I. **Regulatory Limits on Claims-Handling**

A. **Timing for Responses and Determinations**

Section 628.46 of the Wisconsin Statutes requires an insurer to “promptly pay every insurance claim.” Wis. Stat. § 628.46(1). The statute provides that a claim shall be considered “overdue” if it is not paid “within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss.” Id. However, “[a]ny payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer.” Id. In Wisconsin, all overdue payments accrue simple interest at the rate of 12% per year. Id.

B. **Standards for Determinations and Settlements**

In Wisconsin, as a general rule, the insurer has the right to exercise its own judgment regarding whether a claim should be settled or contested. Hilker v. W. Auto. Ins. Co., 204 Wis. 1, 14, 235 N.W. 413 (1931). However, in making this determination, the insurer owes the insured a certain duty to act in good faith. Id. at 15. To satisfy this good faith standard, the insurer’s decision must be “based upon a knowledge of the facts and circumstances upon which liability is predicated,” and the insurer must make a diligent effort to ascertain these relevant facts and circumstances in each case. Id. The ultimate decision whether to settle a claim must be the result of weighing the probabilities in a “fair and honest” manner. Id. at 14; see also, Roehl Transport, Inc. v. Liberty Mutl. Ins. Co., 325 Wis.2d 56, 784 N.W.2d 542 (2015).

An insurer must satisfy three basic obligations to meet the “good faith” standard. Mowry v. Badger State Mut. Cas. Co., 129 Wis. 2d 496, 510, 385 N.W.2d 171 (1986). First, the insurer must conduct a reasonable investigation. Second, it must advise the insured when a claim might exceed the limits of the policy. And third, it must timely advise the insured of any settlement offers. Id.

Wisconsin courts have held that it is not bad faith for counsel for an insurance company to refuse to settle a claim if he or she has a “bona fide

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

Wisconsin recognizes the right of privacy and has numerous statutes governing privacy. One whose privacy is unreasonably invaded is entitled to equitable relief to prevent and restrain such invasion, compensatory damages based either on plaintiff’s loss or defendant’s unjust enrichment, and a reasonable amount for attorney’s fees. Wis. Stat. § 995.50. On February 13, 2013, a bill to amend portions of this statutory provision was introduced into the Wisconsin Assembly. 2013 WI A.B. 10.

In addition to the general statute governing the right of privacy, Wis. Stat. 995.50, Wisconsin has various statutes addressing privacy in specific situations, including the following:

- Cable television subscribers, Wis. Stat. § 134.43.
- Oral or wire communications interception, Wis. Stat. §§ 968.27-.375. But see State v. Smith, 149 Wis. 2d 89, 438 N.W.2d 571 (1989) (there is no reasonable expectation of privacy in conversations over cordless telephones so as to be entitled to protection from warrantless interception.).
- Personal identifying information and documents, misappropriation thereof, Wis. Stat. §§ 943.201 & .203.
- State agency records/legislative fiscal bureau, Wis. Stat. § 13.95.
- Student identification numbers, Wis. Stat. §§ 36.32 (university), 38.14(14) (technical colleges), and 118.169 (public and private schools).
- Guardianship actions, Wis. Stat. § 54.44(5).
- Skilled nursing facilities, Wis. Stat. § 49.498(3)(a)3, nursing homes, Wis. Stat. § 50.09(1)(f), and patient privacy, Wis. Stat. § 51.61(1).
- Invasion of privacy, Wis. Stat. § 942.08.
II. Principles of Contract Interpretation

In Wisconsin, insurance contracts are interpreted by the same principles that control the construction of other contracts. Johnson Controls, Inc. v. Employers Ins. of Wausau, 2003 WI 108, ¶ 30, 264 Wis. 2d 60, 665 N.W.2d 257 (citing Kuhn v. Allstate Ins. Co., 193 Wis. 2d 50, 60, 532 N.W.2d 621 (Wis. 1995). The fundamental purpose of contract interpretation in Wisconsin is to carry out the intentions of the contracting parties. Kremers-Urban Co. v. American Employers Ins. Co., 119 Wis. 2d 722, 735, 351 N.W.2d 156 (Wis. 1984). With respect to insurance contracts in particular, policies should be interpreted to mean what a reasonable person in the position of the insured would have understood it to mean. Sprangers v. Greatway Ins. Co., 182 Wis. 2d 521, 536, 514 N.W.2d 1 (Wis. 1994).

