PLUNKETT COONEY

No Occurrence, Imposition of Discovery Sanctions Coverage Update

August 1, 2025

No Occurrence – Ninth Circuit (Washington Law)

Kitsap Rifle and Revolver Club v. Northland Ins. Co.
No. 24-3064, 2025 WL 2028299 (9th Cir. July 21, 2025)

The U.S. Court of Appeals for Ninth Circuit affirmed an order granting summary judgment for Northland Insurance Company (Northland), finding that there was no coverage for Kitsap Rifle and Revolver Club (KRRC) for an underlying lawsuit because the plaintiff in the underlying lawsuit did not seek monetary damages because of "property damage" caused by an "occurrence."

KRRC operated a shooting range on a 72-acre parcel of land in Kitsap County, Washington (the property). The Washington Department of Natural Resources had owned the property and leased it to KRRC until 2009, when it sold it to KRRC. Between 1998 and 2011, KRRC began developing the property and increasing its gun-related activities, including draining wetlands, clearing vegetation in wetland buffers, moving large amounts of earth to create berms, redirecting surface water, installing lighting for nighttime shoot activities, providing firearms, tactical weapons, and automatic and/or high-caliber weapons training, hosting several tactical shooting competitions and discharging cannons.

After Kitsap County received complaints regarding the noise and other activities at the property, the county investigated and noted the extensive land clearing and development. The county issued a "stop work" order until KRRC obtained the requisite permits. But KRRC ignored the "stop work" order and continued its development of the property without obtaining the necessary permits. As such, in 2010, Kitsap County sued KRRC, asserting nuisance claims, as well as violations of zoning and nuisance ordinances. The county sought declaratory and injunctive relief, a warrant of abatement, authority to inspect and monitor the abatements, as well as administrative and legal costs and liens.

Northland insured KRRC under Commercial General Liability (CGL) policies issued consecutively from 1993 to 2006. Northland provided a defense under a reservation of rights to KRRC, and in 2011, KRRC filed a coverage action against Northfield seeking a declaration that Northland was obligated to defend and indemnify it in the underlying lawsuit. KRRC's amended complaint also included claims of common law bad faith, breach of the Insurance Fair Conduct Act (IFCA) and the Consumer Protection Act (CPA). Northland filed a counterclaim, seeking a declaration that its CGL policies did not cover the claims in the underlying lawsuit.

The lower court granted summary judgment in favor of Northland, finding that there was no coverage under the CGL policies for the underlying lawsuit. The appellate court ultimately agreed, determining that there was no coverage under the CGL policies because there was no "occurrence" within the meaning of the policies since "KRRC [did] not dispute that any potential environmental cleanup costs ... are the result of KRRC's deliberate actions" and did not "offer any evidence suggesting that a reasonable person would not have foreseen these damages" or of "'some additional unexpected, independent and unforeseen happening' that could have caused potential harms." (Citations omitted).

As for KRRC's extra-contractual claims for bad faith and violations of the IFCA and CPA, the appellate court noted that these claims were based on the alleged failure of Northland to pay $400,000 in permitting costs and $48,000 in legal defense costs. The appellate court determined that the $400,000 cost to obtain site development permits were not defense costs that fell within the scope of the CGL policies but were discretionary costs that KRRC was obligated to pay when it chose to develop the property. As for the $48,000 in legal fees, KRRC submitted only a ledger, which the appellate court found insufficient because it did not document what the payments were for or whether Northland refused to pay any itemized bills it had received. The appellate court further noted that KRRC failed to rebut Northland's assertion that it would review and pay the outstanding invoices from KRRC's counsel in the normal course of business.

By: Amy L. Diviney

Imposition of Discovery Sanctions – Seventh Circuit (Indiana Law)

Ohio Sec. Ins. Co. v. Best Inn Midwest, LLC
No. 23-1696, 2025 WL 1901905 (7th Cir. July 10, 2025)

The U.S. Court of Appeals for the Seventh Circuit upheld discovery sanctions imposed on an Indianapolis hotel after it repeatedly failed to produce records relating to whether the hotel was "vacant" per the terms of its property insurance policy with Ohio Security Insurance Company (Ohio Security).

