CENTER FOR INSURANCE POLICY AND RESEARCH

NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Journal of Insurance Regulation

Volume 45, Number 6

DOI: https://doi.org/10.52227/27476.2026

Beyond Interpleader: Protecting Insureds Through a Strategic Settlement Safe Harbor

Jonathan M. Stern

Journal of Insurance Regulation: A Forum for Opinion and Discussion of Major Regulatory and Public Policy Issues in Insurance

The Journal of Insurance Regulation (JIR) strives to make state insurance departments more aware of the cutting-edge, high-quality research occurring in the regulatory arena. All authors having articles that deal with insurance regulation are invited to submit manuscripts to the Journal for review. Before appearing in the Journal, each article is rigorously evaluated by the JIR Editorial Review Board to ensure that all information provides a true benefit to its readers and is of the utmost quality. The ideas expressed in the Journal are not endorsed by the NAIC, CIPR, the Journal's editorial staff, or the Journal's board.

© 2026 National Association of Insurance Commissioners

Beyond Interpleader: Protecting Insureds Through a Strategic Settlement Safe Harbor

Jonathan M. Stern, Partner, Victor Rane Group, Inc., Washington, DC

ABSTRACT

When accidents produce multiple claimants and inadequate limits, courts must decide whether to prioritize equitable distribution among victims or the promise of liability insurance: protecting the insured from ruin. In *Baldwin v. Standard Fire Insurance Co.* (2025), the Supreme Court of Indiana adopted Restatement of the Law of Liability Insurance § 26 and held that an insurer that interpleads its limits, names all known claimants, and continues the defense satisfies its duty of good faith as a matter of law. Missouri and Florida enacted statutes that produced a similar result in 2018 and 2023, respectively.

This article traces interpleader from its equitable origins to its modern statutory form, shows that the device was designed for disinterested stakeholders rather than liability insurers, and argues that courts, legislatures, and insurance regulators should resist efforts to convert it into a categorical safe harbor. Instead, it proposes a businessjudgmenttype rule that protects insurers who, in good faith, pursue a documented strategy to minimize their insured's overall exposure, whether or not that strategy includes interpleader. Building on *Peckham*, *Soriano*, *Voccio*, and *Davis*, the article identifies the conduct that should qualify for protection, proposes revising Restatement § 26(2), and offers model language for state unfair claims settlement practices statutes.

EXECUTIVE SUMMARY

Beyond Interpleader: Protecting Insureds Through a Strategic Settlement Safe Harbor argues that an insurer should not automatically be found to have satisfied its duty of good faith by depositing inadequate policy limits with a court. Interpleader can fairly allocate money among competing claimants, but it does not ordinarily produce releases or prevent claimants from pursuing the insured for amounts above the policy limits. The article's central distinction is between protecting the insurer from competing demands on the policy proceeds and protecting the insured from excess liability. The article identifies *Baldwin v. Standard Fire Insurance Co.* (Ind. 2025) as a consequential departure from that distinction. Adopting Restatement of the Law of Liability Insurance § 26, the Supreme Court of Indiana held that an insurer facing multiple claimants and insufficient limits acted in good faith as a matter of law by

DOI: https://doi.org/10.52227/27476.2026

interpleading its limits, naming all known claimants, and continuing the defense. Arizona has recognized a similar judicial safe harbor, while Missouri and Florida have enacted statutory protections.

These rules offer insurers certainty, but, in the author's view, can reward an early filing even when settlement efforts might have reduced the insured's exposure. The historical and practical case against a categorical safe harbor is that interpleader was designed principally to protect a stakeholder facing conflicting claims to a fund. Once liability limits are deposited with a court, the insurer loses direct control of money it might otherwise use to negotiate releases. Claimants may still sue the insured—under *State Farm Fire & Casualty Co. v. Tashire*, the interpleader court cannot enjoin the underlying tort suits against the insured—and distribution may take years.

Interpleader can nevertheless be appropriate when the insured has no meaningful assets at risk, when genuine settlement efforts have failed, or when the insurer has resolved the claims it reasonably can and deposits the remaining limits. In place of filing-based immunity, the article proposes a strategic settlement safe harbor: a rebuttable presumption of good faith for an insurer that documents an informed, insured-protective effort to minimize overall exposure. The insurer would promptly investigate and value all known claims; warn and consult with the insured; offer available limits toward a global settlement in exchange for releases; convene claimants where feasible; and, if global resolution fails, make and document a reasoned allocation of limits. Reasonable selective settlements could qualify even if they exhaust coverage.

Rebutting the presumption would require clear and convincing evidence that no reasonable insurer would have acted as the record shows, so many disputes should be resolved on the pleadings or summary judgment. Courts would judge the strategy against information available at the time, rather than a better outcome imagined in hindsight. The article recommends revising Restatement § 26(2) so interpleader is evidence of good faith, not conclusive performance of the duty of good faith. It proposes replacing categorical statutory interpleader immunity with an evidentiary rule, adding a multiple-claimant standard to unfair claims settlement practices law, and using claim-file documentation and regulatory data collection to assess outcomes. The governing principle is straightforward: legal protection should attach to reasonable efforts to protect the insured, whether those efforts ultimately include interpleader.

I. INTRODUCTION

In *Baldwin v. Standard Fire Insurance Co.* (2025), the Supreme Court of Indiana adopted Restatement of the Law of Liability Insurance § 26 (American Law Institute [ALI], 2019). It held that an insurer facing multiple claimants and inadequate limits satisfied its duty of good faith by interpleading its limits, naming all known claimants, and continuing the defense. The decision endorsed interpleader as a safe harbor from claims that the insurer should have pursued a different settlement strategy.

Other authorities emphasize the insurer's settlement judgment. *Texas Farmers Insurance Co. v. Soriano* (1994) permits a reasonable settlement with one claimant even if it exhausts or diminishes the proceeds available for others. *Peckham v. Continental Casualty Insurance Co.* (1990), *Voccio v. Reliance Insurance Cos.* (1983), and *Liberty Mutual Insurance Co. v. Davis* (1969) likewise recognize latitude to make reasonable, exposure-reducing decisions without satisfying every claimant.

These approaches differ in what earns protection: a procedural filing or an insured-protective settlement process. This article argues for a business-judgment-style rule that protects insurers from hindsight liability when they attempt in good faith to minimize their insureds' exposure.

A. WHY THE CHOICE OF SAFE HARBOR MATTERS TO THE LIABILITY INSURANCE MARKET

The choice of safe harbor affects how liability insurance performs when claims exceed limits. Keeton (1954) argued that an insurer deciding whether to settle "must use such care as would have been used by an ordinarily prudent insurer with no policy limit applicable to the claim" (p. 1147). Syverud (1990) examined the conflicts that control of settlement creates. A rule allowing the insurer to discharge that duty by depositing limits with a court changes the protection policyholders purchased.

The choice also shapes claim handling incentives. A rule rewarding early interpleader encourages insurers to surrender control of the limits. A rule rewarding documented settlement efforts encourages investigation, valuation, communication, and offers to obtain releases. Those efforts should reduce excess exposure and its associated costs. Regulators who supervise claim practices have an interest in which approach insurers adopt and in testing those expected effects.

