I. REGULATORY LIMITS ON CLAIMS HANDLING

A. Timing for Responses and Determinations

Limits are expressed in terms of “reasonableness” in IND. CODE § 27-4-1-4.5, which is entitled “Enumeration of Unfair Claim Settlement Practices.” Under the Unfair Claim Settlement Practices Act, failing to acknowledge and act reasonably upon communications with respect to claims arising under insurance policies, failing to affirm or deny coverage of claims within a reasonable time, or failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed, all may subject an insurer to liability for unfair claims practices under the statute.

B. Standards for Determinations and Settlements


C. Privacy Protections (In addition to Federal Gramm-Leach-Bliley Act)

While there are no express statutory provisions, the Indiana Administrative Code sets forth insurance privacy considerations in the Administrative Code under Section 760, Article 1--General Provisions. The privacy protection sections are under Rule 67. The applicable sections are 760 IND. ADMIN. CODE 1-67-1 to 760 IND. ADMIN. CODE 1-67-20.

II. PRINCIPLES OF CONTRACT INTERPRETATION

Insurance policies are governed by the same rules of construction as other contracts, and their interpretation is a question of law. Peabody Energy Corp.
The court will interpret an insurance policy with the goal of ascertaining and enforcing the parties' intent as revealed by the insurance contract. Westfield Cos. v. Knapp, 804 N.E.2d 1270 (Ind. Ct. App. 2004). If the language in an insurance contract is clear and unambiguous, it should be given its plain and ordinary meaning. Id. Ambiguous provisions are construed in favor of the insured; however, when the case involves disputes between a third party and an insurer, the general intent of the contract is determined from a neutral stance. Id.


III. CHOICE OF LAW

Indiana follows the approach formulated by the Restatement (Second) of Conflict of Laws section 188 when deciding which law to apply when there is a conflict. National Union Fire Ins. Co. of Pittsburgh, PA v. Standard Fusee Corp., 940 N.E.2d 810 (Ind. 2010). If the parties have not made an effective choice of law, the court will consider the different contacts the parties have with the forums at issue. Id. Indiana's choice of law rule for contract actions calls for applying the law of the forum with the most intimate contacts. Id. When applying principles in the insurance realm this means that [r]ights created by an insurance contract are determined by the law of the state where the risk or subject matter is located. Id. Where the “insured risk” spans multiple states, the Indiana courts have afforded this contact less weight, and looked then to the “place of performance of the contract, or ‘the locations where the insurance funds will be put to use.’” Standard Fusee, 940 N.E.2d at 816-817 (quoting Hartford Acc. & Indem. Co. v. Dana Corp., 690 N.E.2d 285 (Ind. Ct. App. 1997)).

Accordingly, in insurance contract cases, courts first attempt to determine the principal location of the insured risk; if the principal location of the insured risk can be determined, it is given more weight than other factors, but if no such location exists, the court continues its analysis of the most intimate contacts, such that the law of the state in most intimate contact is then to be applied to the entire dispute. Id. The following are representative of the factors to consider in applying Indiana's “most intimate contacts” test as choice-of-law rule for contract actions: (1) the place of contracting; (2) the place of negotiation; (3) the place of performance; (4) the location of the subject matter of the contract, and (5) the domicile, residence, nationality, place of incorporation and place of business of the parties. Kentucky Nat. Ins. Co. v. Empire Fire & Marine Ins. Co., 919 N.E.2d 565 (Ind. Ct. App. 2010).

