are involved and the expected claims are in excess of the applicable policy limits.[12]

This rule is known as the "Interpleader safe harbor rule."

ARKANSAS: Under Arkansas law, a liability insurer owes its insured a duty to act in good faith and without negligence.[13] If, through either negligence or bad faith, it fails to settle a claim against the insured within limits of policy when it is possible to do so, it is liable to assured for any judgment recovered against him in excess of policy limits.[14] There does not appear to be any law specifically dealing with a rule of priority or an explanation of the duty of a liability insurer with minimum limits faced with multiple claimants.

CALIFORNIA: California does not make it an easy decision for or provide bright-line rules for liability carriers faced with the quandary of settling one of several liability claims. California appears to give liability insurers wide discretion when settling multiple claims. If a carrier settles in good faith with one of several claimants, it reduces the limit of its liability to the remaining claimants, who may not complain that the insurer favored the settling claimant over them.[15] In *Strauss v. Farmers Ins. Exchange,* the plaintiff sued the defendants' insurer alleging bad faith refusal to accept settlement offer exhausting policy limits in exchange for release of one of three insureds. The court held that: (1) insurer's acceptance of offer that would leave two of its insureds bereft of coverage would have breached insurer's implied covenant of good faith and fair dealing, and thus, insurer could not be held in bad faith

[10] Alaska Admin. Code tit. 3, § 26.070.
[11] *McReynolds v. American Com. Ins. Co*., *235 P.3d 278, 280 (Ariz. App. 2010).*
[12] *Id*.
[13] *Id.*
[14] *Id*.
[15] *Aetna Casualty and Sur. Co. v. Superior Court, Los Angeles County*, *114 Cal.App.3d 49 (Cal. App. 1980) (principle applied to single claimant with multiple claims); Contra, Strauss v. Farmers Ins. Exchange*, 26 Cal.App.4th 1017 (Cal. App. 1994) (insurer's acceptance of a settlement on behalf of one of three insureds would have breached the insurer's duty of good faith).

for refusing to accept offer, and (2) supplementary payments clause of policy unambiguously excluded payment of prejudgment interest.[16]

The California Law Handbook summarizes the situation quite well. In § 11:203 it states:

> ***§ 11:203. Insurer's duty to settle when there are multiple claimants and insufficient policy limits.***
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> *When the insured's policy limits are insufficient to pay all claims of multiple injured parties in full, the insurer must endeavor to settle in a way that avoids exposing the insured to any personal liability. Whether the insurer's exhaustion of policy limits by settling with one claimant constitutes bad faith is a question for the jury. Kinder v. Western Pioneer Ins. Co., 231 Cal.App.2d 894, 902, 42 Cal. Rptr. 394, 399 (1st Dist. 1965). However, where the insurer, in reality, faces only one valid claim, filing an interpleader action will not absolve an insurer of bad faith liability for failure to settle. Kelly v. Farmers Ins. Exchange, 194 Cal.App.3d 1, 239 Cal. Rptr. 259 (1st Dist. 1987). When a liability insurer is faced with the problem of too many claims, and too little money, the insurer should use leverage to purchase greatest release of liability for the insured. However, in the context of a third party claim against the insured, the interpleader solution may expose the insurer to liability. Use of interpleader is arguably a dereliction of the insurer's duty to insured because the interpleader does not extinguish insured's liability, only the insurer's.*[17]

Notwithstanding this, some authorities tell us that an insurer should not simply pay out policy proceeds to any claimant who happens to be the first to press a claim. Rather, an insurer should first investigate fully and consult its insured as soon as possible.[18] With this statement as a foundation, the issue of good faith actually becomes important in an "excess liability" case. It is important to take the steps necessary to establish good faith.

A liability insurer may satisfy its statutory duty to make a good faith attempt to settle all claims against its insured other than by settling all third-party claims. It is entitled, in good faith, to decline to pay what it considers to be an excessive settlement on claim of questionable validity.[19] California law provides for a specific procedure for a defendant to interplead its policy limits in the facet of multiple claims against it. Section 386 of the California Code of Civil Procedure provides as follows:

> ***(b) Entity or person subject to multiple claims which give rise to multiple liability; action against claimants to compel interpleader and litigation of claims.*** *Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.*
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> *When the person, firm, corporation, association or other entity against whom such claims are made, or may be made, is a defendant in an action brought upon one or more of such claims, it may either file a verified cross-complaint in interpleader, admitting that it has no interest in the money or property claimed, or in only a portion thereof, and alleging that all or such portion is demanded by parties to such action, and apply to the court upon notice to such parties for an order to deliver such money or property or such portion thereof to such person as the court shall direct; or may bring a separate action against the claimants to compel them to interplead and litigate*

[16] *Strauss,* supra.

[17] § 11:203. *Insurer's duty to settle when there are multiple claimants and insufficient policy limits*, California Insurance Law Handbook § 11:203.

[18] Arnold P. Anderson, *Establishing Good Faith Settlements in Multiple Claims Cases*, FIC Insurance Quarterly Summer 1979, 381, 394-395.

[19] *Moradi-Shalal v. Fireman's Fund Ins. Cos.*, 758 P.2d 58 (Cal. 1988).

their several claims. The action of interpleader may be maintained although the claims have not a common origin, are not identical but are adverse to and independent of one another, or the claims are unliquidated and no liability on the part of the party bringing the action or filing the cross-complaint has arisen. The applicant or interpleading party may deny liability in whole or in part to any or all of the claimants. The applicant or interpleading party may join as a defendant in such action any other party against whom claims are made by one or more of the claimants or such other party may interplead by cross-complaint; provided, however, that such claims arise out of the same transaction or occurrence.[20]

Interpleader is an equitable proceeding in which the rights of the parties as between themselves are governed by principles of equity.

There do not appear to be any cases finding that a liability insurer acted in bad faith when interpleading its policy limits. To the contrary, the few cases on this point have held in favor of insurers facing similar claims.[21] The use of interpleader has typically been limited to property damage cases and has not been allowed in the personal injury context.[22] The **9th Circuit** has held that an interpleader is proper when, at the time of filing, there are multiple claimants with colorable claims to the insurance proceeds and the liability carrier concedes coverage by depositing the funds.[23]

Notwithstanding the above, when the lienholder is a government entity, it is improper for a defendant to simply issue a check payable to both the plaintiff and the lienholder.[24] The proper procedure would be for the conflicted tortfeasor to interplead the funds and allow the trial court to reach a determination as to the appropriate allocation of funds. Otherwise, the tortfeasor could face direct litigation from the lien holder.