III. Choice of Law

To determine which laws will govern a contractual dispute, Wisconsin applies its own choice of law rules. State Farm Mut. Auto Ins. Co. v. Gillette, 251 Wis. 2d 561, 641 N.W.2d 662, 670-71 (2002). In contractual disputes, including disputes over insurance contracts, Wisconsin courts will use the “grouping of contacts” rule. Id. Under the grouping of contacts rule, the court must determine what jurisdiction has the “most significant relationship” to the contract and then apply the law of that jurisdiction. Id. Factors relevant to the grouping of contacts analysis include: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties. Haines v. Mid-Century Ins. Co., 47 Wis. 2d 442, 450, 177 N.W.2d 328 (Wis. 1970) (citing Restatement (Second) of Conflicts § 188).

IV. Duties Imposed by State Law

A. Duty to Defend

When determining the existence of a duty to defend, the first issue that must be resolved is the existence of an insurance policy and the applicability of the policy to the claim. The party requesting coverage has the burden to prove the policy’s existence and its terms.

Assuming the parties have located an applicable insurance policy, the next issue is whether the insurance company has received sufficient notice of a
lawsuit or tender of defense by the insured. Under Wisconsin law, however, it is not clear when the duty begins. Although Wisconsin has adopted a notice requirement, there is no clearly defined standard by which to determine when the duty to defend is triggered. This issue is addressed in two separate Wisconsin cases. First, in Towne Realty, Inc. v. Zurich Insurance Co., 201 Wis. 2d 260, 548 N.W.2d 64 (1996), the Wisconsin Supreme Court determined that notice of a claim was sufficient to trigger the duty to defend. The court expressly rejected the argument that the insured must specifically request an insurance company to undertake its defense. The duty to defend, therefore, was triggered when the insureds put the insurer on notice of the claim. Second, under Delta Group, Inc. v. DBI, Inc., 204 Wis. 2d 515, 555 N.W.2d 162 (Ct. App. 1996), the court expanded its holding in Towne Realty and determined that the duty to defend was triggered even where there was no contact by the insured or request that the insurer provide a defense. In Delta Group, a letter from the plaintiff to the insurance company coupled with the fact that the insurer was named as a party triggered the duty to defend.

Under Wisconsin law, the duty to defend is determined by the allegations set forth in the complaint. An insurance company is required to defend its insured against all claims that allege damages covered by the terms of the policy even if the allegations are meritless. See, e.g., Southeast Wisconsin Professional Baseball Park Dist. v. Mitsubishi Heavy Industries America, 304 Wis. 2d 637, 783 N.W.2d 87; Elliott v. Donahue, 169 Wis. 2d 310, 321, 485 N.W.2d 403 (1992).

To determine whether an insurer is obligated to assume the defense of a third party suit, it is necessary to determine whether the complaint alleges facts which, if proven, would give rise to liability covered under the terms and conditions of the policy.

Sola Basic Indus., Inc. v. U.S. Fid. & Guar. Co., 90 Wis. 2d 641, 646-47, 280 N.W.2d 211 (1979) (citations omitted). The insurer’s duty to defend “is necessarily broader than the duty to indemnify because the duty to defend is triggered by arguable, as opposed to actual, coverage.” Kreuger Int’l v. Federal Ins. Co., 647 F. Supp. 2d 1024, 1031 (E.D.Wis. 2009), quoting Firemen’s Fund Ins. Co. v. Bradley Corp., 261 Wis. 2d 4, 660 N.W.2d 666. The allegation of a single covered claim gives rise to the insurer’s duty to defend the entire suit. Design Basics LLC v. Fox Cities Construction Corp., 2016 WL 8116895 (E.D.Wis. 2016), citing Fireman’s Fund Ins., 261 Wis.2d 4 (2003). In determining whether the complaint arguably alleges a covered claim, a court must “assume all reasonable inferences in the allegations of a complaint and resolve any doubt regarding the duty to defend in favor of the insured.” Fireman’s Fund Ins., 261 Wis.2d at 19.