IV. DUTIES IMPOSED BY STATE LAW
A. **Duty to Defend**

1. **Standard for Determining Duty to Defend**

   An insurer's duty to defend is broader than its coverage for liability or its duty to indemnify. Indiana Farmers Mut. Ins. Co. v. Ellison, 679 N.E.2d 1378, 1381-82 (Ind. Ct. App. 1997), trans. denied (citing Trisler v. Indiana Ins. Co., 575 N.E.2d 1021 (Ind. Ct. App. 1991)). The duty to defend is determined from the allegations of the complaint and "from the facts known or ascertainable by the insurer after an investigation has been made." Id. at 1382 (emphasis added); Mahan v. Am. Standard Ins. Co., 862 N.E.2d 669, 676 (Ind. Ct. App. 2007). If the pleadings fail to disclose a claim within the coverage limits, or one that is clearly excluded under the policy, no defense is required. Monroe Guar. Ins. Co. v. Monroe, 677 N.E.2d 620 (Ind. Ct. App. 1997). However, the insurer has a duty to conduct a reasonable investigation into the facts underlying the complaint before it may refuse to defend the complaint. Id.; Walton v. First Am. Title Co., 844 N.E.2d 143 (Ind. Ct. App. 2006), Cincinnati Specialty, Underwriters Ins. Co. v. DMH Holdings, LLC, No. 3:11-CV-357, 2013 WL 683493 (N.D. Ind. Feb. 22, 2013). However, Indiana courts are quick to admonish an insurer who "sit[s] down and hold[s] its hands and purse...after fair notice," and "that an insurer may refuse to defend its insured, but at its own peril." Liberty Mut. Ins. Co. v. Metzler, 586 N.E.2d 897, 901 (Ind. Ct. App. 1992) (citing, Cincinnati Ins. Co. v. Mallon, 409 N.E.2d 1100 (Ind. Ct. App. 1980); National Mut. Ins. Co. v. Fincher, 428 N.E.2d 1386, 1390 (Ind. Ct. App. 1980). When an insurer questions whether an injured party's claim falls within the scope of policy coverage or raises a defense that its insured has breached a policy condition, the insurer has two options: (1) file a declaratory judgment action for a judicial determination of its obligations under the policy; or (2) hire independent counsel and defend its insured under a reservation of rights. Gallant Ins. Co. v. Wilkerson, 720 N.E.2d 1223, 1227 (Ind. Ct. App. 1999) (citing Metzler, 586 N.E.2d at 902). Even if recovery in the underlying suit is premised upon several theories of liability, some of which are excluded from policy coverage, the insurer still is obligated to defend if even only one theory falls within the policy's coverage.

B. **Duty to Settle**

An insurer is liable to its insured for a judgment exceeding policy limits when the insurer, who has exclusive control of defending and settling the suit, refuses, in negligence or bad faith, to settle within policy limits. Bennett v. Slater, 289 N.E.2d 144, 146 (1972). The duty of due care and good faith remedies that situation, forcing the insurer "to view the situation as if there were no policy limits applicable to the claim, and to give equal consideration to the financial exposure of the insured". Certain Underwriters of Lloyd's v. Gen. Acc. Ins. Co. of Am., 699 F. Supp. 732, 736 (S.D. Ind. 1988).

V. **EXTRACONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES**

A. **Bad Faith**

1. **First Party**

   Indiana law recognizes a legal duty, implied in all insurance contracts, for the insurer to deal in good faith with its insured. Freidline v. Shelby Ins. Co., 774 N.E.2d 37, 40 (Ind. 2002) (citing Erie Ins. Co. v. Hickman, 622
This obligation of good faith and fair dealing includes the obligation to refrain from: (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in payment; (3) deceiving the insured; and (4) exercising an unfair advantage to pressure an insured into settlement of his claim. A good faith dispute as to the validity of a claim is not grounds for recovery in tort for the breach of the obligation to exercise good faith. An insurer must deny liability knowing there is no rational, principled basis for doing so to breach its duty. Erie, 622 N.E.2d at 519; see also Auto-Owners Ins. Co. v. Shirk, No. 3:10-CV-018-JD-CAN, 2013 WL 832685 (N.D. Ind. Mar. 5, 2013).

The evidentiary standard for insurer bad faith is high. Bad faith is shown when there is clear and convincing evidence establishing that "the insurer had knowledge that there was no legitimate basis for denying liability." Freidline v. Shelby Ins. Co., 774 N.E.2d 37, 40 (Ind. 2002); Monroe Guar. Ins. Co. v. Magwerks Corp., 829 N.E.2d 968, 976 (Ind. 2005). "Poor judgment or negligence does not amount to bad faith; the additional element of conscious wrongdoing must be present. A finding of bad faith requires evidence of a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will." Allstate Ins. Co. v. Fields, 885 N.E.2d 728, 732 (Ind. Ct. App. 2008) (quoting Lumbermens Mut. Cas. Co. v. Combs, 873 N.E.2d 692, 714 (Ind. Ct. App. 2007), trans. denied).