B. THE LITERATURE

Legal scholarship on the duty to settle is deep, but scholarship on the multiple claimant variant is thin. Keeton (1954) and Syverud (1990) supply the doctrinal and economic foundation for the duty to settle generally, and Syverud (1990, p. 1122) reports that most states require the insurer to give "equal consideration" to the insured's interests and its own. Abraham (2015) examines how the duty applies when liability is uncertain or claims are mixed, and Saiman (2022) uses settlementdecision law to defend the Restatement project against its critics. Foggan and Padgett (2020) and Behrens and Appel (2019) present the insurerside critique that the

Restatement departed from the ALI's traditional role by advancing liabilityexpanding rules rather than restating existing law. Casserlie (2021) analyzes Florida's totalityofthecircumstances standard after *Harvey v. GEICO General Insurance Co.* (2018). The practitioner literature on multiple claimants is more developed than the academic literature. Stern (2009) argued that interpleader often amounts to an abdication of the insurer's duty to manage the policy for the insured's benefit, and Weihmuller and TurbeCapaz (2012) canvassed the tools available to an insurer that wants to limit its bad faith exposure without surrendering control of the limits. The history of interpleader has its own literature, led by Chafee (1921, 1932, 1940), who drafted the federal interpleader statutes, and by Hazard and Moskovitz (1964), who traced the device from its common law origins. This article draws those strands together. It brings the history of interpleader to bear on the question whether a liability insurer is the kind of stakeholder the device was built for, and it brings the dutytosettle literature to bear on the question of what rule best serves insureds, claimants, and the market.

Part II traces interpleader's history. Part III examines *Baldwin* and Restatement § 26 and proposes revised text. Part IV explains the limits of interpleader as a means of protection for insureds. Part V develops a strategic settlement safe harbor, identifies qualifying conduct, and relates the proposal to the totality-of-the-circumstances standard. Part VI proposes changes to unfair claims settlement practices laws, statutory safe harbors, and market-conduct supervision.

II. INTERPLEADER: ORIGINS, PURPOSE, AND LIMITS

Interpleader is old, and its history explains its shape. Chafee (1921) traced the device to a common-law writ that allowed a defendant who faced two adverse claimants to the same chattel to bring them into court so that the claimants would "interplead" between themselves. The Court of Chancery adopted the remedy in the 17th century, and Hazard and Moskovitz (1964) concluded that "the contours of modern interpleader began to take shape no earlier than the late seventeenth century" (p. 709). The premise has never changed. As Hazard and Moskovitz put it, "[a] person confronted with conflicting demands that he do or pay something ought not to be liable twice" (1964, p. 706). Chafee described the stakeholder as one who is "not obliged to be at the expense and risk of defending two actions" when he admits he owes the fund to one of two rivals (1921, p. 814).

Equity hedged the remedy with technical requirements. Pomeroy's formulation, which most American courts adopted, required that the same thing, debt, or duty be claimed by all the parties; that the adverse claims derive from a common source; that the stakeholder have no interest in the subject matter; and that the stakeholder have incurred no independent liability to any claimant (Chafee, 1921, p. 822; Hazard & Moskovitz, 1964, p. 706). Chafee criticized these requirements as "partly historical incidents of interpleader unnecessary to its rational purpose" (1921, p. 822). His campaign to modernize the device shaped the federal statutes that followed (Smith, 1980).

The modern federal remedy grew out of an insurance case. In *New York Life Insurance Co. v. Dunlevy* (1916), a life insurer faced rival claimants in two states to the surrender value of a single policy, could not join them in one court because of the limits of state process, and paid twice. The Supreme Court later described *Dunlevy* as having "exhibited the serious problems encountered by insurance companies when conflicting demands are made by residents of different States" and explained that Congress passed the Act of February 22, 1917, 39 Stat. 929, "[i]n order to mitigate the difficulties" (*Sanders v. Armour Fertilizer Works*, 1934). The 1917 Act allowed only insurance companies and fraternal benefit societies to file, and it provided nationwide service of process so that all claimants could be brought before one court (Smith, 1980). Congress extended the remedy to casualty companies and added the power to enjoin claimants in 1926, authorized "bills in the nature of interpleader" in 1936, and codified the remedy in its present form at 28 U.S.C. § 1335 in 1948 (*State Farm Fire & Casualty Co. v. Tashire*, 1967, p. 532 & nn. 8–11). Rule 22 of the Federal Rules of Civil Procedure supplies a parallel remedy that does not depend on the statute's jurisdictional features (Fed. R. Civ. P. 22). Most states have comparable rules.

Two features of this history matter for liability insurance. First, the paradigm stakeholder was and remains a disinterested holder of a fund who concedes that it owes the money and wants only to avoid paying twice. Hazard and Moskovitz identified the "standard case of interpleader" as "the insurance company confronted by rival claimants to the proceeds of a life insurance policy" (1964, p. 706). Second, the Supreme Court has refused to let interpleader grow beyond that purpose. In *Tashire*, the Court held that a liability insurer's interpleader could restrain claimants from enforcing judgments against the insurer outside the interpleader proceeding but could not restrain the claimants' tort suits against the insured. The insurer's interest, "which is the fulcrum of the interpleader procedure," was "confined to its $20,000 fund" (*Tashire*, 1967, p. 535). Interpleader, the Court said, "was never intended to perform such a function, to be an all-purpose 'bill of peace'" (p. 535). The Court acknowledged that the "race to judgment" among claimants to an insufficient fund was among "the principal evils the interpleader device was intended to remedy" (p. 533). But it located the remedy for that evil in the distribution of the fund, not in relief for the insured.

That is the doctrinal setting into which *Baldwin* and Restatement § 26 introduce interpleader as a safe harbor. The device protects the stakeholder's fund. It does not protect the insured. A rule that treats the filing of an interpleader and provision of a defense as full performance of the insurer's duty to the insured therefore asks interpleader to do something it was never designed to do.

III. BALDWIN, THE RESTATEMENT, AND THE SAFE HARBOR

A. THE BALDWIN DECISION

Tommi Hummel crashed her vehicle into a car driven by Bradley Baldwin, causing severe injuries to Baldwin and to one of Hummel's passengers, John Hopkins (*Baldwin*, 2025, p. 1201). Hummel was insured under a Standard Fire automobile policy providing $50,000 per person and $100,000 per accident in bodily injury liability coverage (p. 1201). Standard Fire's investigation identified three potential claimants: Baldwin, Hopkins, and Hummel's other passenger, Jill McCarty (p. 1201).

Baldwin sued the Hummels three months after the accident, prompting Standard Fire to appoint defense counsel (p. 1201). Two months later, Baldwin made a timelimited settlement demand for the $50,000 per person limit (p. 1201). Standard Fire rejected the demand, concluding that both Baldwin's and Hopkins's claims would exceed $50,000 and that paying Baldwin $50,000 risked prematurely exhausting the $100,000 aggregate limit, leaving the Hummels exposed to a potential future claim by McCarty (p. 1202).

One month later, Standard Fire filed an interpleader action, naming all three potential claimants and depositing the $100,000 with the court (p. 1202). As trial approached in Baldwin's negligence suit, Baldwin demanded $700,000 to settle all claims (p. 1202). Standard Fire declined, but the Hummels—without the insurer's consent—entered a $700,000 settlement with Baldwin and assigned him any claims they had against Standard Fire in exchange for an agreement not to enforce the settlement against them (p. 1202).

Baldwin, as assignee, then asserted counterclaims against Standard Fire in the interpleader action alleging bad faith and breach of the duty of good faith (p. 1202). The trial court granted summary judgment in favor of Standard Fire, concluding it had not breached any duty owed to its insureds in connection with the accident (p. 1203). The trial court found that Standard Fire's rejection of Baldwin's $50,000 timelimited demand and its decision to file an interpleader did not violate the duty of good faith and fair dealing, and it further held that Standard Fire was released from any additional liability arising from the accident and owed no further obligations to any defendants in the action (p. 1202). The trial court ultimately distributed $50,000 to Baldwin and $50,000 to Hopkins and the Indiana Child Support Bureau for unpaid child support (p. 1202).[1]

The Court of Appeals affirmed in part and reversed in part the trial court's ruling (*Baldwin*, 2025, p. 1203, citing *Baldwin v. Standard Fire Insurance Co.*, 2024). It agreed with the trial court on several issues (*Baldwin*, 2024, pp. 662–663, 668), but it reversed the grant of summary judgment for Standard Fire on the two central claims—breach of the duty of good faith and bad faith—holding that genuine issues of material fact existed on both (*Baldwin*, 2025, p. 1203). The panel concluded that a jury could find Standard Fire acted unreasonably in rejecting Baldwin's $50,000

[1] There is no indication in the opinion that McCarty ever made a claim.

timelimited demand and that Baldwin's expert testimony created a triable issue on bad faith (p. 1203).