Wisconsin law does not allow the insurer to to defend only those allegations or theories for which there is coverage. Rather, an insurer must
defend a suit in full, even if some of a claim's allegations fall outside the scope of coverage, so long as coverage for some portion of the claim is fairly debatable. See *Doyle v. Engelke*, 219 Wis. 2d 277, 285 n. 4, 580 N.W.2d 245 (1998); *Red Arrow Prods. Co. v. Employers Ins. of Wausau*, 233 Wis. 2d 114, 124, 607 N.W.2d 294 (Ct. App. 2000).

**B. Duty to Settle**

An insurer’s duty to defend includes the duty to seek settlement. *Prosser v. Leuck*, 225 Wis. 2d 126, 138-39, 592 N.W.2d 178 (1999). *Alt v. Am. Family Mut. Ins. Co.*, 71 Wis. 2d 340, 348, 237 N.W.2d 706 (1976). “[A]n insurance company...breaches its duty when it has the opportunity to settle an excess liability case within policy limits and it fails to do so.” *Id.* Thus, the insurer does not have the latitude to sit and wait for an offer of settlement. It may have to initiate negotiations to discharge its good-faith obligation to the insured.

**V. Extra Contractual Claims Against Insurers: Elements and Remedies**

**A. Bad Faith**

1. **First Party**

Wisconsin’s landmark bad faith insurance case is *Hilker v. Western Automobile Ins. Co.*, 204 Wis. 1, 231 N.W. 257 (1930), and recognized an insurer’s implied duty to settle or compromise claims. See also, *Roehl Transport, Inc. v. Liberty Mutl. Ins. Co.*, 325 Wis.2d 56, 784 N.W.2d 542 (2015). In *Anderson v. Continental Insurance Co.*, the Wisconsin Supreme Court established a separate tort of bad faith for first-party claims. Three elements are needed to establish the tort of bad faith:

   (1) the insurance company was obligated to pay the claim under the terms of the policy;

   (2) the insurer lacked a reasonable basis in law or fact for denying the claim; and

   (3) the insurer either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed.

   85 Wis. 2d 675, 691, 271 N.W.2d 368 (1978).

2. **Third Party**

In *Majorowicz v. Allied Mutual Insurance Co.*, 212 Wis. 2d 513, 569 N.W.2d 472 (Ct. App. 1997), the Wisconsin Court of Appeals extended the standard for first-party bad faith claims to third-party bad faith claims. The Court found
that insurers owe their insureds the same duty regardless of whether they are making a decision about providing policy benefits to the insured or defending the insured against third-party claims. “Under Wisconsin law, it is clear that an insurance company owes an affirmative duty to the insured of good faith treatment of any covered claims against the insured.” Id. at 528 (emphasis added); see also, Roehl Transport, 325 Wis.2d 56.

B. Fraud

In Badger Pharmacal, Inc. v. Colgate-Palmolive Co., the court set forth the various elements required to establish fraud/misrepresentation:

1. Misrepresentation must be made on the defendant’s personal knowledge or under circumstances in which the defendant necessarily ought to have known the truth or falsity of the statement;
2. The defendant must have an economic interest in the transaction;
3. The representation must be a fact and must be made by the defendant;
4. The representation must be false; and
5. The plaintiff must believe the representation to be true and rely thereon to his damage.

1 F.3d 621, 627 (7th Cir. 1993) (applying Wisconsin law).

Wisconsin courts also recognized a cause of action based upon a negligent misrepresentation, for which the party asserting such claim must establish the following five elements:

1. There must be a duty of care or a voluntary assumption of a duty;
2. The representation must be of a fact and made by the defendant;
3. The representation of fact must be untrue;
4. The plaintiff must believe such representation to be true and rely thereon to his damage; and
5. The defendant must have failed to exercise ordinary care in making the misrepresentation or in ascertaining the facts.

Badger Pharmacal, 1 F.3d at 626, citing, Schweiger v. Loewi & Co., Inc., 65 Wis.2d 56 (1974).

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

To recover damages for intentional infliction of emotional distress, the plaintiff must show:
1. “[T]he defendant’s conduct was intentional, that is, the defendant behaved as he did for the purpose of causing emotional distress”;

2. “[T]he defendant’s conduct was extreme and outrageous”;

3. The “defendant’s conduct caused the injury”; and

4. “[T]he plaintiff suffered an extreme and disabling emotional response to the conduct.”