COLORADO: Interpleader is looked on favorably in Colorado for efficiently resolving potential multiple actions in the same lawsuit, thereby conserving judicial and party resources.[25] Interpleader allows a person subject to the possibility of competing claims to avoid the risk of double or multiple liability that could result from adverse determinations in different courts. Consequently, while interpleader should not automatically be granted, Colorado courts allow it liberally.[26]

Although there are no cases directly discussing the priority of paying multiple claims or the duty owed by a liability carrier with minimum liability limits when facing multiple liability, under Colorado law, every contract contains an implied duty of good faith and fair dealing.[27] Violating the duty of good faith and fair dealing gives rise to a claim for breach of contract. Whether a party acted in good faith is a factual question which depend on the facts of the individual situation involved.[28]

CONNECTICUT: A liability insurer may, in good faith and in the exercise of fair and honest judgment, settle fewer than all claims arising from an accident and credit those payments against the policy limits,

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[20] Cal. Civ. Proc. Code § 386.

[21] *Schwartz v. State Farm Fire & Cas. Co*., 88 Cal.App.4th 1329 (Cal. App. 2001); *Lehto v. Allstate Ins. Co*., 31 Cal.App.4th 60 (Cal. App. 1994) (both holding that an insurer's interpleader of policy limits did not or would not constitute an act of bad faith); *Bowers v. State Farm Mut. Auto. Ins. Co*., 460 So.2d 1288, 1290 (Ala. 1984) (UM claim).

[22] *California Physicians' Service v. Superior Court,* 102 Cal.App.3d 91 (Cal. 1980).

[23] *Society Insurance Company v. Nystrom*, 718 Fed.Appx. 482 (9th Cir. 2017).

[24] *County of Santa Clara v. Escobar*, 2016 WL 369354 (Cal. App. 2016).

[25] *Benton v. Adams*, 56 P.3d 81 (Colo. 2002).

[26] *Id*.

[27] *Mahan v. Capitol Hill Internal Medicine P.C.*, 151 P.3d 685 (Colo. App. 2006).

[28] *Platt v. Aspenwood Condominium Ass'n*, 214 P.3d 1060 (Colo. App. 2009); *Newflower Mkt., Inc. v. Cook*, 229 P.3d 1058 (Colo. App. 2010).

even though other claimants remain unpaid. Connecticut does not require all claims to be reduced to judgment or the policy limits apportioned before settlement.[29]

DELAWARE: There does not appear to be any Delaware cases directly addressing the duties of a liability carrier faced with multiple claims from multiple plaintiffs. However, Delaware has developed and encourages an interpleader practice which allows the defendant exposed to multiple liability or multiple claims which together exceed the amount of liability insurance the defendant carries.[30] Furthermore, a **3rd Circuit** opinion seems to indicate that the liability insurer has three options:

> *(1) Notify all potential claimants involved that the value of the claims will likely exceed policy limits and invite them to participate jointly in efforts to reach an agreement with the available funds;*
>
> *(2) Attempt to settle the claims on a first come, first service basis as the claims are presented; or*
>
> *(3) Promptly and in good faith commence an interpleader action and pay the policy limits into the court.*[31]

The court seemed to lean in favor of option number three, but under the specific facts of that case did not err in finding that the insurer had a duty to interplead the funds.

DISTRICT OF COLUMBIA: The District of Columbia does not appear to have any case or statutory law governing the duty owed by a liability insurer when faced with multiple claims far in excess of minimum policy limits.

FLORIDA: Until recently, there had been a split of authority in Florida over whether a liability insurer must reasonably investigate all multiple claims being presented to it prior to payment of any one claim, keep the insured tortfeasor informed of the claims process, and attempt to minimize possible excess judgments against the insured tortfeasor.

A 4th District Court of Appeals decision caused a split of authority among the 2nd, 5th and 4th Florida District Courts of Appeal over the duties of a liability insurer faced with multiple claims in excess of policy limits.[32] In *Farinas,* the court approved of a **5th Circuit** opinion which held that an insurer should not exhaust available policy proceeds without an attempt to settle as many claims as possible.[33] The Florida Supreme Court had also chimed in that the insurer should advise the insured of settlement opportunities, the probable outcome of the litigation, the possibility of an excess judgment and any steps that she may take to avoid an excess judgment.[34] *Farinas* declared that an insurer in such a position must conduct a full investigation of all competing claims arising out of an accident before endeavoring to settle any one individual claim, while keeping the insured informed at all junctures of the process.

The Middle District of Florida applied the *Farinas* factors to a multiple-claimant situation under Florida law.[35] In *Marsh*, the liability carrier settled a wrongful death claim, exhausting the policy limits even though there was a remaining serious injury claim. The evidence indicated that the injury claim was worth less than the wrongful-death claim. Under those circumstances, the insurer was entitled to

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[29] *Bartlett v. Travelers Ins. Co*., 167 A. 180 (Conn. 1933).
[30] *Professional Underwriters Liability Ins. Co. v. Zakrzewski*, 2006 WL 3872847 (Del. Supr. Ct., Dec. 8, 2006); 10 Del. C. § 3910.
[31] *McNally v. Nationwide Ins. Co.,* 815 F.2d 254 (3d Cir. 1987) (Delaware law).
[32] *Farinas v. Florida Farm Bur. Gen. Ins. Co.,* 850 So.2d 555 (Fla. App. 2003).
[33] *Liberty Mutual Ins. Co. v. Davis*, 412 F.2d 475 (5th Cir. 1969) (applying Florida law); see also *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So.2d 783 Fla. 1980) (did not address multiple, competing claims. Instead, only required the insurer, among other things, to "investigate the facts.").
[34] *Gutierrez,* supra.
[35] *General Security Nat'l Ins. Co. v. Marsh*, 303 F.Supp.2d 1321 (M.D. Fla. 2004).

summary judgment applying the standards announced in *Farinas*. The court found that the insurer acted reasonably and in good faith when it settled with the deceased claimant's estate to the exclusion of the injured survivor.[36]