The Supreme Court of Indiana affirmed the trial court's summary judgment, holding that the insurer did not breach its duty of good faith or act in bad faith when it rejected Baldwin's timelimited settlement demand and instead filed an interpleader (p. 1203).[2] Adopting Section 26 of the Restatement, the Court recognized a "safe harbor" that protects insurers facing multiple claimants and inadequate policy limits when they promptly interplead the full limits, name all known claimants, and continue defending the insured. Because Standard Fire satisfied each of these requirements, its conduct was reasonable as a matter of law, foreclosing any claim of bad faith. The court expressly described interpleader as a safe harbor in the multiple claimant/inadequatelimits context and rejected the notion that the insurer must "play Solomon" or prioritize an early demanding claimant over other injured claimants or potential claimants.

The court explained that insurers in a multiple claimant/inadequate limits situation "should try to minimize their insureds' overall liability" and "should make settlement decisions and manage policy limits with this goal in mind" (p. 1207). But the rule the court adopted immunizes insurers regardless of whether they make any effort to minimize their insureds' overall liability and, as will be seen, interpleading their limit of liability ties the insurer's hands and prevents them from doing what the court said they should do.

Indiana is not unique in this respect. The Court of Appeals of Arizona reached a similar result in *McReynolds v. American Commerce Insurance Co.* (2010), holding that the prompt, goodfaith filing of an interpleader as to all known claimants, with payment of the limits into court and a continued defense, "acts as a safe harbor for an insurer against a bad faith claim for failure to properly manage the policy limits" when the expected claims exceed the limits (p. 284).[3] Legislatures in Missouri and Florida have created safe harbors for interpleading by statute.

In 2018, the Missouri Legislature amended Section 507.060 of its revised statutes, which generally addresses interpleader matters. The amendment provides that, if an insurer timely files an interpleader action and deposits its policy limits into court, it is generally protected from liability beyond those limits while continuing to provide a good-faith defense to its insureds, and the statute does not require claimants to release or dismiss their claims against the insured (Mo. Rev. Stat. § 507.060, RSMo 2026; H.B. 1531, § A, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018)).

[2] The court recognized, under the then-prevailing rule that inquired whether the insurer had made "reasonable efforts to compromise and settle the matter," that it was a "close call," and one justice concurred in part and dissented in part, arguing that a jury could find the interpleader was done in bad faith if the insurer had not expected McCarty would make a claim (*Baldwin*, 2025, pp. 1203, 1210).

[3] The Arizona court explained that "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" (*McReynolds*, 2010, p. 284). Part V agrees with that premise and disagrees only with the choice of interpleader as the source of certainty.

In 2023, the Florida Legislature added a subsection to the state's bad faith statute that immunizes an insurer from liability beyond its limits for failure to pay all or part of the limits to competing third-party claimants when multiple thirdparty claimants assert competing claims from a single occurrence that may exceed the available limits, if the insurer, within 90 days after notice of the competing claims, either files an interpleader action or makes the limits available for distribution through binding arbitration agreed to by the insurer and the claimants (Fla. Stat. § 624.155(6), 2025; Ch. 2023-15, § 4, Laws of Fla.).

B. RESTATEMENT OF THE LAW OF LIABILITY INSURANCE § 26

ALI issued the Restatement in 2019. Section 26 addresses the duty of an insurer when there are multiple lawsuits that are subject to "a single policy limit" (ALI, 2019, § 26(1)). The insurer's duty in that circumstance is "to make a good-faith effort to settle the actions in a manner that minimizes the insured's overall exposure" (§ 26(1)). That formulation tracks the First Circuit's statement in *Peckham* that the insurer "has both the right and the duty to exercise its professional judgment in settling, or refusing to settle, such claims" but "must do so mindful of the insured's best interests and in good faith," with the goal of relieving the insured "of so much of his potential liability as is reasonably possible, considering the paucity of the policy limits" (1990, p. 835, citing *Davis*, 1969, p. 481).

Subsection (2) then supplies the safe harbor. It provides that the insurer "may . . . satisfy this duty" by interpleading the policy limits to the court, naming all known claimants, and, if it has a duty to defend or to pay defense costs, continuing to do so until the actions settle, until they are finally adjudicated, or until a court holds that the insurer has no duty to defend or to pay defense costs (§ 26(2)). Three features of the text deserve attention. The word "may" signals that interpleader is permissive, not mandatory. The phrase "satisfy this duty" signals that interpleader is complete performance, not evidence of performance. And the subsection says nothing about what the insurer must have done before it files.

Comment A favors an overall settlement strategy over a "first-come, first-served" approach that may exhaust limits while leaving the insured exposed. It calls for allocating proceeds according to relative claim values, while recognizing that global settlement may fail. An insurer pursuing that strategy risks a later suit if it rejects a within-limits demand and an excess judgment follows (§ 26 cmt. a).

Comment B picks up that risk. It acknowledges that the duty to pursue a global strategy exposes insurers to a "considerable degree of uncertainty," and it presents the interpleader safe harbor of subsection (2) as the answer to that uncertainty (§ 26 cmt. b). The insurer may deposit the limits with the court, name all potential claimants, and keep defending while the court decides how to divide the money. The comment describes this mechanism as one that promotes an equitable division when the insured has few assets, while conceding that it does not prevent further litigation against an insured who has assets worth pursuing. The drafters added that insurers that issue "low-limit policies" to assetrich insureds "bear a greater defense burden" (§ 26 cmt. b).

Comment C narrows the safe harbor's intended field. The drafters designed it for simple coverage arrangements: a single policy period and an integrated program. Where coverage is layered across several policies or insurers, the insured usually has the resources to coordinate among them, and the insurer's duty is to act reasonably and to assist the insured in minimizing total exposure even when interpleader is not feasible (§ 26 cmt. c).

The Restatement's reception adds irony. Publication of the Restatement prompted significant backlash from insurers, practitioners, and state legislatures. Commentators argued that it departed from ALI's traditional role by advancing novel, liabilityexpanding rules rather than accurately restating existing law (Foggan & Padgett, 2020; Behrens & Appel, 2019). Creating a safe harbor through interpleader, however, favored insurers. As this article contends, making interpleader a safe harbor likely is detrimental to policyholders. Even a defender of the Restatement's settlement provisions has described settlement law as "an undertheorized amalgamation of contract, tort, agency, and fiduciary principles" (Saiman, 2022, p. 169). Section 26(2) shows the cost of that lack of theory: it imported a procedural device built for one kind of insurer into a duty owed by another.

C. SHOULD § 26(2) BE REVISED?

> The question that follows is whether the fault lies in how courts read § 26(2) or in § 26(2) itself. The comments say that the insurer's task is to minimize the insured's overall exposure. The black letter says that the insurer may discharge that task by depositing the limits with a court. Part IV explains in detail why those two statements are in tension: once the limits are in the court registry, the insurer has no money with which to buy releases, so the deposit forecloses the very strategy the comments describe. A blackletter rule that produces effects contrary to its own comments should be revised.

Revision is preferable to repeal. Interpleader has a legitimate place in the multiple claimant setting, as Part IV acknowledges, and § 26(2) is the only provision in the Restatement that speaks to it. The defect is the phrase "satisfy this duty." The Restatement should treat interpleader as some evidence of good faith rather than as complete performance. A revised subsection (2) might read as follows:

> (2) An insurer's interpleader of the policy limits, naming all known claimants, accompanied by continued performance of any duty to defend or to pay defense costs, is evidence that the insurer has made the good faith effort required by subsection (1). It is not conclusive. In determining whether the insurer satisfied subsection (1), the trier of fact must consider whether, before interpleading, the insurer made reasonable efforts to settle the actions in a manner that minimizes the insured's overall exposure, and whether interpleading at that time sacrificed a realistic opportunity to do so.

