

Late Notice Coverage Update

January 15, 2026

Late Notice – Eleventh Circuit (Alabama Law)

A.B. by & through J.B. v. Barrow

No. 24-13138, --- F.4th ---, 2026 WL 40906 (11th Cir. Jan. 7, 2026)

The U.S. Court of Appeals for the Eleventh Circuit upheld the U.S. District Court for the Northern District of Alabama's order granting Nationwide Mutual Insurance Company's (Nationwide) motion for summary judgment, finding that Nationwide had no duty to indemnify its insured, David Barrow (Barrow), under an umbrella policy, for a \$10 million state-court judgment because notice to Nationwide of the underlying matter was untimely.

In 2013, Barrow sexually abused 10-year old A.B. and used her to film child pornography. The abuse continued into 2014. Barrow was eventually arrested in 2014 and later pled guilty to two counts of production of pornography/obscene material with a minor child and two counts of human trafficking involving a minor under the age of 12 or involving child pornography. Barrow is currently serving a 30-year sentence for his crimes.

In 2018, A.B., through her father, filed two lawsuits in Alabama state court. The first lawsuit was against Barrow for invasion of privacy, and the second lawsuit was against Barrow and his wife under the Alabama Fraudulent Transfer Act. The state court held a bench trial for the first lawsuit in April 2022 and ruled in favor of A.B., awarding her \$10 million, comprised of \$4 million in compensatory damages and \$6 million in punitive damages.

As part of her second lawsuit, A.B.'s attorney requested that Barrow and his wife provide copies of all insurance policies in effect at the time of Barrow's misconduct. Barrow's wife responded in September 2018, stating that she thought that Nationwide insured Barrow. On Nov. 9, 2018, A.B.'s attorney served a subpoena on Nationwide requesting production of its policies, which is when Nationwide first received notice of Barrow's 2013 conduct.

In July 2019, Nationwide retained counsel to defend Barrow in the state court action. The retained defense counsel represented Barrow through the 2022 verdict. When Barrow failed to pay the \$10 million judgment entered against him, A.B. sued Nationwide and Barrow in state court under Alabama's Direct Action Statute, seeking to apply up to \$10 million in coverage under the umbrella liability policy issued by Nationwide to Barrow.

After removing A.B.'s direct action case to the U.S. District Court for the Northern District of Alabama, Nationwide moved for summary judgment on the grounds that Barrow and A.B. did not comply with the

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notice condition in the umbrella policy. The district court, applying Alabama law, granted Nationwide's dispositive motion, finding that the 58 months between Barrow's 2013 conduct and when Nationwide first received notice of it via A.B.'s subpoena was untimely and Barrow offered no reasonable excuse or explanation for his failure to give timely notice to Nationwide. A.B. appealed the district court's order.

The appellate court held that A.B. could give notice to Nationwide on behalf of Barrow given the broad language of the policy's notice provision, but the 58-month delay in providing notice without justification warranted the upholding of the district court's order. The appellate court rejected A.B.'s argument that A.B.'s notice to Nationwide in November 2018 was timely because A.B. did not know about the Nationwide policy until September 2018. The appellate court, relying on the precedential holdings of the Alabama Supreme Court in *Nationwide Mut. Fire Ins. Co. v. Estate of Files*, 10 So. 3d 533 (Ala. 2008) and *Travelers Indem. Co. of Conn. v. Miller*, 86 So. 3d 338 (Ala. 2011), noted that the timeliness of notice is measured from the perspective of the insured, not the injured party, because an injured party proceeding under Alabama's Direct Action Statute stands in the shoes of an insured.

The appellate court refused to rewrite the contract to allow A.B. to obtain greater rights under the policy than Barrow had. Because Nationwide did not receive timely notice from Barrow or anyone acting on his behalf and because no valid excuse was provided for the 58-month delay in providing notice, the appellate court affirmed the district court's grant of summary judgment to Nationwide.

By: Amy L. Diviney