Given the split of authority, the *Farinas* court certified the question to the Supreme Court of Florida. The Supreme Court never addressed the question; but the Florida legislature did. In 2023, as part of a greater tort reform measure, the Florida Legislature amended § 624.155 to address directly the handling of multiple third-party claims arising out of a single occurrence where the total value of the claims may exceed available liability policy limits.[37] Subsection (6) reads:

> *(6) If two or more third-party claimants have competing claims arising out of a single occurrence, which in total may exceed the available policy limits of one or more of the insured parties who may be liable to the third-party claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available policy limits to one or more of the third-party claimants if, within 90 days after receiving notice of the competing claims in excess of the available policy limits, the insurer complies with either paragraph (a) or paragraph (b):*
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> *(a) The insurer files an interpleader action under the Florida Rules of Civil Procedure. If the claims of the competing third-party claimants are found to be in excess of the policy limits, the third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. An insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured.*
>
> *(b) Pursuant to binding arbitration that has been agreed to by the insurer and the third-party claimants, the insurer makes the entire amount of the policy limits available for payment to the competing third-party claimants before a qualified arbitrator agreed to by the insurer and such third-party claimants at the expense of the insurer. The third-party claimants are entitled to a prorated share of the policy limits as determined by the arbitrator, who must consider the comparative fault, if any, of each third-party claimant, and the total likely outcome at trial based upon the total of the economic and noneconomic damages submitted to the arbitrator for consideration. A third-party claimant whose claim is resolved by the arbitrator must execute and deliver a general release to the insured party whose claim is resolved by the proceeding.*[38]

New subsection (6) establishes a statutory safe harbor under which a liability insurer is not liable beyond the policy limits if, within ninety (90) days after receiving notice of competing claims in excess of those limits, the insurer either files an interpleader action under the Florida Rules of Civil Procedure or makes the full policy limits available through binding arbitration agreed to by the insurer and the claimants. In either case, the policy limits are to be distributed on a prorated basis, and the insurer's obligation to defend the insured is not extinguished by the filing of interpleader. This amendment provides insurers with a legislatively sanctioned mechanism to resolve multiple-claimant excess exposure and limits the continued application of prior common-law bad faith principles in cases where the statute is timely and properly invoked."

The liability carrier's ability to settle with one of several claimants when it has limited policy limits previously depended on the concept of good faith. Florida holds insurers to "that degree of care and diligence which a man of ordinary care and prudence should exercise in the management of his own business."[39] At the same time, Florida approves the prevailing rule that the insurer must act in good faith

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[36] *Id*.

[37] FL LEGIS 2023-15, 2023 Fla. Sess. Law Serv. Ch. 2023-15 (C.S.C.S.H.B. 837).

[38] F.S.A. § 624.155(6).

[39] *Automobile Mutual Indem. Co. v. Shaw,* 184 So.2d 852 (Fla. 1938).

toward the insured in its effort to negotiate a settlement.[40] Whether it was done in good faith was a question for the jury. The 2023 amendment provides a statutory safe harbor if the insurer timely invokes interpleader or agreed binding arbitration, but Florida common law remains relevant when the insurer does not proceed under the statute. Outside the statutory safe harbor, Florida continues to require the insurer to fully investigate competing claims, keep the insured informed, seek to settle as many claims as reasonably possible within limits, and avoid indiscriminately exhausting limits in a manner that unnecessarily exposes the insured to excess judgments.[41]

GEORGIA: A liability insurance company may be liable for damages to its insured for failing to settle the claim of an injured person where the insurer is guilty of negligence, fraud, or bad faith in failing to compromise the claim.[42] In deciding whether to settle a claim within the policy limits, the insurance company must give equal consideration to the interests of the insured.[43] The insurer must afford the insured the same faithful consideration it gives its own interest.[44]

Therefore, an insurance company faced with a demand involving multiple claimants can create a safe harbor from liability for an insured's bad faith claim under *Holt* by meeting the portion of the demand over which it has control, thus doing what it can to effectuate the settlement of the claims against its insured.[45]

The Georgia Court of Appeals has said that a liability carrier can settle with one claimant, leaving inadequate limits for the other claimant.[46] The court concluded that the settlement would not have been in bad faith even if the insurer had settled without conferring with the other claimant.

In addition, an uninsured motorist carrier can settle with and pay whomever it wants, whenever it wants, when there are multiple claimants.[47] Georgia courts have continued to recognize that a liability insurer may, in good faith and without notice to other claimants, settle part of multiple claims against its insured even though doing so depletes or exhausts the policy limits and leaves remaining claimants without recourse against the insurer. However, the insurer must give equal consideration to the insured's interests, and a payment of limits that does not secure a release of the insured may raise serious questions regarding whether the insurer discharged its obligations in good faith.[48]

HAWAII: There does not appear to be any authority with regard to the duties and procedures to be followed in terms of a tortfeasor's insurer settling with only one of several claimants on a first come, first served basis. However, Rule 22 of the Hawai'i Rules of Civil Procedure provides:

> *Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such*

[40] *Id*.
[41] *Farinas v. Florida Farm Bureau General Ins. Co.*, 850 So.2d 555 (Fla. App. 2003).
[42] *McCall v. Allstate Ins. Co*., 10 S.E.2d 513 (Ga. 1984).
[43] *Great American Ins. Co. v. Exum*, 181 S.E.2d 704 (Ga. App. 1971).
[44] *Southern General Ins. Co. v. Holt*, 416 S.E.2d 274 (Ga. 1992).
[45] *Cotton States Mutual Ins. Co. v. Brightman*, 580 S.E.2d 519, 522 (Ga. 2003).
[46] *Miller v. Interlocal Risk Mgmt. Agency*, 501 S.E. 2d 589 (Ga. App. 1998).
[47] *Walston v. Holloway*, 416 S.E.2d 109 (Ga. App. 1992).
[48] *Cannon v. Safeco Ins. Co. of Illinois*, 928 S.E.2d 293 (Ga. App. 2024).

interpleader by way of cross-claim or counterclaim. The provisions of this role supplement and do not in any way limit the joinder of parties permitted in Rule 20.[49]

IDAHO: An Idaho liability insurer's actions in settling with one of several victims will be assessed on a case by case basis.[50] An automobile liability insurer's delay in settling a claim arising out of accident with multiple victims was held not to be intentional infliction of emotional distress because the insurer needed time to investigate and did seek to settle within four months of the accident, and while it could have acted more expeditiously under the particular facts at issue in *McKinley*, its conduct was held not reckless or beyond the bounds of decency.[51]