The corresponding change to comment B would explain that interpleader ordinarily satisfies the duty when the insured has no meaningful assets at risk, when settlement efforts have been exhausted, or when the insurer has settled the claims it can settle and interpleads the remainder. The comment should also explain that interpleader ordinarily will not satisfy the duty when the insurer files it in place of any effort to settle while the insured faces a realistic prospect of an excess judgment. That revision aligns the black letter with the comments, and with the *Peckham* line of authority the Restatement itself cites. Part V proposes the processbased safe harbor that should replace the one the current text creates.

IV. THE PROBLEM WITH INTERPLEADER

A. LOSS OF SETTLEMENT LEVERAGE AND CONTROL

The interpleader works well, for example, with a life insurer when there is uncertainty as to the proper beneficiary. In the liability setting, however, interpleader deprives the insurer of the very leverage the duty to defend and settle is supposed to deploy on the insured's behalf. Once the policy limits are paid into court and placed in *custodia legis*, those dollars—absent agreement of the interested parties—are no longer available to fund settlements that trade policy proceeds for releases; the insurer can defend, but it cannot meaningfully buy down the insured's exposure.

A liability insurer is simultaneously a stakeholder of limited policy proceeds and an active contracting party with ongoing defense, coverage, and settlement obligations. That structural difference makes life insurance interpleader a clean, "onefund, many claimants" problem, whereas liability insurance interpleader typically collides with the duty to defend and the duty to settle. Moreover, a liability insurer does not face a real risk of multiple liability; once it pays the policy's limit of liability through judgments and *bona fide* settlements, its liability generally ends. The historical justification for the remedy—the double vexation that Chafee, Hazard, and Moskovitz described—is therefore absent.

In a liability insurance interpleader, courts generally treat the deposited policy limit as a single limited fund and distribute it according to equitable principles that vary by jurisdiction but follow a few recurring patterns.[4] In many states, once the insurer interpleads and all claimants and their claims are before one court, the court will order a *pro rata* distribution based on each claimant's proportionate share of the total proven damages, so a claimant with 40% of the aggregate damages gets roughly 40% of the fund rather than everyone taking equal cuts or racing to be the first to judgment.[5]

[4] E.g., Commercial Union Ins. Co. v. United States, 999 F.2d 581, 588-89 (D.C. Cir. 1993).

[5] E.g., XL Specialty Ins. Co. v. Hallac, No. 17-cv-2867, 2018 U.S. Dist. LEXIS 114575, at *14 (S.D.N.Y. June 20, 2018) ("In an interpleader action, the Court, in exercising its equitable discretion, can distribute funds irrespective of the timing of competing claims."); Boris v. Flaherty, 242 A.D.2d 9, 13 (N.Y. A.D. 1998) ("Inasmuch as the interpleader action was commenced before execution on the judgment and before a stay of enforcement was ordered, State Farm should be in no better position than the other claimants regarding its priority to the stake. As part of the continuing inherent authority of a court over its own judgments … and pursuant to the equitable power granted it by statute in an interpleader action, Supreme Court had the authority to stay any execution under State Farm's judgment before deciding how to distribute the insurance monies equitably."); Secura Ins. Co. v. Stamp, 991 N.W.2d 244 (Mich. App. 2022); Christlieb v. Luten, 633 S.W.2d 139 (Mo. Ct. App. 1982); Century Indem. Co. v. Kofsky, 161 A. 101 (Conn. 1932).

In practice, the court will usually require each claimant to prove liability and damages; submit judgments already obtained or settlements already agreed upon; or stipulate to their percentages. The court will then determine the total amount of valid claims and enter an order specifying each claimant's dollar share of the interpleaded fund, sometimes also taking into account perperson or peroccurrence limits in the insurance.[6]

Liability insurers, however, do more than simply write checks; they provide a service to insureds by taking over the complex task of evaluating, negotiating, and resolving thirdparty claims to minimize the insured's overall financial exposure. By contract, the insurer typically assumes control of the defense and settlement of covered claims, which means the carrier uses its claims professionals' experience with liability law, damages valuation, jury verdict ranges, and negotiation tactics and strategy to identify beneficial settlement opportunities and to respond appropriately to offers within limits. That control is the source of the duty to settle in the first place; the insured has surrendered the power to protect itself and depends on the insurer to exercise it (Keeton, 1954; Syverud, 1990).

That is not to say that interpleader can never serve a beneficial purpose with liability insurance. Interpleader may make sense, for example, when the insured is liquidating in bankruptcy and can provide no excess recovery because it lets the liability insurer convert a chaotic, zerosum race to the policy limits into a single, equitable proceeding where all claimants are before one court, the limited fund is fixed, and the insurer can discharge its obligations without favoring any one claimant and without harming its insured. Interpleader can work in a scenario where there is no realistic prospect of recovering the excess from the insured, so the policy proceeds are functionally a common fund whose fair and transparent distribution matters more than any theoretical protection of the insured's estate.

Interpleader might also be appropriate after genuine efforts at settlement are exhausted, or when some but not all claims are settled. An insurer interpleading after settling some of multiple claims has reduced the overall liability of its insured to the extent feasible and, by interpleading at that point, likely prevents the first to judgment from getting the entirety of the remainder.[7]

The underlying tort cases can still settle, but the settlement is typically structured around how the court chooses to distribute the interpleaded funds (often via a global agreement presented to the interpleader court for approval). The insurer can still pay its own money to settle bad-faith or extracontractual exposure if it chooses, but that is separate from the already-deposited policy limits, which remain under court control.

---

[6] *E.g.*, Standard Acc. Ins. Co. v. Winget, 197 F.2d 97 (9th Cir. 1952); Allstate Ins. Co. v. Ostenson, 713 P.2d 733 (Wash. 1986).

[7] *E.g.*, Boris v. Flaherty, 242 A.D.2d 9, 13 (N.Y. A.D. 1998). The interpleader at that point does not aid the insured, who should not care how the insurance money is distributed, but it also does not hurt the insured.

Distribution can nevertheless take years, while the insured remains exposed to judgments and collection efforts. Court control of the fund limits the insurer's ability to respond independently to settlement opportunities.[8]

B. NO MEANINGFUL PROTECTION FROM EXCESS JUDGMENTS

Unlike a liability insurer, which rarely, if ever, would pay money to a claimant without taking a release, the interpleader court declines to require a release of the insured from liability as a condition for receiving distributions from the interpleaded funds. Indeed, federal courts and numerous state courts are precluded from enjoining claimants from pursuing the insured in tort.[9] "In short, interpleader, in and of itself, does not minimize or extinguish the insured's exposure to multiple claims; it simply provides a means of 'fair' distribution of the policy proceeds from the claimants' perspective" (Weihmuller & TurbeCapaz, 2012, p. 242).

How does this possibly benefit the insured? This article contends it does not. And, in the circumstances where interpleading prevents the insurer from endeavoring to reduce the insured's overall liability, interpleading the policy limits may be an abdication of the insurer's responsibility (Stern, 2009, as quoted in Bruner & O'Connor, 2025, § 11:170).

The separate opinion in *Baldwin* illustrates the distinction. Justice Goff reasoned that settling Baldwin's claim at the per person limit would have protected the Hummels from that claim while leaving the balance available for Hopkins and McCarty.

---

8 In Matter of Schoharie Limousine Crash of Oct. 6, 2018, 219 N.Y.S.3d 534 (N.Y. Sup. Ct. 2024), the court declined to distribute the Global Liberty interpleader funds before trial because doing so would neither resolve the underlying wrongful death claims nor advance the equitable purposes of interpleader. The estates sought immediate payment without providing releases or stipulations of discontinuance to the Hussain defendants, meaning the litigation would continue regardless of distribution. That approach would effectively assume liability without any judicial finding or settlement, and it would leave the court without a reliable basis for determining each claimant's ratable share—particularly since the proposed proxies, such as settlements with unrelated defendants, were mismatched and incomplete. The court emphasized that interpleader is meant to promote fairness, avoid a race to judgment, and protect the insured, none of which would be served by distributing funds while claims against the Hussains remained unresolved. As a result, the court held that distribution must await final judgments, settlements, or other final resolution of the claims, and denied the motion without prejudice.

