State Of Insurance: Q2 Notes From Illinois

By **Matthew Fortin** (July 31, 2026)

The second quarter of 2026 featured a trio of auto insurance opinions from Illinois' appellate courts.

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These addressed coverage for employee-drivers under employers' commercial auto liability policies when an underlying claimant sues the employee but not the employer; the appropriate framework for analyzing late notice under a personal auto insurance policy requiring notice within a fixed number of days following an accident; and the viability of an Illinois Insurance Code, Section 155, claim for an insurer's delay in paying an underinsured motorist claim when the insurer pays the available policy limits outside of litigation.

The Second District breaks with the First District on when an employee-driver qualifies as an "insured" under an employer's policy.

Commercial automobile liability coverage obtained by businesses for themselves and their employees often extends insured status to "anyone liable for the conduct of an 'insured'" to the extent of that liability. That catchall can be particularly important for an employee driver involved in an accident with their personal automobile who is sued by the other driver for injuries sustained in the collision.

Where the employer's commercial auto coverage does not extend insured status to employees while operating their personally owned vehicles, the catchall for "anyone liable for the conduct of an 'insured'" may be their, or their personal insurer's, best hope for a defense.

The Appellate Court of Illinois, First District, considered that scenario 11 years ago in First Chicago Insurance Co. v. Molda, holding that an employer's potential liability under the doctrine of respondeat superior, for which the employer would be entitled to indemnification from the employee driver under the common law theory of quasicontractual implied indemnity, may qualify the employee as an insured under the employer's commercial auto coverage.[1]

On June 18, the Appellate Court of Illinois, Second District, decided Country Mutual Insurance Co. v. Witbrod, in which it expressly declined to follow Molda, creating a district split on whether the catchall for "anyone liable for the conduct of an insured" extends coverage to an employee driver when the employer, the named insured, was never sued.[2]

Witbrod rear-ended Tanya Kreulach on his way back to Antioch Pizza Shop after making a delivery for his employer, Wix Pizza Inc. He was driving his own vehicle, insured by State Farm, while Wix carried commercial auto liability policies from Country Mutual that covered nonowned autos used for food delivery.

Kreulach sued Witbrod for the injuries sustained in the accident, but not Wix.

Country Mutual denied coverage on the ground that Witbrod was not an insured because he was driving his own vehicle at the time of the accident. As a result, Witbrod could only qualify as an insured under the catchall provision for "anyone liable for the conduct of an insured," namely Wix.[3]

Feeling bound by Molda, the trial court held that Witbrod qualified as an insured, reasoning that Wix was potentially vicariously liable at the time of the accident and that Witbrod would in turn owe Wix implied indemnity — making him "liable for the conduct of an insured."[4]

The Second District reversed.

The court criticized Molda for grounding its analysis in the circumstances at the time of the accident, when the employer had potential liability under the doctrine of respondeat superior, rather than based on the actual allegations and theories of liability asserted by the claimant.[5]

Under settled Illinois law, the duty to defend is determined by comparing the actual allegations in the underlying complaint to the relevant provisions of the insurance policy.[6]

In that regard, the court noted that Kreulach only sued Witbrod, and never filed a complaint against Wix. The catchall provision in Country Mutual's policy extended insured status to "anyone liable for the conduct of an 'insured' ... but only to the extent of that liability."

Because Wix was never sued, "the extent of [its] liability" was none and, therefore, Country Mutual owed no duty to defend Witbrod.[7]

For insurers and putative insureds alike, Witbrod reopens the question of whether and to what extent an employee-driver involved in an accident in a personal vehicle is entitled to coverage under an employer's commercial auto insurance policy when the underlying claimant sues the employee-driver while leaving the employer entirely on the sidelines.

But it will be the claimant's choices, both in terms of venue and pleading strategy, that determine the answer — at least for now. Eventually, one might expect the Illinois Supreme Court to resolve the district split represented by Molda and Witbrod.

The First District reads a reasonableness standard into a personal auto insurance policy's notice requirement.

The notice requirement in a personal automobile insurance policy typically requires that notice to the insurer be "immediate," "prompt," or "as soon as practicable." Under Illinois law that language is interpreted to require notice "within a reasonable time," as determined by the facts and circumstances of each case using the factors outlined by the Illinois Supreme Court in 2006 in County Mutual Insurance Co. v. Livorsi Marine Inc.[8]

In American Alliance Casualty Co. v. Aguirre, the First District considered whether the same reasonableness standard applies to a notice provision that fixes a specific deadline. In the first published Illinois appellate decision on the issue, the First District held, on May 29, that it does.[9]

Aguirre's personal auto liability insurance policy with American Alliance required written notice of any accident within 30 days, regardless of fault. Aguirre implicitly notified his broker shortly after an accident — asking that his premium payments be stopped because his car was totaled — but did not notify American Alliance itself until the injured party filed suit roughly two years later.[10]

The issue on appeal was whether the 30-day notice provision implicitly required notice within a reasonable time and whether the Livorsi framework applied.

The court answered both questions in the affirmative, noting that personal auto insurance policies are traditional contracts of adhesion and that strict enforcement of a 30-day notice provision "would substantially diminish the practical value of the policy by indiscriminately denying coverage to insureds who provide late yet reasonable notice."[11]

Following its 2022 decision in Direct Auto Insurance Co. v. O'Neal, the court reasoned that strict enforcement of a fixed deadline would work an unfair, automatic denial of coverage against insureds who give late but reasonable notice, particularly given the adhesive nature of personal auto policies.[12]

Applying the Livorsi factors, the court found Aguirre's notice unreasonable as a matter of law. The policy language was clear.