ILLINOIS: A liability insurer is under no obligation to weigh the seriousness of competing claims and place priorities in relation to the claims that present the greatest threat of liability for an excess judgment against the insured. Where there are multiple claimants and inadequate policy limits to satisfy them all, the insurer does not act in bad faith if the settlement with a specific claimant is reasonable under the circumstances.[52]

INDIANA: Indiana recognizes interpleader as an appropriate safe-harbor mechanism for an insurer facing multiple claims that may exhaust a single policy limit. When multiple legal actions count toward one policy limit, the insurer has a duty to make a good-faith effort to settle the actions in a manner that minimizes the insured's overall exposure. Indiana does not impose a rigid pro-rata allocation rule, but it also does not require the insurer to 'play Solomon' by choosing which claimant to pay when doing so risks leaving the insured exposed. An insurer may use interpleader to protect itself from bad-faith exposure while allowing the competing claimants to litigate entitlement to the limited fund.[53]

IOWA: A person, who is or may be exposed to multiple liability or vexatious litigation because of several claims against him for the same thing, may bring an equitable action of interpleader against all such claimants.[54] Their claims or titles need not have a common origin, nor be identical, and may be adverse to, or independent of each other. Such person may dispute his liability, wholly or in part.[55]

KANSAS: In Kansas, a liability insurer owes a duty to the insured to act in good faith and without negligence in defending and settling claims against the insured.[56] However, a liability insurer may in good faith settle part of multiple claims arising from the negligence of its insured even though such settlements deplete or exhaust the policy limits of liability so that the remaining claimants have little or no recourse against the insurer.[57]

KENTUCKY: A liability carrier must not abuse the power it has to negotiate and make settlements and refuse to settle within the limits of the policy if the damage to the insured is reasonably certain.[58] There must be a showing of bad faith, as opposed to mere negligence, to create liability on part of insurer for failure to settle within policy limits, and that factors to be considered, weighed and evaluated together

[49] *Lum v. Donohue*, 70 P.3d 648 (Haw. App. 2003).
[50] *McKinley v. Guaranty Nat'l. Ins. Co*., 159 P.3d 884 (Idaho 2007).
[51] *Id*.
[52] *State Farm Mut. Auto Ins. Co. v. Murphy,* 348 N.E.2d 491 (Ill. App. 1976).
[53] *Baldwin v. Standard Fire Ins. Co.*, 269 N.E.3d 1197 (Ind. 2025).
[54] *Spahn & Rose Lumber Co. v. Iowa Steel & Const. Co.,* 131 N.W.2d 791 (Iowa 1964).
[55] Iowa R. Civ. P. 1.252.
[56] *Castoreno v. Western Indem. Co., Inc*., 515 P.2d 789 (Kan. 1973).
[57] *Id*.
[58] *State Farm Mut. Auto. Ins. Co. v. Marcum*, 420 S.W.2d 113 (Ky. 1967), *overruled by, Manchester Ins. & Indem. Co. v. Grundy*, 531 S.W.2d 493 (Ky. 1975).

in determining whether insurer is guilty of bad faith in failing to settle a claim so as to be liable for excess of policy limits include:

- probability of recovery and that the recovery would be in excess of the policy limits;
- the negotiations in respect to settlement;
- any offers to settle for policy limits or less than these limits; and
- whether the insured made a demand for settlement on the insurer.[59]

However, one case seems to indicate that the fact that a policy limits settlement offer does not include all claimants who have claims against those limits, tends to support the insurer's good faith argument in rejecting the settlement demand and not settling.[60]

LOUISIANA: Where there are multiple claims arising out of an accident, the liability insurer, in entering compromise settlements pursuant to the right accorded it under the provisions of the policy, may exhaust the entire fund, leaving one or more of the injured parties with little or no recourse against such insurer.[61]

MAINE: Under Maine's Unfair Claims Settlement Practices Act (UCSPA), an insurer, absent good cause, must pay first-party claims clearly due even though other claims from the same incident are open to dispute, and even though litigation might be pending.[62] But that only applies to first-party claims. An insurance company expressly does not have such a duty in handling third-party claims.[63] An insurer does have a duty to its own insured to settle within policy limits, however, and one way to accomplish that duty would be to ensure that claims that exceed policy limits are settled globally.[64]

MARYLAND: There is ordinarily no requirement that a liability insurer wait until all claims have been presented before it deals with any claimant. Therefore, a liability insurer may settle claims in good faith with some claimants even if such settlement reduces amount available to other claimants.[65]

MASSACHUSETTS: A liability insurer with limited insurance limits may settle one or more of multiple claims arising from an accident, notwithstanding that such settlement results in a preference by exhausting its limits to which other injured persons whose claims have not been settled might otherwise look.[66] An insurance company does have a duty to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.[67] The Massachusetts Appeals Court has interpreted that statutory duty to require an objective test in determining whether liability is reasonably clear:

> *That objective test calls upon the fact finder to determine whether a reasonable person, with knowledge of the relevant facts and law, would probably have concluded, for good reason, that the insurer was liable to the plaintiff.*[68]

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[59] *Grundy*, supra.
[60] *Harvin v. U.S. Fidelity & Guaranty Co.,* 428 S.W.2d 213 (Ky. 1968).
[61] *Richard v. S. Farm Bureau Cas. Ins. Co*., 212 So.2d 471 (La. App. 1968) *writ issued sub nom*. *Richard v. S. Farm Bureau Cas. Ins. Co*., 215 So.2d 122 (1968) and *aff'd,* 223 So.2d 858 (La. 1969); *Holtzclaw v. Falco, Inc*., 355 So.2d 1279 (La. 1977).
[62] Me. Rev. Stat. Ann. Tit. 24-A, § 2436; *Rankin v. Allstate Ins. Co*., 336 F.3d 8 (1st Cir. 2003).
[63] *Linscott v. State Farm Mutual Automobile Ins. Co*., 368 A.2d 1161 (Me. 1977).
[64] *Wilson v. Aetna Cas. & Sur. Co*., 76 A.2d 111 (Me. 1950).
[65] *Hartford Cas. Ins. Co. v. Dodd*, 416 F. Supp. 1216 (D. Md. 1976).
[66] *Bruyette v. Sandini*, 197 N.E. 29 (Mass. 1935).
[67] Mass. Gen. L., ch. 176D § 3(9)(f).
[68] *Demeo v. State Farm Mut. Auto. Ins. Co.*, 649 N.E.2d 803 (Mass. App. 1995).