9 State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 535 (1967) ("State Farm's interest in this case, which is the fulcrum of the interpleader procedure, is confined to its $ 20,000 fund. That interest receives full vindication when the court restrains claimants from seeking to enforce against the insurance company any judgment obtained against its insured, except in the interpleader proceeding itself. To the extent that the District Court sought to control claimants' lawsuits against the insured and other alleged tortfeasors, it exceeded the powers granted to it by the statutory scheme. [¶] We recognize, of course, that our view of interpleader means that it cannot be used to solve all the vexing problems of multiparty litigation arising out of a mass tort. But interpleader was never intended to perform such a function, to be an all-purpose 'bill of peace.'"); Farmers & Mechs. Nat'l Bank v. Walser, 558 A.2d 1208, 1216-17 (Md. 1989) ("Although [Maryland] Rule 2-221 differs from the federal interpleader rule in that the former specifically provides the court with the power to enjoin the defendants from prosecuting any other action while the latter does not, we agree with those courts which have found that this injunctive power is limited to claims involving the interpleaded fund."); Club Exch. Corp. v. Searing, 567 P.2d 1353, 1358 (Kan. 1977) ("But interpleader does not, and restraining orders and injunctions granted by the interpleader court should not, limit the filing of lawsuits by the claimants against third-party tortfeasors or against the plaintiff's insured."); Oak Cas. Ins. Co. v. Lechliter, 524 S.E.2d 704, 711 (W. Va. 1999) ("[I]t is clear that any restrictions on legal actions imposed by an interpleader court must be limited to actions involving the interpleaded stake. In an interpleader action, a court may not restrict the injured parties from pursuing law suits against an alleged tortfeasor to establish the liability of that person or entity.").

Interpleading the full limits instead left the Hummels exposed to excess judgments on all three claims (*Baldwin*, 2025, p. 1211).

C. MISALIGNED INCENTIVES AND OVERUSE OF INTERPLEADER

By coupling a demanding, processheavy duty to minimize the insured's exposure with a categorical safe harbor for interpleader, Section 26 invites insurers who foresee excess liability to take the path of least resistance: interplead early, avoid hard settlement choices, and let the court distribute the money.

Other courts emphasize active settlement efforts. *DeMarco v. Travelers Insurance Co.* (2011, pp. 613–614) requires timely, meaningful negotiations aimed at resolving as many claims as possible and relieving as much potential liability as the limits and circumstances permit. The insurer must exercise professional judgment with the insured's interests in mind.[10]

Farinas v. Florida Farm Bureau General Insurance Co. (2003, p. 560) likewise required investigation of all claims and efforts to settle as many as possible. It cautioned against indiscriminate settlements that leave excess exposure a wiser strategy could avoid, and treated compliance as a jury question.

Read broadly, *Baldwin* can be taken to mean that an insurer facing multiple claims and inadequate limits fulfills its duty of good faith whenever it follows the interpleader template and that declining a policy limits demand in favor of interpleader cannot, as a matter of law, be bad faith. That reading is overinclusive because it can protect insurers that engage in cursory investigation, ignore viable settlement options, or file interpleader reflexively as soon as aggregate claimed damages exceed limits.

It is underinclusive because it offers no comparable protection to insurers that reasonably elect *Soriano*type selective settlements, *Peckham*type structured negotiations, or global settlement efforts that do not involve interpleader. *Soriano* and *Peckham* suggest, and experience shows, that sound, exposure-minimizing strategies may involve settling some claims and not others, or declining early demands in hopes of broader resolution, without using interpleader.

A rule that favors interpleader of liability limits promotes equitable treatment among multiple injured parties by preventing a "race to the courthouse" and allowing a court to supervise a *pro rata* or otherwise fair allocation of insufficient policy proceeds among all claimants with colorable claims. Rather than letting the first claimant to obtain a judgment or settlement exhaust the limits, interpleader reduces

[10] Peckham v. Cont'l Cas. Ins. Co., 895 F.2d 830, 835 (1st Cir. 1990) ("The insurer's goal should be to try to effect settlement of all or some of the multiple claims so as to relieve its insured of so much of his potential liability as is reasonably possible, considering the paucity of the policy limits."); Liberty Mut. Ins. Co. v. Davis, 412 F.2d 475, 480 (5th Cir. 1969) ("When several claimants are involved, and liability is evident, rejection of a single offer to compromise within policy limits does not necessarily conflict with the interest of the insured. He hopes to see the insurance fund used to compromise as much of his potential liability as possible.").

the risk that similarly situated victims will be arbitrarily undercompensated or left with nothing solely because they arrived later in time.

But the insured purchased the insurance to protect its assets, not to satisfy public policy and notions of equity among claimants.[11] Recognizing that there is not enough money to go around is a great incentivizer for a claimant to settle at a discount. As a result, the insured is generally better served by a rule that allows the insurer to favor one claimant over another when settling claims with limited or insufficient funds.[12]

V. A BUSINESS JUDGMENT RULE AS SAFE HARBOR

The corporate business judgment rule provides a familiar template. Under Delaware law, the rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company" (*Aronson v. Lewis*, 1984, p. 812). The party challenging the decision bears the burden of rebutting the presumption, and "[a]bsent an abuse of discretion, that judgment will be respected by the courts" (p. 812). Transposed to the insurance setting, a similar framework would ask whether the insurer (1) informed itself through reasonable investigation and evaluation, (2) acted in good faith and without selfdealing, and (3) adopted a settlement plan aimed at minimizing the insured's excess exposure.

The analogy requires one clarification because the rule is easy to misread as a license for the insurer to act in its own interest. The business judgment rule does not protect a director who acts for himself. Its "protections can only be claimed by disinterested directors whose conduct otherwise meets the tests of business judgment," which means that directors "can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation or all stockholders generally" (*Aronson*, 1984, p. 812). The rule protects judgment exercised on behalf of the beneficiary of the director's duty—the corporation—and it withdraws that protection when the director's own interest infects the decision. The insurance analog is the same. The beneficiary of the insurer's settlement judgment is the insured. The insurer earns the presumption only when it exercises that judgment for the insured's benefit, and it forfeits the presumption when it uses the settlement process to protect its own balance sheet at the insured's expense. An insurer that declines a reasonable withinlimits demand to preserve a chance at a defense verdict that would save the

[11] Peckham v. Cont'l Cas. Ins. Co., 895 F.2d 830, 835 (1st Cir. 1990) ("The insurer's duty, of course, is to its insured. It owes no correlative contractual duty to third-party claimants…. [W]e must not lose sight of the fact that the doctrinal impetus for insurance bad faith claims derives from the idea that the insured must be treated fairly and his legitimate interests protected. Claimants have no right to insist upon any punctilio in the insurer's observance, or not, of its obligations toward its insured. In other words, the justification for bad faith jurisprudence is as a shield for insureds - not as a sword for claimants.").

[12] *E.g.*, Tex. Farmers Ins. Co. v. Soriano, 881 S.W.2d 312, 315 (Tex. 1994) (footnote omitted) ("We conclude that when faced with a settlement demand arising out of multiple claims and inadequate proceeds, an insurer may enter into a reasonable settlement with one of the several claimants even though such settlement exhausts or diminishes the proceeds available to satisfy other claims. Such an approach, we believe, promotes settlement of lawsuits and encourages claimants to make their claims promptly.").

insurer money, while leaving the insured exposed to the excess, is the analog of the selfdealing director. So is an insurer that interpleads to end its own uncertainty while a realistic settlement opportunity for the insured remains. Neither would qualify.