Kennedy v. Children’s Serv. Soc’y, 17 F.3d 980, 986 (7th Cir. 1994).

Plaintiffs asserting intentional infliction of emotional distress claims must show that the “defendant’s conduct was so egregious that ‘the average member of the community’ would regard the acts forming the basis for the claim ‘as being a complete denial of the plaintiff’s dignity as a person.’” Nelson v. Monroe Reg’l Med. Ctr., 925 F.2d 1555, 1559 (7th Cir. 1991). “Wisconsin law requires more than upset or irritation to state a claim for intentional infliction of emotional distress.” Id. at 1560. Moreover, bad-faith emotional distress damages are recoverable only when the insured suffers substantial other damage apart from the loss of the contract benefits and the emotional distress. See Musa v. Jefferson Cnty. Bank, 2001 WI 2, ¶ 16, 240 Wis. 2d 327, 620 N.W.2d 797.

Compensation for mental health care expenses is separate from damages for NIED or IIED. Recovery of substantial other damages or damages for emotional distress are not prerequisites to recovery of mental health care expenses. Id. ¶¶ 37-38. Moreover, the requirement in the Restatement (Second) of Torts § 774A, which imposes a foreseeability requirement on damages for emotional distress or actual harm to reputation, does not apply to the award of mental health treatment expenses. Id. ¶ 38.

Wisconsin recognizes claims for negligent infliction of emotional distress, but plaintiffs must meet three primary criteria: (1) the injury suffered by the victim must have been fatal or severe; (2) the claimant must be related to the victim as a spouse, parent, child, grandparent, grandchild, or sibling; and (3) the claimant must have witnessed the incident causing death or serious injury or “the gruesome aftermath of such an event minutes after it occurs.” Finnegan ex rel. Skoglin v. Wisconsin Patients Compensation Fund, 2003 WI 98, ¶ 19, 263 Wis. 2d 574, 666 N.W.2d 797 (citing Bowen v. Lumbermans Mut. Cas. Co., 183 Wis. 2d 627, 632, 517 N.W.2d 432 (1994)). The court determines whether considerations of public policy relieve the defendant of liability in a particular case.

D. **State Consumer Protection Laws, Rules and Regulations**

The Wisconsin Consumer Act, codified in Wis. Stat. chs. 421-427, has as its stated purposes and policies the following:
To simplify, clarify and modernize the law governing consumer transactions;

To protect customers against unfair, deceptive, false, misleading and unconscionable practices by merchants;

To permit and encourage the development of fair and economically sound consumer practices in consumer transactions; and

To coordinate the regulation of consumer credit transactions with the policies of the federal consumer credit protection act.

Wis. Stat. § 421.102(2).

Fair marketing and trade practices are covered in Wis. Stat. ch. 100. Unfair methods of competition in business and unfair trade practices in business are prohibited. See Wis. Stat. § 100.20. This statute is enforced by a private right of action. It provides as follows:

Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney’s fee.

Wis. Stat. § 100.20(5) (2012); see, e.g., Reusch v. Roob, 2000 WI App 76, ¶ 27, 234 Wis. 2d 270, 610 N.W.2d 168.

Unfair marketing practices relating to insurance are covered under Wis. Stat. § 628.34, entitled, “Unfair Marketing Practices.” Administrative rules of the Commissioner of Insurance are covered in the Wis. Admin. Code INS. Wisconsin’s Department of Agriculture, Trade & Consumer Protection has promulgated general rules governing fair trade in Wis. Admin. Code ATCP.

VI. Discovery Issues in Actions Against Insurers

A. Discoverability of claims files generally

Section 804.01(2)(b) of the Wisconsin Statutes expressly provides for the right of any party to discover certain insurance information. Specifically, it provides that information regarding the existence and contents of any insurance agreement under which an insurer may be required to provide indemnification or reimbursement if a judgment is later entered in the action is discoverable.