The term "liability" includes both fault and damages. However, insurance companies must be given the time to investigate claims thoroughly to determine their liability.[69]

MICHIGAN: Section 257.520(4) provides as follows with regard to the right of an automobile insurance carrier to settle any claim covered by the policy:

> *(4) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subparagraph (2) of paragraph (b) of this section.*[70]

If more than one injured person recovers a judgment against the insured and the insurer interpleads inadequate policy limits, each claimant is entitled to receive a pro-rata share in the payment due under the policy regardless of the time the actions were commenced, or the judgments rendered.[71]

MINNESOTA: Minnesota relies on and encourages the use of interpleader actions under Rule 22 of the Minnesota Rules of Civil Procedure when there are multiple claimants and not enough insurance proceeds to go around.[72] Rule 22 provides as follows:

> ***Rule 22. Interpleader***
>
> *Persons having claims against the plaintiff may be joined as defendants and required to interplead, in an action brought for that purpose, when their claims are such that the plaintiff is or may be exposed to multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. If such a defendant admits being subject to liability, that defendant may, upon paying the amount claimed or delivering the property claimed or its value into court or to such person as the court may direct, move for an order to substitute the claimants other than the plaintiff as defendants in the movant's stead. On compliance with the terms of such order, the defendant shall be discharged and the action shall proceed against the substituted defendants. It is not ground for objection to such joinder or to such motion that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical with but are adverse to and independent of one another, or that the plaintiff denies liability in whole or in part to any or all of the claimants. The provisions of this rule do not restrict the joinder of parties permitted in Rule 20.*[73]

The purpose of a Rule 22 Interpleader Action is to resolve the claims of multiple claimants in one action.[74]

MISSISSIPPI: Mississippi encourages use of an interpleader for liability insurers faced with multiple claims.[75] Rule 22, governing interpleaders, provides as follows:

> ***Rule 22. Interpleader.***
>
> *(a) Plaintiff or Defendant. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the*

[69] *Van Dyke v. St. Paul Fire & Marine Ins. Co.*, 448 N.E.2d 357 (Mass. 1983).
[70] M.C.L.A. § 257.520.
[71] *Moore v. McDowell*, 221 N.W.2d 446 (Mich. App. 1974).
[72] Minn. Rules of Civil Procedure, Rule 22.
[73] *Id*.
[74] *Faegre & Benson, LLP v. R & R Investors*, 772 N.W.2d 846 (Minn. App. 2009).
[75] Miss. R. Civ. P. 22.

several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(b) Release from Liability; Deposit or Delivery. Any party seeking interpleader, as provided in subdivision (a) of this rule, may deposit with the court the amount claimed, or deliver to the court or as otherwise directed by the court, the property claimed, and the court may thereupon order such party discharged from liability as to such claims and the action shall continue as between the claimants of such money or property.[76]

The comments to Rule 22 of the Mississippi Rules of Civil Procedure describe that interpleader can be used to protect the claimants by bringing them together in one action and resolving a dispute where there are multiple claimants and limited funds to go around. The comments further confirm the difficulties a race to judgment poses for the insurer, and the unfairness which may result to some claimants.[77] Mississippi courts have indicated that the filing of an interpleader may insulate a liability carrier from bad faith.[78]

One **5th Circuit** decision indicates that an insurer need not withhold UM benefits from one insured in order to save something for another insured who has refrained from presenting a claim.[79]

MISSOURI: A liability insurer is not precluded from accepting a reasonable settlement demand from fewer than all insureds in a multiple claimant situation. By accepting the offer, the insurer would avoid being subjected to liability exceeding policy limits due to its rejection of a reasonable offer, and settlement would decrease the total amount of liability in an underlying suit.[80]

Where there are multiple claims against the insured of a liability insurer and that those claims are of such nature that the insured may be exposed to double liability or multiple recovery for a single liability, interpleader is a recommended option.[81]

Effective August 28, 2018, the Missouri legislature passed amendments to the state's interpleader statute,[82] Section 507.060, which address one of the most vexatious problems in claims handling—multiple claimants all claiming from inadequate liability limits—now provides clearer direction for carriers. It provides that an interpleader action may be filed in circumstances "including multiple claims against the same insurance coverage." The amended statute provides that an interpleader claim may be filed where there are multiple "potential" claims against the insurer or insured. If the carrier files an interpleader action within ninety (90) days from receiving a settlement demand, it is protected from extra-contractual liability in "any other action," specifically addressing the third-party bad faith problem. Note, however, that the carrier gets protection only if it defends the insured in any bodily injury action even though it has deposited its limits into court in the interpleader.

[76] *Id*.
[77] Miss. R. Civ. P. 22 (comments).
[78] *Allred v. Yarborough*, 843 So.2d 727 (Miss. 2003).
[79] *Moore v. United Services Auto. Ass'n,* 808 F.2d 1147 (5th Cir. 1987).
[80] *Millers Mut. Ins. Ass'n of Ill. v. Shell Oil Co*., 959 S.W.2d 864 (Mo. App. 1997).
[81] *Gen. Am. Life Ins. Co. v. Wiest*, 567 S.W.2d 341 (Mo. App. 1978).
[82] Mo. Rev. Stat. § 507.060.

MONTANA: In UIM settings, the limits of the tortfeasor's policy are divided among the multiple claimants, in an equal pro-rata share, for the purpose of considering exhaustion.[83] This rule addresses UIM exhaustion and should not be read as a general rule governing how a liability insurer must settle multiple third-party liability claims against insufficient limits.

NEBRASKA: The best judgment of counsel for a liability insurer that a verdict against the insureds might exceed or be less than limit of insureds' automobile liability policy could not be the basis for a finding of bad faith on the part of the liability insurer in failing to compromise or settle all claims against its insured for an amount within policy limit.[84]

Where multiple claimants and multiple claims against the insured are involved, Nebraska recognizes and encourages use of a Bill of Interpleader.[85] This is an equitable remedy in harmony with certain statutory provisions, whereby a liability carrier facing multiple claims against a limited policy limit, may require each of the multiple claimants to litigate among themselves the issue of entitlement to the limited funds.