2. Third Party

The tort action of bad faith in Indiana arises from the breach of the implied duty of good faith and fair dealing that an insurer owes to its insured. Erie Ins. Co. v. Hickman, 622 N.E.2d 515, 518 (Ind. 1993). That tort was established in light of the "special relationship" that exists between an insured and an insurer. Id. at 519. That duty however has not been held to exist with respect to a third party claim. Cain v. Griffin, 849 N.E.2d 728, 732 (Ind. Ct. App. 2006); Myers v. Deets, 968 N.E.2d 299 (Ind. Ct. App. 2012); Menefee v. Schurr, 751 N.E.2d 757 (Ind. Ct. App. 2001). However, the cause of action is assignable so that an insured may assign his cause of action to a third-party claimant.

3. Damages

Tort damages for the breach of the duty to exercise good faith will, in most instances, be "coterminous with those recoverable in a breach of contract action." Erie Ins. Co. v. Hickman, 622 N.E.2d 515, 520 (Ind. 1993).

Even if the finder of fact determines that the insurer committed a tortious breach of its duty to exercise good faith, the right of the insured to punitive damages is not automatic. Punitive damages may be awarded only if there is clear and convincing evidence that the insurer acted with malice, fraud, gross negligence, overzealousness, or oppressiveness which was not the result of mistake or other human failing. Johnston v. State Farm Mut. Auto Ins., 667 N.E.2d 802, 805 (Ind. Ct. App. 1996), trans denied (quoting Nelson v. Jimison, 634 N.E.2d 509 (Ind. Ct. App. 1994)) (emphasis added). In Indiana, a prerequisite to an award of punitive damages is an award of actual (compensatory) damages. Crabtree ex rel. Kemp v. Estate of Crabtree, 837 N.E.2d 135 (Ind. 2005); Bright v. Ruehl, 650 N.E.2d 311, 317 (Ind. Ct. App. 1995).

Indiana follows the "American rule," which requires each party to pay its own attorney's fees, absent an agreement, statute, or rule to the contrary. See Mitchell v. Mitchell, 695 N.E.2d 920, 922 (Ind. 1998). Moreover, the
general and longstanding principals espoused in Indiana case law is that the insurer has an absolute right to dispute and litigate claims in good faith, see Vernon Fire & Cas. Ins. Co. v. Sharp, 349 N.E.2d 173 (Ind. 1976), and that parties to litigation are required to pay their own attorney's fees. Gavin v. Miller, 54 N.E.2d 277 (Ind. 1944).

Indiana’s Supreme Court has not addressed whether attorney fees are recoverable where an insured proves by clear and convincing evidence that the insurer denied its claim in bad faith, without a rational basis. In Mikel v. Am. Ambassador Cas. Co., 644 N.E.2d 168 (Ind. Ct. App. 1994), the Court of Appeals held “when the insured brings an action for a declaration of coverage and prevails, absent a bad faith denial of coverage by the insurer, attorney's fees incurred by the insured in the prosecution of the action are not incurred at the 'request' of the insurer. Our holding is consistent with the longstanding rule in Indiana that an insurer may dispute claims in good faith.”

However, at least one Federal Court has rejected the argument that Mikel stands for the proposition that attorney fees are recoverable upon a showing of bad faith. Patel v. United Fire & Cas. Co., 80 F. Supp.2d 948, 961-962 (N.D. Ind. 2000).

B. Fraud

There are five elements to an action for actual fraud: (i) material misrepresentation of past or existing facts by the party to be charged (ii) which was false (iii) which was made with knowledge or reckless ignorance of the falseness (iv) was relied upon by the complaining party and (v) proximately caused the complaining party injury. Am. United Life Ins. Co. v. Douglas, 808 N.E.2d 690 (Ind. Ct. App. 2004). “The failure to disclose all material facts by one on whom the law imposes a duty to disclose constitutes actionable fraud.” Id.

C. Intentional or Negligent Infliction of Emotional Distress (IIED or NIED)

The tort of intentional infliction of emotional distress ("IIED") arises when a party (1) engages in "extreme and outrageous" conduct that (2) intentionally or recklessly (3) causes (4) severe emotional distress to another. Creel v. I.C.E. Assoc. Inc., 771 N.E.2d 1276, 1282 (Ind. Ct. App. 2002). The basis for the tort of IIED is the intent to harm another emotionally. Id. at 1282. The requirements to prove this tort are "rigorous[.]" Ledbetter v. Ross, 725 N.E.2d 120, 124 (Ind. Ct. App. 2000).