All other insurance information, including information contained in claims files, is subject to Wisconsin’s general discovery rules. It is
discoverable only if it is relevant to the subject matter involved in the action or reasonably calculated to lead to the discovery of admissible evidence, and not privileged. Wis. Stat. § 804.01(2)(a).

The mere fact that insurance information is discoverable under sections 804.01(2)(a) or (b) does not automatically render it admissible at trial.

B. **Discoverability of Reserves**

Discoverability of the fact or particulars of reserve funds set up by insurers or self-insurers is governed by Wisconsin’s general discovery rules. In other words, it is discoverable only if it is relevant to the subject matter involved in the action or reasonably calculated to lead to the discovery of admissible evidence, and not privileged.

C. **Discoverability of existence of reinsurance and communications with reinsurers**

As set forth above, the existence and contents of any insurance agreement under which an insurer may be required to provide indemnification or reimbursement if a judgment is entered in the action is admissible regardless of whether it satisfies Wisconsin’s general relevancy standard. See Wis. Stat. § 804.01(2)(b). However, communications with reinsurers are subject to the general relevancy standard. See Wis. Stat. § 804.01(2)(a).

D. **Attorney/client communications**

With a few exceptions, attorney-client privilege arises when a communication is 1) confidential, 2) made for the purpose of facilitating the rendition of professional legal services to a client, and 3) takes place between any of the following parties:

- The client or the client’s representative and the client’s attorney or the attorney’s representative;
- The attorney and his or her representative;
- The client or the client’s attorney and an attorney representing another person in a matter of common interest;
- Representatives of the client;
- The client and the client’s representative; and
- Attorneys representing the same client.

Wis. Stat. § 905.03(2) (Amended by 2012 Wisconsin Court Order 0010 (C.O. 0010)). The privilege protects only communications, not facts. State ex rel.
Dudek v. Cir. Ct. of Milwaukee Cnty., 34 Wis. 2d 559, 580, 150 N.W.2d 387 (1967). Thus, a party cannot conceal facts or documents from discovery by providing them to his or her attorney. Id.

E. Issues relating to tripartite relationship

For the purposes of insurance law, Wisconsin courts consider the “classic” tripartite relationship to exist when an insurer hires an insurance defense attorney to represent the policyholder. See Marten Transport Ltd. v. Hartford Specialty Co., 194 Wis. 2d 1, 18, 533 N.W.2d 452 (Wis. 1995). In such a relationship, the insurer retains the right to control the defense, the settlement of the claim, and the payment of the claim within policy limits. Id.

F. Advice of counsel defense

When an insurance company retains a law firm to defend its insured in an action, an attorney-client relationship is created between the insured and the attorney along with all the attendant privileges. Juneau County Star-Times v. Juneau County, 2013 WI 4, ¶ 45, 345 Wis. 2d 122, 824 N.W.2d 457.

VII. Defenses in Actions Against Insurers

A. Misrepresentations/Omissions: During Underwriting or During Claim

Misrepresentations by an insured during the negotiation for an insurance contract do not affect an insurer’s obligations under the policy unless it is so stated in at least one of the following: 1) the policy, 2) a written application signed by the insured and made a part of the policy by attachment or endorsement, or 3) a written communication provided to the insured by the insurer within 60 days after the effective date of the policy. Wis. Stat. § 631.11(1)(a).

Moreover, under Wisconsin law,

[n]o misrepresentation, and no breach of an affirmative warranty, that is made by a person other than the insurer or an agent of the insurer in the negotiation for or procurement of an insurance contract constitutes grounds for rescission of, or affects the insurer’s obligations under, the policy unless, if a misrepresentation, the person knew or should have known that the representation was false, and unless any of the following applies:

1. The insurer relies on the misrepresentation or affirmative warranty and the misrepresentation or affirmative warranty is either material or made with intent to deceive.
2. The fact misrepresented or falsely warranted contributes to the loss.

Wis. Stat. § 631.11(1)(b).

Misrepresentations that occur after the loss only affect an insurer’s obligations under the policy if they are material. Am. Cas. Co. v. B. Cianciolo, Inc., 987 F.2d 1302, 1304 (7th Cir. 1993). Reliance on the misrepresentations is not required. Id.