Since 2010, Best Inn Midwest, LLC (Best Inn) owned and operated the Best Inn hotel in Indianapolis, Indiana. Ashok Reddy (Reddy) is the sole owner of the Best Inn corporation. Reddy, however, was an "inexperienced and absentee hotelier and, consequently, the hotel was plagued with problems including health code violations, dilapidation, criminal activity, and dishonest employees." In 2014, the city of Indianapolis obtained an injunction forcing the hotel to close due to reoccurring health code violations. When the hotel was permitted to reopen in 2017, Best Inn purchased a commercial property insurance policy from Ohio Security (policy). The policy, however, excluded coverage for vandalism, if the property was "vacant" for a period of 60 consecutive days or more.

In 2019, the air conditioners located on the roof of the hotel were vandalized, and Best Inn requested coverage under the Ohio Security policy. However, Ohio Security denied the claim, asserting that the policy did not cover acts of vandalism occurring when the hotel was "vacant," and the hotel was, indeed, "vacant."

On Jan. 30, 2020, Ohio Security invoked the terms of the policy to request that Reddy appear for an examination under oath. Additionally, Ohio Security requested that Reddy produce information pertaining to the hotel's occupancy rates to determine if the hotel was "vacant" within the meaning of the policy. After receiving no response, Ohio Security issued follow-up correspondence to Reddy on March 7, 2020, which also went unanswered. As a result, Ohio Security filed a declaratory judgment action seeking a ruling that it owed no coverage for the vandalized air conditioners because the hotel was "vacant" at the time of the damage. In turn, Best Inn filed a counterclaim against Ohio Security for bad faith.

After filing the lawsuit, Ohio Security, again, wrote to Reddy requesting that he produce documents pertaining to the hotel's occupancy. After receiving no response, Ohio Security filed discovery requests on Best Inn on April 17, 2020, which also went unanswered. On June 16, 2020, counsel for the parties, as well as Reddy, attended a telephonic conference to discuss the discovery requests. Thereafter, Ohio Security resent the discovery requests to Reddy's counsel. Best Inn failed to respond in a timely manner, so Ohio Security contacted Reddy again on July 2, July 24, Aug. 12, Aug. 21, and Nov. 4, all to no avail. Accordingly, Ohio Security filed a motion to compel discovery responses, which the district court granted, ordering Best Inn to timely and completely respond to the overdue discovery requests by Nov. 25, 2020. Although Best Inn did produce innkeeper tax records, those records did not provide information regarding the hotel's occupancy rates and, thus, were not responsive to the discovery requests.

Counsel for the parties then attended two meet-and-confer conferences, both of which failed to provoke Best Inn's responses. Consequently, the district court issued a second order requiring Best Inn to comply with the discovery requests by Dec. 31, 2020. Despite two court orders and Ohio Security's repeated requests, Best Inn still failed to comply. Accordingly, on Jan. 12, 2021, Ohio Security moved for discovery sanctions, requesting an order declaring the hotel "vacant" within the meaning of the policy. In response, Best Inn pled that some of the guest logs were destroyed by dishonest employees, and that other guest logs were consumed in a fire that occurred on Nov. 3, 2020. Despite these allegations, the district court granted Ohio Security's motion for sanctions. Once the hotel was deemed "vacant" as a matter of law, the district court granted summary judgment to Ohio Security on Best Inn's counterclaim for bad faith.

The appellate court ultimately affirmed both the district court's sanction orders, as well as its grant of Ohio Security's motion for summary judgment. The appellate court acknowledged that the sanction order amounted to a dismissal, because once the hotel was deemed "vacant," there was nothing left for

the court to decide. Nevertheless, the appellate court noted that a dismissal is well within a court's inherent authority to manage its docket in an orderly and expeditious manner.

Additionally, the appellate court found that the sanction order was an appropriate and proportionate response to Best Inn's conduct. The appellate court reasoned that any lesser sanction would not suffice because "Ohio Security would be left to prove that the hotel was vacant without access to the evidence – evidence that was no longer available due largely to Best Inn's bad faith conduct."

By: Nicholas T. Badalamenti