That is why the proposal borrows the structure of the business judgment rule—a presumption in favor of informed, goodfaith judgment, rebuttable only by proof that the decision maker was uninformed, acted in bad faith, or acted for itself—and not its substantive content. The corporate rule defines the beneficiary as the corporation and its stockholders. The insurance rule defines the beneficiary as the insured. Everything else in the rule follows from that substitution.

The analogy is also imperfect in another respect that should be acknowledged: the corporate rule protects choices among business strategies whose outcomes are uncertain for everyone, while the insurer's settlement choice allocates a known risk between two parties whose interests diverge (Syverud, 1990; Abraham, 2015). The disinterest requirement is what makes the analogy work despite that difference. It requires the insurer to make the decision the insured would make if the insured controlled the money.

A safe harbor grounded in the nature of the business judgment rule would provide incentives more in line with the insured's interests, reduce hindsight bias, and preserve meaningful accountability for insurers that fail to protect their insureds. The concept is not new. In *Peckham*, the First Circuit explained, "So long as it acts in good faith, the insurer is not held to standards of omniscience or perfection; it has leeway to use, and should consistently employ, its honest business judgment" (1990, p. 835). But the path to safe harbor should be clearer and surer for insurers that try to best protect their insureds.

A. EXPLANATION OF THE NEW RULE

To qualify for safe harbor protection, the insurer must: (1) promptly investigate all known claims and reasonably evaluate liability and damages; (2) communicate with the insured about the risk of excess judgments and the settlement options; (3) attempt in good faith to achieve a global or near global resolution when feasible, including conferences and coordinated offers; and (4) where global peace is not realistically attainable, allocate policy limits through a reasoned strategy—such as settling the claims most likely to lead to litigation, settling claims where the greatest discount to value can be achieved, or accepting timelimited reasonable settlement demands—even if this exhausts limits and leaves other claimants exposed. Courts applying this rule would focus on whether the insurer's contemporaneous process and choices fell within a broad range of reasonableness given the information then available, not on whether, in hindsight, a different settlement allocation or overall approach might have produced a better outcome.

Interpleader would remain an option, not an automatic safe harbor. The question would be whether the insurer acted honestly within a reasonable range of insured-protective choices, including whether filing sacrificed a realistic opportunity to reduce excess exposure.

B. WHAT GOODFAITH CONDUCT LOOKS LIKE

The four elements just described are abstract. Insurers, regulators, and courts need to know what conduct satisfies them, and the answer should be concrete enough that an insurer can build a claim-handling protocol around it, and a court can test compliance on a written record. The following steps, drawn from case law and practitioner literature on multiple-claimant claims (Weihmuller & TurbeCapaz, 2012; Stern, 2009), describe what a goodfaith insurer does.

First, the insurer investigates every known and reasonably foreseeable claim promptly and evaluates each one. That means identifying every person injured in the occurrence, not only those who have retained counsel; obtaining the available liability facts and damages information; and assigning a realistic range of value to each claim, including a candid assessment of the probability of an excess verdict. *Farinas* described the duty as one "to fully investigate all the claims at hand to determine how to best limit the insured's liability" (2003, p. 560). An insurer that cannot show it knew the approximate value of each claim cannot show it made an informed judgment about how to allocate the limits.

Second, the insurer tells the insured, in writing and early, that the claims likely exceed the limits; that the insured faces personal exposure for any excess; that the insured has the right to retain personal counsel at the insured's expense; and what the insurer proposes to do about it. The Supreme Court of Florida has long held that the insurer must "warn of the possibility of an excess judgment" and "advise the insured of any steps he might take to avoid same" (*Boston Old Colony Insurance Co. v. Gutierrez*, 1980, p. 785). An insured who knows the risk can contribute personal funds to a settlement, can press the insurer to act, and can protect its own interests in ways the insurer cannot. Silence deprives the insured of those options.

Third, the insurer puts its full limits on the table for a global settlement, in writing, to all claimants and their counsel. Practitioners have recommended this step for years because it demonstrates the insurer's willingness to spend every dollar of coverage for the insured's benefit—the very showing that interpleader is said to make—without surrendering control of the money (Weihmuller & TurbeCapaz, 2012, p. 242; Stern, 2009). The offer should invite the claimants to agree among themselves on an allocation and should make clear that the insurer will pay the limits in exchange for releases of the insured.

Fourth, the insurer convenes the claimants. A global settlement conference or mediation with all claimants present is the most efficient means of testing whether a global resolution is achievable and of educating each claimant about the competing claims on the fund. Claimants who learn that the fund is inadequate and that others will share it often accept discounts they would refuse in a bilateral negotiation.

Fifth, if a global resolution fails, the insurer allocates the limits through a reasoned strategy that it records at the time. The strategy may favor the claimants most likely

to obtain excess judgments, the claimants who will release the insured for the largest discount from value, or a claimant who has made a reasonable timelimited demand. The Supreme Court of Texas approved selective settlement in *Soriano*, and *Peckham* approved structured negotiation with fewer than all claimants (*Texas Farmers Insurance Co. v. Soriano*, 1994, p. 315; *Peckham*, 1990, p. 835). The insurer obtains a release of the insured for every dollar it pays.

Sixth, the insurer documents each of these steps contemporaneously, revisits the strategy as claims mature and new information arrives, and keeps the insured informed as the strategy changes. The record should permit a court to reconstruct what the insurer knew, when it knew it, what options it considered, and why it chose the path it did.

Seventh, and only when these efforts have been exhausted or have resolved the claims that can be resolved, the insurer may interplead any remaining limits to protect the remaining claimants against a race to judgment (*Boris v. Flaherty*, 1998, p. 13). Interpleader at that point does not sacrifice a realistic opportunity to protect the insured because the insurer has already used the money for the insured's benefit to the extent it could.

An insurer that genuinely follows these steps and can prove them from its files should receive a rebuttable presumption of good faith. Rebuttal should require clear and convincing evidence that no reasonable insurer would have performed one or more steps in the manner shown by the record. Absent such rebuttal, the insurer should prevail as a matter of law. The inquiry would concern the reasonableness of the documented process, not a jury's hindsight preference for a different process or allocation.

This proposal does not displace the standard that most states already apply to bad faith failuretosettle claims. It structures that standard. Florida offers the clearest illustration, because the Supreme Court of Florida has held that "the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the 'totality of the circumstances' standard" (*Berges v. Infinity Insurance Co.*, 2004, p. 680; *see Harvey v. GEICO General Insurance Co.*, 2018). The insurer's duties under that standard are the ones *Boston Old Colony* identified: the insurer must "advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same," and it "must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so" (1980, p. 785). Florida's bad faith statute uses the same vocabulary, imposing liability on an insurer for "[n]ot attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests" (Fla. Stat. § 624.155(1)(b)1, 2025).

The strength of a totality standard is that it asks the right question: did the insurer, considering everything it knew and did, treat the insured's interests as its own? The weakness is predictability. Because the standard weighs everything, it rarely yields judgment as a matter of law. *Farinas* held that whether the insurer met each of its duties in a multiple claimant case presented "questions for a jury to decide" (2003, p. 560). The Arizona court in *McReynolds* adopted interpleader as a safe harbor for exactly that reason, reasoning that the law "must include some provision for certainty to insureds, insurers, and litigants short of submitting each case to a jury" (2010, p. 284). Commentators have described the Florida standard as leaving insurers with little guidance about what conduct will survive a jury (Casserlie, 2021). Florida's Legislature responded in 2023 by adopting the interpleaderorarbitration safe harbor discussed in Part III and by codifying other insurerprotective rules (Fla. Stat. § 624.155(4)–(6), 2025). The cure, in other words, was to carve a processfree exception out of a processsensitive standard.

Interpleader would remain relevant evidence. The Texas concurrence in *Soriano* called it "per se evidence of good faith intentions" because it demonstrates willingness to pay the limits (1992, p. 833). But willingness to pay does not establish that the insurer used the fund well. A written global offer makes the same showing without surrendering control. States with statutory interpleader safe harbors would need to amend them to adopt this approach.

