State Of Insurance: Q4 Notes From Pennsylvania

By **Todd Leon** (January 27, 2026)

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While Pennsylvania courts issued two decisions in the fourth quarter of 2025 that continued to shape the scope of automobile insurance coverage law in the commonwealth, the Pennsylvania House of Representatives took new action to protect citizens from naturally occurring landslides, slope movements and sinkholes, which are likely not covered under typical homeowners policies.

Taken together, the cases underscore the importance of paying close attention to policy language while highlighting areas where Pennsylvania courts continue to apply well-settled principles in a pragmatic, fact-driven manner, and the proposed statute represents ongoing efforts by elected officials to provide additional protections to Pennsylvanians.

Chris Eldredge Containers v. Crum & Forster Specialty Insurance

On Oct. 20, the Pennsylvania Supreme Court accepted an appeal in Chris Eldredge Containers LLC v. Crum & Forster Specialty Insurance Co., a matter involving the construction of the "absolute auto exclusion" endorsement to a commercial general liability policy.[1] Indeed, on April 24, 2025, the Pennsylvania Superior Court held that the provision did not apply in this case, even though the underlying accident involved a motor vehicle accident. In so holding, the Superior Court reversed the court below.

An employee of Chris Eldredge Containers was driving a tractor and backed into a stationary service truck owned by Safety-Kleen Systems, injuring Craig Logan, an employee of Safety-Kleen, who was sitting in the truck.

Logan filed a complaint against Chris Eldredge Containers, which sought insurance coverage for the claim from three of its insurers: Crum & Forster, which issued a CGL policy; Selective Insurance Co. of America, which issued a commercial auto policy; and National Union Fire Insurance Co., which issued an excess policy. After each of the carriers denied any duty to defend or indemnify the claim, Chris Eldredge Containers filed a declaratory judgment action seeking coverage for Logan's claim.

The appeal involved the interpretation of the Crum & Forster CGL policy, and specifically the absolute auto exclusion included within the form. Under that provision, Crum & Forster did not provide coverage for "bodily injury or property damage arising out of or resulting from the ownership, maintenance, use, or entrustment to others of any aircraft, auto, or watercraft." In evaluating the absolute auto exclusion, the Superior Court found Crum & Forster owed a defense to Chris Eldredge Containers both because the provision was not triggered and, even if it were, the clause was ambiguous.

Regarding the triggering of defense under the policy, the appellate court noted that it was the tractor driven by the employee of Chris Eldredge Containers, rather than the truck owned by Safety-Kleen, that was the proximate cause of Logan's injuries. According to the Superior Court, this was an important distinction, since the tractor did not qualify as an "auto" as that term was defined in the Crum & Forster policy, such that the absolute auto exclusion did not apply on its face.

Additionally, the Superior Court held that the exclusion was ambiguous because it does not specify whose "ownership, maintenance, use[,] or entrustment to others of any ... auto" triggers the exclusion. Per the panel, because Pennsylvania law requires that exclusions must be strictly construed against insureds and the only "auto" at issue was the Safety-Kleen truck, the absolute auto exclusion was ambiguous on whether it could be triggered in such a circumstance.

As noted, the matter is now ticketed for review by the Pennsylvania Supreme Court. It will be interesting to see whether the Supreme Court opts to follow the rationale of the U.S. District Court for the Eastern District of Pennsylvania in its 2018 decision Nautilus Insurance Co. v. Bike and Build, considering the provision and giving it a broad reading and finding it applicable in a similar circumstance, or if the court will affirm the court below.

Devincenzo-Gambone v. Erie Insurance Exchange

In Devincenzo-Gambone v. Erie, decided on Oct. 27, the Superior Court provided guidance for the manner in which courts reviewing bad faith claims are to consider claims for the awards of attorney fees and interest.[2]

Following a 2004 car accident, Dina Divincenzo-Gambone settled her claim with the tortfeasor driver and turned to her own personal auto insurer, Erie Insurance Exchange, in order to seek underinsured motorist, or UIM, benefits. She initially sued Erie in the Montgomery County Court of Common Pleas, but the parties subsequently agreed to arbitrate the UIM claims.

In 2016, the arbitrator found in favor of Divincenzo-Gambone and held that she was entitled to stack the UIM coverage available to her from Erie up to a total of $300,000. Following the issuance of that decision, Erie issued a payment to Divincenzo-Gambone in the amount of $250,000 and withheld the remaining $50,000.

In so doing, Erie contended that the stacking provisions did not apply and/or that the arbitrators should not have decided the issue. In response, Divincenzo-Gambone filed another complaint in the Court of Common Pleas, asserting claims for breach of fiduciary duty and bad faith. In 2018, the Court of Common Pleas denied Erie's petition to modify the arbitration award, and Erie thereafter tendered the remaining $50,000 in UIM coverage to Divincenzo-Gambone.

However, Divincenzo-Gambone's claim for bad faith proceeded to trial. In 2022, the trial court entered a nonjury verdict in favor of Divincenzo-Gambone. Just over a year later, on Jan. 10, 2024, the Court of Common Pleas entered a damage award against Erie that included $659,007 in interest, $217,000 in attorney fees, $986 in court costs and $877,094 for punitive damages. Erie appealed to the Superior Court.