It is not enough that the defendant acted with intent to cause emotional distress that is tortious or even criminal, or that he intended to inflict emotional distress, or even that his conduct was malicious. The conduct must also have been "extreme and outrageous" as Indiana courts have interpreted that phrase. Creel, 771 N.E.2d at 1282. IIED will be found only where the conduct has been so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. Id.

Indiana recognizes two forms of negligent infliction of emotional distress ("NIED") arising under the modified impact rule (including the precursor impact rule) and the bystander rule. The original "impact rule" requires that there be some kind of physical contact sustained by a plaintiff which causes physical injury and emotional injury arises as a result. This rule was expanded by the
Indiana Supreme Court into what is now known as the "modified impact rule." Shuamber v. Henderson, 579 N.E.2d 452 (Ind. 1991). In Shuamber, the Court dropped the requirement that a plaintiff sustain physical injury, but retained the requirement of a physical impact: "sustains a direct impact by the negligence of another and by virtue of the direct involvement sustains emotional trauma.” The exception to physical impact for NIED is the "bystander rule" adopted by the Indiana Supreme Court in 2000, which held that if a party witnesses or comes upon the scene of the death or severe injury of a loved one with a close relationship such as spouse, parent or child, a cause of action for NIED may be maintained even absent direct impact. Groves v. Taylor, 729 N.E.2d 569 (Ind. 2000).

Note, however, that the Indiana Court of Appeals has repeatedly tested the limits imposed by Indiana's Supreme Court to expand this cause of action and attempt to abandon the strictures of the modified impact and bystander rules. In two recent cases, Atl. Coast Airlines v. Cook, 857 N.E.2d 989 (Ind. 2006) and South v. Toney, 862 N.E.2d 656 (Ind. 2007), the Indiana Supreme Court has emphasized the limitations of this cause of action.

VI. DISCOVERY ISSUES IN ACTIONS AGAINST INSURERS

A. Discoverability of Claims Files Generally

Claim files are generally discoverable in bad-faith litigation, particularly when the bad faith claim arises from the insurer’s handling of a third party claim against its insured (e.g., failure to settle within policy limits). However, Indiana law suggests that a work product privilege exists for insurer claim file materials where "in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation." Burr v. United Farm Bureau Mut. Ins. Co., 560 N.E.2d 1250, 1255 (Ind. Ct. App. 1990) (emphasis added). Under this "prospect of litigation" test, Indiana courts are liberal in upholding the protections afforded by the work product doctrine, and will protect as privileged even the "mental impressions, opinions, legal theories or conclusions" of the insurer in the investigation and evaluation of a claim. Id.; see also, Indiana State Bd. of Pub. Welfare v. Tioga Pines Living Ctr., Inc., 592 N.E.2d 1274, 1277 (Ind. Ct. App. 1992); National Eng’g & Contracting Co., Inc. v. C & P Eng’g & Mfg. Co., Inc., 676 N.E.2d 372, 378 (Ind. Ct. App. 1997). Generally, courts will look at the communications and the role of parties – including the role of outside counsel – to determine whether the parties were engaged in claims adjusting or the rendering of legal advice. See Hartford Fin. Servs. Group, Inc. v. Lake County Park and Recreation Bd., 717 N.E.2d 1232, 1235-1236 (Ind. Ct. App. 1999) (“The role of Hartford's counsel was not one of mere negotiator; nor was the attorney retained to act in the capacity of an agent other than an attorney such as a type of "outside claims adjuster" or to give simple business advice . . . simply put, Hartford retained counsel to investigate Lake County’s claim, render legal advice and make a coverage determination under the policy.”) (citation omitted).

B. Discoverability of Reserves

At least one Indiana case held that insurance reserve information related to an insurance policy, including aggregate reserve information, is discoverable. In Auto-Owners Ins. Co. v. C & J Real Estate, Inc., 996 N.E.2d 803, 807 (Ind. Ct. App. 2013), the court upheld a trial court’s motion to compel discovery as to a plaintiff’s request for "reserve information regarding or relating to [the plaintiff’s] file and/or Insurance Policy, including but not
limited to any aggregate reserve information.” Id. The insurer objected and argued that any documentation regarding the issue was prepared in anticipation of litigation and was undiscoverable. Id. The court noted that, while evidence or remarks about liability insurance in a negligence case is inadmissible, a case involving bad faith is a tort that contains elements that are different than negligence. Id. The court also stated that, while a discovery request from a third party regarding insurance reserves is invalid, such a request from an insurer of an insured is not invalid. Id. at 807-8 (rejecting insurer’s reliance on Ind. R. Trial P. 26(B)(3) and Richey v. Chappell, 594 N.E.2d 443 (Ind. 1992), which involved litigation between the insured and a third party in which the third party was requesting discovery of statements by the insured to the insurer).