NEVADA: Failure to settle one of several claims against an insured isn't necessarily bad faith, but Nevada imposes a duty upon an insurer to notify its insured of potential settlement demands from the victim, including the option of interpleader.[86] "Bad faith" is not capable of a legal definition, but depends on the facts of a particular case. However, the failure of an insurer to inform its insured of a settlement offer is a proximate cause of an insured's damages suffered later as a result of a failure to settle.[87] Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability, and insurers are encouraged to utilize interpleader in order to avoid exposure to their insureds.[88]

NEW HAMPSHIRE: New Hampshire encourages use of a bill of interpleader as a proper and appropriate remedy to pursue where the insurance proceeds are inadequate to satisfy multiple pending claims.[89] It enables a liability insurer to affect a ratable allocation of the proceeds of its policy among all the claimants in order to avoid any contention of negligence, bad faith or preferential treatment on its part in making a settlement with any of the claimants.

However, it may be appropriate to first liquidate by trial or settlement, several claims pending against a liability carrier, before interpleader may become an appropriate remedy for the purpose of prorating the several claims, should they ultimately exceed the limits of the policy.[90]

NEW JERSEY: The duty owed by a liability insurer to multiple claimants when looking to settle with less than all of them is that it must conduct its dealing in such a manner that, being called upon to apply the proceeds of the policy, it refrains from compounding the injuries of the very persons for whose benefit the policy was extended.[91] Therefore, it is not assured that every claimant will get full compensation for a loss.[92] Nonetheless, an aggrieved claimant can seek redress in the courts if he feels he is being treated

[83] *Augustine v. Simonson*, 940 P.2d 116 (Mont. 1997).
[84] *Hadenfeldt v. State Farm Mut. Auto. Ins. Co*., 239 N.W.2d 499 (Neb. 1976).
[85] *Burke Lumber & Coal Co. v. Anderson*, 76 N.W.2d 630 (Neb. 1956).
[86] *Allstate Ins. Co. v. Miller,* 212 P.3d 318 (Nev. 2009).
[87] *Id*.
[88] *Balish v. Farnham*, 546 P.2d 1297 (Nev. 1976).
[89] *Fidelity & Casualty Co. of New York v. LePage*, 200 A.2d 12 (N.H. 1964).
[90] *Sutton Mutual Ins. Co. v. Rolph,* 244 A.2d 186 (N.H. 1968).
[91] N.J.S.A. § 39:6-23, *et seq*.; *Liquori v. Allstate Co.,* 184 A.2d 12 (N.J. Super. 1962).
[92] *Liquori,* supra.

unfairly in a settlement with a limited pool of funds.[93] A liability carrier's decision not to settle a suit against an insured must result from weighing, in a fair manner, the probabilities of a favorable or adverse verdict in the trial of a covered loss suit against the insured.[94] When liability against its insured is good, a liability carrier can treat one of several claims as though it was the only claim.[95]

NEW MEXICO: An automobile liability insurer's statutory duty to attempt reasonable settlement efforts of an insured's claims requires an attempt in good faith to settle the claim of a third party; the insurer's duty to attempt in good faith to effectuate prompt, fair, and equitable settlements is not limited to first-party claims.[96]

New Mexico has no case law defining whether and when it is appropriate for a liability carrier to settle with one of several claims against a limited pool of liability limits arising out of the same incident. New Mexico favors the use of interpleader actions. However, one of the essential requirements in an equitable interpleader action is that the plaintiff seeking interpleader be entirely indifferent to the conflicting claims, asserting no interest in the fund or property deposited.[97]

NEW YORK: A liability insurer faced with multiple claimants and not enough insurance limits may settle with some of the parties injured in an automobile collision and is thereafter liable only for remainder of policy limits even though it may have been aware that total claims would probably exceed policy limits.[98] It is a first come, first served state. There is no authority for the court to ratably distribute the policy limits among the various claimants.[99] An insurer has no duty to interplead the remaining potential claimants, although it is probably good practice to do so.[100] Although an insurer is liable for an amount in excess of its liability coverage owed to third parties by the insured if the insured lost an actual opportunity to settle within coverage limits by reason of insurer's purported bad faith, in order to show bad faith, the insured must show that the carrier acted in "gross disregard" of the insured's interests.[101]

NORTH CAROLINA: A liability insurer may, in good faith, settle part of multiple claims arising from the negligence of its insured, even though the settlement exhausts the fund to which other injured claimants might otherwise look for payment. A court may not require the insurer to pay its limits into court for ratable distribution among claimants.[102]

NORTH DAKOTA: Interpleader is encouraged in cases involving exposure to multiple claimants.[103] It is a device for resolving multiple adverse claims in one proceeding.[104] There is no case law dealing with the appropriateness of settling a liability claim with one of two or more claimants seeking recovery from limit third-party liability insurance limits.

OHIO: A liability insurer who reserved the right to settle any claim or suit and to make such investigation or negotiation as may be deemed expedient is not liable to the insured for negligence in failing or

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[93] *Id*.
[94] *Princeton Ins. Co. v. Qureshi,* 882 A.2d 993 (N.J. Super. 2005).
[95] *Id*.
[96] *Hovet v. Allstate Ins. Co*., 89 P.3d 69 (N.M. 2004).
[97] *Fireman's Ins. Co. of Newark, N.J. v. Bustani*, 737 P.2d 541 (N.M. 1987).
[98] *Gerdes v. Travelers Ins. Co.,* 440 N.Y.S.2d 976 (N.Y. Sup. Ct. 1981).
[99] *Id*.
[100] *Hartford Ins. Co. v. Methodist Hosp.*, 785 F. Supp. 38 (E.D. N.Y. 1992).
[101] *Id.*
[102] *Alford v. Textile Ins. Co*., 103 S.E.2d 8 (N.C. 1958).
[103] *Kiker v. Walters*, 482 N.W.2d 626 (N.D. 1992).
[104] *Id*.

refusing to settle or compromise a claim brought against insured for an amount within the policy limit but is liable only if it fails to act in good faith with respect to settlement of such claim.[105]