As for the bad faith claims, the appellate court held that the record supported the conclusion that the parties agreed to participate in binding arbitration and that the arbitrator was tasked with determining whether Divincenzo-Gambone was entitled to receive stacked UIM benefits. The panel further found that Erie never communicated to Divincenzo-Gambone that it reserved its right to appeal the arbitration decision or reject the stacking determination. Thus, the Superior Court held the trial court did not abuse its discretion or commit an error of law in finding bad faith against Erie.

Regarding the award of attorney fees, the Superior Court first found that, under the bad faith statute, an insured may recover attorney fees incurred in pursuing their rights under

the policy or in protecting the insured's interests, as well as attorney fees incurred in pursuing the bad faith claim. In so finding, the appellate court considered that the trial court adjusted the hourly rate for each attorney and reduced the number of hours each attorney allocated toward the bad faith claim.

However, with respect to the case before it, the panel held that the trial court erred as a matter of law and abused its discretion in awarding $100,000 for attorney fees related to the UIM claim. More specifically, the appellate court held that the court below mistakenly based its award of attorney fees solely as a percentage of the arbitration award and, in so doing, allowed the contingency fee agreement to serve as a ceiling on the fee award.

Per the appellate panel, the trial court was required to apply the lodestar approach, which first requires the determination of a reasonable number of hours spent by the attorneys to litigate the UIM claim and then a multiplication of those hours by what the trial court determines is a reasonable hourly rate for each attorney.

Thus, the Superior Court found that the trial court abused its discretion in awarding attorney fees because it did not apply the lodestar approach and did not explain, in detail, why certain legal work was included in the recovery and why adjustments were made to the rates and hours entered into evidence. The court similarly found that the statute does not limit the type of hours that may be considered by the trial court, and that it was within the trial court's discretion to permit recovery of hours reasonably spent recreating the time logs.

Finally, the panel concluded that the trial court has discretion to award attorney fees related to litigation of both the bad faith claim and the underlying claim for insurance.

On the calculation of interest, the Superior Court found that the term "claim" in the statute refers to the moment when an insured makes a request to the insurer for payment based upon the insurance policy's terms. With this observation in mind, the panel concluded that interest could be calculated from inception of the UIM claim.

Of note, the appellate court also held that the trial court erred in calculating interest on a compounded interest basis. Per the Superior Court, Pennsylvania case law establishes that compound interest is only permitted when the parties have provided for it by agreement or a statute expressly authorizes it. Here, because the relevant statute did not state that interest is compounded, the appellate court reversed the holding below.

Given the court's holding, the judgment and verdict entered by the Court of Common Pleas were vacated, and the case was remanded. The parties will now have additional proceedings in order to determine the appropriate amount that Erie will be obligated to pay Divincenzo-Gambone.

H.B. No. 589, Establishing the Landslide and Sinkhole Insurance Program and Fund

On Sept. 29, the Pennsylvania House voted 152-51 to pass an act establishing the Landslide and Sinkhole Insurance Program and Insurance Fund in the state. The bill, which was principally sponsored by Rep. Emily Kinkead, D-District 20, is intended to help Pennsylvanians ensure they have coverage for damages they may suffer as a result of landslides, slope movements and sinkholes that occur as a result of natural causes.

Under the proposed statute, a state-run insurance program will be created specifically for landslide and sinkhole damage, which would fill a gap in coverage that exists because most

standard homeowners policies do not cover losses due to natural earth movement, absent the purchase of what are likely to be expensive add-ons to coverage via endorsements.

The sponsors of the bill noted that extreme weather, hilly terrain and geological conditions in parts of Pennsylvania have increased both the frequency and cost of land movement damage, such that the legislators crafted a proposed law modeled on the commonwealth's long-standing mine subsidence insurance program.

The principal purpose of the proposed legislation is to establish a state-run insurance program to offer coverage for natural landslides, slope movement and sinkholes. Of note, coverage for landslides or sinkholes caused by human activity, such as construction or drilling, would be excluded.

In order to administer the program, the legislation proposes to create a landslide and sinkhole insurance fund, which would initially be funded with a general fund appropriation in order to commence and then build into a self-sustaining model to be funded by premiums paid by policyholders.

The bill passed the House with strong bipartisan support and is now headed to the Senate, where it was referred to the Senate Committee on Community, Economic and Recreational Development in October.[3] It will be interesting to see whether the Senate makes any substantive amendments to the proposed statute or enacts it as-is in an effort to provide Pennsylvania residents with an additional layer of protection for what would otherwise likely present expensive, noncovered insurance claims.

Conclusion

Taken together, these fourth quarter developments reflect both continuity and evolution in Pennsylvania insurance law.

The pending review in Chris Eldredge Containers underscores the continued centrality of careful policy drafting and judicial scrutiny of exclusionary language, while Devincenzo-Gambone reaffirms established bad faith principles and provides practical guidance on the proper calculation of attorney fees and interest.

At the same time, H.B. 589 illustrates a legislative willingness to step in where traditional insurance products leave significant coverage gaps for Pennsylvania homeowners.

As these judicial and legislative threads continue to develop into 2026, insurers and policyholders alike should remain attentive to both the precise wording of policy provisions and the broader regulatory landscape shaping risk allocation across the commonwealth.

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[1] Chris Eldredge Containers, LLC v. Crum & Forster Specialty Insurance Company, 2025 WL 2950423 (Pa. 2025).

[2] Devincenzo-Gambone v. Erie Insurance Exchange, 2025 WL 2943127 (Super. Ct. Pa. October 17, 2025).

[3] House Bill 589 Information; 2025-2026 Regular Session - The Official Website of the Pennsylvania General Assembly.