Other courts interpreting Indiana law have held that, once litigation is anticipated, loss reserves are protected by the work product doctrine, as long as there is evidence that the loss reserves were established or adjusted in consultation with counsel in anticipation of or during litigation. See, e.g., G&S Metal Consultants, Inc. v. Cont’l Cas. Co., No. 3:09-CV-493-JD-PRC, 2014 U.S. Dist. LEXIS 151431, at *16 (N.D. Ind. Oct. 24, 2014) (applying Indiana law and stating that pre-litigation loss reserves may be discoverable).

C. Discoverability of Existence of Reinsurance and Communications with Reinsurers

This issue has not been directly addressed in a reported Indiana state court case. However, federal courts sitting in Indiana have provided some guidance on the issue. For example, Magistrate Debra McVicker Lynch’s order in Cummins, Inc. v. ACE Am. Ins. Co., No. 1:09-cv-00738-JMS-DML, 2011 U.S. Dist. LEXIS 4568 (S.D. Ind. Jan. 14, 2011) addresses the discoverability of the existence of reinsurance and communications with reinsurers. In that case, the court denied a wide discovery request for all reinsurance information. Id. at *30-31. However, discovery was allowed with respect to communications with reinsurers as to the specific claim at issue. Id. at *31-21 (stating communications between the insurers and their reinsurers regarding the claim at issue are different and may reveal the insurer’s views on coverage that may lead to evidence admissible to plaintiff’s claims).

D. Attorney/Client Communications

As discussed above, the discoverability of correspondence with counsel depends on the role counsel is playing. Indiana courts have recognized that communications between a property insurer and its own legal counsel before the insured sued the insurer for bad faith in handling the claim were protected by the attorney-client privilege and, thus, were not subject to discovery in the suit where the documents concerned the insurer’s request for legal advice relating to the claim. Hartford Fin. Servs. Group, Inc. v. Lake County Park and Recreation Bd., 717 N.E.2d 1232, 1235-1237 (Ind. Ct. App. 1999). However, insurers can waive their privilege in bad faith cases by arguing it did not commit bad faith because it reasonably relied upon the advice of counsel. Id. An insurer does not waive its attorney-client privilege by the mere denial of an allegation that it acted in bad faith. Id.

VII. DEFENSES IN ACTIONS AGAINST INSURERS

A. Misrepresentations/Omissions: During Underwriting or During Claim
A material misrepresentation or omission of fact in an insurance application relied on by the insurer in issuing the policy renders the coverage voidable at the insurance company's option. Colonial Penn Ins. Co. v. Guzorek, 690 N.E.2d 664 (Ind. 1997); Doaks v. Safeco Ins. Co. of Am., 3:09 CV 367, 2013 WL 951202 (N.D. Ind. Mar. 12, 2013). The materiality of the misrepresentation is a question of fact unless reasonable minds could not differ. Id.

Innocent mistakes made in submitting proofs of loss on a claim will not amount to fraud or false swearing, nor bar the insured under policy provisions with respect to misrepresentation. Palace Café v. Hartford Fire Ins. Co., 97 F.2d 766 (7th Cir. Ind. 1938) (applying Indiana law). However, willful and intentional fraud or false swearing in submission of a claim to an insurer may bar the insured under the terms of the relevant policy from recovery. Am. Econ. Ins. Co. v. Liggett, 426 N.E.2d 136 (Ind. Ct. App. 1981).

An insurer that seeks to void/rescind a policy based upon a representation made during underwriting must first offer to return the premiums it has collected from the insured within a reasonable time after the discovery of the alleged breach. Dodd v. Am. Family Mut. Ins. Co., 983 N.E.2d 568 (Ind. 2013). A failure to offer such return of premiums, or if refused, to pay it into court, constitutes a waiver of the alleged fraud. Id. However, there is an exception to this rule: “such a tender is not necessary where . . . the insurer has paid a claim thereon which is greater in amount than the premiums paid.” Id. (quoting Am. Standard Ins. Co. v. Durham, 403 N.E.2d 879, 881 (Ind. Ct. App. 1980)).