B. **Failure to Comply with Conditions**

Section 631.11(3) (2012) of the Wisconsin Statutes, which governs an insured’s failure to comply with conditions, states as follows:

No failure of a condition prior to a loss and no breach of a promissory warranty constitutes grounds for rescission of, or affects an insurer’s obligations under, an insurance policy unless it exists at the time of the loss and either increases the risk at the time of the loss or contributes to the loss. This subsection does not apply to failure to tender payment of premium.

C. **Assistance and cooperation**

Wisconsin courts respect so-called “assistance and cooperation” clauses in insurance contracts because they protect the insurer’s interests by permitting it to obtain relevant facts and information concerning the loss while the information is still fresh and thus protect itself from fraud. Ansul, Inc. v. Employers Ins. Co. of Wausau, 2012 WI App 135, 345 Wis. 2d 373, 826 N.W.2d 110

D. **Late notice**

An insurer is prejudiced by late notice when it is unable to properly investigate the facts necessary to determine whether coverage should be provided. The insured bears a burden of showing that the insurer has not been prejudiced by late notice. Fireman’s Fund Ins. Co. of Wis. v. Bradley Corp., 261 Wis. 2d 4, 660 N.W.2d 666 (2003).

E. **Challenging Stipulated Judgments: Consent and/or No Action Clauses**

Section 632.24 of the Wisconsin Statutes provides for direct actions against insurers. "No action" clauses do not apply in states that allow direct actions.
F. **Statutes of Limitations**

Pursuant to section 631.83(1)(2012), the following statutes of limitations apply to certain insurance actions:

(a) Fire insurance. An action on a fire insurance policy must be commenced within 12 months after the inception of the loss. This rule also applies to riders or endorsements attached to a fire insurance policy covering loss or damage to property or to the use of or income from property from any cause, and to separate windstorm or hail insurance policies.

(b) Disability insurance. An action on disability insurance coverage must be commenced within 3 years from the time written proof of loss is required to be furnished.

(c) Life claims based on absence of insured. Sections 813.22 to 813.34 apply to life insurance actions based on death in which absence is relied upon as evidence of death.

For most other insurance actions, the general law applicable to limitations of actions set forth in Chapter 893 of the Wisconsin Statutes applies. Wis. Stat. § 631.83(1)(d). Pursuant to Chapter 893, actions for breach of contract are governed by a six-year statute of limitation. See Wis. Stat. § 893.43. Actions for libel, slander, assault, battery, invasion of privacy, false imprisonment or other intentional torts are governed by a three-year statute of limitation. See Wis. Stat. § 893.57.

Statutes of limitation cannot be shortened by insurance policy provisions. Wis. Stat. § 631.83(3)(a).

VIII. **Trigger and Allocation Issues for Long-Tail Claims**

A. **Trigger of Coverage**

Wisconsin courts have adopted a continuous trigger approach in cases of continuing damage, pointing out that the definition of “occurrence” expressly contemplates continuous or repeated exposure to conditions. Am. Family Mut. Ins. Co. v. Am. Girl, Inc., 268 Wis. 2d 16, 54-55, 673 N.W.2d 65 (2004); Soc’y Ins. v. Town of Franklin, 233 Wis. 2d 207, 607 N.W.2d 342 (Ct. App. Wis. 2000) (“The majority of courts that have considered the issue have adopted the continuous trigger theory.”).

B. **Allocation Amongst Insurers**

As long as it can be shown that any property damage took place during the time that a policy was in effect then that policy is on the risk for coverage regardless of when the property damage began. Am. Family Mut. Ins.

After confirming the continuous trigger approach, and the fact that each policy in effect during the time the damage occurred or was “triggered,” the court in Society Insurance permitted the insured to horizontally stack the full limits of each triggered policy. 2000 WI App 35, ¶ 10. In doing so, the court essentially adopted the “all sums/no allocation to the insured” approach, reasoning that “the insured should get the full benefit of the coverage it purchased from the insurer.” Id. ¶ 11. The court rejected earlier decisions which limited the insured to the selection of a single policy to satisfy the claim for damages arising out of continuing property damage. The court found this limitation to be “at odds with Wisconsin law,” because the insured has paid a premium for each year of coverage and has a reasonable expectation to recover up to the limit purchased with those premiums if the policy is triggered by property damage during the policy period. Id. ¶ 13.