OKLAHOMA: Oklahoma is a first come, first served, state. Where automobile liability coverage is insufficient to satisfy all judgments rendered against the insured, if a judgment creditor, last in point of time in entry of judgment against insured first obtains judgment against the insurer, he may collect such judgment without regard to rights of common creditors who have not instituted suits against the insurer.[106]

OREGON: An insurer is negligent in failing to settle, where an opportunity to settle exists, if in choosing not to settle it would be taking an unreasonable risk, that is, a risk that would involve chances of unfavorable results out of reasonable proportion to chances of favorable results.[107] An insurer owes to its insured the duty of due diligence and good faith. In determining whether to settle claims against the insured, the insurer must act as if it were liable for the entire judgment that might eventually be entered against the insured. In addition, only a decision made by an insurer who exercises due diligence in apprising itself of the material facts is entitled to be considered as made in good faith.[108]

PENNSYLVANIA: A liability insurer has no duty to judge the seriousness of each of multiple claims against its insured before it settles with less than all of them.[109] The carrier does not act in bad faith if it settles with one of the multiple claimants, provided the settlement is reasonable under the circumstances.[110] One court has stated that if an insurer cannot obtain a global settlement, then it may arrange a less comprehensive settlement and will be subject to a bad faith suit only if the process used in reaching the settlement was in bad faith.[111]

RHODE ISLAND: It appears that a liability carrier can settle with one of several claimants for policy limits provided it is done so in good faith.[112] Where a pedestrian and his father, who had won a verdict for several hundred thousand dollars against a motorist, and who, in return for their promise not to try to collect the judgment, had been assigned motorist's claim against insurer for bad faith in carrying out settlement negotiations with another injured pedestrian, the court held that they could not recover on the bad faith claim against insurer, in absence of any evidence suggesting that a "good faith" settlement between insurer and the other pedestrian would have precluded the large excess judgment against motorist.[113]

SOUTH CAROLINA: A liability insurer has wide discretion in settling multiple liability claims.[114] If an insurer settles with one claimant in good faith, the settlement reduces the limit of its liability to the remaining claimants, who may not complain that the insurer favored the settling claimant over them.[115]

SOUTH DAKOTA: There does not appear to be any law indicating it is bad faith for a liability carrier to settle for policy limits with one of multiple claimants, leaving the remaining claimants without recourse.

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[105] *Hart v. Republic Mut. Ins. Co*., 87 N.E.2d 347 (Ohio 1949).
[106] *Burchfield v. Bevans*, 242 F.2d 239 (10th Cir. 1957).
[107] *Maine Bonding & Cas. Co. v. Centennial Ins. Co*., 693 P.2d 1296 (Or. 1985).
[108] *Kuzmanich v. United Fire and Casualty*, 410 P.2d 812 (Or. 1966).
[109] *Scharnitzki v. Bienenfeld,* 534 A.2d 825 (Pa. Super. 1987).
[110] *Id*.
[111] *Anglo-Am. Ins. Co. v. Molin*, 670 A.2d 194 (Pa. Cmwlth. Ct. 1995).
[112] *Voccio v. Reliance Ins. Companies*, 703 F.2d 1 (1st Cir. 1983).
[113] *Id*.
[114] *State Farm Mut. Auto. Ins. Co. v. Hamilton,* 326 F.Supp. 931 (D. S.C. 1971).
[115] *Id*.

TENNESSEE: If one plaintiff's damages exceed the liability carrier's policy limits and other claimants' damages do not, they cannot pool their damages and later subject the insurer to liability for bad faith for rejecting a combined settlement offer equal to the insurer's per occurrence coverage.[116]

TEXAS: A third-party liability carrier may settle with one of several claimants for policy limits, provided the settlement is reasonable under the circumstances and gives proper regard to the insured's interests.[117] The implied covenant of good faith and fair dealing does not require a pro-rata sharing of inadequate liability policy limits.[118]

A defendant exposed to multiple liabilities may avail itself of an action in interpleader. An interpleading party is entitled to interpleader relief if three elements are met:

(1) he is either subject to, or has reasonable grounds to anticipate, rival claims to the same fund or property;

(2) he has not unreasonably delayed filing his action for interpleader; and,

(3) he has *unconditionally* tendered the funds into the registry of the court.[119]

An *innocent* stakeholder is entitled to recover its attorney fees from the deposited funds if it has a "reasonable doubt either of fact or law as to which claimant is entitled to the fund."[120] The purpose of interpleader is to allow an "innocent" stakeholder facing rival claims to let the court decide who is entitled to the funds.[121] Because interpleader has its roots in equity and provides an equitable remedy for the stakeholder, the stakeholder that seeks equity must "do equity."[122] Thus, for example, if the stakeholder "is responsible for the competing claims to the funds, the stakeholder cannot recover attorney's fees."[123] Or, if the stakeholder creates its own predicament, the trial court, in the exercise of its equity jurisdiction, can deny the interpleader.[124] In order to be an "innocent stakeholder" one must "*have no interest in the subject matter of the litigation."*[125]

UTAH: Utah does not appear to have any case law specifically allowing a liability carrier to settle one of multiple claims against its insured arising out of the same accident. However, Utah does encourage the use of Interpleader for any person facing multiple liabilities, by disclaiming his interest and submitting the matter of ownership for adjudication by the court.[126]

VERMONT: Vermont does not appear to have any case law delineating whether a liability carrier can settle with one of multiple claimants arising out of a loss. However, liability carriers do not have a statutory duty to deal with tort plaintiffs in good faith in offering a settlement.[127]

VIRGINIA: Virginia's requirements for Interpleader are set forth in § 8.01-364, which provides:

§ 8.01-364. Interpleader.

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[116] *Clark v. Hartford Acc. & Indem. Co.,* 457 S.W.2d 35 (Tenn. App. 1970).
[117] *Texas Farmers Ins. Co. v. Soriano,* 881 S.W.2d 312 (Tex. 1994).
[118] *Zapata Corp. v. Zapata Gulf Marine Corp.,* 986 S.W.2d 785 (Tex. Civ. App. – Houston, 1999).
[119] *Olmos v. Pecan Grove Municipal Utility District,* 857 S.W.2d 734 (Tex. App. – Houston[14th Dist.] 1993).
[120] *Id.* at 741.
[121] *State Farm Life Ins. Co. v. Martinez,* 174 S.W.3d 772 (Tex. App. – Waco 2005).
[122] *Id.*
[123] *Id.; Brown v. Getty Reserve Oil, Inc.,* 626 S.W.2d 810 (Tex. App.–Amarillo,1981, *writ dism'd*).
[124] *Union Gas Corp. v. Gisler,* 129 S.W.3d 145 (Tex. App. – Corpus Christi, 2003, *no writ*).
[125] *Rapp v. Mandell & Wright, P.C.,* 127 S.W.3d 888 (Tex. App. – Corpus Christi, 2004).
[126] *Terry's Sales, Inc. v. Vander Veur,* 618 P.2d 29 (Utah 1980).
[127] Vt. Stat. Ann. Tit. 6 §§ 4721 – 4726.