B. Failure to Comply with Conditions

The duty to notify an insurance company of potential liability is a condition precedent to the company's liability to its insured. Shelter Mut. Ins. Co. v. Barron, 615 N.E.2d 503, 507 (Ind. Ct. App. 1993), trans. denied; Dreaded, Inc. v. St. Paul Guardian Ins. Co., 904 N.E.2d 1267 (Ind. 2009); Indiana Farm Bureau Ins. Co. v. Harleysville Ins. Co., 965 N.E.2d 62 (Ind. Ct. App. 2012). However, policy requirements such as notice and cooperation will not bar recovery unless the insurer suffers prejudice as a result of the delay or lack of cooperation. Tri-Etch, Inc. v. Cincinnati Ins. Co., 909 N.E.2d 997 (Ind. 2009); Miller v. Dilts, 463 N.E.2d 257, 265-66 (Ind. 1984). Furthermore, Indiana courts enforce the policy condition that an insured not misrepresent a fact material to the insured’s claim for coverage at any time – including after a claim is filed. State Farm Fire & Cas. Ins. Co. v. Graham, 567 N.E.2d 1139 (Ind. 1991). To defend under a misrepresentation clause, and insurer need not show detrimental reliance. Id. However, an insured can avoid the application of such a clause by showing it withdrew or corrected the misrepresentation prior to reliance by the insurance company. Id. Reliance for purposes of enforcing such a clause is very broad and does not require the payment of a claim. Acuity v. Auto Tech Auto. Inc., 09 CV 336, 2012 WL 124928, at *9 (N.D. Ind. January 18, 2012).

C. Challenging Stipulated Judgments: Consent and/or No-Action Clause

Where an insurer has defended under a reservation of rights or has filed a declaratory judgment action, a judgment between an insured and a tort plaintiff will bind the insurer as to the issues not related to coverage, at least so long as the insured has acted reasonably and in good faith. Frankenmuth Mut. Ins. Co. v. Williams, 690 N.E.2d 675, 679 (Ind. 1997).

No-action clauses barring collusive settlements can bar action against the insurer until there has been a judgment or settlement approved by the
insurer although these cases have presented in Indiana with mixed issues including failure of conditions. See Smithers v. Mettert, 513 N.E.2d 660 (Ind. Ct. App. 1987). The court noted that the no-action clause should be interpreted not to include trial determinations "which merely rubber stamp compromise agreements entered into by the litigants and not by the insurance company." Id.

D. Statutes of Limitation

The ten-year statute of limitation for written contracts contained at IND. CODE § 34-11-2-11 applies to an insured's suit against a liability insurer. Perryman v. Motorist Mut. Ins. Co., 846 N.E.2d 683 (Ind. Ct. App. 2006). However, limitations contained within the policy limiting time to file suit are binding, unless in contravention of statute or public policy, so long as they afford a reasonable time for the insured to bring a claim. Id.

VIII. TRIGGER AND ALLOCATION ISSUES FOR LONG-TAIL CLAIMS

A. Trigger of Coverage

Whether or not the damaging effects of an occurrence continue beyond the end of the policy period depends on the language in the policy. In Allstate Ins. Co. v. Dana, 759 N.E.2d 1049 (Ind. 2001), the Indiana Supreme Court interpreted an Allstate insurance policy provision stating that it would pay "all sums" which Allstate "shall be obligated to pay" based on property damage "caused by an occurrence," to provide indemnification for "all sums," not just those sums accruing as a result of damages which arose during the policy period.

B. Allocation Among Insurers

However, several Courts have recognized that an insuring agreement can qualify an insurer’s indemnification obligation by agreeing to pay for “those” damages which arose during the relevant policy period. Trinity Homes LLC v. Ohio Cas. Ins. Co., 864 F. Supp. 2d 744, 759 (S.D. Ind. 2012). Under the policy language in Trinity – utilizing the phrase “those sums” that Trinity becomes liable to pay for property damage which “occurs during the policy period” – Ohio Casualty was obligated to the insured “only for damages arising during its policy periods for pro rata liability as opposed to several and indivisible.” Id.