C. RESOLUTION OF LIABILITY UNDER THE NEW RULE

Under this new rule, courts should anticipate that many disputes about an insurer's conduct will be resolved short of trial. Because the rule focuses on whether the insurer followed a documented, reasonable, insuredprotective settlement strategy, the key facts will often be reflected in claim files, correspondence, and testimony that can be evaluated on a written record. When a complaint merely recites labels and conclusions—such as alleging "bad faith" without concrete facts showing that the insurer acted outside the broad range of reasonable strategic options—the insurer should be able to obtain dismissal on a motion challenging the sufficiency of the pleadings.

Even when a complaint survives the initial pleading stage, the new rule is designed to lend itself to resolution on summary judgment in many cases. If the undisputed evidence shows that the insurer investigated the claims, communicated with the insured, considered a global resolution, and implemented a reasoned strategy to limit excess exposure, the court can hold as a matter of law that the insurer stayed within the protected safe harbor. Trial would be reserved for the smaller category of cases where there is a genuine factual dispute about whether the insurer actually followed such a process, or whether its decisions fell so far outside the zone of reasonableness that they could not have been made in good faith.

VI. IMPLICATIONS AND PROPOSALS FOR STATE INSURANCE REGULATORS

The preceding Parts address courts and the ALI. This Part addresses state insurance regulators, who supervise the claim handling practices that any safe harbor will shape. Regulators have three tools that bear directly on the multiple claimant, inadequatelimits problem: the unfair claims settlement practices acts, the statutory safe harbors that some legislatures have enacted, and market conduct supervision. Each can be adjusted to reward good-faith settlement efforts rather than early interpleader.

A. WHY REGULATORS SHOULD CARE

The problem this article addresses is a minimum limits problem. Many states set minimum bodily injury limits for automobile liability insurance at $25,000 per person and $50,000 per accident.[13] Florida requires only $10,000 per person and $20,000 per accident.[14] Legislatures set those limits, and regulators supervise the insurers that sell them. A collision that seriously injures two people will exhaust a minimum limits policy in many, if not most, states. The rule governing how the insurer then handles the competing demands determines whether the insured receives the protection the policy promised or a personal judgment for the balance.

Regulators also have an interest in how the safe harbor affects the market as a whole. Keeton (1954) and Syverud (1990) explain that the duty to settle exists because the insurer, not the insured, controls the decision that determines the insured's excess exposure. A safe harbor that lets the insurer discharge that duty by depositing the limits with a court removes the insurer's incentive to use its expertise, and the claimant's incentive to release the insured, at the moment both matter most. Part IV documented the consequences: loss of settlement leverage, delay in distribution, and continued exposure of the insured. The Schoharie limousine litigation, in which a court declined to distribute interpleaded funds six years after the crash because distribution would not resolve the claims against the insureds, illustrates how long claimants and insureds can wait once the fund is in court (refer to Part IV). Those consequences fall on the policyholders and claimants whom the insurance code exists to protect.

---

[13] Louisiana (La. Rev. Stat. Ann. § 32:900(b)(2)) and Pennsylvania (75 Pa. Cons. Stat. § 1702) are examples.
[14] Fla. Stat. Ann. § 324.021.

B. AMENDING THE UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

The NAIC Unfair Claims Settlement Practices Act, Model Law 900 (National Association of Insurance Commissioners [NAIC], 1997) supplies the template for most states' claimhandling standards. Section 4(D) of the Model Act defines as an unfair claims practice "[n]ot attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear." Section 3 makes such an act an improper claims practice if "[i]t is committed flagrantly and in conscious disregard of this Act" or "with such frequency to indicate a general business practice to engage in that type of conduct." Under Section 6, the commissioner may, following a hearing, order a monetary penalty of up to $1,000 for each violation, capped at $100,000 in the aggregate, or, subject to conditions, up to $25,000 for each violation and $250,000 in the aggregate for flagrant violations, and may suspend or revoke the insurer's license (NAIC, 1997, §§ 3, 4(D), 6).

Section 4(D) does not address the multiple-claimant case. It asks whether the insurer attempted in good faith to settle "claims submitted," and an insurer that has interpleaded its limits can plausibly say that it has done all it can with respect to every submitted claim. Nothing in the Model Act tells the insurer, or the examiner, that the insurer's job in a multiple claimant case is to use the fund to reduce the insured's exposure. The author proposes that the NAIC add the following subsection to Section 4 of the Model Act, and that states that have adopted the Model Act do the same. The language is the author's own:

> When two or more claimants assert claims arising out of a single occurrence that together may exceed the applicable limits of liability, failing to attempt in good faith to use the available limits to reduce the insured's exposure to liability in excess of those limits, including by investigating and evaluating each claim, communicating with the insured about the insured's exposure, and pursuing settlements that release the insured. An insurer's filing of an interpleader action or deposit of the limits with a court is evidence of the insurer's conduct under this subsection and by itself neither violates nor satisfies it.

The proposed subsection tracks the seven steps identified in Part V and the standard the Florida courts applied in *Farinas*. It gives adjusters a rule to follow before the fact and examiners a standard to apply afterward. It also fits the Model Act's structure. Because Section 3 reaches only flagrant violations or general business practices, the proposal would not expose an insurer to regulatory penalties for a single debatable settlement judgment. It would reach the insurer whose claim manual directs adjusters to interplead multiple claimant files as a matter of course without first attempting to settle them.

C. STATUTORY SAFE HARBORS: THE FLORIDA MODEL

Florida shows what happens when a legislature writes interpleader into the code. Section 624.155(6) of the Florida Statutes, enacted in 2023, provides that, when competing thirdparty claims may exceed the limits, "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 thirdparty claimants if, within 90 days after receiving notice of the competing claims in excess of the available policy limits," the insurer either files an interpleader action or makes the limits available through binding arbitration agreed to by the insurer and the claimants (Fla. Stat. § 624.155(6) (2025)).[15] The statute is a safe harbor in the full sense: so long as the insurer continues to defend its insured, compliance ends the inquiry.

The statute's two paths reveal its own inconsistency. The arbitration path in paragraph (b) requires the arbitrator to consider comparative fault and the likely outcome at trial, and it requires each claimant whose claim the arbitrator resolves to "execute and deliver a general release to the insured party" (Fla. Stat. § 624.155(6)(b)). The interpleader path in paragraph (a) requires nothing of the kind. A claimant who takes a prorated share of an interpleaded fund does not release the insured and remains free to pursue the insured for the balance. The legislature thus recognized in one paragraph that the insured's protection depends on releases and, in the next, immunized an insurer for a procedure that produces none. The author proposes that legislatures considering the Florida model, and Florida itself, replace the categorical immunity in paragraph (a) with an evidentiary rule. The following language is the author's own:

An insurer's filing of an interpleader action after receiving notice of the competing claims is evidence that the insurer acted in good faith, and the trier of fact must consider it together with all other circumstances, including the insurer's investigation and evaluation of the claims, its communications with the insured, and its efforts to obtain releases for the insured before filing. Filing an interpleader action does not by itself bar an action under this section or under the common law.[16]

That change would preserve what is sound in the Florida statute, the recognition that interpleader can be a legitimate response, while removing the feature that Part IV showed to be harmful, the rule that filing alone ends the insurer's duty. It would also align the statute with the totalityofthecircumstances standard that the Supreme Court of Florida applies under subsection (1)(b)1 and the common law (*Harvey*, 2018; *Berges*, 2004).