(A) Whenever any person is or may be exposed to multiple liability through the existence of claims by others to the same property or fund held by him or on his behalf, such person may file a pleading and require such parties to interplead their claims. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant in an action who is exposed to similar liability may likewise obtain such interpleader. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in § 8.01-5.

(B) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by any other section of this Code.

(C) In any action of interpleader, the court may enter its order restraining all claimants from instituting or prosecuting any proceeding in any court of the Commonwealth affecting the property involved in the interpleader action until further order of the court.

Such court shall hear and determine the case and may discharge the appropriate party from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

(D) A person interpleading may voluntarily pay or tender into court the property claimed, or may be ordered to do so by the court; and the court may thereupon order such party discharged from all or part of any liability as between the claimants of such property.[128]

However, if one of the claimant's has an "independent" claim, this would bar an Interpleader action at common law.[129] Independent liability arises where the stakeholder has agreed to assume liability to one of the claimants, such as by contract, and also by operation of law based on the relationship between the two, such as in bailor-bailee situations.

WASHINGTON: Washington has no authority directly addressing whether a liability insurer may settle with one of several claimants bringing claims against its insured without settling with the remainder of the claimants. However, Washington Civil Rule of Procedure 54(b) does provide as follows:

RULE 54. JUDGMENT AND COSTS.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. *When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*[130]

[128] Va. St. § 8.01-364.

[129] *Sovran Bank v. Bedford Park Assoc., Ltd. Partnership,* 23 Va. Cir. 110 (Va. Cir. Ct. 1991).

[130] Washington Rule of Civil Procedure 54(b).

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination (in the judgment,) that there is no just reason for delay and upon an express direction for the entry of judgment.[131]

Washington does encourage the use of Interpleader.[132]

WEST VIRGINIA: There are no cases directly addressing the duty of a liability carrier faced with the settlement of one of multiple claims presented which arise out of a single incident. However, such a liability carrier must occupy an impartial position with respect to such claims and Interpleader is encouraged.[133]

WISCONSIN: Wisconsin is not a pure pro-rata state. Wisconsin requires pro-rata distribution of insufficient liability insurance proceeds after verdict when several claims arising from one accident are joined in one suit against an insurer whose maximum liability under the policy is inadequate to pay in full the amounts to which the claimants have become entitled. In that situation, the proceeds are distributed on a pro-rata basis according to the amount of damage suffered by each claimant, and amounts recovered through *Pierringer* releases are irrelevant to that pro-rata division.[134] However, Wisconsin does not require pro-rata distribution of policy limits before verdict. Wisconsin's direct action statute, Wis. Stat. § 632.24, makes the insurer liable up to the policy limits to persons entitled to recover against the insured, but the statute is silent as to how inadequate policy limits must be distributed among multiple claimants. The Wisconsin Court of Appeals has held that nothing in § 632.24 precludes an insurer from depleting policy limits by settlement, to the possible detriment of one or more claimants, and that neither the direct action statute nor Wisconsin case law requires an insurer to distribute its limits in settlement on a pro-rata basis before verdict.[135] Accordingly, Wisconsin should be described as a 'post-verdict pro-rata / pre-verdict settlement permitted' jurisdiction, not as a simple pro-rata jurisdiction. *Wondrowitz* remains good law, but only for the post-verdict allocation context.[136]

WYOMING: There are no cases delineating the duty owed by a liability carrier who settles one of several claims against it arising out of the same accident. However, § 26-15-124 creates a private cause of action for a third party against a liability carrier.[137] It provides:

> *(c) In any actions or proceedings commenced against any insurance company on any insurance policy or certificate of any type or kind of insurance, or in any case where an insurer is obligated by a liability insurance policy to defend any suit or claim or pay any judgment on behalf of a named insured, if it is determined that the company refuses to pay the full amount of a loss covered by the policy and that the refusal is unreasonable or without cause, any court in which judgment is*

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[131] *Id.*
[132] *Farmers Ins. Co. of Wash. v. Romas,* 947 P.2d 754 (Wash. App. 1997).
[133] *Arnold v. Arnold,* 24 S.E.2d 102 (W.Va. 1943).
[134] *Wondrowitz v. Swenson*, 392 N.W.2d 449 (Wis. App. 1986).
[135] *Lovelien v. Austin Mut. Ins. Co.*, 906 N.W.2d 728 (Wis. App. 2017).
[136] Monitor *Mitchell Tischauser v. Mode Transportation LLC*, Nos. 24-1392, 24-1393, 24-1394, 24-1395, 24-1960 (7th Cir.), for any discussion of Wisconsin law governing multiple claimants and insufficient policy limits. Until there is a decision, the law in Wisconsin should be based on *Wondrowitz* and *Lovelien.*
[137] *Stewart Title Guaranty Co. v. Tilden,* 110 P.3d 865 (Wyo. 2005).

rendered for a claimant may also award a reasonable sum as an attorney's fee and interest at ten percent (10%) per year.[138]

A bad faith case may only be brought by first party claimant, not third-party claimants.[139] Third-party claimants may, however, recover attorney's fees and interest under the unreasonable-claim-denial provision of § 26-15-124 only when:

- third-party claimant has reduced his liability claim against insured to judgment or has reached settlement agreement with insured and insurer;
- insurer subsequently has refused to pay judgment or settlement amount to extent covered by policy; and
- refusal to pay has been determined to be unreasonable or without cause in action to collect on judgment or to enforce settlement agreement.[140]

[138] Wyo. Stat. § 26-15-124.
[139] *Herrig v. Herrig,* 844 P.2d 487 (Wyo. 1992).
[140] *Id.*