PLUNKETT COONEY

Occurrence, Satisfaction of Self-Insured Retention Coverage Update

August 15, 2025

Occurrence – Sixth Circuit (Michigan Law)

State Farm Fire and Cas. Co. v. Giannone
No. 24-1264, 2025 WL 2218944 (6th Cir. Aug. 5, 2025)

The U.S. Court of Appeals for the Sixth Circuit affirmed a federal district court's grant of summary judgment in favor of State Farm Fire and Casualty Company (State Farm) and against Daniele Giuseppe Giannone (Giannone). The issue in the case was whether the insured's action of shooting a firearm and killing another person constituted an "occurrence" under the State Farm homeowner's insurance policy. The district and appellate courts held that Giannone's actions did not constitute an "occurrence."

As background, Matthew Mollicone believed his wife, Kim Mollicone, was having an affair with Giannone. The Mollicones drove to Giannone's residence to confront him. A gunfight broke out between Messrs. Mollicone and Giannone. At one point, Giannone went into his house and retrieved a second firearm. When he returned, the Mollicones were backing out of the driveway. Giannone claimed he saw a gun poke out of the passenger window and heard gun shots. In response, he shot at the car and struck Kim Mollicone in the neck and killed her.

The estate of Kim Mollicone filed a lawsuit against Giannone and Matthew Mollicone. In turn, Giannone sought defense and indemnity under his insurance policy with State Farm. However, State Farm took the position that the shooting was not an occurrence and was also barred by the intentional-acts exclusion in the policy. State Farm filed the coverage action and sought a declaratory judgment that it had no duty to defend or indemnify Giannone. The district court granted State Farm's motion for summary judgment, concluding that Giannone's actions did not qualify as an "accident" under the policy.

The appellate court affirmed the lower court's decision, ruling that Giannone's acts were not an occurrence (i.e., an accident), because Kim Mollicone's death was a foreseeable result of aiming and shooting a gun at the vehicle she occupied. The appellate court also addressed the argument that under the intentional-act exclusion in the policy, any action taken in self-defense did not fall within the exclusion. The appellate court reasoned that even if the shooting was done in self-defense, actions taken in self-defense do not constitute an accident and, therefore, would not be an occurrence covered under the policy.

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By: Joshua LaBar

Satisfaction of Self-Insured Retention – Delaware

In re Aearo Techs. LLC Ins. Appeals
Nos. 381, 2024, 423, 2024; 2025 WL 2312921 (Del. Aug. 12, 2025)

The Supreme Court of Delaware affirmed a trial court ruling in favor of Twin City Fire Insurance Company (Twin City), ACE American Insurance Company (ACE), and MS Transverse Specialty Insurance Company, f/k/a Transverse Specialty Insurance Company, f/k/a Royal Surplus Lines Insurance Company (Royal Surplus), holding that when a corporate parent that is not the named insured attempts to satisfy the Self-Insured Retention (SIR) on behalf of its subsidiary company, the SIR is not satisfied and the insurers' coverage obligations are not triggered.

This case arose out of Aearo Technologies LLC, Aearo Holding LLC, Aearo Intermediate LLC, and Aearo LLC's (Aearo) development and distribution of Combat Arms Earplugs in the 1990s. In 2008, 3M Company (3M) acquired Aearo. Some years later, 280,000 multidistrict lawsuits were filed against 3M and Aearo alleging product defect and personal injuries caused by the earplugs. While the lawsuits were pending, Aearo filed Chapter 11 bankruptcy, but the bankruptcy court dismissed its petitions, concluding that Aearo was "financially healthy." Two months later, 3M and Aearo reached a global settlement of just over $6 billion for the earplug lawsuits with· each reporting payment of $370 million and $411,000 in legal fees and defense costs, respectively.

Twin City, Ace and Royal Surplus issued commercial general liability insurance policies to Aearo, prior to 3M's acquisition of Aearo. The language of the subject insurance policies stated that the insurers would pay damages and claim expenses but only after "you" pay the SIR. The policies defined "you" as the named insured shown in the declarations was Aearo.

Aearo and 3M filed suit, declaring that either of their payments satisfied the insurers' respective SIRs and triggered the insurers' duty to defend and/or indemnify. In response, the insurers filed a motion for summary judgement, arguing that their obligations had not been triggered because Aearo, not 3M, had to satisfy the SIR, and Aearo had not done so. The trial court granted the insurers' motion and Aearo and 3M appealed.

The Delaware Supreme Court affirmed the lower court. Looking to the language of policies to determine the parties' intent, the Delaware Supreme Court concluded that Aearo had to satisfy the SIR as the named insured. The appellate court also addressed Aearo and 3M's argument that failure to satisfy each SIR did not affect coverage but instead, required the insurers to pay for all defense costs, minus the amount that the insureds owed for the SIRs. The court rejected the argument because Aearo and 3M did not cite any case law in support.

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