Aguirre was a relatively sophisticated insured aware the accident was an event that might trigger coverage yet showed no diligence in ascertaining whether coverage was available. Because notice was unreasonable based on those factors, no showing of prejudice was required.[13] The court, accordingly, affirmed summary judgment for American Alliance.[14]

Following Aguirre, insurers can no longer treat a specific numerical deadline as a bright line that defeats coverage the moment it passes. Instead, the reasonableness standard and analytical framework provided by Livorsi determine whether an insured's failure to comply with a notice requirement relieves an insurer of its coverage obligations.

The First District further narrows insurers' exposure under Section 155 for delayed payment of UIM claims.

It has long been settled that in order for an insured to prevail under Section 155 of the Illinois Insurance Code, which permits a plaintiff to recover attorney fees, costs and statutory damages from an insurer for vexatious or unreasonable denial or delay in paying a claim, the insured must first succeed in an action on the policy.[15]

In Becker-Othman v. State Farm Mutual Automobile Insurance Co., decided on May 29, the First District incrementally extended that line of authority in the context of underinsured motorist claims.[16]

Nancy Becker-Othman sought UIM benefits from State Farm after she was involved in a rear-end collision. After State Farm investigated the claim she demanded arbitration, and State Farm agreed. Nearly three years later, after multiple depositions and reports from retained experts, State Farm agreed to pay the remaining UIM policy limit and canceled the still-pending arbitration.

Becker-Othman sued for breach of contract based on State Farm's failure to adjust and timely pay her claim, and for damages under Section 155 based on vexatious and unreasonable delay of payment.[17] Becker-Othman appealed following the entry of summary judgment for State Farm on both counts.

The First District affirmed summary judgment for State Farm on the breach of contract claim because nothing in the policy required the UIM claim to be adjusted or paid within a specific time frame, and that neither the implied covenant of good faith and fair dealing nor the reasonable-expectations doctrine could supply one.[18]

As to the Section 155 claim, Becker-Othman argued that she "succeeded" because State Farm paid the remaining UIM policy limit and, moreover, that payment did not defeat her Section 155 claim.

The court noted that she relied primarily on McGee v. State Farm Fire & Casualty Co., a Second District case decided in 2000 holding that "an insurer cannot defeat a section 155 claim by merely paying the insured and complying with policy procedures," which had since been marginalized by more recent cases.[19]

Specifically, the court pointed to Kroutil v. State Farm Mutual Automobile Insurance Co., which held, in 2021, that an arbitration award on a UIM claim does not constitute success on an action on the policy because while the award determined the amount owed by the insurer, it did not adjudicate whether the insurer breached the contract, and Moles v. Illinois Farmers Insurance Co., which held, in 2023, that an out-of-court settlement did not constitute success on an action on the policy.[20]

Following Moles and Kroutil, the court held that State Farm's voluntary payment of the remaining policy limits on Becker-Othman's UIM claim after nearly three years of arbitration "does not constitute success on an action on the policy," and, therefore, she could not recover under Section 155.[21]

Becker-Othman further narrows insureds' prospects for obtaining extracontractual relief under Section 155 when an insurer unreasonably delays payment.

The court's decision makes clear that regardless of what transpired before litigation, an insured's Section 155 claim must be anchored to a live and viable cause of action for breach of explicit rather than implied contractual obligations.

Conclusion

Taken together, the second quarter's decisions offer guidance in some areas while creating uncertainty in others.

The First District confirmed that fixed-time notice provisions in personal insurance policies imply a reasonableness standard governed by the Livorsi factors, while further narrowing the circumstances in which insureds may obtain extracontractual relief against insurers for delaying payment of UIM claims.

The Second District, for its part, opened the door for the Illinois Supreme Court to resolve a new district split regarding an employee-driver's status as an insured under an employer's commercial auto liability coverage.

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[1] First Chicago Insurance Co. v. Molda, 2015 IL App (1st) 140548.

[2] Country Mutual Insurance Co. v. Witbrod, 2026 IL App (2d) 250314, ¶ 1.

[3] Id. at ¶¶ 4, 11.

[4] Id. at ¶¶ 36-42.

[5] Id. at ¶¶ 111-117.

[6] Id. at ¶ 75.

[7] Id. at ¶¶ 117, 143.

[8] 222 Ill. 2d 303 (2006).

[9] American Alliance Casualty Co. v. Aguirre, 2026 IL App (1st) 242194, ¶ 1.

[10] Id. at ¶¶ 3-7.

[11] Id. at ¶¶ 16-17.

[12] Id.

[13] Id. at ¶¶ 21-25.

[14] Id. at ¶¶ 27-28.

[15] Cramer v. Insurance Exchange Agency, 174 Ill. 2d 513, 521 (1996).

[16] Becker-Othman v. State Farm Mut. Auto. Ins. Co., 2026 IL App (1st) 250037, ¶¶ 1-3.

[17] Id. at ¶¶ 8-14.

[18] Id. at ¶¶ 26-28.

[19] Id. at ¶ 32 (discussing McGee, 315 Ill. App. 3d 673 (2d Dist. 2000)).

[20] Id. at ¶¶ 32-36 (discussing Kroutil v. State Farm Mut. Auto. Ins. Co., 2021 IL App (4th) 210238, and Moles v. Illinois Farmers Ins. Co., 2023 IL App (1st) 220853).

[21] Id. at ¶¶ 37-38.