[15] Missouri's statute is similar. It provides, "If, within ninety days after receiving the first offer of settlement or demand for payment by a claimant, a plaintiff files an action for interpleader under this section and the plaintiff timely deposits all of its applicable limits of coverage into court within thirty days of the court's order granting interpleader, the plaintiff shall not be liable to any insured or defendant for any amount in excess of the plaintiff's contractual limits of coverage in the interpleader or any other action, so long as the plaintiff defends all of its insureds in good faith from any claims or lawsuits for damages allegedly caused by the incident or occurrence for which the limits of coverage were paid into court, even after depositing its limits of coverage into court notwithstanding any policy provision releasing the plaintiff of its duty to defend any of the insureds. Any insured's refusal of the plaintiff's good faith defense shall not affect the plaintiff's rights under this section." Mo. Rev. Stat. § 507.060(4).

[16] Corresponding amendments to the statutes opening would also be necessary.

D. MARKET CONDUCT SUPERVISION AND CLAIM FILE DOCUMENTATION

Regulators need not wait for statutory amendment.[17] The Model Act authorizes the commissioner to "promulgate reasonable rules, regulations and orders as are necessary or proper to carry out and effectuate the provisions of this Act" (NAIC, 1997, § 8), and most states have parallel authority. A bulletin or regulation could require insurers to document, in every claim file in which competing claims may exceed the limits, the seven steps described in Part V: identification of claimants, investigation and evaluation of each claim, assessment of the insured's exposure, communication with the insured, an exposure-reducing settlement strategy, an attempt to execute that strategy, and a contemporaneous record of the reasons for choosing interpleader if the insurer chooses it. Market conduct examiners could then test multiple claimant files against that record.

Such a documentation requirement has three advantages. It likely costs insurers little because the proposed business judgment rule already rewards the same documentation in bad faith litigation. It gives examiners an objective basis for distinguishing the insurer that interpleaded after a real settlement effort from the insurer that interpleaded to avoid a real settlement effort. And it generates data. Regulators likely do not have systematic information on how often insurers interplead, how long distribution takes, how often insureds suffer excess judgments after interpleader, or how often early global settlements succeed. Klein (2023) urged regulators to insist on evidence before adopting legal system reforms premised on claims of social inflation. The same discipline applies here. A documentation requirement, paired with a data call on multiple claimant files, would let regulators and legislatures test the claims made in this article and by the Restatement's reporters before committing to either safe harbor.

E. MINIMUM LIMITS

Finally, regulators and legislatures should recognize the connection between minimum limits and the safe harbor debate. Every increase in minimum limits reduces the number of accidents in which the multiple claimant problem arises. Every decision to leave minimum limits unchanged increases the number of policyholders who will depend on the rule this article addresses. Whatever a state decides about minimum limits, it should not compound low limits with a rule that permits the insurer to discharge its duty to those policyholders by depositing the limits with a court.

[17] Of course, they cannot override statutorily granted safe harbors.

VII. CONCLUSION

Interpleader can allocate an inadequate fund, but allocation alone does not protect the insured from excess liability. Treating the filing as complete performance encourages insurers to choose procedural protection over settlement efforts. A strategic settlement safe harbor would instead protect documented, good-faith judgment directed at reducing the insured's exposure, whether or not the strategy includes interpleader.

Courts and legislatures should align protection with that process. Regulators can reinforce it through multiple claimant standards, claim file documentation, and data collection. The goal is predictable protection for reasonable insurer judgment without displacing the insured's interests from the center of the settlement duty.

REFERENCES

Abraham, K. S. (2015). The liability insurer's duty to settle uncertain and mixed claims. *Rutgers University Law Review*, *68*, 337–369. http://rutgerslawreview.com/wp-content/uploads/2015/12/11_Abraham.pdf

American Law Institute. (2019). *Restatement of the law, liability insurance*.

Aronson v. Lewis, 473 A.2d 805 (Del. 1984).

Baldwin v. Standard Fire Insurance Co., 238 N.E.3d 655 (Ind. Ct. App. 2024).

Baldwin v. Standard Fire Insurance Co., 269 N.E.3d 1197 (Ind. 2025).

Behrens, M., & Appel, C. E. (2019, November). New ALI Restatement on liability insurance draws criticism. *IADC Committee Newsletter*.

Berges v. Infinity Insurance Co., 896 So. 2d 665 (Fla. 2004).

Boris v. Flaherty, 242 A.D.2d 9 (N.Y. App. Div. 1998).

Boston Old Colony Insurance Co. v. Gutierrez, 386 So. 2d 783 (Fla. 1980).

Bruner, P. L., & O'Connor, P. J., Jr. (2025). *Bruner & O'Connor on construction law* (Vol. 4). Thomson Reuters.

Casserlie, M. A. (2021). Two (or three) to tango: Florida auto insurance bad faith failure to settle post*Harvey*. *Florida Law Review*, *73*(4), 883–917. https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=4051&context=flr

Chafee, Z., Jr. (1921). Modernizing interpleader. *Yale Law Journal*, *30*(8), 814–844. https://doi.org/10.2307/788256

Chafee, Z., Jr. (1932). Interpleader in the United States courts. *Yale Law Journal*, *41*, 1134.

Chafee, Z., Jr. (1940). Federal interpleader since the act of 1936. *Yale Law Journal*, *49*, 377.

DeMarco v. Travelers Insurance Co., 26 A.3d 585 (R.I. 2011).

Farinas v. Florida Farm Bureau General Insurance Co., 850 So. 2d 555 (Fla. Dist. Ct. App. 2003).

Fla. Stat. § 624.155 (2025). https://www.flsenate.gov/Laws/Statutes/2025/624.155

Foggan, L. A., & Padgett, R. (2020, Fall). Rules of policy interpretation reflect lingering policyholder bias in the ALI's Restatement of the Law, Liability Insurance. *The Brief*.

Harvey v. GEICO General Insurance Co., 259 So. 3d 1 (Fla. 2018).

Hazard, G. C., Jr., & Moskovitz, M. (1964). An historical and critical analysis of interpleader. *California Law Review*, *52*, 706–763. https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1916&context=faculty_scholarship

Keeton, R. E. (1954). Liability insurance and responsibility for settlement. *Harvard Law Review*, *67*, 1136–1186.

Klein, K. S. (2023). The case for pausing any immediate embrace of the social inflation argument for legal system reforms, 42. https://doi.org/10.52227/26576.2023

Liberty Mutual Insurance Co. v. Davis, 412 F.2d 475 (5th Cir. 1969).

McReynolds v. American Commerce Insurance Co., 235 P.3d 278 (Ariz. Ct. App. 2010).

National Association of Insurance Commissioners. (1997). *Unfair claims settlement practices act* (Model Law 900). https://content.naic.org/sites/default/files/model-law-900.pdf

New York Life Insurance Co. v. Dunlevy, 241 U.S. 518 (1916).

Peckham v. Continental Casualty Insurance Co., 895 F.2d 830 (1st Cir. 1990).

Saiman, C. (2022). Why insurance needs a Restatement: The case of settlement decision law. *Connecticut Insurance Law Journal*, *28*(2), 162–215. https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1061&context=facpubs

Sanders v. Armour Fertilizer Works, 292 U.S. 190 (1934).

Smith, M. W. (1980). Comment, Deference to state courts in federal interpleader actions. *University of Chicago Law Review*, *47*, 824–844. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4224&context=uclrev

Soriano v. Texas Farmers Insurance Co., 844 S.W.2d 808 (Tex. App. 1992).

State Farm Fire & Casualty Co. v. Tashire, 386 U.S. 523 (1967).

Stern, J. M. (2009, September). What's an insurer to do? Multiple claims and insufficient limits. *For the Defense*, *51*(9), 18.

Syverud, K. D. (1990). The duty to settle. *Virginia Law Review*, *76*, 1113–1209.

Texas Farmers Insurance Co. v. Soriano, 881 S.W.2d 312 (Tex. 1994).

Voccio v. Reliance Insurance Cos., 703 F.2d 1 (1st Cir. 1983).

Weihmuller, J. W., & TurbeCapaz, L. A. (2012, Spring). Multiple claimants and insufficient limits: Can insurers lessen their exposure to bad faith claims? *FDCC Quarterly*, *62*(3), 242.